

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

Hon. G.D. Morgan, Jr.

Case No. 2026-000110

IN THE MATTER OF Mary Sloan "Polly" Shoemaker.....Decedent,

James Marshall Shoemaker, III.....Appellant,

v.

Lesley R. Moore, Esq. as Personal Representative and Trustee, and Edward
Sloan Shoemaker and Jonathan Evans Shoemaker as Beneficiaries and as
Individuals.....Respondents.

RECORD ON APPEAL

Respectfully submitted,

s/William R. McKibbon III

William R. McKibbon III

S.C. Bar #68454

601 E. McBee Ave, Ste. 104

Greenville, SC 29601

864.235.0071, 864.235.0072 (f)

will@legalcarolina.com

Attorney for Appellant

Opposing counsel:

Jenna Hendricks McLeod

Brown, Massey, Evans, McLeod & Haynsworth, LLC

106 Williams Street

Greenville, SC 29601

T: (864) 271-7424

F: (864) 242-6469

jennamcleod@bmemhlaw.com

Attorney for Respondents

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO.: 2024-CP-23-04068
	)	
In the matter of:	)	
	)	
Mary Sloan “Polly” Shoemaker	)	
Decedent	)	
	)	
James Marshall Shoemaker, III	)	ORDER
	)	
Appellant,	)	
	)	
vs.	)	
	)	
Lesley Moore, Esquire as Personal	)	
Representative and Trustee, Edward Sloan	)	
Shoemaker and Jonathan Evans Shoemaker	)	
as Beneficiaries	)	
	)	
Respondents.	)	
_____	)	

This matter came before the Court for a hearing on Tuesday, November 18, 2025 pursuant to Appellant’s appeal from the Probate Court’s ruling on a motion for sanctions, striking Appellant’s pleadings and dismissing the case. Counsel for both parties made persuasive arguments in support of their respective positions.

Background and History

Appellant filed the present action in the Greenville County Probate Court on July 24, 2020 contesting his mother’s will and trust, after previously filing a separate action contesting his father’s will and trust. In the present case of Mary Sloan “Polly” Shoemaker, discovery requests were originally served on Appellant on July 30, 2021. As a result of Appellant’s failure to answer the discovery requests, Respondents filed a motion to compel on December 3, 2021. Thereafter,

Appellant's then counsel was suspended, and Appellant's current counsel was retained, filing a notice of appearance on April 1, 2022.

On January 4, 2023, the Probate Court heard arguments in both the James Marshall Shoemaker, Jr., and the Mary Sloan "Polly" Shoemaker matters. At the onset of the hearing, Appellant's Counsel informed the Court that as to the motion to compel discovery, the Appellant consented to a grant of the motion with a reasonable time to respond. Appellant's Counsel also consented to waive objections to discovery except for attorney-client privileged items. Both parties consented to the Appellant providing responses to discovery within thirty (30) days of the date of the hearing. On the record, the Court granted the motion to compel within thirty (30) days.

No order regarding the motion to compel discovery was issued at that time under the reasoning that the thirty-day deadline would run prior to the issuance of the order regarding the other matters before the Court on January 4 and based upon Appellant's Counsel's assurances. On February 24, 2023, Respondents' Counsel notified the Probate Court, via letter, that the Appellant had failed to respond to discovery as agreed to on the record and asked the Probate Court to strike Appellant's pleadings. The Probate Court was reluctant to sanction a party without an order in place, so rather than strike the Appellant's pleadings at that time, the Probate Court issued an Order on March 10, 2023, ordering Appellant to comply with discovery within ten (10) days.

Appellant then failed to comply with the Court's Order of March 10, 2023, and on March 22, 2023, Respondents' Counsel wrote a letter to the Probate Court renewing their request that Appellant's pleadings be stricken as a sanction. On March 23, 2023, Appellant's Counsel turned over a large box of documents to Respondents, including a letter stating this was his entire file as received from John Blincow, the former lawyer on the case. Appellant still did not issue answers to interrogatories or written responses to Respondents Requests for Production.

Respondents filed a Motion for Sanctions on April 6, 2023, and again asked the court to strike Appellant's pleadings and dismiss all pending claims of Appellant. On April 2, 2024, one day prior to the hearing on the Motion for Sanctions, Appellant submitted interrogatory responses to Respondents but still failed to respond to the Request for Production of Documents. Respondents argued that the evasive and incomplete answers provided by Appellant should be treated as a failure to answer under Rule 37(a)(3), SCRCP. Ultimately, the Probate Court struck Appellant's pleadings and dismissed his case as a sanction for his discovery abuses. This appeal followed.

Legal Standard

In a probate appeal, the circuit court, court of appeals, or supreme court shall hear and determine the appeal according to the rules of law. S.C. Code Ann. § 62-1-308(i) (Supp. 2018). “[I]f the action is at law, the circuit court should uphold the findings of the probate court if there is any evidence to support them.” *In re Estate of Weeks*, 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997). Respondents submit that this is an action at law and as such, the findings of the Probate Court and circuit court must be upheld if there is any evidence to support them.

“A trial judge’s exercise of his discretionary powers with respect to sanctions imposed in discovery matters will not be disturbed on appeal absent a clear abuse of discretion. The burden is on the party appealing from the order to demonstrate the trial court abused its discretion.” *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 541-43, 489 S.E.2d 679, 681-82 (Ct. App. 1997). A decision on sanctions is undeniably with the lower court’s discretion and whether this Court would make a different decision is not the standard the Court must follow.

Under Rule 37, SCRCP, a trial judge may impose sanctions for a party’s failure to comply with the court’s order compelling discovery, including dismissal of the action. Rule 37(b)(2)(C),

SCRCP. “The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court.” *Downey v. Dixon*, 294 SC 42, 44, 362 S.E.2d 317, 318 (Ct. App. 1987). “Nevertheless, whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules.” *Id.* “[T]he most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.” *Nat’l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 643, 96 S. Ct. 2778, 2781 (1976) (dictum).

1. The Probate Court did not abuse its discretion in striking Appellant’s pleadings as a sanction for discovery abuses.

The Probate Court ruled that (1) the March 10, 2023 court order was ignored by Appellant, (2) previous sanctions have not induced Appellant to comply with court orders, (3) the possibility of the sanction of dismissal was not a surprise to Appellant, (4) the Appellant acted in bad faith, willfully and with gross indifference to the rights of other litigants in failing to respond to discovery, and (5) the box of documents that was dumped on Respondents’ Counsel was far from compliance with the Appellant’s outstanding discovery obligations. As noted above, a decision on sanctions is undeniably within the Probate Court’s discretion. There is evidence in the record to support the Probate Court’s decision. The Probate Court ruled that:

“[d]ue to [Appellant’s] continued failure to comply with discovery obligations and Court orders, the appropriate sanction is to strike [Appellant’s] pleadings and summarily dismiss all pending claims of [Appellant]. No less drastic sanction would be effective in this case. I considered the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice. The multiple discovery abuses blocked Respondents’ attempts to conduct meaningful discovery

even after the case has been pending for several years.” Order of Judge Queen,
May 17, 2024. The Probate Court’s Order is affirmed.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: James Marshall Shoemaker III , plaintiff, et al VS Lesley R Moore ,
defendant, et al
Case Number: 2024CP2304068
Type: Order/Dismissal

So Ordered

G.D. Morgan Jr.

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE CIRCUIT COURT

C.A. No.: 2024-CP-23-4068

In the matter of:

Mary Sloan "Polly" Shoemaker,
Decedent,
James Marshall Shoemaker, III
Appellant,

v.

Lesley Moore, Esquire as Personal
Representative and Trustee, Edward Sloan
Shoemaker and Jonathan Evans Shoemaker
as Beneficiaries,

Respondents.

ORDER

This matter came before the Court on March 24, 2025 upon Respondents' Motion to Strike, Amend or Supplement the Record on Appeal, and Stay of Time for Filing Final Briefs. William R. McKibbin III appeared as counsel for Appellant and Jenna McLeod appeared on behalf of Respondents. At the call of the case, the Court first took up the matter of Respondents' Motion to Supplement the Record on Appeal. Appellant orally consented to the relief sought therein. Therefore, Respondent's Motion to Supplement the Record on Appeal per its Motion is GRANTED. Having considered the parties' filings and oral argument, as to Respondent's Motion to Strike, Respondents' motion is DENIED. As to Respondents' Motion for an extension of time or stay of time for filing final briefs, that Motion is GRANTED.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: James Marshall Shoemaker III , plaintiff, et al VS Lesley R Moore ,
defendant, et al

Case Number: 2024CP2304068

Type: Order/Other

So Ordered

William C. McMaster, III

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE CIRCUIT COURT

C.A. No.: 2024-CP-23-4068

In the matter of:

Mary Sloan "Polly" Shoemaker,
Decedent,
James Marshall Shoemaker, III
Appellant,

FINAL BRIEF OF APPELLANT

v.

Lesley Moore, Esquire as Personal
Representative and Trustee, Edward Sloan
Shoemaker and Jonathan Evans Shoemaker
as Beneficiaries,
Respondents.

STATEMENT OF THE CASE

This action was initiated by the filing of a petition in the Greenville County Probate Court on July 24, 2020. (R. at 1). In essence, Petitioner/Appellant Marshall Shoemaker claims a legal incapacity related to his mother as to her testamentary wishes and alleges various matters of malfeasance on the part of the Respondents. Respondents responded to the petition on August 18, 2020, denying all wrongdoing and maintaining that the decedent was of sound mind and had the legal capacity to execute any and all testamentary documents at issue. (R. at 5). Ten months later, on July 18, 2021, Respondents file a Motion to Dismiss. (R. at 10). Also during this time, on July 30, 2021, Respondents submitted discovery requests to Petitioner/Appellant. (R. at 106). On November 29, 2021, Petitioner/Appellant served discovery responses to Respondents' requests. (R. at 124). Respondents then filed a Motion to Compel on December 3, 2021. (R. at 103). A hearing on said motion was held approximately one year later, and then following a

second motion of Respondents, a second hearing was held approximately another entire year later on a Motion for Sanctions. (R. at 154). On May 17, 2024, Judge Joshua Queen, Probate Judge for Gaffney County and special appointee for this case from Greenville County, issued an Order of Sanctions, awarding attorney's fees and striking the Appellant's pleadings. (R. at 206). After a Motion for Reconsideration was filed (R. at 213), Judge Queen denied such motion and affirmed his order in an Order dated June 6, 20, 2024. (R. at 237). This appeal followed.

FACTS

This appeal deals solely with discovery production, and whether or not it was appropriate for the Probate Court to strike the pleadings of Appellant and throw his case out of court with finality. It will be most informative to provide a timeline of facts prior to further engagement. The relevant dates to this appeal are as follows:

July 30, 2021 - Respondents served upon Appellant certain interrogatories and requests for production of documents per the South Carolina Rules of Civil Procedure. (R. at 100).

November 4, 2021 – Attorney Blincow responded that Mr. Shoemaker's responses were on his desk and being sent to opposition. (R. at 102).

November 9, 2021 – Respondents' counsel emails Attorney Blincow acknowledging the expected discovery responses and requesting that documents be sent from "Dr. Boor". Despite Respondents have continued to claim that no such documents were produced, though all of Dr. Boor's records were produced in Respondents' discovery production. They also appear to have been provided to Respondents' counsel well before the end of 2021 (R. at 101).

November 29, 2021 – Appellant **serves Respondents' counsel with discovery responses.** (R. at 124). It is noteworthy that this discovery production occurred before any

Motion to Compel. No deficiency letter was ever sent, to Appellant's knowledge, prior to the filing of the Motion to Compel.¹

December 3, 2021 – Respondents' counsel files a Motion to Compel against *pro se* Appellant (his attorney had only days before been indefinitely suspended from practice). (R. at 103). Respondents did not seek the scheduling of any hearing.

April 11, 2022 – Appellant's new counsel, Mr. McKibbin, appears in the case for the first time, having been retained for purposes of appealing Appellant's Father's case, but also retained to continue in the mother's case (R. at 145).

January 2023 – Almost a year after Respondents filed a Motion to Compel, wherein they claimed discovery responses had not been provided, Respondents finally scheduled a hearing on their 13 month old December 2021 Motion to Compel (it was Respondent's obligation to schedule their own motion within the Probate Court).

March 10, 2023 – Judge Queen issues an Order compelling production of documents and interrogatories by March 20, 2023. (R. at 150).

March 23, 2023 – Appellant's counsel hand-delivered responsive documents to Respondent's counsel with explanation of their origin and contents (the "Supreme Court Box"). This consisted of the entire file of former counsel Blincow, which also included all previous document production (R. at 124-141). These documents were both responsive to document requests and to interrogatories. In fact, the documents contained a second copy of the

¹ It is important to note, however, that in December, 2021, Mr. Blincow was suspended from the practice of law and his file was immediately boxed and turned over to the South Carolina Supreme Court. From that point until the Spring of 2022, Appellant had no counsel.

interrogatory responses that had been provided to Respondents on November 29, 2021 (with certificate of service) despite the errant claims such documents had never been provided.² (R. at 143).

March 23, 2023 – the same day such documents were delivered, mere moments after such delivery, Respondents’ counsel issued an email stating ‘And the interrogatories?’ They were in both the Supreme Court Box and had also been served upon Respondents; counsel two years prior, November 29, 2021 as evidenced by the certificate of service. (R. at 131). Counsel then wrote and stated that Respondents’ firm would not spend any time going through the single box of documents because it pertained only to Appellant’s father’s estate (an incorrect statement, which would have been recognized had the box been inspected per the rule). (R. at 142). Thus, Respondents’ counsel expressly refused the discovery production without any inspection or copying.

As stated, Respondents indicated that no efforts were even undertaken to inspect the documents (R. at 142), and his statements were indisputably false as to the contents of the Supreme Court Box. Even a cursory review would have shown that the lion’s share of documents were responsive to matters involving Polly Shoemaker’s case and contained interrogatory responses.³ (R. at 124-141).

² Appellant’s production of documents consisted of all documents provided by Appellant to his then attorney John Blincow, which were maintained in the ordinary course of business for approximately 5 months in a single box, not provided to Mr. Shoemaker. They were then provided to new, undersigned counsel. The March 23 production was three days late of Judge Queen’s Order for production of such documents. That 3 days late was entirely due to mere inadvertence of counsel, whereas the party in interest, Mr. Shoemaker, had provided them to counsel for production in November 2021, as evidenced by John Blincow’s interrogatory productions and the mere fact that the Supreme Court file contained ALL of the documents pertaining to Mary Shoemaker’s estate and the dispute over that.

³ It is also important to note that the photographs provided herein are in the order in which they were presented in the Supreme Court-supplied document box. Furthermore, as indicated numerous times to counsel and the lower court, the Father and Mother’s estate cases are inextricably intertwined, such that production of documents related to his case was reasonable, especially given the vast majority presented related to Polly Shoemaker, the case at bar.

Respondents demanded that Appellants pick up the box of discovery. (R. at 142). The appellant did not do so, because the production of these documents contained both responsive documents and interrogatory responses, and they were provided in earnest and good faith effort for Respondents to inspect and copy any documents they wished. Respondents termed this a ‘document dump.’ Appellant submits one single box of documentation would never be considered a “document dump”, especially one that was quite organized topically. Furthermore, Respondents’ email suggested they would not ‘take the time’ to sort through the documents (R. at 142), yet Appellant can attest that a sorting through of documents merely to create the photographs for this appeal was less than a one-hour process. Therefore, indisputable evidence exists that the Appellant provided discovery responses (though Appellant’s counsel insisted that such responses were not provided and continued to maintain that position all the way through to the present day) in both November of 2021 and March 2023. Nevertheless, when Appellant’s counsel was suspended, Respondents had filed a Motion to Compel, of which Appellant was unaware, and then Appellant remained without counsel and without any access to any file because the Supreme Court had taken it under its care until a later time for subsequent counsel.

Mr. Shoemaker had no further counsel until the middle of April 2022 (R. at 145), whom he hired to represent him in the appeal of his father’s case, a task that took extraordinary amounts of time and effort over the ensuing months and well over a year to go through both the Circuit Court and into the Court of Appeals. It was not until after Shoemaker retained new counsel that his previous file in total was obtained, and counsel secured the file from the Supreme Court, which mailed the single banker’s box of documents to Mr. Shoemaker’s new counsel. Appellant’s counsel is unsure of the exact date of receiving such file, but it is presumed based upon date of retainer that receipt occurred sometime in May of 2022.

During this time, the Motion to Compel filed by Respondents in December 2021 still had not been scheduled, nor requested to be scheduled by Respondents. Also, Appellant disputed the Motion and disputed any request that sanctions be ordered (as requested in the Motion to Compel), because Mr. Shoemaker believed all documents had been provided and turned over November 2021 (R. at 124-141). Whether he was accurate or not, he believed he had complied with discovery requests, which is a critical point in the present Court's evaluation of whether he acted with any bad faith during this time. And in his honest belief, he was most certainly allowed to have his position be heard in a motion filed by his opponent's that he genuinely contested.

A hearing on Respondents' Motion to Compel was finally scheduled - a full 13 months after Respondents had filed it. Respondents had made no affirmative efforts to schedule the hearing, which was their responsibility, or the Clerk of Court's responsibility. It was certainly not Mr. Shoemaker's responsibility for another party's motion. Respondents, it would appear, had no concerns about the passage of time or any urgency to have their motion heard. Yet when the time came for the one and only discovery motion that was filed in this case, Respondents sought to blame Mr. Shoemaker for delay and for discovery abuses and sought to have his pleadings struck and for attorney's fees for the entirety of their case be awarded. Mr. Shoemaker played no role in delaying the case for this substantial duration; he had a genuine disagreement which would be addressed by hearing upon said motion, and Respondents could have, at any time following the filing of their Motion in 2021, contacted the Cherokee County Probate Court to schedule such hearing. Instead, they patiently waited, and when the hearing was scheduled 13 months later, Respondents inappropriately sought to blame Mr. Shoemaker for that.

From the hearing on Respondents' Motion to Compel, Judge Queen Ordered compliance with document production and interrogatory responses by March 20, 2023. (R. at 150). In so doing, all interrogatories had already been responded to November 29, 2021. (R. at 124-130). After such Order was issued on March 10, compelling responses to discovery, Mr. Shoemaker's counsel conducted a full review of the entirety of documents provided, retracted all privileged communications, and provided the documents to opposing counsel in the Supreme Court Box. Appellant calls the Court's attention to the hearing on sanctions, wherein the Court was provided Mr. Shoemaker's emails for its review, both of which revealed Mr. Shoemaker had timely provided his responses to his prior counsel in 2021 (R. at 162-164) and again in his email March 6, 2023 after the Motion to Compel but without having been Ordered to do so (R. at 181-182). Both of these facts show that Mr. Shoemaker was engaged in discovery to actively comply with what was requested and there is no evidence of Mr. Shoemaker seeking to subvert, hide, avoid, or otherwise exercise willfulness or bad faith in the discovery process.

Opposing counsel then filed a motion for sanctions on April 6, 2023 (R. at 154), despite having received interrogatory and document responses in November 2021 and March of 2023. Respondents again did not seek to schedule the motion, and again, almost an entire year passed before Respondents sought to schedule the Motion for Sanctions. This spotlights that the delay that Respondents relied so heavily upon at the lower court hearing on this matter was caused by their own failing to call or write Cherokee County to schedule a hearing (again, a hearing which Mr. Shoemaker substantively disputed, well within his rights).

The undisputed facts are that the Motion to Compel of Respondents was not scheduled for 13 months after their filing, and the Motion for Sanctions was not scheduled for an additional 13 months after their filing, and it cannot be disputed that Mr. Shoemaker had nothing to do with

scheduling and no part whatsoever in that passage of time. Thus, the 26-month period of ‘delay’ was not in fact caused by Mr. Shoemaker, but by the opposing party choosing not to schedule hearings. Thus, the passage of time is a factor in this matter that should not prejudice Mr. Shoemaker and should not be considered in any evaluation of bad faith or gross indifference, because the Respondents had complete control over scheduling with the Probate Court for both of its Motions.

Combined with the above, the following facts are true about Mr. Shoemaker’s responses to discovery requests:

1) evidence was presented to the Court that Mr. Shoemaker provided discovery responses to his initial counsel in 2021, who served it upon opposing counsel (R. at 124-141). In any event, Mr. Shoemaker certainly reasonably relied upon his counsel for production of what he had provided his counsel.

2) Mr. Shoemaker again provided responses via email to counsel 4 days before any Order on the Motion to Compel was issued in 2023, again showing his good faith and diligence; and

3) responsive documents were in fact provided to Respondents’ counsel in full 13 days after the Order on the Motion to Compel was issued. Opposing counsel was in possession of all responsive documents for over a year prior to the Motion for Sanctions being heard. During the entirety of this time, Respondents’ counsel refused to even look at the Supreme Court Box, and have claimed that single box of documents was a ‘document dump,’ despite the fact that the amount of documents was quite reasonable, and despite the fact that Appellant’s counsel represented to Respondents that all such documents were in fact appropriately produced and responsive to the specific requests. Counsel reviewed the Supreme Court Box, confirmed that it

contained all documents in the possession of Appellant, determined the documents to provide, which did include some documents from both his father's case and his mother's case but primarily the mother's (Polly's) case, and served opposing counsel. In no event did the provision of a single box of documents constitute bad faith or a gross indifference from Appellant.

The above stated facts are indisputable as to Mr. Shoemaker's actions, the timeline of the motions and hearings with the court, Mr. Shoemaker's responding to counsel in both 2021 and 2023, and the turning over of responsive documents (R. at 124 and R. at 161). Under all of the above facts, and given the extreme importance of the case to all parties, Appellant submits that 1) delays of time in this case were not 'caused' by Appellant, and 2) any discovery deficiencies were technical in nature and were mitigated by highly unusual procedural circumstances, and 3) there is no single piece of evidence that Mr. Shoemaker himself operated in bad faith or with gross indifference to the process or the parties in this case.

Standard of Review

The burden is on the appealing party to show the trial court abused its discretion in imposing sanctions for failing to comply with a discovery order. *Halverson v. Yawn*, 328 S.C. 618, 493 S.E.2d 883 (Ct.App. 1997). An abuse of discretion exists where the Appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law. *Kershaw County Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990). In the present case, there is an abundance of evidence that Appellant's discovery production was very sufficient, and even if it had minor deficiencies, in striking the pleadings of Appellant, the lower court struck not a gavel, but an unjust iron hammer of ultimate prejudice down against the Appellant.

Argument

The Circuit Court should reverse the Probate Court because

- a. Appellant produced full interrogatory responses on November 19, 2021, as well as responsive documents;
- b. Appellant indisputably provided responses and documents to opposing counsel in both November 2021 and March 2023, and
- c. In providing written responses to interrogatories in November 2021, March 2023, as well as responsive documents in the “Supreme Court Box” which was refused to be inspected by Respondents, the lower court could not have made a finding of bad faith, willfulness, or a gross indifference to the rights of other litigants to justify a striking of pleadings.

In *Karppi v. Greenville Terrazzo Co. Inc. and Ogden Teck, Inc.* 489 S.E.2d 679, 327 S.C.

538 (Ct. App. 1997), the South Carolina Court of Appeals set forth the mandated framework regarding the imposition of sanctions against a party:

“[W]hen the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is nevertheless harsh medicine that should not be administered lightly. See generally *Orlando v. Boyd*, 320 S.C. 509, 466 S.E.2d 353 (1996); *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Before invoking this severe remedy, the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants. See *Orlando*; *Baughman*. The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. *Balloon Plantation v. Head Balloons*, 303 S.C. 152, 399 S.E.2d 439 (Ct.App.1990). The sanction should be aimed at the specific misconduct of the party sanctioned. *Balloon Plantation*, 303 S.C. at 154, 399 S.E.2d at 440.” *Karppi*, at 489 S.E.2d 682. (hereinafter referred to as “Ogden Teck” due to Ogden Teck being the party what was challenging the striking of its pleadings, thus the party situated as Mr. Shoemaker).⁴

Before addressing the facts of this case, it is important to note the mandatory language in the rule. Not only does the court recognize a striking of pleadings as “harsh medicine” and a “severe remedy,” it states the court MUST find elements of bad faith, willingness, or gross indifference. The present case facts simply cannot support such a finding. *Id.*

⁴ Note the

In *Ogden Teck*, a lower court was reversed after striking pleadings of a party. The facts of the case could not be more starkly contrasted to the present case, which should massively favor the Appellant in the case at bar. *Ogden Teck* was a case originally filed in June 1995. Respondent Karppi engaged in discovery requests in February 1996, seeking certain discovery from Ogden Teck, including requests for documents and a deposition of a Herbert Ogden. Ogden Teck **refused** (emphasis added) to produce the deponent, and also provided document responses unsatisfactory to Karppi, who filed a Motion to Compel. The trial court issued Order on June 29, 1996, that Ogden Teck must fully and completely respond to all outstanding requests within 30 days and that Herbert Ogden must be made available for deposition. On July 11, a status conference was held, and at that conference, the trial court again reiterated the Order, ordering Ogden Teck to comply with the discovery Order by July 31. Additionally, the Court set the case for trial during the week of August 12. *Id.* at 681.

Thus, at this stage in the *Ogden Teck* procedural history, 1) original discovery requests were ‘refused’ to be complied with, 2) the trial court issued an order requiring full compliance within 30 days, 3) within that 30 days, the trial court again ordered compliance while at a status conference, and 4) the discovery order and its ordered compliance was on the very eve of a scheduled trial of August 12, thus invoking incredible potential prejudice upon the aggrieved party. In essence, one party was blatantly refusing to supply discovery and essentially ignoring court orders with abandon and willfulness.

Yet the reckless disregard seemingly continued. Despite these two unequivocal orders from the Circuit Court, and even though trial was set for August 12, Ogden Teck again **refused** (emphasis added) to produce Herbert Ogden for an August 6th deposition (only 6 days before trial and in direct contravention of the discovery order). On August 9th (3 days before trial), Kaarpi

filed a second Motion to Compel discovery and for sanctions. After a hearing on that second Motion to Compel, the Circuit Court struck Ogden Teck's pleadings and ruled it to be in default for willfully and intentionally failing to comply with the court's discovery order.

In sum, the party owing discovery openly refused to produce, then ignored a total of 3 orders from the Court, endured 2 Motions to Compel, even up to the eve of trial, and the lower court did in fact strike the pleadings as a sanction. *Id.* Despite all these many and possibly highly prejudicial violations, the appeals court found the lower court had abused its discretion and reversed the decision.

In so reversing, the Court of Appeals reversed the trial court, holding that it abused its discretion under the circumstances of the case, and remanded the case to the lower court, where the case was ultimately tried in Greenville County by a jury on the merits and disposed of April 3, 1998. The Court of Appeals held as follows: "Under these circumstances...the harsh sanction that was imposed was not commensurate with Ogden Teck's disobedience, and any number of lesser, more narrowly tailored sanctions would have sufficed to protect Karppi's rights while adequately punishing the wrongdoing of Ogden Teck... Therefore, we find that the trial court abused its discretion with its imposition of this harsh and unjustifiable sanction." (*citing National Hockey League v. Metropolitan Hockey Club, Inc.* 427 U.S. 639, 643, 96 S.Ct. 2778,2781 (1976). *Id.* at 683.

In the present case, all evidence before the Court suggests that Mr. Shoemaker provided discovery responses to his first counsel, and that those responses were then given to Respondents' counsel November 29, 2021 (R. at 124) (though Respondents' counsel later alleged otherwise against a *pro se* Appellant). Appellant proceeded through the case with the honest

belief that he had honored all discovery requests. Indeed, the timeline above and supporting documentation reveal that to be true.

Unlike *Ogden Teck*, where the offending party absolutely chose on its own to refuse to comply with discovery, on its own accord and multiple times, Mr. Shoemaker has never refused to comply with requests. When requested to provide responses initially, he did so in 2021, and he believed his counsel had turned over all such documents.

It is also undisputed that all responsive documents were provided to opposing counsel again on March 23, 2023 (R. at 161), but that respondents' counsel outright refused to even review the documents for inspection and copying (R. at 142), despite the fact that these documents in the Supreme Court Box had fully organized and responsive documents as well as the full answers to interrogatories. (R. at 124). Respondents claimed the box was full of nothing but Appellant's father's case, but nothing could be further from the truth (R. at 132-141). Appellant could not effectively separate the mother's and father's cases without risk of failing to produce documentation, though a vast majority produced did in fact relate to only the case at bar. In fact, Appellant's counsel held back 3 full banker's boxes of documents that do in fact relate ONLY to the father's estate, which should effectively eliminate the derogatory claim that Appellant sought a 'document dump' approach upon Respondents.

Respondents *may* have had an argument that Appellant's counsel provided the documents with technical deficiency, but all responsive documents were in fact provided to opposing counsel twice, in 2021 and 2023.

As the *Ogden* court stated, a sanction should not go beyond the necessities of a situation to foreclose a decision on the merits of a case. *Id.* at 684. In the case at bar, Appellant submits that far less sanctions would sufficiently have remedied the need of appropriateness in proportion

to any mild deficiencies, if any were appropriate at all. There are a range of sanctions the Court can impose to ensure compliance with court rules and procedures such as monetary fines, contempt, preclusion orders, striking specific claims to limit the scope of the case, and conditional orders, but South Carolina has consistently regarded the sanction of dismissal drastic and extreme.

The Court has repeatedly stated that sanctions resulting in dismissal are harsh and should not be taken lightly and are to be imposed for more egregious violations. In *Ball v. Canadian American Express Co.*, counsel for the Defendants’ “freely admitted his clients had refused to comply with discovery orders before a certain date and had still not complied with certain discovery requests by the time of trial.” *Ball v. Canadian American Express Co.*, 314 S.C. 272, 442 S.E.2d 620 (Ct. App. 1994). Despite this admission of blatant refusal, the Court upheld a finding of contempt as an appropriate sanction without dismissal. Why? Precisely because it is the harshest penalty a court can issue upon a party litigant. Such a sanction ENDS the case without even a slight consideration of merits. That should never have happened in this case and has caused not only severe prejudice, but absolute injustice against Mr. Shoemaker.

Despite the Respondents’ ceaseless claims that Mr. Shoemaker did not provide discovery responses, the evidence shows precisely the opposite. Responses were provided in November of 2021 and again in response to a Court Order in 2023, as proven by Mr. Blincow’s dated letter, responses, and certificate of service contained in the Supreme Court Box as well as the hand-delivered Supreme Court Box to Respondents in March 2023 which contained organized easily distinguishable documents of Mary Shoemaker (the case at bar), as well as some documents related to her husband and to the both of them as well, because of their inextricable linkage to some degree.

(R. at 124-141). Regardless, nothing in such production could reasonably be considered so egregious as to reach the mandated standards before striking of pleadings is justified or allowed.

Further, warning parties of the possibility of default before entering such harsh sanctions aligns with the principles of fairness, due process and judicial efficiency, encouraging compliance. A party "is entitled to be made aware of th[e] drastic consequence[s] of failing to meet the court's conditions at the time the conditions are imposed, when he still has the opportunity to satisfy the conditions and avoid" the sanction. *Choice Hotels Int'l v. Goodwin & Boone*, 11 F.3d 469, 473 (4th Cir.1993); see also *Griffin Grading Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct.App. 1999) (where the Court noted that the Appellant had been warned by court order of the possible consequences prior to its fourth discovery Order violation). Appellant was not so warned in the one discovery Order in this case.

As a point of illustration as to the extremes it often takes before the Courts support the striking of pleadings, and standing in stark contrast to the present case, take the case of *Qzo, Inc. v. Moyer*, 358 S.C. 246, 594 S.E.2d 541 (S.C. App. 2004). In *Qzo*, the court found Appellant willfully destroyed evidence relevant to Palmetto's case when it failed to turn a computer over subject to a TRO, and held the computer for seven days, turned it over, only for it to be determined that in that intervening time period, the Appellant had erased the hard drive (or parts of it). *Id.* at 257. Thereafter, the trial court struck Appellant's pleadings and entered a judgment of liability in favor of Palmetto. In *Griffin Grading Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct.App. 1999), the Court of Appeals upheld the striking of pleadings after the defendant failed to comply with FOUR prior orders compelling discovery, even after prior Orders had included the imposition of the assessment of attorney's fees and after also having been warned by the Court of the possible consequences of having its pleadings stricken.

Appellant submits that the Court's sanction of attorney's fees, as already awarded, is no small penalty, and that the necessities of the situation in light of the facts warrant a more tailored remedy short of the most extreme chosen. Appellant himself had no part in determining the manner in which to produce the discovery, only to produce the documents and information he had in his possession, custody, knowledge, and control that were responsive to what was asked of him. All documents that he had, he produced, and he did so without reservation, as he did with information requested of him. There simply is no reasonable factual support for a finding of bad faith, willful disobedience, or gross indifference to warrant the extreme sanction imposed upon him, especially given the representative caselaw providing guidance as to what levels of extremity should be present to justify this most drastic of sanctions.

In seeking the Court's reversal, Appellant must stand firm that Mr. Shoemaker is not the architect of delay in this matter, nor is there any evidence of his desire or attempt to do so. In fact, the Respondents are solely the source of delay. The best evidence of that is by a following of the timeline noted at the beginning of this brief. Respondents filed a Motion to Compel in December 2021 yet never sought to have the issue heard for over a year, not until January 2023, and Respondents then moved for sanctions in March of 2023 yet failed to have that matter scheduled to be heard until April 2024. Appellant should not suffer the harshest of results nor should Respondents reap complete 'victory' by default by claiming they were the victims of years of delay when they had all the responsive documents in their possession and still were the architects of their own delay of the proceedings.

Mr. Shoemaker himself neither designed nor executed any scheme of noncompliance in either time or mode of production of discovery, and as such, there should be no finding against him of bad faith or gross indifference that would render the 'harsh medicine' the *Ogden Teck*

court appropriate. In light of all facts in this case and its companion case's considerable procedural confusion and interconnectedness; in light of the evidence that Mr. Shoemaker provided discovery responses in 2021 and again in March 2023; in light of all responsive documents being provided to Respondents by delivery of the Supreme Court Box, withholding nothing except privileged communications; and in light of the totality of the circumstances, the required legal standards for striking of pleadings cannot be met under any analysis, and reversal is appropriate due to such abuse of discretion.

Conclusion

As the *Ogden* Court aptly stated, a sanction should not go beyond the necessities of a situation to foreclose a decision on the merits of a case, and Appellant submits that the necessities of this set of facts make the striking of pleadings not only unreasonable, but patently unjust. Furthermore, the lower court abused its discretion in finding bad faith, willingness, or gross indifference to the rights of litigants. Appellant's initial 2021 responsive production and the 2023 production answered the interrogatories and requests for production of documents. Furthermore, the lower court appeared to give no consideration to Appellant's misfortune of over 5 months of non-representation and lack of access to his file, the fact that Respondents created ALL of the delays in having their motions heard, and the absolute refusal of Respondents' to open the "Supreme Court Box" which was provided in an organized manner and in good faith. As stated several times, the single produced box contained interrogatory responses and Ms. Shoemaker's responsive documents; things Respondents would have known had they been willing to even examine the contents, which they expressly were not willing to do by email of counsel.

Under such facts, the lower court abused its discretion in finding bad faith, willingness, or gross indifference. On the contrary, the facts show a clear progression of discovery, with some dispute, some misunderstanding, failures on the part of the Respondents, but clearly with Mr. Shoemaker participating actively, willingly, and forthrightly throughout the process. Under the appropriate standard of review, reversal is required if the lower court was without reasonable factual support to make a finding of bad faith or gross indifference which resulted in prejudice to the Appellant. In the present case, Appellant submits it could not be clearer that he has been the most prejudiced that the law could provide in being foreclosed from his case, but he has also demonstrated at least substantial, if not full compliance with discovery requests in a timely, or very close to timely manner and with the Respondents being at fault in the cause of their own delays and their misrepresentations in claiming they had not received responses when in fact they had!

The appellant submits that the lower court's ruling striking Appellant's pleadings and awarding attorney fees must be reversed, and that the case should be remanded for further proceedings on the merits.

Respectfully submitted,

s/William R. McKibbon III
601 E. McBee Ave. Ste 204
Greenville, SC 29601
(864) 235-0071
(864) 235-0072 (f)
will@legalcarolina.com
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM GREENVILLE COUNTY
Probate Court

Joshua L. Queen, Probate Judge

Appellate Case No. 2024CP2304068

James Marshall Shoemaker, III.....Appellant

v.

Lesley R. Moore, Esq. as Personal Representative and Trustee,
Edward Sloan Shoemaker and Jonathan Evans Shoemaker.....Respondents

FINAL BRIEF OF RESPONDENTS

September 24, 2025

Respectfully submitted,
**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH,
LLC**

s/ Jenna Hendricks McLeod
Jenna Hendricks McLeod
SC Bar No.: 101236
s/Tyler McLeod
Tyler McLeod
SC Bar No.: 101309
jennamcleod@bmemhlaw.com
tmcleod@bmemhlaw.com
PO Box 2464
Greenville, SC 29602
T: (864) 271-7424
Attorneys for Respondents

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STATEMENT OF ISSUES ON APPEAL

- I. Was Appellant's argument that Respondents' counsel was served with discovery responses on November 19, 2021 ever made to the lower court and therefore properly preserved for appellate review?**
- II. Did the probate court abuse its discretion in striking Appellant's pleadings as a sanction for Appellant's disregard of the Court's March 10, 2023 Order, Appellant's failure to ever provide written responses to Requests for Production, and Appellant's deficient responses to interrogatories which were not sent until April 2, 2024, almost three (3) full years after discovery requests were originally served on Appellant on July 30, 2021?**

STATEMENT OF THE CASE

The background of this case is protracted and complicated. Appellant originally filed a case contesting the will and trust of his father, James Marshall Shoemaker, Jr., in the Greenville County Probate Court on June 27, 2019. (Supp. R. p. 1) Appellant's mother, Mary Hunter "Polly" Sloan Shoemaker, was named as a Respondent in that action. *Id.* However, she passed away on December 28, 2019 and Appellant filed the present action in the Greenville County Probate Court on July 24, 2020 contesting her will and trust. (R. pp. 1-4 - Summons and Petition, case no: 2020ES2300073). On January 5, 2022, then Greenville County Probate Court Judge Clayton Jennings recused himself in the entirety from the Estates of James Marshall Shoemaker, Jr. and Mary Sloan "Polly" Shoemaker. (Supp. R. pp. 9-14 - Order, case no: 2018ES2301729 (Dec. 15, 2021)). On February 1, 2022, the Honorable Joshua L. Queen was appointed as special probate court judge by the Chief Justice of the South Carolina Supreme Court for all further hearings in the James Marshall Shoemaker, Jr. case and the Mary Sloan "Polly" Shoemaker case. (Supp. R. p. 15 - Order of the Supreme Court of South Carolina (Feb. 1, 2022)). Summary judgment in favor of the Respondents was granted in the James Marshall Shoemaker, Jr. case, which is currently on appeal at the South Carolina Court of Appeals.

As far as the discovery posture of the present case of Mary Sloan “Polly” Shoemaker, Respondents answered Appellant’s interrogatories and issued documents and written responses to the requests for production on January 6, 2021. On July 30, 2021, Respondents’ discovery requests were originally served on Appellant. (Supp. R. pp.16 -24 - Resp’ts First Set of Interrogs. and Resp’ts First Req. for Produc. (July 30, 2021)). By the time Respondents requested discovery from Appellant, Respondents had already fully and completely responded to Appellant’s discovery requests. Nevertheless, Appellant failed to answer the discovery requests and Respondents filed a motion to compel on December 3, 2021. (R. pp. 103-123 - Mot. to Compel (Dec. 3, 2021)). Thereafter, Appellant’s then counsel was suspended, and William McKibbon was retained, filing a notice of appearance on April 11, 2022. (R. p. 145 - Notice of Rep. (April 11, 2022)). On June 30, 2022, Respondents’ Counsel wrote a letter to William McKibbon regarding the outstanding discovery and pending motion to compel and requesting dates for depositions. (R. pp. 146-147 - Letter from Knox Haynsworth, Resp’ts Counsel, to William R. McKibbon, III, Pet’r’s Counsel (June 30, 2022)).

On January 4, 2023, the Court heard arguments in both the James Marshall Shoemaker, Jr., and the Mary Sloan “Polly” Shoemaker matters. (R. pp. 148-149 - Letter from Knox Haynsworth, Resp’ts Counsel, to the Honorable Joshua L. Queen (Feb. 24, 2023)). At that hearing, Mr. McKibbon informed the Court that as to the motion to compel discovery, Appellant consented to a grant of the motion with a reasonable time to respond. (R. p. 207 - Order, case no: 2020ES2300073, p. 2 (May 17, 2024)). Mr. McKibbon also consented to waive objections to discovery except for attorney-client privileged items. *Id.* Both parties consented to Appellant providing responses to discovery within thirty (30) days of the date of the hearing. *Id.* On the record, the Court granted the motion to compel within thirty (30) days. *Id.*

Based on Mr. McKibbon's assurances, no Order regarding the motion to compel discovery was issued at that time. *Id.* On February 24, 2023, Respondents' Counsel notified the Court, via letter, that Appellant had failed to respond to discovery as agreed to on the record and asked the Court to strike Appellant's pleadings. *Id.* The probate court was reluctant to sanction a party without an Order in place, so rather than strike Appellant's pleadings at that time, the probate court issued an Order on March 10, 2023, ordering Appellant to comply with discovery within ten (10) days. *Id.* 2-3; (R. p. 207 - Order, case no: 2020ES2300073, p. 2 (May 17, 2024)).

Appellant then failed to comply with the Court's Order of March 10, 2023, and on March 22, 2023, Respondents' Counsel wrote a letter to the court renewing their request that Appellant's pleadings be stricken as a sanction. (R. p. 208 - Order, case no: 2020ES2300073, p. 3 (May 17, 2024)); (R. pp. 152-153 - Letter from Knox Haynsworth, Resp'ts Counsel, to the Honorable Joshua L. Queen (Mar. 22, 2023)). On March 23, 2023, Appellant's Counsel turned over a large box of documents to Respondents, including a letter stating this was his entire file as received from John Blincow, the former lawyer on the case. (R. p. 208 - Order, case no: 2020ES2300073, p. 3 (May 17, 2024)). Appellant still did not issue answers to interrogatories or written responses to Respondents' Requests for Production. *Id.*

Respondents filed a Motion for Sanctions on April 6, 2023, and again asked the court to strike Appellant's pleadings and dismiss all pending claims of Appellant. (R. p. 154-161 - Mot. for Sanctions (Apr. 6, 2023)). In addition, Respondents asked for the costs and attorney's fees associated with this motion pursuant to S.C. Code §§ 32-1-111 and 62-7-1004. *Id.*

On April 2, 2024, one day prior to this hearing on the Motion for Sanctions, Appellant submitted interrogatory responses to Respondents but still failed to respond to the Request for Production of Documents. (R. pp. 162-164 - Letter from William McKibbon, III, Appellant's

Counsel, to Jenna Hendricks McLeod, Resp'ts Counsel (Apr. 2, 2024); Pet'r's Resp. to Resp'ts' Interrogs. and Req. for Produc. of Docs. (dated Mar. 26, 2024, rec'd Apr. 2, 2024). Respondents argued that the evasive and incomplete answers provided by Appellant should be treated as a failure to answer under Rule 37(a)(3), SCRCP. (R. p. 175: 16-19, 194: 24-195:6 - Transcript of Mot. for Sanctions at 11:16-19, 30:24-31:6). The probate court agreed, and Appellant's pleadings were stricken and all of Appellant's claims were summarily dismissed. (R. p. 208 - Order, case no: 2020ES2300073, p. 3 (May 17, 2024)). Appellant was also ordered to pay attorney's fees and costs in the amount of \$11,449.67 within ten (10) days of the May 17, 2024 Order. (R. p.212 Order, case no: 2020ES2300073, p. 7 (May 17, 2024)). Appellant has failed to pay the ordered attorney's fees and has not appealed the grant of attorney's fees.

STANDARD OF REVIEW

In a probate appeal, the circuit court, court of appeals, or supreme court shall hear and determine the appeal according to the rules of law. S.C. Code Ann. § 62-1-308(i) (Supp. 2018). “[I]f the action is at law, the circuit court should uphold the findings of the probate court if there is any evidence to support them.” *In re Estate of Weeks*, 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997). Respondents submit that this is an action at law and as such, the findings of the probate court and circuit court must be upheld if there is any evidence to support them.

“A trial judge’s exercise of his discretionary powers with respect to sanctions imposed in discovery matters will not be disturbed on appeal absent a clear abuse of discretion. The burden is on the party appealing from the order to demonstrate the trial court abused its discretion.” *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 541-43, 489 S.E.2d 679, 681-82 (Ct. App. 1997).

Under Rule 37, SCRCP, a trial judge may impose sanctions for a party’s failure to comply with the court’s order compelling discovery, including dismissal of the action. Rule 37(b)(2)(C),

SCRCP. “The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court.” *Downey v. Dixon*, 294 SC 42, 44, 362 S.E.2d 317, 318 (Ct. App. 1987). “Nevertheless, whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules.” *Id.* “[T]he most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.” *Nat’l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 643, 96 S. Ct. 2778, 2781 (1976) (dictum).

ARGUMENT

I. Appellant’s argument that Respondents’ counsel was served with discovery responses on November 19, 2021 is not substantiated and in any event was not raised to the lower court and therefore cannot be raised for the first time on appeal.

Appellant’s argument that Respondents’ counsel was served with discovery responses on November 19, 2021 is being made for the first time to this Court, which is sitting as an appellate court in the present case. Respondents were not, in fact, served with any discovery responses on November 19, 2021 seeing as Respondents had to file a motion to compel based on a total lack of discovery responses on December 3, 2021. (R. pp. 103-123 - Mot. to Compel (Dec. 3, 2021); R. pp. 148-149 - Letter from Knox Haynsworth, Resp’ts Counsel, to the Honorable Joshua L. Queen (Feb. 24, 2023); R. pp. 152-153 - Letter from Knox Haynsworth, Resp’ts Counsel, to the Honorable Joshua L. Queen (Mar. 22, 2023)). Importantly, Appellant failed to assert the allegation that Respondent was served with discovery responses on November 19, 2021 (1) in response to Respondents’ counsel’s letter on June 30, 2022 stating that discovery was outstanding, (2) in response to the Respondents’ counsel’s letter to Judge Queen on July 25, 2022, (3) at the motion to compel hearing on January 4, 2023, (4) in response to Respondents’ counsel’s letter to the Court

asking that Appellant's pleadings be stricken on February 24, 2023, (5) in response to Judge Queen's order that Appellant respond to discovery dated March 10, 2023, (6) in response to Respondents' counsel's letter asking that Appellant's pleadings be struck on March 22, 2023, (7) in response to Respondents' motion asking that Appellant's pleadings be struck as a sanction on April 6, 2023, (8) at the hearing on the motion for sanctions on April 3, 2024, (9) in his motion to reconsider, (10) in his statement of issues on appeal, or (11) at any other time to Respondents. (R. pp. 146-147 - Letter from Knox (June 30, 2022), Supp. R. pp. 25-26 - Letter from Knox (July 25, 2022); R. pp. 148-149 - Letter from Knox (Feb. 24, 2023); R. pp. 150-151 - Order (Mar. 10, 2023); R. p. 152-153 - Letter from Knox (Mar. 22, 2023); R. pp. 154-161 - Mot. for Sanctions (Apr. 6, 2023); R. pp. 165-207 - Transcript from Hearing (Apr. 3, 2024); R. pp. 213-229 - Mot. to Recons. (May 29, 2024); Statement of Issues on Appeal (July 26, 2024).

"It is well settled that issues not raised and ruled on by the lower court are not preserved for appellate consideration." *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 560 S.E.2d 410 (2002); *see also State v. Nelson*, 331 S.C. 1, 5 n.6, 501 S.E.2d 716, 718 n. 6 (1998) ("the ultimate goal behind preservation of error rules is to insure that an issue raised on appeal has first been addressed to and ruled on by the trial court.") "Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006).

Appellant attempts to raise the argument that Respondents were served with discovery on November 19, 2021 for the first time in this brief. Brief of Appellant at 1, 3, 5, 7, 8, 9. Appellant did not even raise this claim in his Statement of Issues on Appeal dated July 26, 2024. Therefore, this alleged claim that Respondents were served with discovery was created at some point after

the date of July 26, 2024. This issue is not preserved for appellate review and should not be considered by the Circuit Court. Based on the fact that this is the first Respondents are hearing of this contention, Respondents are unable to adequately respond to this claim other than to assure the Court that Respondents did not receive responses to interrogatories until April 2, 2024 (which we maintain are evasive and incomplete and thus to be treated as a failure to answer pursuant to SCRCP 37(a)(3)) and that Respondents have still to this date not received written responses to their Requests for Production.

a. Appellant did not serve Respondents' counsel with discovery responses on November 19, 2021.

Respondents were not, in fact, served with any discovery responses on November 19, 2021 seeing as Respondents had to file a motion to compel based on a total lack of discovery responses on December 3, 2021. (R. pp. 103-123 - Mot. to Compel (Dec. 3, 2021)). Had Respondents been served with discovery responses they would not have had to respond to the March 23, 2023 document dump stating that we were still waiting on interrogatories and written responses to the requests for production. (R. p. 144). Appellant's Counsel has consistently admitted that they turned over their entire file to Respondents on March 23, 2023 and did not even retain a copy. (R. p. 183:17-19 - Transcript of Mot. for Sanctions at 19:17-19). In fact, Appellant's Counsel had to pick up the box in June of 2024 after their case was dismissed. The document dump by Appellant did not answer interrogatories or include written responses to the Requests for Production. (R. p. 170:21-22 - Transcript of Mot. for Sanctions at 6:21-22).

Appellant has not attached or produced these alleged discovery responses they claim were served on Respondents on November 19, 2021, or any corresponding alleged certificate of service. Given that Appellant failed to raise the allegation that Respondents were served with discovery on November 19, 2021 and Appellant still has not submitted any alleged documentation to support

the claim to the Court or to Respondents, it is virtually impossible for Respondents to reply to Appellant's novel claims related to discovery. Nevertheless, Respondents can assure the Court that we did not receive discovery responses on November 19, 2021. If Respondents had received the discovery responses on November 19, 2021, then Appellant would not have needed to send them again on April 2, 2024, just one (1) day prior to the hearing on the motion for sanctions. (Supp. R. pp. 30-32 - Letter from William McKibbon, III, Appellant's Counsel, to Jenna Hendricks McLeod, Resp'ts Counsel (Apr. 2, 2024); Supp. R. pp.27-29 - Pet'r's Resp. to Resp'ts' Interrogs. and Req. for Produc. of Docs. (dated Mar. 26, 2024)). Furthermore, assuming for arguments sake that Appellant could somehow prove that Respondents were served with discovery on November 19, 2021, Appellant still failed to raise that issue at any time to the lower court and therefore it cannot be raised on appeal.

b. Appellant's production on March 23, 2023 did not include answers to interrogatories or written responses to the requests for production, as required by the Rules of Civil Procedure.

The Probate Court correctly ruled that Appellant's production in March of 2023 did not satisfy their discovery obligations since the document dump did not include any written answers to interrogatories or written responses to the requests for production, as required by the *South Carolina Rules of Civil Procedure*. Order, case no: 2020ES2300073, p. 2 (May 17, 2024). "Dumping the box of documents on Respondents' Counsel is far from compliance with the Petitioner's outstanding discovery obligations. Petitioner attempted to shift the responsibility of complying with his discovery requirements to Respondents. Were the Court to allow this, the Respondents would bear the burden of responding to their own requests for production." *Id.* at 5-6. In addition, the box dumped on Respondents on March 10, 2023 contained documents mixed

from the files of both James Marshall Shoemaker, Jr. and Mary Sloan “Polly” Shoemaker making it virtually impossible to glean which documents were responsive to which case. *Id.* at 6.

c. Appellant’s responses to interrogatories on April 2, 2024, just one (1) day before the hearing on the motion for sanctions, were evasive and incomplete and are therefore treated as a failure to answer pursuant to South Carolina Rule of Civil Procedure 37(a)(3).

Respondents contend that the interrogatory answers are not only several years late, but also evasive and incomplete and should therefore be treated as a failure to answer under SCRCP 37(a)(3). Rule 37(a)(3), SCRCP. SCRCP Rule 37 is the rule governing sanctions for failing to make or cooperate in discovery. *Id.* Rule 37(a)(3), SCRCP explicitly states “For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.” *Id.* Appellant argued in the hearing that “an answer to an interrogatory is an answer...” but that is incorrect under SCRCP 37(a)(3). *Id.*, Transcript of Mot. for Sanctions at 12:18-20.

Appellant’s failed to properly answer even a single one (1) of the eighteen (18) interrogatories. (Supp. R. pp. 27-29 - Pet’r’s Resp. to Resp’ts’ Interrogs. and Req. for Produc. of Docs. (dated Mar. 26, 2024, rec’d Apr. 2, 2024)). Appellant claimed to have no photographs, no documents, no expert witnesses, no fact witnesses, no recollection of any discussions with Appellant’s own children, and no recollections of any discussions with Appellant’s own mother, Polly Shoemaker. *Id.* Not only is Appellant claiming to have no information to support the case that he brought and must prove, but Appellant also had already brought a similar and related case challenging the will and trust of his father, James “Shoe” Shoemaker, Jr. Shoe’s case was dismissed at the summary judgment stage which was confirmed by the Court of Appeals certiorari was denied by the Supreme Court. Shoe’s case is relevant because the witnesses are the same. Both Appellant’s father’s and mother’s wills and trusts were prepared by Lesley Moore and witnessed by the same individuals, both of which are attorneys. Respondents answered

interrogatories and gave Appellant information as to Mrs. Shoemakers' doctors and potential witnesses in this case back in January of 2021. Nevertheless, Appellant has not taken a single deposition in an effort to legitimately pursue his claims or make any effort to determine if his claims were supported.

The responses to interrogatories were received by Respondent's Counsel on April 2, 2024 at 2:45 PM, the day before the hearing on the motion to compel. (Supp. R. pp. 30-32 - Letter from William McKibbon, III, Appellant's Counsel, to Jenna Hendricks McLeod, Resp'ts Counsel (Apr. 2, 2024); Supp. R. pp. 27-29 - Pet'r's Resp. to Resp'ts' Interrogs. and Req. for Produc. of Docs. (dated Mar. 26, 2024)). The responses were dated March 26, 2024. *Id.* Regardless of the late date of the responses after they were requested originally on July 30, 2021 from Appellant's original counsel, a motion to compel was filed on December 3, 2021, responses were requested from Appellant's present counsel by letter on June 30, 2022, a motion to compel was heard on January 4, 2023, and the court issued an order giving Appellant ten (10) days to comply with discovery on March 10, 2023. (Supp. R. pp. 20-24 - Resp'ts First Set of Interrogs. and Resp'ts First Req. for Produc. (July 30, 2021); R. pp. 103-123 - Mot. to Compel (Dec. 3, 2021); R. pp.146-147 - Letter from Knox Haynsworth, Resp'ts Counsel, to William R. McKibbon, III, Pet'r's Counsel (June 30, 2022); R. pp.150-151 - Order (Mar. 10, 2023)). Appellant responded by dumping a box of documents on Respondents on March 23, 2023, in violation of Judge Queen's order that all discovery be completed by March 20, 2023. R. pp.150-151 - Order (Mar. 10, 2023). Despite the document dump, Appellant still did not provide written responses to interrogatories to Respondent until April 2, 2024 and has still to this date not provided written responses to the requests for production (or at this point any documents responsive to the requests for production since Counsel for Appellant picked up the document dump).

Therefore, the Court properly granted Respondents' Motion for Sanctions and struck Appellant's pleadings based on Appellant's failure to ever provide written responses to Requests for Production and his deficient responses to interrogatories which were not sent until April 2, 2024, almost three full years after discovery requests were originally served on Appellant on July 30, 2021.

II. The probate court properly struck Appellant's pleadings as a sanction for Appellant's failing to comply with the court's March 10, 2023 Order and for continued discovery violations.

Even though the imposition of sanctions is usually left to the sound discretion of the trial judge, whatever sanction the judge imposes "should serve to protect the rights of discovery provided by the Rules." *Downey v. Dixon*, 294 S.C. 42, 362 S.E.2d 317 (Ct.App.1987). Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery. *Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1126 (5th Cir.1970), cert. denied sub nom., *Trefina v. U.S.*, 400 U.S. 878, 91 S.Ct. 118, 27 L.Ed.2d 115 (1970). As Chief Judge Sanders eloquently stated in *Downey*:

The rights of discovery provided by the Rules were not protected in any way. Neither was Ms. Downey accorded the rights of discovery provided by the Rules, nor was the sanction imposed against Mr. Dixon a meaningful deterrent to those who might fail to submit to discovery in the future. (It is perfectly obvious that few, if any, litigants would willingly submit to the discovery provided by the Rules if the alternative were simply paying \$50.). Indeed, it can be argued that the sanction imposed in the instant case tended to encourage, rather than discourage, noncompliance with the Rules. *Id.* at 45-46, 46 n. 2, 362 S.E.2d at 318 n. 2.

Downey v. Dixon, 294 S.C. 42, 45-46, 46 n. 2, 362 S.E.2d 317, 318 n.2 (Ct. App. 1987).

William McKibbon assured the Court that he would comply with discovery within thirty (30) days of the hearing on the motion to compel, which was held on January 4, 2023. (R. p. 207 - Order at 2 (May 17, 2024)). Appellant did not answer discovery within thirty (30) days and Respondents asked that his pleadings be struck and his case dismissed. (R. pp. 148-149 - Letter

from Knox Haynsworth, Resp'ts Counsel, to the Honorable Joshua L. Queen (Feb. 24, 2023)). Instead, an Order was issued giving Appellant ten (10) additional days to respond. (R. pp. 150-151 - Order (Mar. 10, 2023)). Appellant again did not respond within the ordered time period. (R. p. 208 - Order at 3 (May 17, 2024)).

A court is not required to warn a party of the possibility of their pleadings being struck as a sanction. The sanction of striking pleadings is explicitly provided in SCRCP Rule 37(b)(2)(c). Rule 37(b)(2)(C), SCRCP. Additionally, Appellant's Counsel was well aware of this possibility based on the fact that he was copied on not one, but two, letters asking the Court to strike Appellant's pleadings and dismiss the action on February 24, 2023 and on March 22, 2023. (R. pp. 148-149 - Letter from Knox Haynsworth, Resp'ts Counsel, to the Honorable Joshua L. Queen (Feb. 24, 2023); R. p. 152-153 - Letter from Knox (Mar. 22, 2023)). In addition, Respondents motion for sanctions filed April 6, 2023 stated that "Respondents respectfully submit that the only appropriate sanction for this continued conduct is to strike Petitioner's pleadings and summarily dismiss all pending claims of Petitioner." (R. p. 155 - Mot. for Sanctions). Nevertheless, Appellant still failed to answer the interrogatories or issue written responses to the requests for production. The Rules of Civil Procedure explicitly allow for the sanction of striking pleadings and dismissing the action under Rule 37(b)(2)(c). Rule 37(b)(2)(C), SCRCP.

a. The Probate Court properly found that Appellant acted in bad faith, willfully and with gross indifference to the rights of other litigants.

The Court properly found that Appellant acted in bad faith, willfully and with gross indifference to the rights of others. (R. pp. 210-212 - Order at 5-7 (May 17, 2024)). The fact that Appellant's interrogatory responses were almost two years late, and even then completely evasive and incomplete demonstrates the bad faith of Appellant. *Id.* at 210. Appellant dumped a box of

documents on Respondents, willfully and with gross indifference to their rights, in an attempt to shift his discovery burden onto Respondents. *Id.* at 210-211. As the probate court stated in the May 17, 2024 order “Were the Court to allow this, the Respondents would bear the burden of responding to their own requests for production.” *Id.* Furthermore, the documents in the box were mixed from the files of both James Marshall Shoemaker, Jr. and Mary Sloan “Polly” Shoemaker making it virtually impossible to glean which documents are responsive to which case. *Id.* at 211. Appellant knowingly ignored the Court’s March 10, 2023 Order which is additional evidence of Appellant’s bad faith. *Id.* at 209.

Appellant’s actions have caused his mother’s estate, his siblings, the Personal Representative and Trustee associated with his mother’s Will and Trust great time and expense up to this point, just to attempt to force Appellant to answer discovery that he is required to answer under the Rules, in a case that Appellant brought. *Id.* at 211. The court properly considered the precise nature of the discovery and the discovery posture of the case, Appellant’s disregard of the court’s order, willfulness, bad faith and the degree of prejudice to Respondents and found that the appropriate sanction was to strike Appellant’s pleadings and summarily dismiss all pending claims of Appellant.

The Court found that (1) the March 10, 2023 Court Order to comply with discovery in ten (10) days was ignored by Appellant, (2) previous sanctions have not induced Appellant to comply (including sanctions for attorneys fees against him in this case and in the companion case of James Marshall Shoemaker, Jr.) because Appellant just refuses to pay the court ordered attorneys’ fees, and that (3) the possibility of the sanction of dismissal is in no way a surprise to Appellant as Respondents have asked the Court to strike Appellant’s pleadings and dismiss this action three (3) times. Order (May 17, 2024). The latest request was in a motion for sanctions filed April 6, 2023,

and Appellant had almost a full year between April 6, 2023, and the last hearing on April 3, 2024, to fully answer discovery and failed to do so. Mot. for Sanctions.

Appellant attempts to shift the blame for the delay caused by his failure to answer discovery for two (2) full years (at a minimum) to Respondents no less than twelve (12) times in his brief. What Appellant ignores, however, is his own continuing duty to not only answer discovery, but to supplement his answers from the time of service until the time of trial. Rule 26 and Rule 26(e), SCRCP. Therefore, no delay that Appellant attempts to blame on Respondents relieves him of his discovery obligations. Not to mention Appellant is the party who brought the case and therefore should be pursuing it by taking depositions, filing motions, asking for status conferences and at an absolute bare minimum, responding to discovery. These alleged delays, while Appellant claims he was “patiently waiting” did nothing but give Appellant additional time to comply with his discovery obligations before having to answer for the lack of discovery in front of a judge. Nevertheless, Appellant did not serve interrogatory answers on Respondents until April 2, 2024, one day before the hearing for sanctions, and has still to this date never issued written responses to the Requests for Production. (Supp. R. pp. 20-24 - Pet’r’s Resp. to Resp’ts’ Interrogs. and Req. for Produc. of Docs. (dated Mar. 26, 2024, rec’d Apr. 2, 2024)).

b. Appellant failed to submit any evidence to prove a lack of bad faith, willfulness, or a gross indifference to the rights of other litigants.

Appellant did not present any evidence in the form of sworn testimony or affidavits either at the April 3, 2024 hearing on sanctions or in support of the motion to reconsider. (R. pp. 165-205 - Transcript of Mot. for Sanctions; R. pp. 213-229 - Mot. to Recons. (May 29, 2024)). Appellant’s motion and initial brief mentions indisputable evidence, but no evidence has been admitted. A movant’s failure to present and submit admissible evidence into the record sufficient

to provide the court with evidentiary support for all required findings of fact is fatal to the relief requested. *Regions Bank v. Owens*, 402 S.C. 642, 648-49, 741 S.E.2d 51, 55 (Ct. App. 2013). “[S]uch evidence is usually provided through affidavits.” *Bowers v. Bowers*, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991). “[T]he grounds upon which the motion were based were not supported by affidavit. There was no error in refusing to set aside the [default judgment] upon the mere statement of the defendant, contained in the notice of his motion, and unsupported by his affidavit.” *Duncan v. Duncan*, 93 SC 487, 495, 76 S.E.2d 1099, 1011 (1912). Arguments of counsel are not considered evidence. “The arguments of Husband’s counsel did not constitute competent evidence of the amount of any debt Wife may have owed Husband...In the absence of any other evidence establishing the existence or amount of the debt, we reverse the part of the order on reconsideration which reduces Wife’s award of equitable distribution...” *Jenkins v. Jenkins*, 345 S.C. 88, 105, 545 S.E.2d 88 (Ct. App. 2001). A movant who “offered neither affidavits nor other proof” and instead “relie[d] on the allegations contained in his unverified counterclaim and arguments made by his attorney during the hearing on his motion” failed to present evidence proving the facts essential to entitle him to relief. *Bowers*, 304 S.C. at 68, 403 S.E.2d at 129.

Appellant’s Brief referenced two emails from Appellant that Appellant contends were provided to the court at the motion for sanctions. These emails were not properly authenticated or entered into evidence. In fact, Appellant’s counsel even stated “I’m not – I’ve – obviously, you know, and I’m not seeking to admit anything to exhibits...” (R. p. 182:14-16 - Transcript of Mot. for Sanctions at 18:14-16). Counsel for Respondents does not even have a copy of these alleged emails or recall seeing them at the hearing. Reference to and submitting these emails to the Court at the hearing does not make them admitted evidence. The need for properly admitted evidence in

the form of sworn testimony or affidavits is partly to avoid this exact scenario where the other party, in this case Respondents, are unable to respond to what Appellant is calling “evidence” when Respondents have not even been provided a copy and it was not even attached to Appellant’s brief.

c. Any deficiencies in discovery on the part of Appellant’s Counsel are imputable to the client.

Appellant’s Counsel stated at the hearing on the motion for sanctions that any discovery deficiencies come from him and him only and should not be held against his client. (R. p. 176:12-14 - Transcript of Mot. for Sanctions at 12:12-14.) Appellant’s Counsel states throughout his brief that Appellant did not act in bad faith, had no part in determining the manner in which to produce discovery, and was not the architect of delay. Appellant’s Br. 6, 8, 9, 16. Appellant’s Counsel contends that Appellant provided interrogatory responses to him via email on March 6, 2023, four (4) days before any Order on the Motion to Compel on March 10, 2023. (*Id.* 7; R. p.182:1-24 - Tr. of Hr’g 18:1-24). In addition to the claim being unsupported by evidence, those incomplete interrogatory responses were not provided to Respondents for over an additional full year, until April 2, 2024, and written responses to the requests for production have still never been produced. (Supp. R. pp. 20-24 - Pet’r’s Resp. to Resp’t Interrogs and Req. for Produc. of Docs. (dated Mar. 26, 2024, rec’d Apr. 2, 2024)). Any deficiency on the part of Appellant’s Counsel is imputed to Appellant. “The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant.” *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987). Respondents should not have to suffer the consequences of Appellant’s repeated failure to comply with the discovery in direct disregard of the Rules of Civil Procedure and court orders.

Appellant’s alleged belief that his previous Counsel provided answers to Respondents is irrelevant. The alleged fact that Appellant provided responses to his current Counsel before Judge

Queen's March 10, 2023 order is also irrelevant. The only salient fact is that Respondents did not receive **any** answers to interrogatories until April 2, 2024 after an Order from the Court, writing two letters, filing a motion to compel, having a hearing on the motion to compel, filing a motion for sanctions, and sending deficient interrogatory responses the day before the hearing on the motion for sanctions (but still no responses to the requests for production). Respondents have still not received any written responses to the Requests for Production and the interrogatory responses provided are incomplete and evasive. A cursory glance at Appellant's answers to interrogatories will dispel any claim that Appellant was not acting in bad faith or with gross indifference to the process or the parties in his case, seeing as he did not answer a single interrogatory. (Supp. R. pp. 20-24 - Pet'r's Resp. to Resp'ts' Interrogs. and Req. for Produc. of Docs. (dated Mar. 26, 2024, rec'd Apr. 2, 2024)).

d. *Ogden Teck* is distinguishable from the present case because it was reversed based on the effect the sanction of dismissal had on another party

Appellant relies on the case of *Karppi v. Greenville Terrazzo Co. Inc. and Ogden Teck, Inc.* (hereinafter *Ogden Teck*) to support their argument that the sanction of striking Appellant's pleadings and dismissing his case is too harsh and thus an abuse of discretion. 489 S.E.2d 679, 327 S.C. 538 (Ct. App. 1997); Appellant's Br. 10-13. Appellant fails to point out why the sanction in *Ogden Teck* was overturned, and it was not because it was too harsh on the offending party (Ogden Teck) but rather that it was overbroad and had an unfair effect on the other, non-offending party, Greenville Terrazzo Co. Inc. "The need for the trial court to narrowly tailor its sanction to the offense committed by a party is never more evidence than in cases involving multiple parties." *Ogden Teck*, 489 S.E.2d at 682, 327 S.C. at 543. The court in *Ogden Teck* struck the pleadings of the offending party (Ogden Teck), including Ogden Teck's cross-claim against Terrazzo. *Id.* The

court determined that this unfairly gave Terrazzo a windfall and therefore was an overbroad sanction. *Id.* at 682, 327 S.C. at 544. Obviously this factual scenario is not applicable in this case since there are not multiple parties or an overbroad effect on a non-offending party.

Appellant attempts to paint the facts of *Ogden Teck* as much more egregious than Appellant's own conduct. However, Respondents argue that similar to *Ogden Teck*, (1) Appellant also refused to comply with original discovery requests, (2) the trial court orally ordered full compliance with discovery within 30 days, (3) Appellant still did not comply with the discovery requests, (4) an Order was issued giving Appellant an additional ten (10) days to comply on March 10, 2024, and (5) Appellant still did not comply in blatant disregard of the court's March 10, 2024 Order. Additionally, Appellant was warned of the sanction of striking the pleadings in letters on February 24, 2023 and March 22, 2023, as well as in the motion for sanctions filed on April 6, 2023. (R. pp. 148-149 - Letter from Knox Haynsworth (Feb. 24, 2023); R. pp. 152-153 - Letter from Knox Haynsworth (Mar. 22, 2023); R. pp. 154-161 - Mot. for Sanctions (May 29, 2024)).

CONCLUSION

Appellant did not indisputably provide responses and documents to opposing counsel on November 19, 2021. Respondents have still not received full answers to interrogatories or any written responses to the requests for production. Furthermore, Appellant never made the argument that Respondents' counsel was served with discovery responses on November 19, 2021, and therefore that argument is not properly preserved for appellate review.

The probate court did not abuse its discretion by striking the Appellant's pleadings as a sanction for the Appellant's continued blatant disregard for the rules of discovery and disregard of the Court's March 10, 2023 Order, when Appellant failed to ever provide written responses to Requests for Production and only produced deficient interrogatory responses on April 2, 2024,

almost three (3) full years after discovery requests were originally served on Appellant on July 30, 2021.

September 24, 2025

Respectfully submitted,
**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH,
LLC**

s/ Jenna Hendricks McLeod
Jenna Hendricks McLeod
SC Bar No.: 101236
s/Tyler McLeod
Tyler McLeod
SC Bar No.: 101309
jennamcleod@bmemhlaw.com
tmcleod@bmemhlaw.com
PO Box 2464
Greenville, SC 29602
T: (864) 271-7424
Attorneys for Respondents

STATE OF SOUTH CAROLINA	*	COMMON PLEAS COURT
	*	
COUNTY OF GREENVILLE	*	TRANSCRIPT OF RECORD
-----X		
MARY SLOAN "POLLY"	*	
SHOEMAKER, etal	*	
	*	
Plaintiff,	*	
	*	
vs.	*	Case No. 2024-CP-23-4068
	*	
LESLIE R. MOORE, etal	*	
	*	
Defendant.	*	
-----X		
		NOVEMBER 18, 2025

B E F O R E:

The Honorable G. D. MORGAN, JR., Presiding Judge

A P P E A R A N C E S:

WILLIAM R. MCKIBBON, III, ESQ.
ATTORNEY FOR THE APPELLANT

JENNA MCLEOD, ESQ.
ATTORNEY FOR THE DEFENDANT

Recorded by: Web Ex

Transcribed by: Loraine Victoria Edwards, CER, CET
SC Official Digital Court Reporter II

I N D E XWITNESS/DESCRIPTIONPAGE

NONE

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(The following proceedings started via Web Ex at 3:27)

THE COURT: All right. Next matter -- Marshall Shoemaker vs Leslie Moore, 2024-CP-23-4068.

All right. If y'all will identify yourself and who you represent.

MR. MCKIBBON: Yes, Your Honor. Will McKibbon on behalf of the appellant, Mr. Marshall Shoemaker.

THE COURT: All right.

Yes, ma'am?

MS. MCLEOD: Jenna Hendricks McLeod on behalf of Respondents.

THE COURT: All right. Mr. McKibbon, this is your appeal, I believe.

MR. MCKIBBON: Yes, Your Honor, may I please the Court. I'll ask for the Court's indulgence on some -- some background on this matter. We're here today appealing the Cherokee County Probate Judge's order where he struck my client's pleadings and dismissed his case.

We're here today to show in the Court that the Probate Judge abused his discretion exposing that sanction upon my client -- submit an error of law.

And we're here today to show the Court that my client's case deserves to be heard on the merits rather than to suffer the most extreme punishment from the lower Court to the

1 absolute extinguishment of his right to be heard.

2 By some background, Judge, this case originated July 24,
3 2020. This is a case where Mr. Shoemaker has challenged the
4 testamentary capacity of his mother who passed. He -- for
5 many, many years -- was sharing equally in an estate division
6 between he and his brothers.

7 And late in her life, when Mr. Shoemaker contends she
8 lacked testamentary capacity, they -- her will was changed
9 and he was written out of the will. This case is of -- of
10 massive import for a number of reasons, but, specifically,
11 this is a multi-million-dollar estate.

12 And the result of the Probate Judge Queen in Cherokee
13 County dismissing my client's case -- for closing his case on
14 the merits, of course, ended his ability to make any claims
15 whatsoever that he had petitioned for with the Probate Court.

16 Such that his legal ability to seek invalidation of the
17 will, challenging millions of dollars of estate monies to be
18 distributed to the family, has not only been at risk, but has
19 now been extinguished subject to this appeal.

20 Your Honor, the case was filed in 2020 and about a year
21 later, July 30th, discovery requests -- interrogatories and
22 requests for production were served upon my client. I was
23 not representing Mr. Shoemaker at the time.

24 He had another attorney. And in July 2021, again,
25 Respondent served discovery request. On November 29th, 2021

1 -- there have been no discovery motions filed whatsoever.
2 Both Ms. Mcleod and myself took over these cases a bit later.

3 At the time, it was Mr. Knox Haynsworth and Mr. John
4 Blincow who were representing the parties. And then going
5 back and forth, Mr. Blincow on November 29th, 2021, produced
6 discovery responses to the respondents.

7 Those were -- that's in the record. There is a
8 Certificate of Service from November 29th, 2021, as well as
9 the -- the responses to the interrogatories, as well as -- as
10 I'll go into a minute -- the multiple, many, many documents
11 that responded to the request for production of documents.

12 The date is very important. This was November 29th of
13 2021, when Mr. Blincow -- Marshall's attorney -- responded
14 and provided discovery responses to the opposition. Four
15 days after that -- there were no deficiency letters sent --
16 no -- no anything sent in response to that production of
17 documents and interrogatory responses --

18 THE COURT: That's when they filed a Motion to Compel at
19 that point?

20 MR. MCKIBBON: That is when a Motion to Compel was
21 filed. That's correct, Your Honor. And the -- several weeks
22 after that, Mr. Blincow was indefinitely suspended from
23 practicing. Mr. Shoemaker -- whom I'll call Marshall because
24 everybody's a Shoemaker in the case -- Marshall was
25 unrepresented for a period of time.

1 I became involved in the spring of 2022. The hearing on
2 the Motion to Compel was not scheduled by the respondents for
3 over an entire year after the filing of this Motion to
4 Compel.

5 As you know, not unlike with the Master in Equity, in
6 the Probate Court, you typically call and schedule it.
7 There's not a non-jury coordinator that just sets it up. He
8 called -- make contact, get things scheduled. And it was not
9 scheduled for over a year from the filing.

10 Having been filed in 2021, it was -- it was scheduled to
11 be heard in January of 2023. From November 29th of 2021
12 until this time, the documents and the interrogatories
13 produced November 29th, 2021 were in their possession.

14 The Motion to Compel did not have any specifics
15 whatsoever on it. It was maintained by the respondents that
16 absolutely nothing had been produced, despite the record
17 showing otherwise.

18 As a result of that Motion to Compel, which was the
19 first motion in this case, an order issued from Judge Queen
20 March 10th of 2023, giving 10 days to provide the full
21 discovery responses. My office had been provided with -- and
22 you've seen it in the brief -- what we've called the Supreme
23 Court box, which was Mr. Blincow's file, which had all of the
24 discovery in it from Ms. Shoemaker's estate, including the
25 interrogatories that were produced and -- and many, many

1 other documents.

2 As you see in the record, there are numerous pieces of
3 evidence that are -- rather than it being the actual
4 documents, there are documents from pages 118 to 141 in the
5 record showing numerous documents that had been produced in
6 2021 as well as in 2023, all relating to this case and
7 responsive to the document production requests made by the
8 respondents.

9 So the documents that were provided in 2021 in response
10 to the production of document requests, as well as
11 interrogatories were again produced in 2023 in response to
12 Judge Queen's order.

13 The reason for that being produced exactly like that was
14 this is exactly the way that it was provided and the way it
15 was kept in the ordinary course of business from the attorney
16 who had the original discovery, who provided the original
17 discovery, I provided that doc -- that box by hand delivery
18 with a -- a -- a note.

19 Mr. Haynsworth at the time stating, you know, "Here are
20 the documents for your inspection and copying as you see fit.
21 Take your time, I'll be glad to come pick it up whenever
22 you'd like."

23 His response was, "This appears nothing more than
24 Blincow's file. I'm not going to spend my time or my
25 client's money to go through this and you can come pick up

1 the documents." We did not pick up those documents, Your
2 Honor, because we believe -- and still believe -- that those
3 were responsive.

4 They were. They had the documents that had been
5 requested. That was the only motion to file -- that was
6 filed. One Motion to Compel was filed. One order compelling
7 production was issued.

8 That order simply stated produce the documents within 10
9 days. It was provided March 23rd. It was issued March 10th.
10 The box after we took out the -- the attorney-client
11 privilege documents was provided March 23rd.

12 The -- what followed next, Your Honor, was a Motion for
13 Sanctions on April 3rd, 2023. And here, again, Marshall
14 asserted to me -- and I asserted as well -- that everything
15 had been produced. There was no further document to be
16 provided, no further answer to be provided, and still no
17 deficiencies had ever been pointed out to us.

18 It was merely a Motion for Sanctions and a request that
19 our pleadings -- my client's pleadings -- be stricken as well
20 as for attorney's fees. That was filed April 3rd, 2023.

21 From there, Your Honor, again, the respondents took no
22 particular action to get that scheduled. It -- it -- it sat
23 there and while another appeal was pending in a different
24 case and no action was taken to schedule the hearing with
25 Probate Court until another year had passed and it was April

1 23rd of 2024.

2 At that hearing, Your Honor, the Judge ruled that --
3 as you, of course, see in the order -- that my client,
4 essentially, the word, of course, jumps out had -- had
5 flagrantly disregarded the rules of the Court and the rules
6 of discovery and determined to assess attorney's fees,
7 strike my client's pleadings, and dismiss his case.

8 And it is from that order that we appeal. We appealed
9 precisely because we believe very strongly that Judge Queen
10 abused his discretion in making such order.

11 Your Honor, the law in such cases, as you know, we
12 began with the standard of review. And it is a standard of
13 review that the lower Court's ruling may only be disturbed
14 upon your finding of abuse of discretion.

15 An abuse of discretion may be found when considering
16 the reasonable factual support, the prejudice to the
17 appellant, and that that therefore amounted to an error of
18 law. And we believe that to be very apparent here.

19 I'll first address the prejudice to the appellant. And
20 the simple fact is he had a valid case. There is evidentiary
21 documents that have been presented to the other side, as well
22 as those that we have reviewed that are very important to
23 challenge what he seeks to challenge in this case.

24 It is a family matter, and it involves a will that he
25 was written out of at the end of his mother's life that

1 involves millions of dollars -- being thrown out of Court and
2 the striking of these pleadings could not be more prejudicial
3 as a result of those particular situations.

4 Your Honor, the -- as you know, the cases -- I'm going
5 to refer to several of them because they each clarify and
6 often echo the various standards and guidelines that the
7 Court is to use in looking into abuse of discretion,
8 looking into sanctions, looking into one, whether sanctions
9 should be imposed and two, what types of sanctions should
10 be imposed.

11 And cases in particular are *Darden v. Witham*, which is a
12 Supreme Court case of '74; *Dunn v. Dunn* in 1989, Supreme
13 Court case; *Karppi vs. Greenville Terrazzo*, Supreme Court
14 case of 1997; *Orlando v. Boyd* in 1996, *Baughman v. American*
15 *Telephone*, 1991; *Balloon Plantation vs. Head Balloons*, 1990;
16 and between our group and the other groups, all of these are
17 cited, Your Honor, and they stand for very important
18 principles.

19 One of the cases has very good quotation in it which
20 -- which lines up a lot of things. And this is from the
21 *Terrazzo* case. When the Court orders default or dismissal,
22 the end result is nevertheless harsh medicine that should
23 not be administered lightly.

24 Before invoking this severe remedy, the trial Court
25 must determine that there is some element of bad faith,

1 willfulness, or gross indifference to the rights of other
2 litigants. The sanction should be reasonable, and the
3 Court should not go beyond the necessities of the situation
4 to foreclose a decision on the merits of the case.

5 And the sanction should be aimed at the specific
6 misconduct of the party sanctioned. And whatever sanctions
7 imposed should serve to protect the rights of discovery
8 provided by the rules of civil procedure.

9 And *Orlando v. Boyd*, 1996, takes it further, and
10 states, and I quote, whatever sanction is in place should
11 serve to protect the rights of discovery provided by the
12 rules of civil procedure. And a sanction of dismissal is
13 too severe if there is new evidence of intentional
14 misconduct.

15 Your Honor, there is absolutely no basis whatsoever in
16 fact -- in factual support of intentional misconduct in
17 this case. If anything is found in this case from a
18 discovery situation, it would be technical deficiencies.

19 There could have been deficiencies if they had been
20 pointed out. Well, this one wasn't answered. This one
21 wasn't answered sufficiently. Something along those lines.
22 But the most severe function of throwing someone's case out
23 of Court flies in the face of the Court's general policy of
24 cases being favored to be heard on the merits.

25 And it is designed to be punitive when you have got a

1 party litigant that absolutely refuses to do what they are
2 told to do. That is why there are a variety of sanctions.
3 Attorney's fees can be awarded, exclusion of certain
4 evidence, preclusion of certain witnesses, contempt of
5 Court, with, of course --

6 THE COURT: In the argument, though, from the respondent
7 here that your client failed to respond to any discovery
8 hardly, and orders were actually issued compelling him to
9 respond, and he still didn't do it, and that's what the
10 Probate Judge based his decision in awarding the sanctions?

11 MR. MCKIBBON: Yes, Your Honor, but that's -- that's
12 incorrect. The -- the -- the record reflects clearly that
13 Mr. -- that Marshall's attorney produced discovery. He
14 responded to the discovery requests of the respondents, and
15 he did so in 2021.

16 It's in the record in plain black and white. You can
17 also see in the record in that same grouping of documents,
18 documents that were produced at that time.

19 THE COURT: But he still didn't answer discovery
20 questions, did he?

21 MR. MCKIBBON: Yes, Your Honor. Those -- those
22 interrogatory responses are also in that production in 2021.
23 And opposing side maintained that nothing was ever responded
24 to.

25 And again, it is in black and white that in -- on

1 November 29, 2021, by Certificate of Service and another
2 document, as well as a copy of the interrogatories, as well
3 as, again, photographs of many documents that were provided,
4 that discovery documents and answers were, in fact, provided
5 to the other side.

6 THE COURT: And the Probate Judge -- they found that
7 they were not, correct? So is that -- I mean, first of all,
8 is that correct? Is that what the Probate Judge found --
9 that the discovery was not provided to the respondent in this
10 case, and therefore that's why he issued his order awarding
11 sanctions? Are you saying that he is incorrect in his
12 findings?

13 MR. MCKIBBON: Yes, Your Honor. And that's precisely
14 goes to the -- the standard of there being no reasonable
15 factual support. In fact, in -- in -- despite our consistent
16 belief of all of those documents having been provided.

17 I provided a document right before that last hearing,
18 which in request to produce documents, I very specifically
19 stated that the documents sought to be produced were produced
20 in November of 2021, which was available to -- to the Judge.

21 It was addressed in that hearing. And my response,
22 specifically, stated that those documents were produced
23 November of 2021. The -- the -- the simple fact is that one
24 has to show and -- and -- and come to a belief of intentional
25 misconduct.

1 THE COURT: Let me ask you this -- because you say that
2 the documents were produced in 2021, but then in a hearing on
3 January the 4th of 2023, parties -- because new Counsel --
4 the petition -- or the appellant, Mr. Shoemaker, had retained
5 Counsel, which I assume that was you, in April 2022.

6 And then a hearing on January the 4th, 2023, all parties
7 consented to providing discovery within 30 days. So is that
8 a -- does that sort of fly in the face of in November -- or
9 in 2021 -- all discovery had been produced?

10 Yet in 2023 at the hearing, parties consented that
11 discovery did need to be provided and would be provided in --
12 within 30 days. And then those 30 days went by, and the
13 discovery had not been responded to.

14 So does that sort of fly in the face that in 2021, all
15 discovery had been provided? Because in January 2023, all
16 the parties consented that discovery needed to be provided.
17 And your client was given 30 days at that point.

18 MR. MCKIBBON: Yes, Your Honor. At that time -- keeping
19 in mind the Motion to Compel, which stated absolutely nothing
20 about specifics of anything that was needed, was filed in --
21 December 5th of 2021.

22 When that hearing was held in 2023, there were still --
23 nothing had been suggested as to what was missing. We knew
24 that the -- the discovery had been provided. We knew that
25 discovery had been -- had been sent, but I didn't know what

1 was needed.

2 There was never a list of we need this, this, or this.
3 The consent was made to whatever was deficient or missing we
4 could provide. We will provide the discovery. And you are
5 correct, Your Honor, nothing was provided during that time.

6 The -- with an order compelling discovery -- the only
7 thing that we had available to produce was the only thing
8 that existed in this case, which was 100 percent of the
9 documents in my client's custody, control, or possession, as
10 well as his responses which had previously been produced.

11 They were -- again, is in the -- in the record that the
12 opposition had those documents and had those interrogatories.
13 So that was an absolute misrepresentation that they didn't
14 have them.

15 My agreement to provide whatever was necessary was to
16 provide whatever was necessary -- what's missing. But it
17 didn't change the facts. The facts are that my client,
18 through his original counsel, produced discovery.

19 THE COURT: Well, then why at the hearing did you agree
20 to provide discovery? Why did you not -- at the hearing in
21 January of 2023 -- say, we have provided all the discovery?
22 But apparently there was a consent among the parties that you
23 would provide discovery within 30 days, and then it was never
24 responded to.

25 So I'm a little confused. It seems to be something --

1 somewhat inconsistent there that -- that you're saying all
2 discovery was produced, but yet at the hearing in January
3 2023, well, we got, you know, we'll have 30 days to produce
4 discovery. So which -- which is it?

5 MR. MCKIBBON: Well, Your Honor, it was -- the question
6 was what discovery was needed. That was never made clear.
7 In terms of what do you not have? And from that hearing is
8 when I went and -- through this box of documents, went
9 through every single document to see what could have been
10 missing.

11 And at that point, it appeared nothing was missing. And
12 therefore, that was the same grouping of documents that was
13 provided because there were no more responsive documents
14 other than those.

15 And having had nothing to do with the original discovery
16 request -- with the original discovery production -- I was
17 left with the Certificate of Service, the production of
18 interrogatories, all of the documents that specifically went
19 to the production requests to review and see what wasn't
20 responded to.

21 But everything that was in there appeared to be
22 responsive. And I got -- I never had any directive of, well,
23 we didn't get such and such from this. Of course, I
24 consented and agreed to provide the discovery. The -- my
25 knowledge was the discovery existed.

1 I didn't necessarily know a hundred percent of what had
2 been given in terms of every single document. But the
3 opposing side never said what they were missing. So it was a
4 very informal agreement at the hearing of very -- very simply
5 saying, "Yeah, I'll get you what you need."

6 That's kind of how that went. But in review of
7 everything we had, there was nothing absent.

8 THE COURT: All right.

9 Let me hear from Respondent. So what about that -- the
10 appellant says that they did provide these discovery
11 documents all the way back to 2021. There was a box of
12 discovery that was produced and all. And therefore, there's
13 really no willfulness here.

14 MS. MCLEOD: Thank you, Your Honor. May it please the
15 Court. That's not true. He -- this -- what he's found that
16 supposedly was served on us in November of 2021, he found in
17 the giant box of documents that he brought to our office.

18 He didn't come pick up that box until after the Motion
19 for Sanctions. He picked up the box and found this letter
20 from Mr. Blincow that was never sent where he had prepared
21 discovery.

22 But it was never sent us. It was never received by us.
23 Mr. McKibbon admits that in the transcript of the hearing in
24 Probate Court. He said, "And to Marshall's understanding,
25 things have been provided before. And as I said, Mr. Blincow

1 already said, I've got responses on my desk."

2 He apparently never sent those. Mr. Blincow never sent
3 us discovery. We never received discovery in 2021. After
4 that -- I mean, had we received discovery, we wouldn't have
5 filed a Motion to Compel. Our Motion to Compel was based on
6 not having a single item of discovery in this case.

7 This alleged -- you know, John Blincow was suspended
8 December 31st, 2021. Mr. McKibbon filed notice of
9 representation in April of 2022. In June of 2022, previous
10 Counsel for respondents was Knox Haynsworth.

11 Sent a letter to Mr. McKibbon about outstanding
12 discovery and pending Motion to Compel. Let's get it going.
13 Let's schedule depositions. Never heard back. He sent a
14 letter -- Knox in a letter to Judge Queen in July -- July
15 25th, 2022 -- pending Motion to Compel.

16 Got set for January 4th. Ms. -- Mr. McKibbon said that
17 he would fully comply with discovery. So there was no need
18 to do an order. No order was done. Discovery would have
19 been done in 30 days -- like approximately February 4th.

20 Knox tried to contact Mr. McKibbon with no response --
21 February 15th, February 21st, February 23rd. So finally, on
22 February 24th, we -- Knox, sent a letter to Judge Queen
23 asking that the pleadings be struck. Judge Queen said, "I
24 don't feel comfortable doing that without an order."

25 He issued an order on March 10th giving him 10 days to

1 respond to discovery. March -- those 10 days pass. Nothing.
2 Nothing from him. So March 22nd, when we still had no
3 discovery, Knox asked -- sent another letter to the -- to
4 Judge Queen asking that pleadings be struck.

5 That was on March 22nd. The very next day, Mr. McKibbon
6 brings this big box and dumps it at our office. We say,
7 "That's not complying with discovery." You know, our clients
8 have paid -- the other case that's referenced -- this is in
9 reference to Marshall's mother's estate.

10 He had -- he had also filed a case in reference to his
11 father's case. His father died first. He was a prominent
12 attorney here in Greenville. And that case is -- they've
13 taken that case all the way to the Supreme Court.

14 So we have, you know, over \$200,000 in expenses. He's
15 been sanctioned in that case. He's never paid. He's been --
16 attorney's fees have been awarded against him. Never paid a
17 dime.

18 THE COURT: In his father's case?

19 MS. MCLEOD: His father's case. And in this case. The
20 Judge -- the Probate Judge ordered him to pay my attorney's
21 fees for the Motion for Sanctions. Never paid a dime. So,
22 you know, this is -- none of this would have happened had we
23 had discovery. That's just asinine. That's not true.

24 I actually -- so my brief, I believe, was filed before
25 this issue arose. So, basically what happened is my brief

1 was filed to you October 17th, and we didn't get the record
2 on appeal until November 13th, 2024. So I look at the record
3 on appeal, and I'm like, what is this? I've never seen this
4 before.

5 The only thing that makes sense is that he got that box
6 of documents that we told him to pick up years ago and found
7 that this -- you know, this letter from Blincow from November
8 of whatever year he's alleging -- that was not raised to the
9 Probate Court, and it is not appropriate for review.

10 So we had a Motion to Strike in front of Judge McMaster,
11 because I said, "These weren't before the Probate Court.
12 They shouldn't be included." That motion was denied, which I
13 think is fine.

14 I remember hearing a panel at the Greenville Bar
15 Convention, I believe you were on it, and Justice Verdon
16 about how -- if you have a Motion to Strike or we're saying
17 you shouldn't consider something, you need to know what we're
18 talking about.

19 So I felt -- I said, okay, that's fine. You know, we
20 didn't strike it, but, you know, need to know what we're
21 talking about. Well, we're talking about pages 124 to 144 in
22 the record on appeal. And it is the letter from Mr. Blincow
23 with these alleged discovery responses from November of 2021.

24 That was not raised in the Probate Court, has never been
25 raised. It was not in their issues on appeal, because that

1 was due before. The first time this has ever been raised is
2 in his appellant brief that was to this Court.

3 So, I mean, he's had opportunity after opportunity,
4 hearing after hearing, and never brought this up before. I
5 mean, in fact, we had the Motion for Sanctions April 3rd in
6 Cherokee County in Probate Court. And April 2nd, he sent me
7 an email with discovery responses saying, "Let's work this
8 out."

9 And I said, you know, the discovery responses were
10 insufficient. The Probate Judge ruled that the discovery
11 responses were insufficient and the sanction was proper, that
12 he -- that his case was dismissed. I mean, he was the
13 plaintiff.

14 It was his job to move the case forward, not ours. And,
15 you know, he never -- he never issued discovery. He never
16 made sure it was done. He never asked what we were missing.
17 He was barely responsive. I didn't even see Mr. McKibbon
18 until the Cherokee County hearing.

19 And, you know, at that point, it had been two years
20 since he had been on the case. Even longer, if you count
21 when we served Mr. Blincow originally with discovery requests
22 and we hadn't gotten a thing and -- until the night before.

23 And that was insufficient answers to interrogatories and
24 no answers -- no written answers to the request for
25 production or no -- you know, I don't think any documents

1 were even produced at that point.

2 So, I mean, I think at that point, what was before the
3 Probate Court, it was entirely appropriate. The standard of
4 review is any evidence for sanctions. So as we said in our
5 brief, the standard for review is any evidence whatsoever.

6 I think you can read Judge Queen's order and see, like,
7 how, you know, flagrant this was, basically. So selection of
8 a sanction for discovery violations within the trial Court's
9 discretion. He ruled that the March 10th, 2023 Court order
10 was ignored by Petitioner.

11 Previous sanctions have not induced Petitioner to comply
12 with Court orders. Petitioner act in bad faith willfully and
13 with gross indifference to the rights of others. You know,
14 we -- at that point, we'd asked the Court to strike
15 Petitioners pleading and dismiss this action three times
16 before they finally did it.

17 Never in response to any of that did he say, "What are
18 you talking about? We've already produced discovery." Like,
19 that was a non-issue in the Probate Court. So the answers to
20 interrogatories that he produced on April 2nd, 2024, the day
21 before the hearing, were two years late and evasive and
22 incomplete and should be treated as a non-answer under the
23 rules of civil procedure.

24 This situation, where Petitioner disregarded his
25 discovery obligations, was aware of multiple letters from

1 Respondents to the Court requesting relief and flagrantly
2 ignored a Court order is exactly the scenario the rules of
3 civil procedure contemplate when allowing for the sanction of
4 striking the pleading and dismissing the action.

5 Dismissal is the only sanction that protects the right
6 of discovery as provided for by the rules and acts as a
7 meaningful deterrent to those who might fail to submit
8 discovery in time.

9 It is perfectly obvious that few, if any, litigants
10 would willfully submit to discovery provided by the rules if
11 the alternatives were simply paying \$50. And that last
12 sentence is from the case of *Downey versus Dixon*.

13 Respondent should not have to continue at great time and
14 expense in a lawsuit where the rules of civil procedure and
15 Court orders have been obviously ignored. No less drastic
16 sanction would be effective in this case.

17 I consider the precise nature of discovery, the
18 discovery posture of the case, the willfulness, and the
19 degree of prejudice. So, I mean, this was a thorough hearing
20 in Probate Court.

21 This alleged discovery that was produced in 2023 was not
22 brought up before the Court. And therefore, under the
23 Probate Code 16-1-308(i), I believe, appeals from Probate
24 Court are strictly on the record, and nothing that was not
25 produced to the lower Court should be considered by the

1 appellate Court.

2 You know, I -- I go through my -- see, so basically when
3 he got the box of documents for -- back from us -- after that
4 is the first time that he alleges that discovery was complied
5 with. So it's alleged for the first time in his brief, not
6 even in his statement of issues on appeal.

7 So it arose sometime after July 26, 2024. And he never
8 -- you know, he didn't raise it in response to our letter
9 June 30th, 2022, or July 25th, 2022, at the Motion to Compel
10 hearing, January 4th, 2023. Didn't bring it up.

11 He didn't bring it up in response to our letter February
12 24th, 2023. He didn't bring it up in response to Judge
13 Queen's order on March 10th. He didn't bring it up in
14 response to our letter asking that pleadings be struck on
15 March 22nd.

16 He didn't bring it up at the Motion for Sanctions in
17 April. He didn't bring it up in response to that -- that
18 Motion for Sanctions or at the hearing. He didn't bring it
19 up in his Motion to Reconsider the Sanctions. And he didn't
20 bring it up in a statement on -- of issues on appeal or at
21 any other time.

22 He shouldn't be allowed to bring that up at this late
23 time. It's not true. We didn't -- we didn't have discovery
24 or we wouldn't have gone through this. I mean, this is just
25 -- case has been, you know, belabored to the point -- I mean,

1 this was -- I can't imagine a case where the sanction was
2 more appropriate.

3 And after, you know, waiting on discovery for two to
4 three years -- two years, if you count Mr. McKibbon being on
5 the case, three years, if you count previous Counsel. So I
6 don't believe any -- I don't believe this alleged discovery
7 is -- you know, that they say happened in November 2023.

8 It -- we did not receive it. We don't have any proof
9 that it was sent. He mentions a Certificate of Service.
10 It's not filed. I mean, there's no -- it's just -- Mr.
11 Blincow's Certificate of Service.

12 You know, I don't think any of us would have gone
13 through all of this if we had had discovery or there was some
14 argument to be made there. Just trying to see if I had -- a
15 couple of these quotes that -- of these cases he cited
16 weren't in his brief, so I can't really respond to those.

17 We have anything else -- so it's mentioning he -- you
18 know, he mentioned that this sanction should be reserved for
19 a litigant who absolutely refuses to do what he's supposed to
20 do. Well, that's what the Judge found about this litigant.

21 The Judge said, "Sanctions aren't effective because
22 you've ignored them before. You're not going to -- you've
23 ignored Court orders. You know, this is the only thing
24 that's going to work, right? Like, you've had two years to
25 comply with discovery. You haven't done it."

1 There -- there's nothing else to do with a litigant like
2 that. I think the record reflects that. He's never said he
3 complied with discovery at any time in the lower Court. I
4 think that's the most important issue on appeal. And I think
5 our brief covers everything else.

6 He mentions a case -- *Orlando* -- about intentional
7 misconduct. That's -- that wasn't located in my research.
8 But I think as far as sanctions for discovery abuses, the
9 standard is they must be upheld if there's any evidence to
10 support them.

11 I think in this case, there's ample evidence to support
12 that sanction.

13 THE COURT: All right. Thank you very much.

14 MS. MCLEOD: Thank you, Your Honor.

15 THE COURT: All right.

16 If you want some reply, I'll give you a very brief --
17 less than five minutes. I've -- I've read the file for
18 y'all's' reference.

19 MR. MCKIBBON: Yes, Your Honor, very, very briefly.
20 There -- there have been no sanctions in this case
21 whatsoever. Opposing Counsel just said that we had ignored
22 sanctions; that there had been sanctions.

23 There was one order compelling responses, which was
24 submitted 13 days after that order by the submission of that
25 box of documents which did come -- it did contain -- it did

1 contain Marshall's lawyer's Certificate of Service and letter
2 to Knox saying, "Here are our discovery responses," his
3 Certificate of Service, and a lot of documents responding to
4 it.

5 The fact is that existed and was produced on -- and it
6 is in the record that it was produced. And that -- at the
7 end of the day -- is all that matters, is that it was. And
8 it was in 2021.

9 Your Honor, in looking at other cases -- and I will
10 finish with this -- the egregiousness -- we have one order to
11 compel that was complied with by providing everything 13 days
12 later. Which technically -- technically was three days past
13 when he had said to do it.

14 But it was provided three days later. There are two
15 cases that I cite in the brief that show where pleadings were
16 stricken, that you can see the level of egregiousness that
17 makes that the right way to go.

18 In one of those cases, a party held on to a hard drive
19 that was requested long enough to delete everything on it and
20 then turned it over. That was intentional misconduct. It
21 was absolutely willful and grossly indifferent and vague --
22 and they dismissed it.

23 Dismissed the -- struck the pleadings and dismissed the
24 case. And the other one, the case, *Choice Hotels*, I believe
25 -- or no, the *Griffin* case, a party underwent four different

1 Orders to Compel -- orders compelling discovery. Four.

2 Several of those even warned of the sanction of
3 pleadings being stricken before the Court struck the
4 pleadings. And it is important to note, Your Honor, that as
5 you'll see in my brief, warning the parties of the
6 possibility of default is required.

7 A party, quote, is entitled to be made aware of the
8 drastic consequences of failing to meet the Court's
9 conditions at the time the conditions are imposed. That is
10 *Choice Hotels International*.

11 It absolutely must be in the order. There was one order
12 to compel, Your Honor, and it was --

13 THE COURT: Well, this, Mr. McKibbon, the Probate Judge
14 was aware of the request by the respondent to strike the
15 pleadings because in his order -- states that the Court was
16 reluctant to sanction a party without an order.

17 His concern it wasn't an order, but parties were aware
18 at that time, at least, even though he didn't award sanctions
19 then, he -- in his order -- I'm reading his order -- says he
20 was reluctant to sanction a party without an order.

21 So rather than strike the petitioner's pleadings at that
22 time, this Court issued an order on March 10, 2023, ordering
23 Petitioner to comply with discovery within 10 days. So there
24 was some warning there because a request had already been
25 made at that point.

1 And the Judge there did not award sanctions, gave the
2 parties an opportunity, and then according to his order,
3 there was no compliance.

4 And so he awarded sanctions at that time. But it was a
5 shot fired over the bow, so to speak. At least anybody was
6 put on notice according to his order.

7 MR. MCKIBBON: Well, Your Honor, yes, that there was a
8 warning that sanctions could be awarded. That is true. But
9 as you know, Your Honor, that there are any number of
10 sanctions based upon alleged misconduct, intentionality,
11 willfulness, and all of such things.

12 But a sanction is to be reasonable and aimed at the
13 specific misconduct, not to be overly broad, limited in
14 scope, should not go beyond the necessities of the situation
15 to foreclose a decision on the merits of the case.

16 There are any number of sanctions that could be applied
17 in -- in this -- in any of those situations, but there was
18 absolutely no suggestion that pleadings would be stricken
19 whatsoever.

20 In fact, there's precedent in the Circuit Court just
21 recently in another case I'm involved with, where Judge
22 Gravely, very specifically, after on a third motion -- a
23 third Motion to Compel and a third Motion for Sanctions, he,
24 specifically, indicated in his order, "Failure to comply will
25 result in the striking of pleadings."

1 And included that because of its necessity to be
2 included for that most severe consequence. If there was
3 error, Your Honor, I am not suggesting that something may
4 have been appropriate.

5 But the point is both the standard involves the -- the
6 looking at the prejudice to the appellant as well as
7 reasonable factual support. And at worst, you have a
8 three-day late deficiency on one order.

9 One order compelling discovery responses when, in fact,
10 there can be no doubt that of a production based on the
11 record that occurred in 2021. Thank you, Judge.

12 THE COURT: All right. I will take it under advisement
13 and let you know my decision. I've read it, but I'll read it
14 in conjunction with your arguments here today and I'll let
15 you know my decision.

16 Thank you both.

17 MR. MCKIBBON: Thank you, Your Honor.

18 (Proceedings adjourned via Web Ex at 4:12)
19

20 **CERTIFICATE OF TRANSCRIBER**

21 CASE NAME/NUMBER: SHOEMAKER, ETAL VS MOORE, ETAL

22 2024-CP-23-4068

23 DATE OF HEARING: NOVEMBER 18, 2023

24 COURT REPORTER/MONITOR: WEB EX

25 *****

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13 LORAIN VICTORIA EDWARDS, CER, CET Certified Transcriber

14 Date Submitted: APRIL 2, 2026

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THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM GREENVILLE COUNTY
Probate Court

Joshua L. Queen, Probate Judge

Appellate Case No. 2024CP2304068

James Marshall Shoemaker, III. Appellant

v.

Lesley R. Moore, Esq. as Personal Representative and Trustee,
Edward Sloan Shoemaker and Jonathan Evans Shoemaker Respondents

RECORD ON APPEAL

Respectfully submitted,

s/William R. McKibbin III
601 E. McBee Ave. Ste. 104
Greenville, SC 29601
864.235.0071
864.235.0072 (F)
Will @legalcarolina.com
Attorney for Plain

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FILED

STATE OF SOUTH CAROLINA

JUL 24 2020

IN THE PROBATE COURT

COUNTY OF GREENVILLE

**GREENVILLE COUNTY
PROBATE COURT**

Case No. 2020ES2300073

IN THE MATTER OF:

Mary Hunter Sloan Shoemaker
DecedentJames Marshall Shoemaker, III
Petitioner

v

Lesley R. Moore, Esq. as Personal
Representative and Trustee,
Edward Sloan Shoemaker, and
and Jonathan Evans Shoemaker
as Beneficiaries

Respondents

SUMMONS

To the Respondents listed above:

YOU ARE HEREBY SUMMONED and required to Answer the Petition in this action, a copy of which is herewith served upon you, and to serve your Answer to the Petition on the subscriber, The Blincow Griffin Law Firm, 126 Meeting St., Charleston, S.C. 29401, within thirty (30) days after the service hereof, exclusive of the date of such service. If you fail to Answer the Petition within the time aforesaid, judgment by default may be rendered against you for the relief sought in the Petition.

Blincow Griffin Law Firm

John Blincow, Jr.

126 Meeting St.

Charleston, S.C. 29401

843-872-6449

jblincow@blincowgriffin.com

Attorneys for the Petitioner

Date: July 21, 2020

FILED

JUL 24 2020

STATE OF SOUTH CAROLINA

GREENVILLE COUNTY
PROBATE COURT

IN THE PROBATE COURT

COUNTY OF GREENVILLE

Case No. 2020ES2300073

IN THE MATTER OF:

Mary Hunter Sloan Shoemaker
Decedent**PETITION**James Marshall Shoemaker, III
Petitioner

v

Lesley R. Moore, Esq. as Personal
Representative and Trustee,
Edward Sloan Shoemaker, and
and Jonathan Evans Shoemaker
as Beneficiaries

Respondents

To the Respondents listed above:

The Petitioner, James Marshall Shoemaker, III, would respectfully show to this honorable Court as follows:

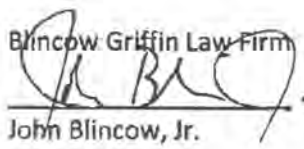
1. That the Petitioner is a citizen and resident of the State of Georgia. He is the oldest son of the Decedent.
2. That, at all relevant times, the Decedent was a citizen and resident of Greenville County. At the time of her death she had three living sons who were the only heirs of her Estate.
3. That the Respondent, Leslie R. Moore, is an attorney and citizen and resident of Greenville County South Carolina. She is the duly appointed Personal Representative of the Decedent's Last Will and Testament. She is also the Trustee of the Mary S. Shoemaker Revocable Trust.

4. That the Respondent, Edward Sloan Shoemaker, is a citizen and resident of the State of Colorado. He is the brother of the Petitioner and son of the deceased and a Beneficiary of his mother's Will and Trust.
5. That the Respondent, Jonathan Evans Shoemaker is a citizen and resident of the State of New York. He is the brother of the Petitioner and son of the deceased and a Beneficiary of his mother's Will and Trust.
6. That the decedent passed away on December 28, 2019. She was Eighty-eight (88) years old at the time of her death.
7. That, upon information and belief, the Decedent's Will and Trust have previously been informally probated in this Court and the Court is in possession of the subject Will and Trust. That case number is 2020-ES-23-00073.
8. That jurisdiction and venue are proper in this Court.
9. That on June 24, 2018, the deceased executed a new Will and restated her Revocable Trust, the subject Will and Trust. In this Will and Trust she excluded the Petitioner as a Beneficiary.
10. That, in all prior versions of her Will and Trust, the Petitioner was a Beneficiary and shared equally with his two brothers. As a result, the Petitioner is an "interested person" under the S.C. Probate Code.
11. That, at the time she executed the new Will and Trust the Decedent lacked testamentary capacity to make a valid Will and Trust as defined by S.C. law.

12. Under the circumstances the Petitioner contests the Will and seeks an Order, after Notice and a hearing, that the Decedent lacked sufficient testamentary capacity and that the Will and Restated Trust are invalid.

13. The Petitioner demands a trial by jury on all issues to which he is entitled.

Respectfully submitted,

Blinchow Griffin Law Firm

John Blincow, Jr.
126 Meeting St.
Charleston, S.C. 29401
843-872-6449
jblincow@blincowgriffin.com

Attorneys for the Petitioner

Date: 9-17-21-2020

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF GREENVILLE)

C.A. NO.: 2020-ES-23-00073

In the matter of:)

FILEDMary Hunter Sloan Shoemaker)
Decedent)

AUG 18 2020

James Marshall Shoemaker, III)

GREENVILLE COUNTY
PROBATE COURT

Petitioner,)

RESPONDENTS' RESPONSE TO
PETITION

vs.)

Lesley Moore, Esquire as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker and Jonathan Evans Shoemaker)
as Beneficiaries)

Respondents.)

The above named respondents, responding to the allegations of petitioner's petition, would respectfully allege and show unto the court as follows:

FOR A FIRST DEFENSE

1. All allegations of the petition not hereinafter specifically admitted, qualified or explained, are denied.
2. Respondents admit, upon information and belief, the allegations of paragraph 1 of the petition.
3. Answering the allegations of paragraph 2 of the petition, respondents admit that decedent was a citizen and resident of Greenville County and further admit that at the time of her death she had three living sons.
4. Respondents admit the allegations of paragraphs 3, 4, 5, 6, 7, 8 and 9 of the petition.

5. Answering the allegations of paragraph 10 of the petition, respondents deny so much of said allegations as allege that in all prior versions of Mrs. Shoemaker's Will and Trust, the petitioner was a beneficiary and shared equally with his two brothers. Further answering, with regard to so much of the allegations of paragraph 10 as allege petitioner is an "interested person" under the S.C. Probate Code, such allegations appear to be legal conclusions to which no response would be required of these respondents. To the extent the allegations are factual, the same are denied and strict proof demanded.
6. Respondents deny the allegations of paragraph 11 of the petition.
7. Answering the allegations of paragraph 12 of the petition, respondents admit that petitioner is contesting the Will of the decedent Mary Hunter Sloan Shoemaker and seeks an Order that the decedent lacked sufficient testamentary capacity. Respondents deny petitioner is entitled to the relief he seeks.
8. Answering the allegations of paragraph 13 of the petition, respondents admit the petition demands a trial by jury.

FOR A SECOND DEFENSE

9. Respondents restate and incorporate by reference the contents of paragraphs 1 through 8 above, as fully as if repeated herein.
10. Further responding to the petition and as a second defense thereto, respondents would state that petitioner's children Mary Shoemaker and Peter Shoemaker are "interested persons" as defined by S.C. Code Ann. §62-1-201(23).
11. By virtue of the allegations of the petition, Peter Shoemaker and Mary Shoemaker may be affected by the proceedings and as such, are indispensable parties pursuant to Rule 19 of the South Carolina Rules of Civil Procedure.

12. Based on the foregoing, respondents are informed and believe petitioner's petition must be dismissed pursuant to Rule 12(b)(7) of the South Carolina Rules of Civil Procedure for failure to join indispensable parties.

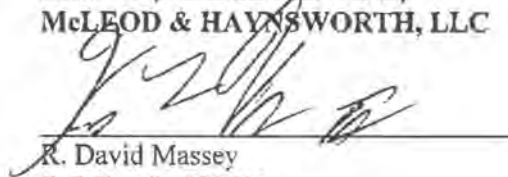
FOR A FIRST COUNTERCLAIM

13. Respondents restate and incorporate by reference the contents of paragraphs 1 through 12 above, as fully as if repeated herein.
14. Further responding to the petition and as a first counterclaim thereto, these respondents would state that petitioner's pleadings with regard to decedent Mary Hunter Sloan Shoemaker are completely contradictory to the position asserted by petitioner with regard to Mary Hunter Sloan Shoemaker in the action currently pending relative to petitioner's father's estate under C.A. No.: 2018-ES-23-01729.
15. Respondents are informed and believe that the inconsistent contentions made by petitioner clearly establish this action is frivolous and instituted for improper purposes and to cause hurt and anguish to his siblings and the memory of his parents.
16. Based on the foregoing, respondents request the court review the actions and positions taken by petitioner in this litigation and the related litigation relative to his father and utilizing its statutory powers pursuant to S.C. Code §62-1-111, 62-1-112 as well as 62-7-1004, award these respondents their costs and attorney's fees as a sanction to punish and deter petitioner for his frivolous litigation.

WHEREFORE, having fully responded to the allegations of the petition, these respondents pray that the petition against them be dismissed, that they be awarded judgment against petitioner for all of their costs and attorney's fees, and such other and further relief as the court may deem just and proper.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**

A handwritten signature in dark ink, appearing to read 'R. David Massey', is written over a horizontal line.

R. David Massey
S.C. Bar #: 003681
Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorneys for Respondents

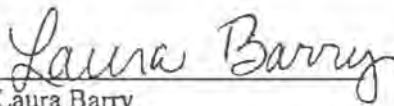
Greenville, South Carolina
August 17, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
In the matter of:)
Mary Hunter Sloan Shoemaker)
Decedent)
James Marshall Shoemaker, III)
Petitioner,)
vs.)
Lesley Moore, Esquire as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker and Jonathan Evans Shoemaker)
as Beneficiaries)
Respondents.)

IN THE PROBATE COURT
C.A. NO.: 2020-ES-23-00073
FILED
AUG 18 2020
GREENVILLE COUNTY
PROBATE COURT
CERTIFICATE OF SERVICE

This is to certify that I am an employee in the firm of **BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC** attorneys for respondents and that I have this day caused to be served upon the person(s) named below Respondents' Response to Petition by placing copies of the same in the United States mail, with adequate postage thereon, addressed as follows:

John Blincow, Jr., Esquire
126 Meeting Street
Charleston, South Carolina 29401


Laura Barry

Greenville, South Carolina
August 17, 2020

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF GREENVILLE	)	C.A. NO.: 2020-ES-23-00073
	FILED	
In the matter of:	JUN 18 2021	
Mary Hunter Sloan Shoemaker	)	
Decedent	)	
	GREENVILLE COUNTY	
	PROBATE COURT	
James Marshall Shoemaker, III	)	
	)	
Petitioner,	)	NOTICE OF MOTION
	)	AND MOTION TO DISMISS
vs.	)	
	)	
Lesley Moore, Esquire as Personal	)	
Representative and Trustee, Edward Sloan	)	
Shoemaker and Jonathan Evans Shoemaker	)	
as Beneficiaries	)	
	)	
Respondents.	)	

TO: JOHN BLINCOW, JR., ESQUIRE, ATTORNEY FOR PETITIONER

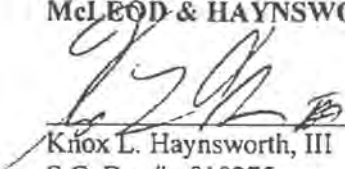
You will please take notice that Respondents will move on the tenth day following service hereof, or as soon thereafter as counsel may be heard for an Order pursuant to Rule 12(b)(7) of the South Carolina Rules of Civil Procedure dismissing Petitioner's Petition for failure to join indispensable parties. Specifically, pursuant to her Revocable Trust, decedent bequeathed to her two grandchildren, Peter Henning Shoemaker and Mary Caroline Shoemaker, \$250,000.00 each. A copy of the Restatement of the Mary S. Shoemaker Revocable Trust dated June 24, 2018 is attached hereto and incorporated by reference as Exhibit 1. Additionally, a copy of The Mary S. Shoemaker Revocable Trust dated December 23, 2016 is attached hereto and incorporated by reference as Exhibit 2. Due to the challenge by Petitioner, the estate has not dispersed the bequests to Peter and Mary. In her prior testamentary documents, Ms. Shoemaker did not make a direct bequest to Peter and Mary Shoemaker. Should Petitioner's challenge to his mother's Trust be

successful, Peter and Mary Shoemaker would not receive the bequests made to them by their grandmother. As such, Respondents are informed and believe that this action cannot go forward without Petitioner joining as Respondents Peter and Mary Shoemaker and, therefore, the Petition against Respondents must be dismissed.

This Motion is supported by the pleadings on file with the Court, including, but not limited to, those filed in the matter of *James Marshall Shoemaker, III vs. Mary Hunter Sloan Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker, Lesley Moore and John and Jan Doe* C.A. No.: 2018-ES-23-01729, a Memorandum of Law to be submitted, Exhibits 1 and 2 and such other and further materials as the Court may consider.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorneys for Respondents

Greenville, South Carolina
June 18, 2021

EXHIBIT

1

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

RESTATEMENT OF
THE MARY S. SHOEMAKER REVOCABLE TRUST

THIS RESTATEMENT OF TRUST is made this 24 day of June, 2018, by and between MARY S. SHOEMAKER (the "Grantor") and MARY S. SHOEMAKER (the "Trustee") in order to restate in its entirety that certain trust agreement by and between the Grantor and the Trustee dated December 23, 2016 and as amended February 5, 2018.

The Grantor, desiring to establish a revocable trust, hereby assigns, transfers and conveys to the Trustee all the Grantor's interests in the property more particularly described in Exhibit A, attached hereto and by this reference made a part hereof, to be held in trust for the Grantor's benefit, subject to the terms, conditions and purposes hereinafter set forth in this agreement.

The Grantor agrees to execute and deliver all further documents which the Trustee shall reasonably require in connection with the assignment, transfer and conveyance of said property.

The Trustee hereby acknowledges delivery of the property described in Exhibit A and agrees to hold and manage said property, together with all other property added to this trust, in trust, for the uses and in the manner hereinafter set forth.

This trust shall be known as "THE MARY S. SHOEMAKER REVOCABLE TRUST."

The Grantor is married to JAMES M. SHOEMAKER, JR. ("SHOE"). The Grantor has three children, and their names are JAMES MARSHALL SHOEMAKER III ("MARSHALL"), EDWARD SLOAN SHOEMAKER ("SLOAN") and JONATHAN EVANS SHOEMAKER ("JONATHAN"). The Grantor is not making any provision in this trust for MARSHALL, and he is excluded from all provisions of this trust.

ITEM I.RESERVATION OF RIGHTS BY GRANTOR

Unless the Grantor is disabled as determined in paragraph (5) of Item II, the Grantor hereby expressly reserves the full right, to be exercised at any time and from time to time during the Grantor's lifetime, to do the following:

(1) To revoke this instrument entirely and to receive from the Trustee all property then remaining in this trust after making payment or provision for payment of all expenses connected with the administration of this trust.

(2) To alter or amend this instrument in whole or in part from time to time, provided that such change does not increase the duties or liabilities of the Trustee without the Trustee's consent.

(3) To change the identity or number, or both, from time to time of the Trustee hereunder.

(4) To withdraw from the operation of this trust from time to time any part or all of the property then in this trust.

(5) To direct the Trustee to distribute any or all of the assets comprising this trust to such persons or entities, in trust or otherwise, and in such manner as the Grantor shall direct.

(6) Any and all such withdrawals and distributions, as well as any such change or revocation, shall be effected by a written instrument executed and acknowledged by the Grantor and delivered in person or by mail to the Trustee during the lifetime of the Grantor or by verbal direction by the Grantor to the Trustee. Any such written instrument received by the Trustee after the Grantor's death shall be ineffective. Upon any such withdrawal or distribution, all property withdrawn shall be conveyed to the Grantor or to those persons or entities so selected by the

Grantor, as the case may be, free of the terms of this trust. The Trustee shall have a reasonable time after receiving the writing which revokes this trust, in whole or in part, in which to deliver such trust property to the Grantor.

ITEM II.

ADMINISTRATION OF TRUST

The Trustee shall hold, manage, invest and reinvest the property of this trust, shall collect and receive the income therefrom, and, after deducting all expenses incurred in the administration of this trust, shall distribute the income and principal of this trust as follows:

(1) All property at any time comprising this trust shall be held in trust for the Grantor's benefit during the Grantor's lifetime. During the Grantor's lifetime, the Trustee shall distribute to the Grantor or for her benefit as much of the income and/or principal of this trust as the Trustee deems necessary or advisable to provide for her health, maintenance and support in accordance with her accustomed standard of living. In the event the Grantor is disabled or incapacitated, the Trustee may, during such disability or incapacity, distribute part or all of the income and/or principal of this trust to or for the benefit of the Grantor's husband, SHOE, to provide for his health, maintenance and support in accordance with his accustomed standard of living. Any income of this trust not so distributed shall be accumulated and added to the principal of this trust. In making distributions from this trust to or for the Grantor, the Trustee shall not be required to take into consideration other income and assets of the Grantor and of trusts known to the Trustee, if any, of which she is then a beneficiary. In making distributions from this trust to or for SHOE, the Trustee shall take into consideration other income and assets of SHOE and of trusts known to the Trustee, if any, of which he is then a beneficiary. In creating this trust, it is the Grantor's primary desire that the Grantor be suitably maintained during the Grantor's lifetime, and that SHOE be suitably maintained

during the Grantor's incapacity, in accordance with the standards set out in this paragraph rather than that the principal of this trust be preserved until the termination of this trust, and the Trustee shall be guided by these desires in making distributions from this trust.

(2) During her lifetime and unless she is determined to be disabled in accordance with paragraph (5) of this Item, the Grantor shall have the power, at any time and from time to time, by written instrument signed by the Grantor and delivered to the Trustee during the Grantor's lifetime (unless the Grantor and the Trustee are one and the same), or at her death by her Last Will and Testament, making express reference to this power, to direct the Trustee to turn over any portion or all of the principal of this trust to, among or for the benefit of such persons and entities, including the Grantor's estate, in such manner, in trust or otherwise, as the Grantor may direct in such instrument. The Trustee shall comply with such written directions without reference to the purpose thereof.

(3) During the Grantor's lifetime, if the Trustee determines that the Grantor is disabled as described in paragraph (5) of this Item or if the Grantor is declared to be incompetent by a court of competent jurisdiction, the Trustee, exercising absolute judgment and without liability, may make such distributions from the trust assets as are necessary or appropriate to carry out, on the Grantor's behalf, any plan or pattern of gifts to any charitable organization or any of the Grantor's issue (excluding MARSHALL) and their spouses (even if such person is then acting as the Grantor's general attorney-in-fact) that (a) are in accordance with the Grantor's personal history of making or joining in the making of lifetime gifts, or (b) had previously been clearly contemplated by the Grantor, or (c) would be in the best interests of the subsequent beneficiaries of this trust and would not substantially impair the Grantor's own financial security. With respect to any gifts to or in favor of any individuals, the amount given to any particular individual during any particular calendar year

shall not exceed the then-applicable maximum annual exclusion amount as described in Internal Revenue Code § 2503(b).

(4) Upon the Grantor's death, if and to the extent the Grantor does not effectively exercise the general power of appointment granted to her in paragraph (2) of this Item, all property then remaining in this trust shall be distributed in accordance with the provisions of the following Items.

(5) The decision as to whether at any time or from time to time the Grantor is disabled for purposes of Item I and this Item because of advanced age, illness or other cause has impaired the Grantor's ability to transact ordinary business shall be made by a court of competent jurisdiction or by the Grantor's then serving agent under her Health Care Power of Attorney and two physicians, one of whom is a physician who has examined or treated the Grantor within the prior twelve months. Any such determination shall be by written instrument signed by the physicians and the then serving agent under the Grantor's Health Care Power of Attorney, and delivered to the Grantor and the Trustee. During any period in which the Grantor is determined to be disabled hereunder, she may be prohibited from exercising any power under Items I and XV and/or making withdrawals pursuant to paragraph (2) of this Item.

ITEM III.

SPECIFIC BEQUESTS

(1) The Grantor bequeaths all her personal and household effects, including, but not limited to, furniture, appliances, furnishings, objects of art, silver, silverware, china, crystal, books, photographs, jewelry, clothing, automobiles, boats and other vehicles, wherever located, to those persons and/or organizations designated in any written memorandum either in the Grantor's handwriting or signed by the Grantor and in existence at the time of her death. If no such written

statement is found within ninety (90) days after the Grantor's death, it shall be conclusively presumed that there is no such written statement and any subsequently discovered written statement shall be void. In default of such written statement, or to the extent such written statement does not completely or effectively dispose of the Grantor's tangible personal effects held in this trust, then the Grantor leaves all such remaining items to SHOE, if he survives the Grantor, and if not, then in approximately equal shares (not taking into account items disposed of in the above-described memorandum) to those among SLOAN and JONATHAN who survive her as they may agree upon and specify. If said beneficiaries cannot reach an agreement within six months after the Grantor's death, the Trustee shall make the final determination as to the division and distribution of such items among said beneficiaries, and the Trustee's decision shall not be subject to question by any beneficiary herein.

(2) The Grantor devises to her husband, SHOE, if he survives her, all interests owned by her at her death in her principal residence located at 10 CreekrIDGE Road, Greenville, South Carolina, or a principal residence to which she may later move. If SHOE predeceases the Grantor, the Grantor directs the Trustee to sell her primary residence after her death, if applicable, and the net proceeds from such residence (or the proceeds from any note payment) shall be added to her residuary estate passing under Item V.

(3) If SHOE predeceases the Grantor, the Grantor bequeaths the sum of Fifty Thousand Dollars (\$50,000) in cash to DEBORA WINE, if she is then in the Grantor's employ, and if not, then this bequest shall lapse. If SHOE survives the Grantor, this bequest shall lapse.

(4) The Grantor bequeaths the sum of Two Hundred Fifty Thousand Dollars (\$250,000) in cash to each one among her grandson, PETER SHOEMAKER, and her granddaughter,

MARY C. SHOEMAKER, who survives her. If said grandchild predeceases her, his or her bequest bequest shall lapse.

(5) The property bequeathed or devised under this Item shall be subject to all outstanding indebtedness thereon at the Grantor's death. All insurance in effect at the Grantor's death (including the proceeds of any claim arising prior to, upon or after her death) with respect to such bequest or devise shall be considered a part of such bequest or devise.

ITEM IV.

CREATION OF THE MARITAL TRUST

(1) After the Grantor's death, if SHOE survives the Grantor, the Grantor directs the Trustee to create a trust, to be known as "THE MARY S. SHOEMAKER MARITAL TRUST", from property of this trust (undiminished by any Estate Taxes as defined in Item XXII) having a value equal to the maximum marital deduction allowable to the Grantor's estate at the time of her death for federal estate tax purposes, taking into consideration any election the Grantor's personal representative may make for income or estate tax purposes with respect to the deduction of administration expenses and losses allowed under I.R.C. Sections 2053 and 2054, less the aggregate amount of the marital deduction, if any, allowed for such tax purposes by reason of property passing or which has passed to SHOE otherwise than pursuant to the provisions of this Item, including any provisions of the Grantor's Will, by operation of law or otherwise; provided, however, the amount of this bequest shall be reduced by the amount, if any, needed to increase the Grantor's taxable estate (for federal estate tax purposes) to the largest amount that, after application of the available unified credit against the federal estate tax and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state) will result in the smallest (if any) federal estate tax being imposed on the Grantor's estate. The

Trustee shall have the sole discretion to select the assets which shall constitute this bequest. The Trustee shall value any assets selected by the Trustee for distribution in kind in satisfaction of this bequest at the value of such asset at the date of its distribution. Any property of this bequest which does not qualify for the marital deduction, by reason of the Grantor's personal representative failing to elect to so qualify such property or otherwise, shall bear its proportionate share of all Estate Taxes assessed by reason of such property being included in the Grantor's estate.

(2) THE MARY S. SHOEMAKER MARITAL TRUST, as so set apart, shall be held, administered and distributed in accordance with the provisions of Item VI.

(3) If SHOE predeceases the Grantor, this bequest shall lapse.

ITEM V.

DISPOSITION OF REST AND RESIDUE OF TRUST

After the Grantor's death, all of the rest, residue and remainder of all property comprising this trust, of every kind and description, including lapsed legacies and devises, wherever situated and whether acquired before or after the execution of this trust, shall be distributed as follows:

(1) If SHOE survives the Grantor, such property shall be distributed to the Trustee, hereinafter named, in trust, to be known as "THE MARY S. SHOEMAKER EXEMPTION TRUST," and said trust shall be held, administered and distributed as follows:

(a) During SHOE's lifetime, the Trustee shall pay to or apply for the benefit of SHOE in annual or more frequent installments the Net Income of this trust. In addition, the Trustee shall apply to or for the benefit of SHOE as much or all of the remaining principal of this trust as the Trustee deems necessary or advisable from time to time for the health, maintenance and support of SHOE in accordance with his accustomed standard of living. In making discretionary distributions from this trust, the Trustee shall take into

consideration other income and assets of SHOE and trusts known to the Trustee of which he is then a beneficiary; provided, however, SHOE shall not be required to dispose of assets which the Trustee deems appropriate for him to retain in order to be eligible for discretionary distributions from this trust. The Grantor's primary desire is that SHOE be suitably maintained in accordance with the standards set out in this subparagraph, and the Trustee shall be guided by this desire in making discretionary distributions from this trust. Notwithstanding anything contained in this subparagraph or in any other provision of this agreement to the contrary, during his lifetime, SHOE shall have the power to direct the Trustee, in writing, to convert any non-productive or non-income-producing property which is at any time acquired, invested or retained by the Trustee of the trust into productive or income-producing property. Within a reasonable time after receiving such written directions from SHOE, the Trustee of the trust shall make reasonable efforts to comply with such directions. In extension and not in limitation of any other benefits granted to SHOE in the trust, the Grantor intends that SHOE have substantially that degree of beneficial enjoyment of the property of the trust which the laws of the State of South Carolina accord to persons who are unqualifiedly designated as life beneficiaries of a trust. The Grantor recognizes that it may be appropriate for this trust to qualify for the marital deduction, and notwithstanding anything contained in Item XIII or in any other provision of this agreement to the contrary, the Trustee shall not take any action or make any investment which would prevent the trust or any property distributed to fund the trust from qualifying for the marital deduction. The foregoing provisions of this paragraph shall not be applicable to the extent the Grantor's personal representative elects not to qualify any portion of the property passing to the trust for the marital deduction. At the time of the execution of this agreement, the Grantor

anticipates that the Grantor's personal representative may elect to treat all assets distributed to fund the trust as qualified terminable interest property. The Grantor recognizes, however, that future tax and other considerations may suggest that it would be prudent not to make such election in whole or in part, and, for this reason, the Grantor leaves the responsibility for that decision to her personal representative, and her personal representative shall incur no liability for such decision, provided such decision is exercised by his personal representative with prudence and in good faith.

(b) Upon SHOE's death, such property shall be distributed as follows:

(i) One-half of such property shall be distributed to the Grantor's son, SLOAN, if he survives SHOE, and if not, such share shall be distributed per stirpes among SLOAN's issue who survive SHOE, if any, and if none, then such share shall be added to increase the share passing under subparagraph (1)(b)(ii) of this Item.

(ii) One-half of such property shall be distributed to the Grantor's son, JONATHAN, if he survives SHOE, and if not, such share shall be distributed per stirpes among JONATHAN's issue who survive SHOE, if any, and if none, then such share shall be added to increase the share passing under subparagraph (1)(b)(i) of this Item.

(c) Upon SHOE's death, if none of the persons named in subparagraph (1)(b) of this Item survives SHOE, such property shall be distributed in accordance with the provisions of Item XX.

(2) If SHOE predeceases the Grantor, such property shall be distributed as follows:

(a) One-half of such property shall be distributed to the Grantor's son, SLOAN, if he survives the Grantor, and if not, such share shall be distributed per stirpes among SLOAN's issue who survive the Grantor, if any, and if none, then such share shall be added to increase the share passing under subparagraph (2)(b) of this Item.

(b) One-half of such property shall be distributed to the Grantor's son, JONATHAN, if he survives the Grantor, and if not, such share shall be distributed per stirpes among JONATHAN's issue who survive the Grantor, if any, and if none, then such share shall be added to increase the share passing under subparagraph (2)(a) of this Item.

(3) If none among SHOE and the persons named or described in paragraph (2) of this Item survives the Grantor, such property shall be distributed in accordance with the provisions of Item XX.

ITEM VI.

ADMINISTRATION OF THE MARY S. SHOEMAKER MARITAL TRUST

If THE MARY S. SHOEMAKER MARITAL TRUST is established, the Trustee shall manage, invest and reinvest the assets of this trust and shall distribute the income and principal of this trust as follows:

(1) The Trustee shall distribute to SHOE, during his lifetime, the Net Income of this trust, from the time of the Grantor's death, in semiannual or more frequent installments.

(2) If at any time SHOE should need funds to provide for his health, maintenance and support in accordance with his accustomed standard of living, the Trustee shall be authorized to distribute to SHOE or for his benefit such amount or amounts of the remaining principal of this trust as the Trustee deems necessary or advisable to provide for SHOE's health, maintenance and support.

(3) Notwithstanding anything contained in Item XIII or in any other provision of this agreement to the contrary, during his lifetime, SHOE shall have the power to direct the Trustee, in writing, to convert any non-productive or non-income-producing property which is at any time acquired, invested or retained by the Trustee of the trust into productive or income-producing property. Within a reasonable time after receiving such written directions from SHOE, the Trustee of the trust shall make reasonable efforts to comply with such directions. In extension and not in limitation of any other benefits granted to SHOE in the trust, the Grantor intends that SHOE have substantially that degree of beneficial enjoyment of the property of the trust which the laws of the State of South Carolina accord to persons who are unqualifiedly designated as life beneficiaries of a trust.

(4) Notwithstanding anything contained in Item XIII or in any other provision of this agreement to the contrary, the Trustee of the trust shall have no power to invest any of the assets of the trust in life insurance.

(5) In creating the trust, the Grantor intends that the trust qualify for the marital deduction, and notwithstanding anything contained in Item XIII or in any other provision of this agreement to the contrary, the Trustee shall not take any action or make any investment which would prevent the trust or any property distributed to fund the trust from qualifying for the marital deduction. The foregoing provisions of this paragraph shall not be applicable to the extent the Grantor's personal representative elects not to qualify any portion of the property passing to the trust for the marital deduction.

(6) At the time of the execution of this agreement, the Grantor anticipates that the Grantor's personal representative will elect to treat all assets distributed to fund the trust as qualified terminable interest property. The Grantor recognizes, however, that future tax and other

considerations may suggest that it would be prudent not to make such election in whole or in part, and, for this reason, the Grantor leaves the responsibility for that decision to her personal representative, and her personal representative shall incur no liability for such decision, provided such decision is exercised by her personal representative with prudence and in good faith.

(7) Upon SHOE's death, all unpaid and accrued income of THE MARY S. SHOEMAKER MARITAL TRUST, if any, shall be distributed to SHOE's estate. After reserving sufficient funds to cover the estate tax liabilities and administrative expenses more fully described in paragraphs (8) and (9) of this Item, all property remaining in the trust (the "Remaining Property") shall be distributed as follows:

(a) One-half of the Remaining Property shall be distributed to the Grantor's son, SLOAN, if he survives SHOE, and if not, such share shall be distributed per stirpes among SLOAN's issue who survive SHOE, if any, and if none, such share shall be added to increase the share passing under subparagraph (7)(b) of this Item.

(b) One-half of the Remaining Property shall be distributed to the Grantor's son, JONATHAN, if he survives SHOE, and if not, such share shall be distributed per stirpes among JONATHAN's issue who survive SHOE, if any, and if none, such share shall be added to increase the share passing under subparagraph (7)(a) of this Item.

(c) If none of the persons named in subparagraphs (7)(a) and (7)(b) of this Item survives SHOE, the Remaining Property shall be distributed in accordance with the provisions of Item XX.

(8) Upon SHOE's death, unless otherwise directed by his Will, the Trustee of THE MARY S. SHOEMAKER MARITAL TRUST shall withhold from the Remaining Property prior to distributing such property in accordance with the provisions of paragraph (7) of this Item an

amount of property which the Trustee deems sufficient to cover the difference between: (i) the total estate taxes due by reason of SHOE's death; and (ii) the total estate taxes which would have been due by reason of SHOE's death if none of the value of the property of THE MARY S.

SHOEMAKER MARITAL TRUST had been included in SHOE's estate for estate tax purposes.

The Trustee of THE MARY S. SHOEMAKER MARITAL TRUST, in the Trustee's sole and absolute discretion, shall be authorized to distribute such withheld property to the personal representative of SHOE's estate and/or to any taxing authority for the purpose of satisfying any estate taxes or other liability that may be imposed on the Trustee of the trust, on the trust or on the distributees of the trust until such tax liabilities are finally satisfied. Any property so withheld in excess of the amount finally required to satisfy such tax liabilities shall be distributed as provided in paragraph (7) of this Item for the Remaining Property. SHOE may direct, by his Last Will and Testament taking effect at or after the Grantor's death, the manner in which said estate taxes shall be apportioned between the property of the trust that is included in SHOE's estate for estate tax purposes and all other property included in SHOE's estate for estate tax purposes, but in no event shall the trust pay more than the difference between: (A) the total estate taxes due by reason of SHOE's death; and (B) the total estate taxes that would have been due by reason of SHOE's death if none of the property of the trust had been included in SHOE's estate for estate tax purposes. Whenever the term "estate taxes" is used in this paragraph, said term shall include all estate, inheritance, succession, transfer, legacy and death taxes assessed or imposed with respect to SHOE's estate.

(9) Upon SHOE's death, the Trustee of THE MARY S. SHOEMAKER MARITAL TRUST shall also withhold from the Remaining Property prior to distributing such property in accordance with the provisions of paragraph (7) of this Item an amount of property which, in the

Trustee's sole and absolute discretion, shall be sufficient to cover any additional expenses of administration incurred by SHOE's estate as a result of any property of the trust being included in SHOE's estate for estate tax purposes. The Trustee of THE MARY S. SHOEMAKER MARITAL TRUST, in the Trustee's sole and absolute discretion, shall be authorized to distribute such withheld property to the personal representative of SHOE's estate for the purpose of paying such expenses and/or may distribute such property directly in payment of any such administrative expenses. Any property so withheld in excess of the amount finally required to satisfy such administrative expenses shall be distributed as provided for the Remaining Property in paragraph (7) of this Item.

ITEM VII.

SPENDTHRIFT PROVISION

After the Grantor's death, payments of principal and income payable or to become payable to the beneficiary of any trust or share thereof created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

ITEM VIII.

TRUSTS FOR CERTAIN BENEFICIARIES

(1) If the Trustee of any trust created in this agreement is directed under any provision of this agreement to distribute any part of the principal of any such trust outright to a person who has not attained the age of twenty-five years at the time for such distribution, the share of such person shall be fully and indefeasibly vested in such person at the time for the creation of his or her share, but shall not be distributed directly to him or her at such time. Rather, the Trustee shall

transfer such share to the Trustee, hereinafter named, to be placed in trust for the benefit of such beneficiary until the first to occur of the following events: (a) the day such beneficiary attains the age of twenty-five years; or (b) the Vesting Date; at which time, such beneficiary's trust shall terminate, and all property then remaining in such beneficiary's trust shall be distributed outright to him or her. During the period of each such trust, the Trustee shall hold, manage, invest and reinvest the property of such trust and shall distribute to such beneficiary or for his or her benefit in annual or more frequent installments the amount required to be distributed under the minimum distribution rules under I.R.C. Section 401(a)(9) and the regulations thereunder, or any subsequent statute requiring minimum distributions for any qualified retirement plan ("QRP") or individual retirement account ("IRA") that is held or owned by this trust. All income earned upon any IRA or QRP and made payable to this trust shall retain its character as income and be administered as such pursuant to this agreement. No expenses chargeable with respect to the principal of any distribution from an IRA or QRP shall be charged against the income portion of such distribution. The Grantor directs the Trustee to treat distributions from any QRP or any IRA as income of the trust to the extent that the distribution represents income generated or deemed to be generated by such QRP or IRA, notwithstanding the treatment of such portion of the distribution under any law concerning the determination of income and principal for trust accounting purposes, and the Trustee shall not charge to such income any expense properly chargeable to the nonincome portion of the distribution. Notwithstanding the above, the Trustee, in the Trustee's sole and absolute discretion, may direct the administrator, custodian or trustee of any QRP or IRA to make distributions to this trust in excess of the minimum distribution amount described above. The Trustee shall have the full authority and power to direct the administrator, custodian or trustee of any QRP or IRA as to the amounts to be paid to this trust from such QRP or IRA pursuant to this paragraph. In addition, the

Trustee shall distribute to such beneficiary or for his or her benefit as much of the income and/or principal of such beneficiary's respective trust as the Trustee deems necessary or advisable to provide for the health, maintenance and support of such beneficiary in accordance with his or her accustomed standard of living and to provide for the education of such beneficiary. The income of any trust not so distributed shall be accumulated and added to the principal of such trust. If such beneficiary dies after the time for the creation of his or her share but prior to the time for the termination of his or her trust, such beneficiary's trust shall terminate at such beneficiary's death, and the Trustee shall distribute all property then remaining in such beneficiary's trust to such beneficiary's estate.

(2) If at any time, in the Trustee's sole and absolute discretion, the total fair market value of the assets of any trust established or to be established under this agreement is so small that the Trustee deems it inadvisable to create or continue such trust, the Trustee shall be authorized not to establish such trust or shall be authorized to terminate such trust, and, in such event, the property then to be distributed to or to be held in such trust shall be distributed to the person who is then, or who would then be, entitled to the income of such trust, or, if such person is then a minor, to a custodian of such minor (selected by the Trustee) under the applicable gifts to minors act.

(3) The provisions of this Item shall not apply to the extent they may conflict with or restrict in any manner (a) the exercise of any power of appointment created in this agreement or (b) the Trustee's duty and/or authority to distribute the income or principal of any trust described in this agreement to or for the benefit of any beneficiary during the term of the trust of which such person is then a beneficiary as is otherwise provided in this agreement.

ITEM IX.THIRD PARTIES

No corporation, transfer agent or other person dealing with the Trustee hereunder shall be obligated to follow the application of any money or property delivered to the Trustee or to examine the terms upon which any property is held by the Trustee, but any such corporation, transfer agent or other person may deal with any such property and with the Trustee as if the Trustee were the owner thereof, free of any trust.

ITEM X.CONTRIBUTIONS OF ADDITIONAL PROPERTY

The Grantor, as well as any other person, shall have the right at any time and from time to time to add to the trust created herein by depositing additional property with the Trustee hereunder, and all such property so deposited shall be held and distributed by the Trustee in all respects as if originally deposited hereunder.

ITEM XI.PROHIBITION AGAINST SELF-DEALING

After the Grantor's death or during her incapacity, no powers of the Trustee enumerated herein or now or hereafter conferred upon trustees generally shall be construed to enable the Trustee, or any other person, to purchase, exchange or otherwise deal with or dispose of all or any part of the principal or income of the trusts created herein for less than adequate consideration in money or money's worth. No person, other than the Trustee, shall have or exercise the power to vote or direct the voting of any stock or other securities of these trusts, to control investments or

reinvestments, to veto proposed investments or reinvestments, or to reacquire or exchange any property of these trusts by substituting other property of an equivalent value.

ITEM XII.

APPLICABLE LAW

Notwithstanding the fact that the Grantor or the Trustee may now or at any future time be domiciled elsewhere than in the State of South Carolina, this instrument and the trust created herein shall be regarded for all purposes as a South Carolina instrument and as a South Carolina trust, and the validity and construction thereof shall be determined and governed in all respects by the laws of the State of South Carolina, and the trusts, powers and provisions herein contained shall be administered, exercised and carried into effect under the laws of the State of South Carolina.

ITEM XIII.

POWERS AND DUTIES OF TRUSTEE

The following powers are hereby conferred upon the Trustee named herein (hereinafter referred to as "fiduciary") and are in addition to the powers conferred by law upon fiduciaries or elsewhere set forth in this agreement, and each said fiduciary, its successors or successors and substitutes, is specifically authorized with respect to any and all property at any time held under any provisions of this agreement and any property held pursuant to any power in trust:

- (1) To sell upon such terms and conditions as it in its sole discretion may determine, including, but not limited to, the power to sell at public or private sale with or without advertisement for cash or on credit.
- (2) To invest and reinvest in, and to acquire by exchange or otherwise, property of any character including stocks of any classification, obligations or other property, real or personal,

whether or not of the same kind, and participation in any common trust fund (including any common trust fund maintained by a fiduciary), without regard to diversification and without being limited to the investments authorized by law for the investment of trust funds.

(3) To retain property of any kind received by it, without regard to diversification and without being limited to the investments authorized by law for the investment of trust funds and without liability for diminution in value of any property so retained.

(4) To form a corporation using all or any part of the assets of the trust estate and to hold the stock of such corporation as an asset of the trust estate.

(5) To exercise each and every option and privilege under any policy of insurance owned or payable to a fiduciary or any trust hereunder.

(6) To join in, consent to or become a party to any reorganization, merger, consolidation, dissolution, readjustment, exchange or other transaction and any plan or action thereunder or in connection therewith; to deposit any such property with any protective, reorganization or similar committee; to delegate discretionary powers thereto and to share in payment of its expenses and compensation and to pay any assessments levied with respect to such property and to receive property under any reorganization, merger, consolidation, dissolution, readjustment, exchange or other transaction whether or not the same be authorized by law for the investment of trust funds.

(7) To enter into a limited partnership or operating agreement.

(8) To exercise all conversion, subscription, voting and other rights of whatsoever nature pertaining to any such property and to grant proxies, discretionary or otherwise, with respect thereto.

(9) To make and retain joint investments of undivided interests in any property, real or personal, whether or not all the property be held hereunder and whether the provisions under which such other property is held are similar.

(10) With respect to any real property (including real property acquired on foreclosure or by deed in lieu thereof) at any time held hereunder, to sell, exchange, partition, lease, sublease, mortgage, improve or otherwise alter the same upon such terms as it may deem proper and to execute and deliver deeds, leases, mortgages or other instruments relating thereto. Any lease may be made for such period of time as the fiduciary may deem proper and without the approval of any court and may extend beyond the term of this agreement and any trust created thereunder.

(11) To extend the time of payment of any obligation and/or security held by it, or of any installment of principal or interest or to hold such obligation and/or security after maturity is past due; to consent to the alteration or modification of any terms thereof and/or waive defaults in the performance of the terms thereof; to foreclose any such mortgage or security or compromise or settle claims thereunder; to take over, take title to or manage the property, or any part thereof affected by any such mortgage or security agreement, either temporarily or permanently, and in partial or complete satisfaction of any claim thereunder; to protect such property against or redeem it from foreclosure or nonpayment of taxes, assessments or other liens; to insure, protect, maintain and repair such property; and generally, without limitation by the foregoing specifications, to exercise with respect to such obligation and/or security or such property all rights and powers as may be exercised by a person owning similar property in his or her own right.

(12) To borrow money from any person or corporation (including any fiduciary hereunder) for any purpose without resorting to the sale of any assets; and, for the purpose of securing the payment thereof, to pledge, mortgage or otherwise encumber any and all property upon

such terms, covenants and conditions as it may deem proper; and also to extend the time of payment of any loans or encumbrances which at any time may be encumbrances on any such property irrespective of by whom the same were made or by whom the obligation may or should ultimately be borne, upon such terms, covenants and conditions as the fiduciary may deem proper.

(13) To exercise any and all the powers, authorities and discretions provided herein in respect to any shares of stock of the fiduciary and any successor corporation whether by merger, consolidation, reorganization, sale or otherwise.

(14) To register any property in the name of its nominee, or to hold the same unregistered, or in such form that title shall pass by delivery.

(15) To distribute in cash or in kind or partly in cash and partly in kind.

(16) To abandon, settle, compromise, extend, renew, modify, release, adjust or submit to arbitration in whole or in part and without the order or decree of any court any and all claims whether such claims would increase or decrease the assets held hereunder.

(17) To decide with absolute discretion how commissions, attorneys' fees and other administration expenses shall be taken as tax deductions and to charge fiduciary commissions to principal and/or income, and the determination in this respect shall be final and conclusive upon all persons interested hereunder whether or not the amount of their respective interest or shares are thereby affected; provided, however, that adjustments between principal and income may, in the exercise of the fiduciary's absolute discretion, be made if deemed advisable.

(18) To determine whether or not to amortize the premium on any investment, or to allocate to income all or any part of any discount on any investment and the decision with respect thereto shall be conclusive upon all parties interested hereunder.

(19) To consider, insofar as permitted by law, all extraordinary dividends, whether in cash or in stock, and all realized appreciation in the value of stocks, bonds, securities or other property, resulting from the sale or other disposition thereof, principal and not income, but ordinary stock dividends paid regularly by a corporation in lieu of or in addition to regular cash dividends shall be considered income and not principal; provided, however, that the determination by the fiduciary as to whether any dividends shall be apportioned or allocated in whole or in part to principal or income shall, insofar as permitted by law, be conclusive and binding upon all persons now or hereafter interested in the trust estates.

(20) To keep adequate books and records of receipts, disbursements and transactions in accordance with generally accepted accounting procedures and to set up or not set up reserves for depreciation and/or obsolescence and to allocate such depreciation and/or obsolescence against income and/or corpus as the fiduciary in its sole discretion shall deem advisable. Such books and records shall be opened to any beneficiary for inspection at reasonable times and intervals.

(21) To administer any two or more of the trusts herein created or any parts thereof together or as a single fund by holding the principal of such trusts in one or more consolidated funds in which the separate trusts shall have undivided interests.

(22) To invest, so far as permitted by law, all or such portions of the trust assets as the fiduciary deems advisable in bonds of foreign governments or political subdivisions and in stocks, bonds or other securities of foreign corporations and in real estate located in foreign countries.

(23) If the administration of any trust created herein is required in any jurisdiction in which the fiduciary, for any reason, cannot serve, the fiduciary shall be authorized to appoint a fiduciary to serve in such jurisdiction.

(24) To file such returns as may be required under the tax laws of the United States, any state, any political subdivision of any state or any foreign country; to make any election permitted by any tax law, if, in the fiduciary's opinion, such election is in the best interest of any trust created herein; to make any disclaimer permitted by any tax law, if, in the fiduciary's opinion, such disclaimer is in the best interest of any trust created herein; and to agree to such apportionment of taxes and application of estimated tax payments, refunds and credits as the fiduciary deems equitable under all the circumstances.

(25) To have full access to all credit card accounts, cell phone accounts and records (including GPS information), computers and to all e-mail accounts, including, but not limited to passwords, and to deal with all internet service providers and website hosting providers, and to be authorized to open, manage, use, transfer, gift and close membership plans and accounts.

(26) The Grantor authorizes, but does not direct, the Trustee to divide any trust established by this agreement, at any time, into two or more separate trusts so that the federal generation-skipping transfer tax inclusion ratio as defined in I.R.C. Section 2642(a) for each trust shall be either zero or one. All such separate trusts shall have the identical provisions as the original trust from which they shall have been divided; provided, however, that the Trustee, in making discretionary distributions from such trusts, shall be authorized to make such discretionary distributions in such manner as the Trustee shall deem advisable and shall not be required to make such distributions pro rata or equally from such trusts.

(27) To employ any attorney, accountant or other professional to provide services to my estate and/or to any such trust and to pay reasonable fees for all services provided according to such firm's customary fees for such services, taking into consideration the value and nature of the assets

of my estate and/or of such trust, the nature of the services rendered and the time and responsibilities involved in performing such services.

(28) In any judicial proceeding involving my estate or any trust hereunder and in any non-judicial settlement of the account of a Personal Representative or Trustee hereunder, the interest of a person under disability may be represented by a party to such proceeding or settlement who is not under disability and who has the same interest.

(29) The Trustee shall have the power to employ, and to delegate any of its discretionary and nondiscretionary powers to agents, including, but not limited to, attorneys, investment advisers, appraisers or accountants as it deems appropriate and to pay for such services from the trust property.

(30) The Trustee may, but shall not be required to, at any time, and from time to time, file an account of its administration with a court of competent jurisdiction. Prior to transferring any or all of the assets of any trust hereunder to a successor Trustee or to making any partial or complete distribution of trust principal, the Trustee may require an approval of its account either by (a) release and discharge from those competent beneficiaries currently eligible to receive income or principal and those who would succeed to principal were the trust to then terminate (which release(s) and discharge(s) shall be binding on all persons at any time interested in the trust) or (b) by a court of competent jurisdiction. All of the Trustee's fees and expenses (including reasonable attorneys' fees) attributable to any such accounting and approval shall be paid by the trust.

ITEM XIV.ANNUAL STATEMENTS OF ACCOUNT

The Trustee shall, upon the request of any person then entitled to receive income from any trust created herein, furnish to such person at least annually a statement showing the property held by the Trustee and the receipts and disbursements thereunder.

ITEM XV.

APPOINTMENT OF SUCCESSOR TRUSTEE/ADDITIONAL
MATTERS RELATING TO TRUSTEES

(1) During her lifetime, the Grantor shall have the power to remove any Trustee serving hereunder and to appoint one or more successor Trustee(s). If for any reason the Trustee hereinabove appointed becomes unable or unwilling to continue serving as Trustee of any such trust and if the Grantor fails to appoint a successor Trustee, the Grantor appoints her husband, SHOE, and LESLEY R. MOORE as Co-Trustees of each such trust. If for any reason SHOE is unable or unwilling to serve or continue serving as Co-Trustee of any such trust, the then serving Co-Trustee shall serve as sole Trustee of such trust.

(2) The Grantor authorizes MARTHA LOUISE RAMAGE LEWIS, in her sole and absolute discretion, to appoint one or more individuals or corporate entities as successor fiduciaries for any Trustee who resigns. In addition, MARTHA LOUISE RAMAGE LEWIS, in her sole and absolute discretion, shall have the power to remove any fiduciary serving hereunder (other than the Grantor) and to replace said fiduciary with one or more individuals or corporate fiduciaries. Said appointment, removal and replacement powers shall be given by thirty (30) days advance written notice to all Interested Parties. Said appointment, removal and replacement powers may be exercised one or more times.

(3) The Grantor expects that the Trustee of any such trust will use one or more investment managers. The Grantor directs the Trustee to provide to the persons at the time comprising the governing board of the Professional Corporation now bearing the name FREEMAN AND MOORE, PC and/or MARTHA LOUISE RAMAGE LEWIS, as the case may be, copies of account statements for each such trust on a semiannual or more frequent basis.

(4) No Trustee or successor Trustee named or described herein shall be required to post a bond.

(5) If there is more than one Trustee serving, any Trustee may give any Co-Trustee power of attorney, by written instrument, to act for or to sign any document in the name of the Trustee giving such power, provided such act is one which a fiduciary may properly delegate, and any action taken pursuant to such power of attorney shall be valid for all purposes as if done or signed in person by the Trustee giving such power of attorney. Any such power of attorney may be general or may be limited to certain acts or instruments or may contain conditions and restrictions and may be changed or revoked at any time by the Trustee who gave such power, giving written notice of its change or revocation to the Co-Trustee to whom such power is given.

(6) All successor Trustees shall have all the rights, authorities and duties granted in this agreement as if originally named Trustee, and no successor Trustee shall be required to inquire into or audit the acts or actions of any predecessor Trustee.

(7) In lieu of any compensation that may be provided by statute or otherwise by state law, all individuals who may serve as a Trustee of any trust created herein shall be entitled to receive reasonable compensation from such trust for all services provided to such trust, taking into consideration the value and nature of the assets of such trust, the nature of the services rendered and the time and responsibilities involved in performing such services. Unless otherwise agreed by

the parties, any corporate Trustee shall receive such compensation for its services as it normally charges to administer similar trusts under its regularly published fee schedule as the same from time to time may be amended taking into account the investment function of any investment manager appointed hereunder.

(8) Each Trustee named herein and each successor Trustee may resign without the order of any officer or court and without the consent of any beneficiary of any provision of this trust upon giving all Interested Parties thirty days advance written notice of such Trustee's intention to resign from such trusteeship and/or co-trusteeship.

ITEM XVI.

DEFINITIONS OF TERMS USED IN THIS AGREEMENT

(1) All references to "education" shall refer to the education of the beneficiary in question at any available level at any formal educational institution, whether or not accredited, including preschool, elementary, secondary, trade, vocational, college and postgraduate schools and shall include, but shall not be limited to, such expenses as tuition, books, laboratory fees, educational equipment and supplies, private lessons, counseling, housing, board, travel to and from the educational institution in question, and all such other expenditures as the Trustee may deem appropriate to enable the beneficiary in question to further his or her education.

(2) Unless otherwise expressly provided herein to the contrary, all references to an "Item" or to "Items" shall refer to Item(s) of this agreement.

(3) All references to "Interested Parties" shall refer to the following applicable individuals and/or entities: to all then serving Trustees of the trust in question; to the successor Trustee or Co-Trustee or other fiduciary being appointed in the instrument in question; to the

fiduciary being replaced; and to all persons then entitled to receive income from the trust in question, or to the guardian(s) of such persons.

(4) Unless otherwise provided herein, when the term "Trustee" is used in this agreement, it shall include all persons and/or institutions, whether singular or plural, masculine or feminine, then acting as Co-Trustees or as sole Trustee.

(5) All references to the "Vesting Date" shall refer to later to occur of the following events: (a) the day preceding the twenty-first anniversary of the death of the survivor of the Grantor, SHOE and those of the Grantor's issue (excluding MARSHALL) who are living at the date of the execution of this agreement; or (b) the day preceding the ninetieth anniversary of the creation of the interest or power in question in accordance with the provisions of S.C. Code Section 27-6-10 et seq.

(6) Except with respect to MARSHALL, all references to "child" or "children" mean lawful blood descendants in the first degree of the parent designated and all references to "issue" and "descendants" mean lawful blood descendants in the first, second or any other degree of the ancestor designated; provided always, however, that an adopted child, if adopted prior to reaching age eighteen years, and such adopted child's issue, whether birth or adopted, if adopted prior to reaching age eighteen years, shall be considered in this agreement as lawful blood descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or of either of the adopting parents and shall not be considered issue of the adopted child's birth parents, except that where a child is adopted by a spouse of one of his or her birth parents, such child shall be considered issue of such birth parent as well as issue of the adopting parent.

(7) All references to section(s) and chapter(s) of the Internal Revenue Code are to section(s) and chapter(s) of the Internal Revenue Code of 1986 presently in force or as such section(s), chapter(s) and/or code from time to time may be amended or superseded.

(8) All references to "Net Income" shall refer to the entire net income of the trust in question, from and after the time the Trustee is directed to distribute said income to the beneficiary in question. The Trustee shall determine said income in accordance with the powers herein granted to the Trustee; provided, however, and notwithstanding any provision of this agreement to the contrary, the Trustee shall not make any charge to income or allocation to principal which would cause the beneficiary of the trust in question to receive in any year less than all of said income within the meaning of the federal estate tax laws as officially interpreted from time to time.

(9) All references to "spouses" shall refer to (a) any person who at the time in question is legally married to and living as spouses with a descendant of the Grantor or (b) any person who is legally married to and living as spouses with a descendant of the Grantor at such descendant's death. If a person qualifies as a spouse of a descendant of the Grantor by reason of being legally married to and living as spouses with such descendant at the time of such descendant's death, such surviving spouse shall continue to be considered as such descendant's spouse regardless of whether he or she marries after such descendant's death.

ITEM XVII

LIABILITIES OF FIDUCIARIES

No Trustee hereunder, or any successor or substitute thereto, shall be liable for any loss to the assets of any trust hereunder, except for bad faith or willful misconduct.

ITEM XVIII.RULE AGAINST PERPETUITIES

Notwithstanding any other provision of this agreement to the contrary, unless sooner vested as herein provided, on the Vesting Date, all property of every trust created by this agreement shall vest in and immediately be distributed free of all trusts, to the person(s) then entitled to share the income thereof in the proportions in which they are then entitled to share such income. The provisions of this Item are intended to prevent any possible violation of the rule against perpetuities, and they shall be construed accordingly.

ITEM XIX.PRESUMPTION OF SURVIVORSHIP

If any beneficiary and the Grantor 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 the Grantor died first, then it shall be conclusively presumed for the purposes of this agreement that said beneficiary predeceased the Grantor.

ITEM XX.FINAL CONTINGENT BENEFICIARIES

(1) If, pursuant to any provision of this agreement, the Trustee of any trust created in this agreement is directed to distribute any property remaining in any such trust at the Grantor's death or at the death of any beneficiary of any trust created in this agreement in accordance with the provisions of this Item (such time is referred to hereinafter as the "Distribution Date"), the Trustee of the trust in question shall distribute such property as follows:

(a) Twenty-Five Percent (25%) of such property shall be distributed to SWEET BRIAR COLLEGE, Sweet Briar, Virginia, or to its successor, to be used for such purposes as the governing board of said organization shall deem advisable.

(b) Twenty-Five Percent (25%) of such property shall be distributed to CHATHAM HALL SCHOOL, Chatham, Virginia, or to its successor, to be used for such purposes as the governing board of said organization shall deem advisable.

(c) Fifty Percent (50%) of such property shall be distributed to THE COMMUNITY FOUNDATION OF GREATER GREENVILLE, Greenville, South Carolina, or to its successor, to be used for the following purposes: one-half of such share shall be added to, or to be used to create, THE POLLY SHOEMAKER REEDY RIVER FALLS PARK MEMORIAL FUND, the income from which shall be used for the beautification of the Reedy River Falls Park and Falls Cottage located in Greenville, South Carolina; and one-half of such share shall be distributed to or used for the GREENVILLE FREE MEDICAL CLINIC, Greenville, South Carolina.

(2) The provisions contained in this Item are included in this agreement solely for the purpose of providing for the disposition of any property of any trust created herein in the unlikely event that the primary beneficiary or beneficiaries of such trust should all die prior to the time for the distribution or the termination of such trust. The Grantor accordingly directs the Trustee, so far as is consistent with the provisions of this agreement, to give no consideration to reserving funds or properties for distributions pursuant to the provisions of this Item. Furthermore, the Trustee shall be under no duty to notify the beneficiaries named or described in this Item of the nature and extent of this contingent provision until any interest created in this Item shall vest, if that shall ever happen.

ITEM XXI.RESTRICTIONS ON CERTAIN DISTRIBUTIONS

Notwithstanding any provision of this agreement to the contrary, if at any time any person who is serving as a Co-Trustee or as sole Trustee of any trust described in this agreement shall have a legal obligation to support any beneficiary of any such trust, during such time as such person is serving as a Co-Trustee of such trust, he or she shall have no right to participate in any decision regarding any distribution or proposed distribution of the income or principal of such trust to or for the benefit of any beneficiary whom such person at such time shall have a legal obligation to support, and all such decisions shall be made by the remaining Co-Trustee(s) of such trust, acting in their, or in his, her or its fiduciary capacities or capacity; and while such person is serving as sole Trustee of such trust, such sole Trustee shall not be authorized to distribute any income or principal of such trust to or for the benefit of any beneficiary whom such person at such time shall have a legal obligation to support if such distribution would discharge any legal obligation which such sole Trustee may have to support such beneficiary.

ITEM XXII.PAYMENT OF DEBTS AND ESTATE TAXES

After the Grantor's death, and except as otherwise provided herein, the Trustee, in the Trustee's discretion, may pay all or any part of the Grantor's funeral expenses, legally enforceable claims against the Grantor or the Grantor's estate, reasonable expenses of administration of the Grantor's estate, and any estate, inheritance, transfer, succession, death or similar taxes, including any interest or penalties thereon, payable by reason of the Grantor's death (other than any generation-skipping transfer tax or any additional tax imposed by Section 2032A of the Internal Revenue Code) ("Estate Taxes"), assessed or imposed with respect to the Grantor's estate, or any

part thereof, whether or not passing under this trust, or any amendment thereto, or under the Grantor's Will, or any codicil thereto, including all policies of insurance on the Grantor's life, all bequests and devises, and all transfers, powers, rights or other interests in property included in the Grantor's gross estate for the purpose of such Estate Taxes, without reimbursement from the Grantor's estate. Except as otherwise provided herein and in the Grantor's Will to the contrary, all such payments shall be charged generally against the principal of the trust estate includable in the Grantor's estate for federal estate tax purposes, provided, however, any such Estate Taxes shall first be charged against the Grantor's residuary estate passing under Item V and shall not be charged against any assets qualifying for the marital deduction and/or charitable deduction; provided, however, that if and to the extent that the Grantor's residuary estate is insufficient to pay such Estate Taxes, such excess Estate Taxes shall be paid from and shall reduce the marital bequest described in Item IV. Except as otherwise provided herein and in the Grantor's Will to the contrary, such tax payments shall be made without apportionment and shall not be charged against any recipient, transferee, owner, or other beneficiary, and shall not be prorated among any of the transfers made under this trust or under the Grantor's Will, or against property passing outside of this trust or outside of the Grantor's Will. The Trustee may make such payments directly or may pay over the amounts thereof to the Personal Representative of the Grantor's estate. Written statements by the Personal Representative of such sums due and payable by the Grantor's estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee, and the Trustee shall be under no duty to see to the application of any such payments.

ITEM XXIII.ACQUIESCENCE

(1) Except as expressly provided in paragraph (2) of this Item to the contrary, each and every benefit conferred by this agreement is made on the condition precedent that each beneficiary hereof acquiesce in all of the provisions of this agreement. If any beneficiary of any bequest created in this agreement, whether outright or in trust, contests the validity of this agreement, or any provision of this agreement, if any beneficiary contests any valuation placed upon any asset of the trust by the Trustee, or if any beneficiary institutes any proceedings to contest the validity of this agreement or any provision of this agreement or to prevent any provision of this agreement from being carried out in accordance with its terms (whether or not in good faith and with probable cause), and/or if such beneficiary conspires with or assists any person who does any of the foregoing, then all benefits provided for such beneficiary in this agreement shall be revoked and annulled, and such benefits which such beneficiary would have received if he or she had not made any such contest or brought such proceedings shall be distributed as if such beneficiary predeceased SHOE and the Grantor. The Trustee is hereby authorized to defend, at the expense of the trust, any violation of this paragraph. The Grantor has excluded MARSHALL from receiving any assets under the trust after careful deliberation and reflection.

(2) The provisions of paragraph (1) of this Item shall not apply to the Grantor's husband, SHOE, or to any bequest created for the Grantor's husband in this agreement, whether outright or in trust. Nor shall the provisions of paragraph (1) of this Item apply so as to cause a forfeiture of any distribution otherwise qualifying for any Federal estate tax charitable deduction.

ITEM XXIV.COPY OF AGREEMENT

To the same effect as if it were the original, anyone may rely upon a photostatic copy or a copy certified by a notary public to be a counterpart of this instrument.

IN WITNESS WHEREOF, MARY S. SHOEMAKER, as the Grantor, has hereunto set her hand and seal, and MARY S. SHOEMAKER, as the Trustee, in token of her acceptance of the trust(s) created hereby, has hereunto set her hand and seal the day and year first above written.

Witnesses as to Grantor:

GRANTOR:

Amos Alan Workman
Witness

Mary S. Shoemaker (SEAL)
MARY S. SHOEMAKER

Carl F. Muller
Witness

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that ~~(s)~~he saw MARY S. SHOEMAKER, as Grantor, sign, seal and as her act and deed deliver the within instrument and that ~~(s)~~he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this
24 day of June, 2018

Carl F. Muller

Amos Alan Workman (SEAL)
Notary Public for South Carolina
My Commission Expires: 11-25-18

Witnesses as to Trustee:

TRUSTEE:

Amos Alan Workman

Witness

Mary S. Shoemaker (SEAL)

MARY S. SHOEMAKER

Carl F. Muller

Witness

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF GREENVILLE)

PERSONALLY appeared the undersigned witness and made oath that ~~s~~he saw MARY S. SHOEMAKER, as Trustee, sign, seal and as her act and deed accept delivery of the within instrument and that ~~s~~he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this
24 day of June, 2018

Carl F. MullerAmos Alan Workman (SEAL)

Notary Public for South Carolina

My Commission Expires: 11-25-18

EXHIBIT A

\$1.00

EXHIBIT

2

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

THE MARY S. SHOEMAKER REVOCABLE TRUST

THIS AGREEMENT OF TRUST is made this 23 day of Dec., 2016, by and between MARY S. SHOEMAKER (the "Grantor") and MARY S. SHOEMAKER (the "Trustee") in order to establish a trust for the purposes and under the terms and conditions hereinafter stated.

The Grantor, desiring to establish a revocable trust, hereby assigns, transfers and conveys to the Trustee all the Grantor's interests in the property more particularly described in Exhibit A, attached hereto and by this reference made a part hereof, to be held in trust for the Grantor's benefit, subject to the terms, conditions and purposes hereinafter set forth in this agreement.

The Grantor agrees to execute and deliver all further documents which the Trustee shall reasonably require in connection with the assignment, transfer and conveyance of said property.

The Trustee hereby acknowledges delivery of the property described in Exhibit A and agrees to hold and manage said property, together with all other property added to this trust, in trust, for the uses and in the manner hereinafter set forth.

This trust shall be known as "THE MARY S. SHOEMAKER REVOCABLE TRUST."

The Grantor is married to JAMES M. SHOEMAKER, JR. ("SHOE"). The Grantor has three children, and their names are JAMES MARSHALL SHOEMAKER III ("MARSHALL"), EDWARD SLOAN SHOEMAKER ("SLOAN") and JONATHAN EVANS SHOEMAKER ("JONATHAN").

ITEM I.RESERVATION OF RIGHTS BY GRANTOR

Unless the Grantor is disabled as determined in paragraph (5) of Item II, the Grantor hereby expressly reserves the full right, to be exercised at any time and from time to time during the Grantor's lifetime, to do the following:

(1) To revoke this instrument entirely and to receive from the Trustee all property then remaining in this trust after making payment or provision for payment of all expenses connected with the administration of this trust.

(2) To alter or amend this instrument in whole or in part from time to time, provided that such change does not increase the duties or liabilities of the Trustee without the Trustee's consent.

(3) To change the identity or number, or both, from time to time of the Trustee hereunder.

(4) To withdraw from the operation of this trust from time to time any part or all of the property then in this trust.

(5) To direct the Trustee to distribute any or all of the assets comprising this trust to such persons or entities, in trust or otherwise, and in such manner as the Grantor shall direct.

(6) Any and all such withdrawals and distributions, as well as any such change or revocation, shall be effected by a written instrument executed and acknowledged by the Grantor and delivered in person or by mail to the Trustee during the lifetime of the Grantor or by verbal direction by the Grantor to the Trustee. Any such written instrument received by the Trustee after the Grantor's death shall be ineffective. Upon any such withdrawal or distribution, all property withdrawn shall be conveyed to the Grantor or to those persons or entities so selected by the

Grantor, as the case may be, free of the terms of this trust. The Trustee shall have a reasonable time after receiving the writing which revokes this trust, in whole or in part, in which to deliver such trust property to the Grantor.

ITEM II.

ADMINISTRATION OF TRUST

The Trustee shall hold, manage, invest and reinvest the property of this trust, shall collect and receive the income therefrom, and, after deducting all expenses incurred in the administration of this trust, shall distribute the income and principal of this trust as follows:

(1) All property at any time comprising this trust shall be held in trust for the Grantor's benefit during the Grantor's lifetime. During the Grantor's lifetime, the Trustee shall distribute to the Grantor or for her benefit as much of the income and/or principal of this trust as the Trustee deems necessary or advisable to provide for her health, maintenance and support in accordance with her accustomed standard of living. In the event the Grantor is disabled or incapacitated, the Trustee may, during such disability or incapacity, distribute part or all of the income and/or principal of this trust to or for the benefit of the Grantor's husband, SHOE, to provide for his health, maintenance and support in accordance with his accustomed standard of living. Any income of this trust not so distributed shall be accumulated and added to the principal of this trust. In making distributions from this trust to or for the Grantor, the Trustee shall not be required to take into consideration other income and assets of the Grantor and of trusts known to the Trustee, if any, of which she is then a beneficiary. In making distributions from this trust to or for SHOE, the Trustee shall take into consideration other income and assets of SHOE and of trusts known to the Trustee, if any, of which he is then a beneficiary. In creating this trust, it is the Grantor's primary desire that the Grantor be suitably maintained during the Grantor's lifetime, and that SHOE be suitably maintained

during the Grantor's incapacity, in accordance with the standards set out in this paragraph rather than that the principal of this trust be preserved until the termination of this trust, and the Trustee shall be guided by these desires in making distributions from this trust.

(2) During her lifetime and unless she is determined to be disabled in accordance with paragraph (5) of this Item, the Grantor shall have the power, at any time and from time to time, by written instrument signed by the Grantor and delivered to the Trustee during the Grantor's lifetime (unless the Grantor and the Trustee are one and the same), or at her death by her Last Will and Testament, making express reference to this power, to direct the Trustee to turn over any portion or all of the principal of this trust to, among or for the benefit of such persons and entities, including the Grantor's estate, in such manner, in trust or otherwise, as the Grantor may direct in such instrument. The Trustee shall comply with such written directions without reference to the purpose thereof.

(3) During the Grantor's lifetime, if the Trustee determines that the Grantor is disabled as described in paragraph (5) of this Item or if the Grantor is declared to be incompetent by a court of competent jurisdiction, the Trustee, exercising absolute judgment and without liability, may make such distributions from the trust assets as are necessary or appropriate to carry out, on the Grantor's behalf, any plan or pattern of gifts to any charitable organization or any of the Grantor's issue and their spouses (even if such person is then acting as the Grantor's general attorney-in-fact) that (a) are in accordance with the Grantor's personal history of making or joining in the making of lifetime gifts, or (b) had previously been clearly contemplated by the Grantor, or (c) would be in the best interests of the subsequent beneficiaries of this trust and would not substantially impair the Grantor's own financial security. With respect to any gifts to or in favor of any individuals, the amount given to any particular individual during any particular calendar year shall not exceed the

then-applicable maximum annual exclusion amount as described in Internal Revenue Code § 2503(b).

(4) Upon the Grantor's death, if and to the extent the Grantor does not effectively exercise the general power of appointment granted to her in paragraph (2) of this Item, all property then remaining in this trust shall be distributed in accordance with the provisions of the following Items.

(5) The decision as to whether at any time or from time to time the Grantor is disabled for purposes of Item I and this Item because of advanced age, illness or other cause has impaired the Grantor's ability to transact ordinary business shall be made by a court of competent jurisdiction or by the Grantor's then serving agent under her Health Care Power of Attorney and two physicians, one of whom is a physician who has examined or treated the Grantor within the prior twelve months. Any such determination shall be by written instrument signed by the physicians and the then serving agent under the Grantor's Health Care Power of Attorney, and delivered to the Grantor and the Trustee. During any period in which the Grantor is determined to be disabled hereunder, she may be prohibited from exercising any power under Items I and XV and/or making withdrawals pursuant to paragraph (2) of this Item.

ITEM III.

SPECIFIC BEQUESTS

(1) The Grantor bequeaths all her personal and household effects, including, but not limited to, furniture, appliances, furnishings, objects of art, silver, silverware, china, crystal, books, photographs, jewelry, clothing, automobiles, boats and other vehicles, wherever located, to those persons and/or organizations designated in any written memorandum either in the Grantor's handwriting or signed by the Grantor and in existence at the time of her death. If no such written

statement is found within ninety (90) days after the Grantor's death, it shall be conclusively presumed that there is no such written statement and any subsequently discovered written statement shall be void. In default of such written statement, or to the extent such written statement does not completely or effectively dispose of the Grantor's tangible personal effects held in this trust, then the Grantor leaves all such remaining items to SHOE, if he survives the Grantor, and if not, then in approximately equal shares (not taking into account items disposed of in the above-described memorandum) to those among the Grantor's children who survive her, as they may agree upon and specify. If said children cannot reach an agreement within six months after the Grantor's death, the Trustee shall make the final determination as to the division and distribution of such items among said children, and the Trustee's decision shall not be subject to question by any child herein.

(2) The Grantor devises to her husband, SHOE, if he survives her, all interests owned by her at her death in her principal residence located at 10 Creekridge Road, Greenville, South Carolina, or a principal residence to which she may later move. If SHOE predeceases the Grantor, the Grantor directs the Trustee to sell her primary residence after her death, if applicable, and the net proceeds from such residence shall be added to her residuary estate passing under Item V.

(3) If SHOE predeceases the Grantor, the Grantor bequeaths the sum of Fifty Thousand Dollars (\$50,000) in cash to DEBORA WINE, if she is then in the Grantor's employ, and if not, then this bequest shall lapse. If SHOE survives the Grantor, this bequest shall lapse.

(4) If SHOE survives the Grantor, the Grantor bequeaths the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to each of her sons, MARSHALL, SLOAN and JONATHAN, who survives the Grantor. If a son predeceases the Grantor, his bequest shall lapse. If SHOE predeceases the Grantor, these bequests shall lapse.

(5) The property bequeathed or devised under this Item shall be subject to all outstanding indebtedness thereon at the Grantor's death. All insurance in effect at the Grantor's death (including the proceeds of any claim arising prior to, upon or after her death) with respect to such bequest or devise shall be considered a part of such bequest or devise.

ITEM IV.

CREATION OF THE MARITAL TRUST

(1) After the Grantor's death, if SHOE survives the Grantor, the Grantor directs the Trustee to create a trust, to be known as "THE MARY S. SHOEMAKER MARITAL TRUST", from property of this trust (undiminished by any Estate Taxes as defined in Item XXII) having a value equal to the maximum marital deduction allowable to the Grantor's estate at the time of her death for federal estate tax purposes, taking into consideration any election the Grantor's personal representative may make for income or estate tax purposes with respect to the deduction of administration expenses and losses allowed under I.R.C. Sections 2053 and 2054, less the aggregate amount of the marital deduction, if any, allowed for such tax purposes by reason of property passing or which has passed to SHOE otherwise than pursuant to the provisions of this Item, including any provisions of the Grantor's Will, by operation of law or otherwise; provided, however, the amount of this bequest shall be reduced by the amount, if any, needed to increase the Grantor's taxable estate (for federal estate tax purposes) to the largest amount that, after application of the available unified credit against the federal estate tax and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state) will result in the smallest (if any) federal estate tax being imposed on the Grantor's estate. The Trustee shall have the sole discretion to select the assets which shall constitute this bequest. The Trustee shall value any assets selected by the Trustee for distribution in kind in satisfaction of this

bequest at the value of such asset at the date of its distribution. Any property of this bequest which does not qualify for the marital deduction, by reason of the Grantor's personal representative failing to elect to so qualify such property or otherwise, shall bear its proportionate share of all Estate Taxes assessed by reason of such property being included in the Grantor's estate.

(2) THE MARY S. SHOEMAKER MARITAL TRUST, as so set apart, shall be held, administered and distributed in accordance with the provisions of Item VI.

(3) If SHOE predeceases the Grantor, this bequest shall lapse.

ITEM V.

DISPOSITION OF REST AND RESIDUE OF TRUST

After the Grantor's death, all of the rest, residue and remainder of all property comprising this trust, of every kind and description, including lapsed legacies and devises, wherever situated and whether acquired before or after the execution of this trust, shall be distributed as follows:

(1) If SHOE survives the Grantor, such property shall be distributed to the Trustee, hereinafter named, in trust, to be known as "THE MARY S. SHOEMAKER EXEMPTION TRUST," and said trust shall be held, administered and distributed as follows:

(a) During SHOE's lifetime, the Trustee apply to or for the benefit of SHOE as much or all of the income and/or principal of this trust as the Trustee deems necessary or advisable from time to time for the health, maintenance and support of SHOE in accordance with his accustomed standard of living. In making discretionary distributions from this trust, the Trustee shall take into consideration other income and assets of SHOE and trusts known to the Trustee of which he is then a beneficiary; provided, however, SHOE shall not be required to dispose of assets which the Trustee deems appropriate for him to retain in order to be eligible for discretionary distributions from this trust. The

Grantor's primary desire is that SHOE be suitably maintained in accordance with the standards set out in this subparagraph, and the Trustee shall be guided by this desire in making discretionary distributions from this trust. Any income of this trust not so distributed shall be accumulated and added to the principal of this trust. To the extent practicable, the Grantor requests that the Trustee, in making distributions of the principal of this trust to SHOE or for his benefit, before encroaching upon the principal of this trust, encroach first on such trust(s), if any, of which SHOE is then a beneficiary and which, to the best of the Trustee's knowledge, will be includable in SHOE's gross estate for federal estate tax purposes, and the Trustee shall also be authorized to accumulate income in the trust described in this Item while encroaching on the principal of such other trust(s) for SHOE. This request shall not apply, however, to the extent it would be necessary to sell or otherwise to dispose of any property which, in the opinion of the Trustee, should not be sold in order to encroach first on any such other trust for SHOE.

(b) Upon SHOE's death, if any of the Grantor's issue survives SHOE, such property shall be divided into as many separate equal shares as the Grantor has children who survive SHOE and children who predecease SHOE leaving issue who survive him, and the Trustee shall allocate and distribute one such share to each child of the Grantor who survives SHOE and one such share per stirpes among the then living issue of any deceased child.

(c) Upon SHOE's death, if none of the Grantor's issue survives SHOE, such property shall be distributed in accordance with the provisions of Item XX.

(2) If SHOE predeceases the Grantor, such property shall be divided into as many separate equal shares as the Grantor has children who survive the Grantor and children who

predecease the Grantor leaving issue who survive her, and the Trustee shall allocate and distribute one such share to each child of the Grantor who survives the Grantor and one such share per stirpes among the then living issue of any deceased child.

(3) If none among SHOE and the Grantor's issue survives the Grantor, such property shall be distributed in accordance with the provisions of Item XX.

ITEM VI.

ADMINISTRATION OF THE MARY S. SHOEMAKER MARITAL TRUST

IF THE MARY S. SHOEMAKER MARITAL TRUST is established, the Trustee shall manage, invest and reinvest the assets of this trust and shall distribute the income and principal of this trust as follows:

(1) The Trustee shall distribute to SHOE, during his lifetime, the Net Income of this trust, from the time of the Grantor's death, in semiannual or more frequent installments.

(2) If at any time SHOE should need funds to provide for his health, maintenance and support in accordance with his accustomed standard of living, the Trustee shall be authorized to distribute to SHOE or for his benefit such amount or amounts of the remaining principal of this trust as the Trustee deems necessary or advisable to provide for SHOE's health, maintenance and support.

(3) Notwithstanding anything contained in Item XIII or in any other provision of this agreement to the contrary, during his lifetime, SHOE shall have the power to direct the Trustee, in writing, to convert any non-productive or non-income-producing property which is at any time acquired, invested or retained by the Trustee of the trust into productive or income-producing property. Within a reasonable time after receiving such written directions from SHOE, the Trustee of the trust shall make reasonable efforts to comply with such directions. In extension and not in

limitation of any other benefits granted to SHOE in the trust, the Grantor intends that SHOE have substantially that degree of beneficial enjoyment of the property of the trust which the laws of the State of South Carolina accord to persons who are unqualifiedly designated as life beneficiaries of a trust.

(4) Notwithstanding anything contained in Item XIII or in any other provision of this agreement to the contrary, the Trustee of the trust shall have no power to invest any of the assets of the trust in life insurance.

(5) In creating the trust, the Grantor intends that the trust qualify for the marital deduction, and notwithstanding anything contained in Item XIII or in any other provision of this agreement to the contrary, the Trustee shall not take any action or make any investment which would prevent the trust or any property distributed to fund the trust from qualifying for the marital deduction. The foregoing provisions of this paragraph shall not be applicable to the extent the Grantor's personal representative elects not to qualify any portion of the property passing to the trust for the marital deduction.

(6) At the time of the execution of this agreement, the Grantor anticipates that the Grantor's personal representative will elect to treat all assets distributed to fund the trust as qualified terminable interest property. The Grantor recognizes, however, that future tax and other considerations may suggest that it would be prudent not to make such election in whole or in part, and, for this reason, the Grantor leaves the responsibility for that decision to her personal representative, and her personal representative shall incur no liability for such decision, provided such decision is exercised by her personal representative with prudence and in good faith.

(7) Upon SHOE's death, all unpaid and accrued income of THE MARY S. SHOEMAKER MARITAL TRUST, if any, shall be distributed to SHOE's estate. After reserving

sufficient funds to cover the estate tax liabilities and administrative expenses more fully described in paragraphs (8) and (9) of this Item, all property remaining in the trust (the "Remaining Property") shall be divided into as many separate equal shares as the Grantor has children who survive SHOE and children who predecease SHOE leaving issue who survive him, and the Trustee shall allocate and distribute one such share to each child of the Grantor who survives SHOE and one such share per stirpes among the then living issue of any deceased child. If none of the Grantor's issue survives SHOE, the Remaining Property shall be distributed in accordance with the provisions of Item XX.

(8) Upon SHOE's death, unless otherwise directed by his Will, the Trustee of THE MARY S. SHOEMAKER MARITAL TRUST shall withhold from the Remaining Property prior to distributing such property in accordance with the provisions of paragraph (7) of this Item an amount of property which the Trustee deems sufficient to cover the difference between: (i) the total estate taxes due by reason of SHOE's death; and (ii) the total estate taxes which would have been due by reason of SHOE's death if none of the value of the property of THE MARY S. SHOEMAKER MARITAL TRUST had been included in SHOE's estate for estate tax purposes. The Trustee of THE MARY S. SHOEMAKER MARITAL TRUST, in the Trustee's sole and absolute discretion, shall be authorized to distribute such withheld property to the personal representative of SHOE's estate and/or to any taxing authority for the purpose of satisfying any estate taxes or other liability that may be imposed on the Trustee of the trust, on the trust or on the distributees of the trust until such tax liabilities are finally satisfied. Any property so withheld in excess of the amount finally required to satisfy such tax liabilities shall be distributed as provided in paragraph (7) of this Item for the Remaining Property. SHOE may direct, by his Last Will and Testament taking effect at or after the Grantor's death, the manner in which said estate taxes shall be apportioned between the property of the trust that is included in SHOE's estate for estate tax

purposes and all other property included in SHOE's estate for estate tax purposes, but in no event shall the trust pay more than the difference between: (A) the total estate taxes due by reason of SHOE's death; and (B) the total estate taxes that would have been due by reason of SHOE's death if none of the property of the trust had been included in SHOE's estate for estate tax purposes. Whenever the term "estate taxes" is used in this paragraph, said term shall include all estate, inheritance, succession, transfer, legacy and death taxes assessed or imposed with respect to SHOE's estate.

(9) Upon SHOE's death, the Trustee of THE MARY S. SHOEMAKER MARITAL TRUST shall also withhold from the Remaining Property prior to distributing such property in accordance with the provisions of paragraph (7) of this Item an amount of property which, in the Trustee's sole and absolute discretion, shall be sufficient to cover any additional expenses of administration incurred by SHOE's estate as a result of any property of the trust being included in SHOE's estate for estate tax purposes. The Trustee of THE MARY S. SHOEMAKER MARITAL TRUST, in the Trustee's sole and absolute discretion, shall be authorized to distribute such withheld property to the personal representative of SHOE's estate for the purpose of paying such expenses and/or may distribute such property directly in payment of any such administrative expenses. Any property so withheld in excess of the amount finally required to satisfy such administrative expenses shall be distributed as provided for the Remaining Property in paragraph (7) of this Item.

ITEM VII

SPENDTHRIFT PROVISION

After the Grantor's death, payments of principal and income payable or to become payable to the beneficiary of any trust or share thereof created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to

anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

ITEM VIII.

TRUSTS FOR CERTAIN BENEFICIARIES

(1) If the Trustee of any trust created in this agreement is directed under any provision of this agreement to distribute any part of the principal of any such trust outright to a person who has not attained the age of thirty years at the time for such distribution, the share of such person shall be fully and indefeasibly vested in such person at the time for the creation of his or her share, but shall not be distributed directly to him or her at such time. Rather, the Trustee shall transfer such share to the Trustee, hereinafter named, to be placed in trust for the benefit of such beneficiary until the first to occur of the following events: (a) the day such beneficiary attains the age of thirty years; or (b) the Vesting Date; at which time, such beneficiary's trust shall terminate, and all property then remaining in such beneficiary's trust shall be distributed outright to him or her. During the period of each such trust, the Trustee shall hold, manage, invest and reinvest the property of such trust and shall distribute to such beneficiary or for his or her benefit in annual or more frequent installments the amount required to be distributed under the minimum distribution rules under I.R.C. Section 401(a)(9) and the regulations thereunder, or any subsequent statute requiring minimum distributions for any qualified retirement plan ("QRP") or individual retirement account ("IRA") that is held or owned by this trust. All income earned upon any IRA or QRP and made payable to this trust shall retain its character as income and be administered as such pursuant to this agreement. No expenses chargeable with respect to the principal of any distribution from an IRA or QRP shall be charged against the income portion of such distribution. The Grantor directs the Trustee to treat distributions from any QRP or any IRA as income of the trust to the extent that the

distribution represents income generated or deemed to be generated by such QRP or IRA, notwithstanding the treatment of such portion of the distribution under any law concerning the determination of income and principal for trust accounting purposes, and the Trustee shall not charge to such income any expense properly chargeable to the nonincome portion of the distribution. Notwithstanding the above, the Trustee, in the Trustee's sole and absolute discretion, may direct the administrator, custodian or trustee of any QRP or IRA to make distributions to this trust in excess of the minimum distribution amount described above. My Trustee shall have the full authority and power to direct the administrator, custodian or trustee of any QRP or IRA as to the amounts to be paid to this trust from such QRP or IRA pursuant to this paragraph. In addition, the Trustee shall distribute to such beneficiary or for his or her benefit as much of the income and/or principal of such beneficiary's respective trust as the Trustee deems necessary or advisable to provide for the health, maintenance and support of such beneficiary in accordance with his or her accustomed standard of living and to provide for the education of such beneficiary. The income of any trust not so distributed shall be accumulated and added to the principal of such trust. If such beneficiary dies after the time for the creation of his or her share but prior to the time for the termination of his or her trust, such beneficiary's trust shall terminate at such beneficiary's death, and the Trustee shall distribute all property then remaining in such beneficiary's trust to such beneficiary's estate.

(2) If at any time, in the Trustee's sole and absolute discretion, the total fair market value of the assets of any trust established or to be established under this agreement is so small that the Trustee deems it inadvisable to create or continue such trust, the Trustee shall be authorized not to establish such trust or shall be authorized to terminate such trust, and, in such event, the property then to be distributed to or to be held in such trust shall be distributed to the person who is then, or

who would then be, entitled to the income of such trust, or, if such person is then a minor, to a custodian of such minor (selected by the Trustee) under the applicable gifts to minors act.

(3) - The provisions of this Item shall not apply to the extent they may conflict with or restrict in any manner the Trustee's duty and/or authority to distribute the income or principal of any trust described in this agreement to or for the benefit of any beneficiary during the term of the trust of which such person is then a beneficiary as is otherwise provided in this agreement.

ITEM IX.

THIRD PARTIES

No corporation, transfer agent or other person dealing with the Trustee hereunder shall be obligated to follow the application of any money or property delivered to the Trustee or to examine the terms upon which any property is held by the Trustee, but any such corporation, transfer agent or other person may deal with any such property and with the Trustee as if the Trustee were the owner thereof, free of any trust.

ITEM X.

CONTRIBUTIONS OF ADDITIONAL PROPERTY

The Grantor, as well as any other person, shall have the right at any time and from time to time to add to the trust created herein by depositing additional property with the Trustee hereunder, and all such property so deposited shall be held and distributed by the Trustee in all respects as if originally deposited hereunder.

ITEM XI.

PROHIBITION AGAINST SELF-DEALING

After the Grantor's death or during her incapacity, no powers of the Trustee enumerated herein or now or hereafter conferred upon trustees generally shall be construed to enable the Trustee, or any other person, to purchase, exchange or otherwise deal with or dispose of all or any part of the principal or income of the trusts created herein for less than adequate consideration in money or money's worth. No person, other than the Trustee, shall have or exercise the power to vote or direct the voting of any stock or other securities of these trusts, to control investments or reinvestments, to veto proposed investments or reinvestments, or to reacquire or exchange any property of these trusts by substituting other property of an equivalent value.

ITEM XII.

APPLICABLE LAW

Notwithstanding the fact that the Grantor or the Trustee may now or at any future time be domiciled elsewhere than in the State of South Carolina, this instrument and the trust created herein shall be regarded for all purposes as a South Carolina instrument and as a South Carolina trust, and the validity and construction thereof shall be determined and governed in all respects by the laws of the State of South Carolina, and the trusts, powers and provisions herein contained shall be administered, exercised and carried into effect under the laws of the State of South Carolina.

ITEM XIII.

POWERS AND DUTIES OF TRUSTEE

The following powers are hereby conferred upon the Trustee named herein (hereinafter referred to as "fiduciary") and are in addition to the powers conferred by law upon fiduciaries or

elsewhere set forth in this agreement, and each said fiduciary, its successors or successors and substitutes, is specifically authorized with respect to any and all property at any time held under any provisions of this agreement and any property held pursuant to any power in trust:

(1) To sell upon such terms and conditions as it in its sole discretion may determine, including, but not limited to, the power to sell at public or private sale with or without advertisement for cash or on credit.

(2) To invest and reinvest in, and to acquire by exchange or otherwise, property of any character including stocks of any classification, obligations or other property, real or personal, whether or not of the same kind, and participation in any common trust fund (including any common trust fund maintained by a fiduciary), without regard to diversification and without being limited to the investments authorized by law for the investment of trust funds.

(3) To retain property of any kind received by it, without regard to diversification and without being limited to the investments authorized by law for the investment of trust funds and without liability for diminution in value of any property so retained.

(4) To form a corporation using all or any part of the assets of the trust estate and to hold the stock of such corporation as an asset of the trust estate.

(5) To exercise each and every option and privilege under any policy of insurance owned or payable to a fiduciary or any trust hereunder.

(6) To join in, consent to or become a party to any reorganization, merger, consolidation, dissolution, readjustment, exchange or other transaction and any plan or action thereunder or in connection therewith; to deposit any such property with any protective, reorganization or similar committee; to delegate discretionary powers thereto and to share in payment of its expenses and compensation and to pay any assessments levied with respect to such

property and to receive property under any reorganization, merger, consolidation, dissolution, readjustment, exchange or other transaction whether or not the same be authorized by law for the investment of trust funds.

(7) To enter into a limited partnership or operating agreement.

(8) To exercise all conversion, subscription, voting and other rights of whatsoever nature pertaining to any such property and to grant proxies, discretionary or otherwise, with respect thereto.

(9) To make and retain joint investments of undivided interests in any property, real or personal, whether or not all the property be held hereunder and whether the provisions under which such other property is held are similar.

(10) With respect to any real property (including real property acquired on foreclosure or by deed in lieu thereof) at anytime held hereunder, to sell, exchange, partition, lease, sublease, mortgage, improve or otherwise alter the same upon such terms as it may deem proper and to execute and deliver deeds, leases, mortgages or other instruments relating thereto. Any lease may be made for such period of time as the fiduciary may deem proper and without the approval of any court and may extend beyond the term of this agreement and any trust created thereunder.

(11) To extend the time of payment of any obligation and/or security held by it, or of any installment of principal or interest or to hold such obligation and/or security after maturity is past due; to consent to the alteration or modification of any terms thereof and/or waive defaults in the performance of the terms thereof; to foreclose any such mortgage or security or compromise or settle claims thereunder; to take over, take title to or manage the property, or any part thereof affected by any such mortgage or security agreement, either temporarily or permanently, and in partial or complete satisfaction of any claim thereunder; to protect such property against or redeem

it from foreclosure or nonpayment of taxes, assessments or other liens; to insure, protect, maintain and repair such property; and generally, without limitation by the foregoing specifications, to exercise with respect to such obligation and/or security or such property all rights and powers as may be exercised by a person owning similar property in his or her own right.

(12) To borrow money from any person or corporation (including any fiduciary hereunder) for any purpose without resorting to the sale of any assets; and, for the purpose of securing the payment thereof, to pledge, mortgage or otherwise encumber any and all property upon such terms, covenants and conditions as it may deem proper; and also to extend the time of payment of any loans or encumbrances which at any time may be encumbrances on any such property irrespective of by whom the same were made or by whom the obligation may or should ultimately be borne, upon such terms, covenants and conditions as the fiduciary may deem proper.

(13) To exercise any and all the powers, authorities and discretions provided herein in respect to any shares of stock of the fiduciary and any successor corporation whether by merger, consolidation, reorganization, sale or otherwise.

(14) To register any property in the name of its nominee, or to hold the same unregistered, or in such form that title shall pass by delivery.

(15) To distribute in cash or in kind or partly in cash and partly in kind.

(16) To abandon, settle, compromise, extend, renew, modify, release, adjust or submit to arbitration in whole or in part and without the order or decree of any court any and all claims whether such claims would increase or decrease the assets held hereunder.

(17) To decide with absolute discretion how commissions, attorneys' fees and other administration expenses shall be taken as tax deductions and to charge fiduciary commissions to principal and/or income, and the determination in this respect shall be final and conclusive upon all

persons interested hereunder whether or not the amount of their respective interest or shares are thereby affected; provided, however, that adjustments between principal and income may, in the exercise of the fiduciary's absolute discretion, be made if deemed advisable.

(18) To determine whether or not to amortize the premium on any investment, or to allocate to income all or any part of any discount on any investment and the decision with respect thereto shall be conclusive upon all parties interested hereunder.

(19) To consider, insofar as permitted by law, all extraordinary dividends, whether in cash or in stock, and all realized appreciation in the value of stocks, bonds, securities or other property, resulting from the sale or other disposition thereof, principal and not income, but ordinary stock dividends paid regularly by a corporation in lieu of or in addition to regular cash dividends shall be considered income and not principal; provided, however, that the determination by the fiduciary as to whether any dividends shall be apportioned or allocated in whole or in part to principal or income shall, insofar as permitted by law, be conclusive and binding upon all persons now or hereafter interested in the trust estates.

(20) To keep adequate books and records of receipts, disbursements and transactions in accordance with generally accepted accounting procedures and to set up or not set up reserves for depreciation and/or obsolescence and to allocate such depreciation and/or obsolescence against income and/or corpus as the fiduciary in its sole discretion shall deem advisable. Such books and records shall be opened to any beneficiary for inspection at reasonable times and intervals.

(21) To administer any two or more of the trusts herein created or any parts thereof together or as a single fund by holding the principal of such trusts in one or more consolidated funds in which the separate trusts shall have undivided interests.

(22) To invest, so far as permitted by law, all or such portions of the trust assets as the fiduciary deems advisable in bonds of foreign governments or political subdivisions and in stocks, bonds or other securities of foreign corporations and in real estate located in foreign countries.

(23) If the administration of any trust created herein is required in any jurisdiction in which the fiduciary, for any reason, cannot serve, the fiduciary shall be authorized to appoint a fiduciary to serve in such jurisdiction.

(24) To file such returns as may be required under the tax laws of the United States, any state, any political subdivision of any state or any foreign country; to make any election permitted by any tax law, if, in the fiduciary's opinion, such election is in the best interest of any trust created herein; to make any disclaimer permitted by any tax law, if, in the fiduciary's opinion, such disclaimer is in the best interest of any trust created herein; and to agree to such apportionment of taxes and application of estimated tax payments, refunds and credits as the fiduciary deems equitable under all the circumstances.

(25) To have full access to all credit card accounts, cell phone accounts and records (including GPS information), computers and to all e-mail accounts, including, but not limited to passwords, and to deal with all internet service providers and website hosting providers, and to be authorized to open, manage, use, transfer, gift and close membership plans and accounts.

(26) The Grantor authorizes, but does not direct, the Trustee to divide any trust established by this agreement, at any time, into two or more separate trusts so that the federal generation-skipping transfer tax inclusion ratio as defined in I.R.C. Section 2642(a) for each trust shall be either zero or one. All such separate trusts shall have the identical provisions as the original trust from which they shall have been divided; provided, however, that the Trustee, in making discretionary distributions from such trusts, shall be authorized to make such discretionary

distributions in such manner as the Trustee shall deem advisable and shall not be required to make such distributions pro rata or equally from such trusts.

(27) To employ any attorney, accountant or other professional to provide services to my estate and/or to any such trust and to pay reasonable fees for all services provided according to such firm's customary fees for such services, taking into consideration the value and nature of the assets of my estate and/or of such trust, the nature of the services rendered and the time and responsibilities involved in performing such services.

(28) In any judicial proceeding involving my estate or any trust hereunder and in any non-judicial settlement of the account of a Personal Representative or Trustee hereunder, the interest of a person under disability may be represented by a party to such proceeding or settlement who is not under disability and who has the same interest.

(29) The Trustee shall have the power to employ, and to delegate any of its discretionary and nondiscretionary powers to agents, including, but not limited to, attorneys, investment advisers, appraisers or accountants as it deems appropriate and to pay for such services from the trust property.

(30) The Trustee may, but shall not be required to, at any time, and from time to time, file an account of its administration with a court of competent jurisdiction. Prior to transferring any or all of the assets of any trust hereunder to a successor Trustee or to making any partial or complete distribution of trust principal, the Trustee may require an approval of its account either by (a) release and discharge from those competent beneficiaries currently eligible to receive income or principal and those who would succeed to principal were the trust to then terminate (which release(s) and discharge(s) shall be binding on all persons at any time interested in the trust) or (b) by a court of

competent jurisdiction. All of the Trustee's fees and expenses (including reasonable attorneys' fees) attributable to any such accounting and approval shall be paid by the trust.

ITEM XIV.

ANNUAL STATEMENTS OF ACCOUNT

The Trustee shall, upon the request of any person then entitled to receive income from any trust created herein, furnish to such person at least annually a statement showing the property held by the Trustee and the receipts and disbursements thereunder.

ITEM XV.

APPOINTMENT OF SUCCESSOR TRUSTEE/ADDITIONAL

MATTERS RELATING TO TRUSTEES

(1) During her lifetime, the Grantor shall have the power to remove any Trustee serving hereunder and to appoint one or more successor Trustee(s). If for any reason the Trustee hereinabove appointed becomes unable or unwilling to continue serving as Trustee of any such trust and if the Grantor fails to appoint a successor Trustee, the Grantor appoints her husband, SHOE, and LESLEY R. MOORE as Co-Trustees of each such trust. If for any reason SHOE is unable or unwilling to serve or continue serving as Co-Trustee of any such trust, the then serving Co-Trustee shall serve as sole Trustee of such trust.

(2) The Grantor authorizes MARTHA LOUISE RAMAGE LEWIS, in her sole and absolute discretion, to appoint one or more individuals or corporate entities as successor fiduciaries for any Trustee who resigns. In addition, MARTHA LOUISE RAMAGE LEWIS, in her sole and absolute discretion, shall have the power to remove any fiduciary serving hereunder (other than SHOE) and to replace said fiduciary with one or more individuals or corporate fiduciaries. Said

appointment, removal and replacement powers shall be given by thirty (30) days advance written notice to all Interested Parties. Said appointment, removal and replacement powers may be exercised one or more times.

(3) The Grantor expects that the Trustee of any such trust will use one or more investment managers. The Grantor directs the Trustee to provide to the persons at the time comprising the governing board of the Professional Corporation now bearing the name FREEMAN AND MOORE, PC and/or MARTHA LOUISE RAMAGE LEWIS, as the case may be, copies of account statements for each such trust on a semiannual or more frequent basis.

(4) No Trustee or successor Trustee named or described herein shall be required to post a bond.

(5) If there is more than one Trustee serving, any Trustee may give any Co-Trustee power of attorney, by written instrument, to act for or to sign any document in the name of the Trustee giving such power, provided such act is one which a fiduciary may properly delegate, and any action taken pursuant to such power of attorney shall be valid for all purposes as if done or signed in person by the Trustee giving such power of attorney. Any such power of attorney may be general or may be limited to certain acts or instruments or may contain conditions and restrictions and may be changed or revoked at any time by the Trustee who gave such power, giving written notice of its change or revocation to the Co-Trustee to whom such power is given.

(6) All successor Trustees shall have all the rights, authorities and duties granted in this agreement as if originally named Trustee, and no successor Trustee shall be required to inquire into or audit the acts or actions of any predecessor Trustee.

(7) In lieu of any compensation that may be provided by statute or otherwise by state law, all individuals who may serve as a Trustee of any trust created herein shall be entitled to receive

reasonable compensation from such trust for all services provided to such trust, taking into consideration the value and nature of the assets of such trust, the nature of the services rendered and the time and responsibilities involved in performing such services. Unless otherwise agreed by the parties, any corporate Trustee shall receive such compensation for its services as it normally charges to administer similar trusts under its regularly published fee schedule as the same from time to time may be amended taking into account the investment function of any investment manager appointed hereunder.

(8) Each Trustee named herein and each successor Trustee may resign without the order of any officer or court and without the consent of any beneficiary of any provision of this trust upon giving all Interested Parties thirty days advance written notice of such Trustee's intention to resign from such trusteeship and/or co-trusteeship.

ITEM XVI.

DEFINITIONS OF TERMS USED IN THIS AGREEMENT

(1) All references to "education" shall refer to the education of the beneficiary in question at any available level at any formal educational institution, whether or not accredited, including preschool, elementary, secondary, trade, vocational, college and postgraduate schools and shall include, but shall not be limited to, such expenses as tuition, books, laboratory fees, educational equipment and supplies, private lessons, counseling, housing, board, travel to and from the educational institution in question, and all such other expenditures as the Trustee may deem appropriate to enable the beneficiary in question to further his or her education.

(2) Unless otherwise expressly provided herein to the contrary, all references to an "Item" or to "Items" shall refer to Item(s) of this agreement.

(3) All references to "Interested Parties" shall refer to the following applicable individuals and/or entities: to all then serving Trustees of the trust in question; to the successor Trustee or Co-Trustee or other fiduciary being appointed in the instrument in question; to the fiduciary being replaced; and to all persons then entitled to receive income from the trust in question, or to the guardian(s) of such persons.

(4) Unless otherwise provided herein, when the term "Trustee" is used in this agreement, it shall include all persons and/or institutions, whether singular or plural, masculine or feminine, then acting as Co-Trustees or as sole Trustee.

(5) All references to the "Vesting Date" shall refer to later to occur of the following events: (a) the day preceding the twenty-first anniversary of the death of the survivor of the Grantor, SHOE and those of the Grantor's issue who are living at the date of the execution of this agreement; or (b) the day preceding the ninetieth anniversary of the creation of the interest or power in question in accordance with the provisions of S.C. Code Section 27-6-10 et seq.

(6) All references to "child" or "children" mean lawful blood descendants in the first degree of the parent designated and all references to "issue" and "descendants" mean lawful blood descendants in the first, second or any other degree of the ancestor designated; provided always, however, that an adopted child, if adopted prior to reaching age eighteen years, and such adopted child's issue, whether birth or adopted, if adopted prior to reaching age eighteen years, shall be considered in this agreement as lawful blood descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or of either of the adopting parents and shall not be considered issue of the adopted child's birth parents, except that where a child is adopted by a spouse of one of his or her birth parents, such child shall be considered issue of such birth parent as well as issue of the adopting parent.

(7) All references to section(s) and chapter(s) of the Internal Revenue Code are to section(s) and chapter(s) of the Internal Revenue Code of 1986 presently in force or as such section(s), chapter(s) and/or code from time to time may be amended or superseded.

(8) All references to "Net Income" shall refer to the entire net income of the trust in question, from and after the time the Trustee is directed to distribute said income to the beneficiary in question. The Trustee shall determine said income in accordance with the powers herein granted to the Trustee; provided, however, and notwithstanding any provision of this agreement to the contrary, the Trustee shall not make any charge to income or allocation to principal which would cause the beneficiary of the trust in question to receive in any year less than all of said income within the meaning of the federal estate tax laws as officially interpreted from time to time.

(9) All references to "spouses" shall refer to (a) any person who at the time in question is legally married to and living as spouses with a descendant of the Grantor or (b) any person who is legally married to and living as spouses with a descendant of the Grantor at such descendant's death. If a person qualifies as a spouse of a descendant of the Grantor by reason of being legally married to and living as spouses with such descendant at the time of such descendant's death, such surviving spouse shall continue to be considered as such descendant's spouse regardless of whether he or she marries after such descendant's death.

ITEM XVII.

LIABILITIES OF FIDUCIARIES

No Trustee hereunder, or any successor or substitute thereto, shall be liable for any loss to the assets of any trust hereunder, except for bad faith or willful misconduct.

ITEM XVIII.RULE AGAINST PERPETUITIES

Notwithstanding any other provision of this agreement to the contrary, unless sooner vested as herein provided, on the Vesting Date, all property of every trust created by this agreement shall vest in and immediately be distributed free of all trusts, to the person(s) then entitled to share the income thereof in the proportions in which they are then entitled to share such income. The provisions of this Item are intended to prevent any possible violation of the rule against perpetuities, and they shall be construed accordingly.

ITEM XIX.PRESUMPTION OF SURVIVORSHIP

If any beneficiary and the Grantor 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 the Grantor died first, then it shall be conclusively presumed for the purposes of this agreement that said beneficiary predeceased the Grantor.

ITEM XX.FINAL CONTINGENT BENEFICIARIES

(1) If, pursuant to any provision of this agreement, the Trustee of any trust created in this agreement is directed to distribute any property remaining in any such trust at the Grantor's death or at the death of any beneficiary of any trust created in this agreement in accordance with the provisions of this Item (such time is referred to hereinafter as the "Distribution Date"), the Trustee of the trust in question shall distribute such property as follows:

(a) Twenty-Five Percent (25%) of such property shall be distributed to SWEET BRIAR COLLEGE, Sweet Briar, Virginia, or to its successor, to be used for such purposes as the governing board of said organization shall deem advisable.

(b) Twenty-Five Percent (25%) of such property shall be distributed to CHATHAM HALL SCHOOL, Chatham, Virginia, or to its successor, to be used for such purposes as the governing board of said organization shall deem advisable.

(c) Fifty Percent (50%) of such property shall be distributed to THE COMMUNITY FOUNDATION OF GREATER GREENVILLE, Greenville, South Carolina, or to its successor, to be used for the following purposes: one-half of such share shall be added to, or to be used to create, THE POLLY SHOEMAKER REEDY RIVER FALLS PARK MEMORIAL FUND, the income from which shall be used for the beautification of the Reedy River Falls Park and Falls Cottage located in Greenville, South Carolina; and one-half of such share shall be distributed to or used for the GREENVILLE FREE MEDICAL CLINIC, Greenville, South Carolina.

(2) The provisions contained in this Item are included in this agreement solely for the purpose of providing for the disposition of any property of any trust created herein in the unlikely event that the primary beneficiary or beneficiaries of such trust should all die prior to the time for the distribution or the termination of such trust. The Grantor accordingly directs the Trustee, so far as is consistent with the provisions of this agreement, to give no consideration to reserving funds or properties for distributions pursuant to the provisions of this Item. Furthermore, the Trustee shall be under no duty to notify the beneficiaries named or described in this Item of the nature and extent of this contingent provision until any interest created in this Item shall vest, if that shall ever happen.

ITEM XXI.RESTRICTIONS ON CERTAIN DISTRIBUTIONS

Notwithstanding any provision of this agreement to the contrary, if at any time any person who is serving as a Co-Trustee or as sole Trustee of any trust described in this agreement shall have a legal obligation to support any beneficiary of any such trust, during such time as such person is serving as a Co-Trustee of such trust, he or she shall have no right to participate in any decision regarding any distribution or proposed distribution of the income or principal of such trust to or for the benefit of any beneficiary whom such person at such time shall have a legal obligation to support, and all such decisions shall be made by the remaining Co-Trustee(s) of such trust, acting in their, or in his, her or its fiduciary capacities or capacity; and while such person is serving as sole Trustee of such trust, such sole Trustee shall not be authorized to distribute any income or principal of such trust to or for the benefit of any beneficiary whom such person at such time shall have a legal obligation to support if such distribution would discharge any legal obligation which such sole Trustee may have to support such beneficiary.

ITEM XXII.PAYMENT OF DEBTS AND ESTATE TAXES

After the Grantor's death, and except as otherwise provided herein, the Trustee, in the Trustee's discretion, may pay all or any part of the Grantor's funeral expenses, legally enforceable claims against the Grantor or the Grantor's estate, reasonable expenses of administration of the Grantor's estate, and any estate, inheritance, transfer, succession, death or similar taxes, including any interest or penalties thereon, payable by reason of the Grantor's death (other than any generation-skipping transfer tax or any additional tax imposed by Section 2032A of the Internal Revenue Code) ("Estate Taxes"), assessed or imposed with respect to the Grantor's estate, or any

part thereof, whether or not passing under this trust, or any amendment thereto, or under the Grantor's Will, or any codicil thereto, including all policies of insurance on the Grantor's life, all bequests and devises, and all transfers, powers, rights or other interests in property included in the Grantor's gross estate for the purpose of such Estate Taxes, without reimbursement from the Grantor's estate. Except as otherwise provided herein and in the Grantor's Will to the contrary, all such payments shall be charged generally against the principal of the trust estate includable in the Grantor's estate for federal estate tax purposes, provided, however, any such Estate Taxes shall first be charged against the Grantor's residuary estate passing under Item V and shall not be charged against any assets qualifying for the marital deduction and/or charitable deduction; provided, however, that if and to the extent that the Grantor's residuary estate is insufficient to pay such Estate Taxes, such excess Estate Taxes shall be paid from and shall reduce the marital bequest described in Item IV. Except as otherwise provided herein and in the Grantor's Will to the contrary, such tax payments shall be made without apportionment and shall not be charged against any recipient, transferee, owner, or other beneficiary, and shall not be prorated among any of the transfers made under this trust or under the Grantor's Will, or against property passing outside of this trust or outside of the Grantor's Will. The Trustee may make such payments directly or may pay over the amounts thereof to the Personal Representative of the Grantor's estate. Written statements by the Personal Representative of such sums due and payable by the Grantor's estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee, and the Trustee shall be under no duty to see to the application of any such payments.

ITEM XXIII.ACQUIESCENCE

(1) Except as expressly provided in paragraph (2) of this Item to the contrary, each and every benefit conferred by this agreement is made on the condition precedent that each beneficiary hereof acquiesce in all of the provisions of this agreement. If any beneficiary of any bequest created in this agreement, whether outright or in trust, contests the validity of this agreement, or any provision of this agreement, if any beneficiary contests any valuation placed upon any asset of the trust by the Trustee, or if any beneficiary institutes any proceedings to contest the validity of this agreement or any provision of this agreement or to prevent any provision of this agreement from being carried out in accordance with its terms (whether or not in good faith and with probable cause), and/or if such beneficiary conspires with or assists any person who does any of the foregoing, then all benefits provided for such beneficiary in this agreement shall be revoked and annulled, and such benefits which such beneficiary would have received if he or she had not made any such contest or brought such proceedings shall be distributed as if such beneficiary predeceased SHOE and the Grantor. The Trustee is hereby authorized to defend, at the expense of the trust, any violation of this paragraph.

(2) The provisions of paragraph (1) of this Item shall not apply to the Grantor's husband, SHOE, or to any bequest created for the Grantor's husband in this agreement, whether outright or in trust. Nor shall the provisions of paragraph (1) of this Item apply so as to cause a forfeiture of any distribution otherwise qualifying for any Federal estate tax charitable deduction.

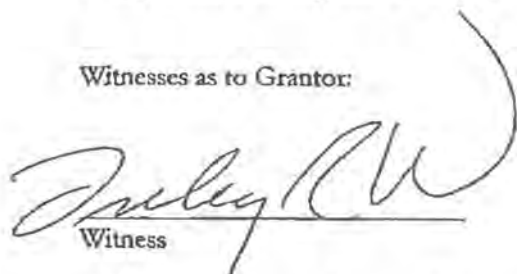
ITEM XXIV.COPY OF AGREEMENT

To the same effect as if it were the original, anyone may rely upon a photostatic copy or a copy certified by a notary public to be a counterpart of this instrument.

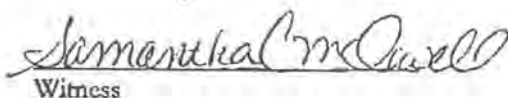
IN WITNESS WHEREOF, MARY S. SHOEMAKER, as the Grantor, has hereunto set her hand and seal, and MARY S. SHOEMAKER, as the Trustee, in token of her acceptance of the trust(s) created hereby, has hereunto set her hand and seal the day and year first above written.

Witnesses as to Grantor:

GRANTOR:


Witness

 (SEAL)
MARY S. SHOEMAKER

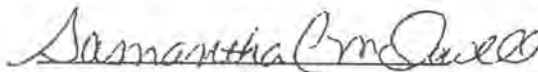

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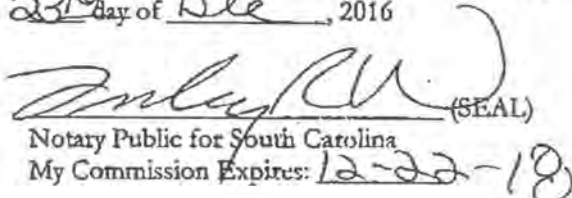
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw MARY S. SHOEMAKER, as Grantor, sign, seal and as her act and deed deliver the within instrument and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this
23rd day of Dec, 2016



 (SEAL)
Notary Public for South Carolina
My Commission Expires: 12-22-18

Witnesses as to Trustee:

Truley RW
Witness

Samantha McQuill
Witness

TRUSTEE:

Mary S Shoemaker (SEAL)
MARY S. SHOEMAKER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw MARY S. SHOEMAKER, as Trustee, sign, seal and as her act and deed accept delivery of the within instrument and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this
23 day of Dec, 2016

Truley RW (SEAL)

Notary Public for South Carolina

My Commission Expires: 12-22-18

Samantha McQuill

EXHIBIT A

\$1.00

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF GREENVILLE

FILED

PROOF OF DELIVERY

Case Number: 2020-ES-23-00073

IN THE MATTER OF:

James Marshall Shoemaker, III,
Petitioner/Plaintiff

JUN 18 2021

vs.

GREENVILLE COUNTY
PROBATE COURTLesley Moore, Esquire as PR and Trustee, Edward
Sloan Shoemaker and Jonathan Evans Shoemaker
as Beneficiaries
Respondents/Defendants

On June 18, 2021 I mailed or delivered the following document(s):

Respondents' Notice of Motion and Motion to Dismiss with Exhibits 1 and 2

- ☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery ☒ ordinary first-class mail
☐ certified mail ☐ registered mail
☐ commercial delivery

to each of the following persons at the address shown:

NAME	ADDRESS
John Blincow, Jr., Esquire	126 Meeting Street Charleston, South Carolina 29401

SWORN to before me this 18 day of
June, 2021Laura Barry

Notary Public for South Carolina

My Commission Expires: 5/8/2023Signature: [Signature]Print Name: Knox L. Haynsworth, III (S.C. Bar #010275)Address: Brown, Massey, Evans, McLeod &
Haynsworth, LLCP.O. Box 2464 Greenville, SC 29602Telephone (Work): 864-271-7424(Fax): 864-271-3192E-mail: knoxhaynsworth@bmemhlaw.comRelationship to Decedent/Estate: Attorney for Respondents Mary Hunter Sloan
Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker and Lesley Moore

FILED

STATE OF SOUTH CAROLINA

JUN 29 2021

IN THE PROBATE COURT

COUNTY OF GREENVILLE

GREENVILLE COUNTY
PROBATE COURT

Case No. 20-ES-23-00073

IN THE MATTER OF:

Mary Hunter Sloan Shoemaker
Decedent**PETITIONER'S RESPONSE TO
MOTION TO DISMISS**James Marshall Shoemaker, III
Petitioner

v

Lesley R. Moore, Esq. as Personal
Representative and Trustee,
Edward Sloan Shoemaker, and
and Jonathan Evans Shoemaker
as Beneficiaries

Respondents

To: Knox Haynsworth, Esq. attorney for the Respondents:

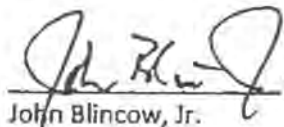
The Respondents have filed a Motion to Dismiss and the Petitioner files and serves his Response. For the reasons set forth below, the relief requested in the Motion should be denied.

This is a dispute between three brothers regarding their Mother's Estate. The Respondents have moved to dismiss the case on the basis that two parties are not joined in the action. Those two parties are the Petitioner's adult children, Peter Shoemaker and Mary Shoemaker. In her last Will and Trust, Peter and Mary Shoemaker's grandmother left each of them a bequest of \$250,000. Their father, the Petitioner herein, has moved to set aside that Will and Trust on the basis that the decedent lacked the necessary testamentary capacity at the time. If the Petitioner prevails on his claims, Peter and Mary would arguably be prejudiced since the decedent's earlier Will and Trust left her Estate to her three sons and did not include a separate bequest to her grandchildren.

The Petitioner agrees that, in some sense, his two children are "indispensable parties". They clearly have an interest relating to the subject of this case. Instead of a dismissal, the appropriate remedy would be to add them as parties. Under the circumstances, and given the timing of this case, there would be no prejudice to any parties to allow this amendment. Both parties are subject to service of process and the addition of both parties will not deprive this Court of subject matter jurisdiction. A copy of the Petitioner's proposed Amended Petition is attached as Exhibit 1 to this Response.

The Respondent's request for a dismissal should be denied. Here, the Petitioner agrees to add the parties, there is no prejudice to any party by the addition, and their addition will not interfere with this Court's jurisdiction over the case. Accordingly, the Petitioner respectfully request that the Respondent's request for a dismissal be denied and that the Petitioner be allowed to file and serve the proposed Amended Complaint.

Blinco Griffin Law Firm



John Blincow, Jr.
126 Meeting St.
Charleston, S.C. 29401

Attorney for the Petitioner

Date: 6/25/21

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
IN THE MATTER OF:)
Mary Hunter Sloan Shoemaker)
Decedent)
James Marshall Shoemaker, III)
Petitioner)
v)
Lesley R. Moore, Esq. as Personal)
Representative and Trustee,)
Edward Sloan Shoemaker, Jonathan)
Evans Shoemaker, Peter Henning)
Shoemaker, and Mary Caroline)
Shoemaker as Beneficiaries)
Respondents)

IN THE PROBATE COURT

Case No. 20-ES-23-00073

AMENDED SUMMONS

To the Respondents listed above:

YOU ARE HEREBY SUMMONED and required to Answer the Amended Petition in this action, a copy of which is herewith served upon you, and to serve your Answer to the Petition on the subscriber, The Blincow Griffin Law Firm, 126 Meeting St., Charleston, S.C. 29401, within thirty (30) days after the service hereof, exclusive of the date of such service. If you fail to Answer the Petition within the time aforesaid, judgment by default may be rendered against you for the relief sought in the Petition.

Blincow Griffin Law Firm

John Blincow, Jr.
126 Meeting St.
Charleston, S.C. 29401
843-872-6449
Attorney for the Petitioner

Date: _____



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
IN THE MATTER OF:)
Mary Hunter Sloan Shoemaker)
Decedent)
James Marshall Shoemaker, III)
Petitioner)
v)
Lesley R. Moore, Esq. as Personal)
Representative and Trustee,)
Edward Sloan Shoemaker, Jonathan)
Evans Shoemaker, Peter Henning)
Shoemaker, and Mary Caroline)
Shoemaker .)
Respondents)
_____)

IN THE PROBATE COURT

Case No. 20-ES-23-00073

AMENDED PETITION
(Jury Trial Demanded)

To: the Respondents listed above:

The Petitioner, James Marshall Shoemaker, III, hereby amends his Petition and would respectfully show to this honorable Court as follows:

1. That the Petitioner is a citizen and resident of the State of Georgia. He is the oldest son of the Decedent.
2. That, at all relevant times, the Decedent was a citizen and resident of Greenville County. At the time of her death she had three living sons who were previously the only heirs of her Estate.

3. That the Respondent, Leslie R. Moore, is an attorney and citizen and resident of Greenville County South Carolina. She is the duly appointed Personal Representative of the Decedent's Last Will and Testament. She is also the Trustee of the Mary S. Shoemaker Revocable Trust.
4. That the Respondent, Edward Sloan Shoemaker, is a citizen and resident of the State of Colorado. He is the brother of the Petitioner and son of the deceased and a Beneficiary of his mother's Will and Trust.
5. That the Respondent, Jonathan Evans Shoemaker is a citizen and resident of the State of New York. He is the brother of the Petitioner and son of the deceased and a Beneficiary of his mother's Will and Trust.
6. That Peter Henning Shoemaker is a citizen and resident of the State of Georgia. He is the son of the Petitioner and grandson of the decedent.
7. Mary Caroline Shoemaker is a citizen and resident of the State of Georgia. She is the daughter of the Petitioner and the granddaughter of the decedent.
8. That the decedent passed away on December 28, 2019. She was Eighty-eight (88) years old at the time of her death.
9. That, upon information and belief, the Decedent's Will and Trust have previously been informally probated in this Court and the Court is in possession of the subject Will and Trust. That case number is 2020-ES-23-00073.
10. That jurisdiction and venue are proper in this Court.
11. That on June 24, 2018, the deceased executed a new Will and restated her Revocable Trust, the subject Will and Trust. In this Will and Trust she excluded the Petitioner as a Beneficiary. In

this Will and Trust she left a specific bequest to Respondent Peter Shoemaker and Respondent Mary Shoemaker.

12. That, in all prior versions of her Will and Trust, the Petitioner was a Beneficiary and shared equally with his two brothers. As a result, the Petitioner is an "interested person" under the S.C. Probate Code.

13. That, at the time she executed the new Will and Trust the Decedent lacked testamentary capacity to make a valid Will and Trust as defined by S.C. law.

14. Under the circumstances the Petitioner contests the Will and seeks an Order, after Notice and a hearing, that the Decedent lacked sufficient testamentary capacity and that the Will and Restated Trust are invalid.

15. The Petitioner demands a trial by jury on all issues to which he is entitled.

Respectfully submitted,

Blinchow Griffin Law Firm

John Blincow, Jr.
126 Meeting St.
Charleston, S.C. 29401
843-872-6449
jblincow@blincowgriffin.com

Attorneys for the Petitioner

Date: _____

FILED

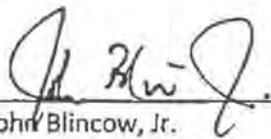
JUN 29 2021

GREENVILLE COUNTY
PROBATE COURT

CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of June 2021, a copy of Petitioner's **RESPONSE TO MOTION TO DISMISS** has been filed with the Probate Court and mailed to counsel for the Respondents, postage pre-paid and properly addressed as follows:

Knox L. Haynsworth, III
Brown, Massey, Evans, McLeod and Haynsworth, LLC
PO Box 2464
Greenville, S.C. 29602


John Blincow, Jr.

STATE OF SOUTH CAROLINA

FILED

IN THE PROBATE COURT

COUNTY OF GREENVILLE

JUL 13 2021

C.A. NO.: 2020-ES-23-00073

In the matter of:

**GREENVILLE COUNTY
PROBATE COURT**Mary Hunter Sloan Shoemaker
Decedent

James Marshall Shoemaker, III

Petitioner,

vs.

Lesley Moore, Esquire as Personal
Representative and Trustee, Edward Sloan
Shoemaker and Jonathan Evans Shoemaker
as Beneficiaries

Respondents.

**MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS
PETITION**

Petitioner Marshall Shoemaker instituted the present action against his mother's Estate and Trust by filing a Petition with the probate court on July 24, 2020. While Petitioner's action against the Estate of his mother and his two brothers was timely filed within one year of the death of his mother, Petitioner specifically failed to join in the action, indispensable parties.

Pursuant to the Trust being challenged in this action, Polly Shoemaker left to her grandchildren Peter and Mary, \$250,000.00 each. Marshall Shoemaker, Peter and Mary's father, challenged the Trust of his mother and clearly that challenge will affect Peter and Mary Shoemaker. In Mrs. Shoemaker's Will and trust as they existed prior to the versions probated, Peter and Mary did not receive the bequest of \$250,000.00 each.

In response to the Petition, Respondents filed a response and asserted the affirmative defense of dismissal pursuant to Rule 12(b)(7) of the South Carolina Rules of Civil Procedure for failure to join and indispensable party.

Petitioner was well aware of fatal flaws in his Petition prior to the expiration of the applicable statute of limitations. On August 18, 2020 Respondents filed their response and asserted specifically the failure to join indispensable parties. In fact, Peter and Mary Shoemaker were referenced by name as being indispensable. Pursuant to S.C. Code Ann. §62-3-803 all claims against a decedent's estate which arose before the death of decedent must be brought within one year after decedent's death. Pursuant to S.C. Code §62-3-803(c) all claims against a decedent's estate which arise at or after the death of decedent must be brought the later of eight months after it arises or one year following the decedent's death.

With regard to the claims relative to Mrs. Shoemaker's estate, the time for asserting claims has now expired. Mary Hunter Sloan Shoemaker, or as she was known "Polly", died on December 28, 2019. Peter and Mary Shoemaker cannot now be joined to this action.

In some circumstances amending pleadings after the expiration of the applicable statute of limitation is allowed by virtue of the provisions of Rule 15 and the concept of "relation back". However, it is black letter law that one cannot add parties pursuant to Rule 15 and have claims that would otherwise be barred by the statute of limitations "relate back" to the date of filing.

To the extent Petitioner may argue that equitable considerations should override or extend applicable time limit, non-claimed statutes impose a condition precedent to the enforcement of a right of action and are not subject to equitable exceptions.

"While equitable principles may extend the time for commencing an action under statutes of limitation, nonclaim statutes impose a condition precedent to the enforcement of a right of action

and are not subject to equitable exceptions.” *Estate of Decker*, 684 N.E.2d at 1139; see also 51 Am. Jur.2d Limitation of Actions § 3 (2011) (“The time element is a built-in condition of a nonclaim statute and is of the essence of the right of action, and unless the claim is filed within the prescribed time set out in the statute, no enforceable right of action is created.”).

Phillips v. Quick, 399 S.C. 226, 731 S.E.2d 327 (S.C. App. 2012)

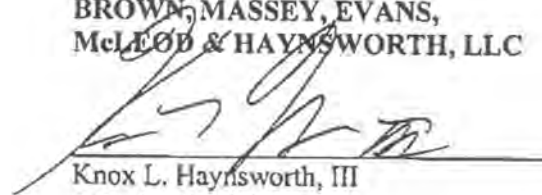
It goes without saying that Peter and Mary Shoemaker are indispensable parties. “[A]ccording to the former decisions of this court, it is indispensable that the beneficiaries be made parties to any proceeding brought for the purpose of adjudicating their interest.” *Dorn v. Cohen*, 418 S.C. 126, 140, 791 S.E.2d 313, 320 (S.C. App. 2016), quoting *Hood v. Cannon*, 178 S.C. 94, 99–100, 182 S.E. 306, 308 (1935)..”

Having determined that Peter and Mary are indispensable parties, it is also apparent that the action cannot proceed in their absence. The relevant portions of Rule 19 provide at subsection (a) that a person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. Subsection (b) goes on to address the determination by the court whenever joinder is not feasible. If a person described as indispensable cannot be made as a party, the court shall determine whether in equity and in good conscience the action should proceed among the parties before it, or should be dismissed, the absent persons being thus regarded as indispensable.

The applicable rules of civil procedure mandate a dismissal of the Petition. Given the situation created by Petitioner, he should not now complain that his failure to join indispensable parties until after the expiration of the claims period necessitates dismissal, however, Respondents submit that is the only relief appropriate under the applicable facts and law.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorneys for Respondents

Greenville, South Carolina
July 13, 2021

From: Knox Haynsworth
Sent: Thursday, September 16, 2021 9:12 AM
To: John Blincow <jblincow@blincowgriffin.com>
Subject: Polly Shoemaker case

John, I see my discovery served on July 30 is still outstanding. Can you let me know when I should expect your responses? Thanks, Knox

Knox L. Haynsworth, III, Esquire

2

From: Knox Haynsworth
Sent: Tuesday, November 9, 2021 6:10 PM
To: John Blincow <jblincow@blincowgriffin.com>
Subject: RE: Polly Shoemaker case

John, safe travels tomorrow. Once you are back, please go ahead and send me your responses, less what you are waiting on from Dr. Boor. You can send those later. I'd like to get the written discovery done so we can set up depositions of Marshall's kids. Thanks, Knox

Knox L. Haynsworth, III, Esquire
Brown, Massey, Evans, McLeod & Haynsworth, LLC
106 Williams Street
Greenville, SC 29601
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424 Ext. 105 - Phone
(864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

From: John Blincow <jblincow@blincowgriffin.com>
Sent: Thursday, November 4, 2021 10:25 AM
To: Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>
Subject: Re: Polly Shoemaker case

[EXTERNAL]
Knox

These responses are sitting on my desk. I am waiting to get records from Dr. Boor. He was Ms. Shoemaker's neurologist. He has retired and closed his practice and we have had trouble getting in touch with him.. Should have those soon.

From: John Blincow <jblincow@blincowgriffin.com>
Sent: Thursday, November 4, 2021 10:25 AM
To: Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>
Subject: Re: Polly Shoemaker case

[EXTERNAL]

Knox

These responses are sitting on my desk. I am waiting to get records from Dr. Boor. He was Ms. Shoemaker's neurologist. He has retired and closed his practice and we have had trouble getting in touch with him.. Should have those soon.

1

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

In the matter of:)

Mary Hunter Sloan Shoemaker)
Decedent)

James Marshall Shoemaker, III)

Petitioner,)

vs.)

Lesley Moore, Esquire as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker and Jonathan Evans Shoemaker)
as Beneficiaries)

Respondents.)

IN THE PROBATE COURT

C.A. NO.: 2020-ES-23-00073

FILED

DEC 03 2021

GREENVILLE COUNTY
PROBATE COURT

NOTICE OF MOTION
AND MOTION TO COMPEL

TO: JOHN BLINCOW, JR., ESQUIRE, ATTORNEY FOR PETITIONER

You will please take notice that Respondents will move on the tenth day following service hereof, or as soon thereafter as counsel may be heard for an Order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure compelling Petitioner to respond to Respondents' Interrogatories and Request for Production of Documents and to award Respondents their attorney's fees associated with the necessity of having to file this motion notwithstanding repeated attempts to obtain the requested information.

This motion is supported by the interrogatories and document requests previously served which are attached hereto and incorporated by reference as Exhibit 1, as well as a copy of numerous emails requesting the information be provided are attached hereto as Exhibit 2.

This motion is further supported by the pleadings on file with the Court, Petitioner's conduct in the related matter of *James Marshall Shoemaker, III vs. Mary Hunter Sloan Shoemaker*,

Edward Sloan Shoemaker, Jonathan Evans Shoemaker, Debora Wine, Lesley Moore and John and Jane Doe C.A. No.: 2018-ES-23-01729 and such other and further materials as the Court may consider.

I certify in accordance with Rule 11 of the South Carolina Rules of Civil Procedure that I have attempted to resolve the matters contained in this motion with opposing counsel but have been unable to resolve the same.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorneys for Respondents

Greenville, South Carolina
November 30, 2021

EXHIBIT 1

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF GREENVILLE)

C.A. NO.: 2020-ES-23-00073

In the matter of:)

Mary Hunter Sloan Shoemaker)
Decedent)

James Marshall Shoemaker, III)

Petitioner,)

RESPONDENTS' FIRST SET OF
INTERROGATORIES TO PETITIONER

vs.)

Lesley Moore, Esquire as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker and Jonathan Evans Shoemaker)
as Beneficiaries)

Respondents.)

TO: JOHN BLINCOW, JR., ESQUIRE, ATTORNEY FOR PETITIONER

You will place take notice that Respondents, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, hereby propounds the following Interrogatories to be answered fully and under oath within thirty (30) days after service hereof.

Interrogatory No. 1:

Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Interrogatory No. 2:

Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

Interrogatory No. 3:

List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Interrogatory No. 4:

For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Interrogatory #5:

Please state whether or not you have discussed with your children the lawsuit you have instituted against your mother's Estate and Trust and if so, please state the substance of the discussions with them including whether or not you discussed that if you were successful, they will not receive the \$250,000.00 each left to them by their grandmother.

Interrogatory #6:

Please identify by date all verbal conversations with your mother from January 1, 2017 until the date of her death and identify who else was present and specify the substance of the conversations.

Interrogatory #7:

Please identify by date all written communications with your mother from January 1, 2015 until the date of her death and identify the substance of the circumstances.

Interrogatory #8:

Please identify all persons to whom you have communicated regarding your mother's physical, mental or emotional health and wellbeing since January 1, 2017 through the present and identify the date of the communications and the substance.

Interrogatory #9:

Please identify any persons whom you or your representatives have contacted concerning the physical or mental health of your mother or father, including regarding your mother or father's medical records, since January 1, 2017.

Interrogatory #10:

Please identify any and all persons with whom you have communicated about your mother or father's testamentary capacity and any and all persons who provided information to you suggesting that your mother or father lacked testamentary capacity.

Interrogatory #11:

In paragraph 10 of your petition, you allege that you are a "interested person" under the SC probate code. What is the basis for that contention?

Interrogatory #12:

In paragraph 11 of your petition, you contend that at the time she executed "the new Will and Trust the decedent lacked testamentary capacity to make a valid Will and Trust as defined by SC law." With regard to that allegation, as of the date your petition was filed on July 21, 2020 please specifically list all medical evidence in your possession supporting your contention "that decedent lacked testamentary capacity to make a valid Will and Trust as defined by SC law".

Interrogatory #13:

Please list by name, address and phone number all persons with whom Petitioner has talked since

January 1, 2015 regarding his mother or his father and their Wills, Trusts or estate plans.

Interrogatory #14:

For all persons identified in response to Interrogatory #13 above, please state when the conversation(s) took place, who was present, where the conversation took place and specify the substance of the conversation, particularly any statements made by Petitioner.

Interrogatory #15:

Has Petitioner ever sought counseling or treatment of any kind or nature regarding depression? If so, please provide the name, address and phone number of all persons Petitioner has consulted.

Interrogatory #16:

Has Petitioner ever sought counseling or treatment of any kind or nature regarding bipolar disorder? If so, please provide the name, address and phone number of all persons Petitioner has consulted.

Interrogatory #17:

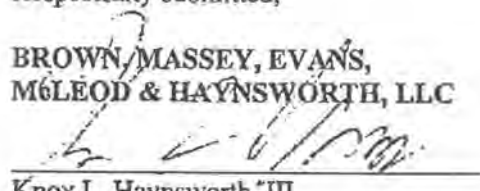
Does Petitioner believe that his children are honest and truthful?

Interrogatory #18:

Has Petitioner ever encouraged his children to be untruthful? If so, describe the circumstances.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
MCLEOD & HAYNSWORTH, LLC**


Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorneys for Respondents

Greenville, South Carolina
July 30, 2021

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF GREENVILLE)

C.A. NO.: 2020-ES-23-00073)

In the matter of:)

Mary Hunter Sloan Shoemaker)
Decedent)

James Marshall Shoemaker, III)

Petitioner,)

RESPONDENTS' FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS
TO PETITIONER)

vs.)

Lesley Moore, Esquire as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker and Jonathan Evans Shoemaker)
as Beneficiaries)

Respondents.)

TO: JOHN BLINCOW, JR., ESQUIRE, ATTORNEY FOR PETITIONER

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, you are requested to produce and permit inspection and copying of all things listed herein below within thirty days of this request.

Request #1:

Any and all documents identified in your answers to these Respondents' First Set of Interrogatories.

Request #2:

Any and all documents you intend to introduce as an exhibit at the trial of this case.

Request #3:

Any and all documents which support the claims asserted by Petitioner.

Request #4:

Any and all documents which are relevant to the claims or defenses in this case.

Request #5:

Any documents subpoenaed or obtained via a records release from third parties in connection with this case.

Request #6:

Any and all sketches, plats, photographs, or similar tangible evidence relating to the subject matter of this lawsuit, including but not limited to, the claims or allegations of any party.

Request #7:

All documents related to the facts in the Petitioner's Petition.

Request #8:

Any and all correspondence, memoranda, writings, documents, writing of any sort, by and between Petitioner or persons acting on its behalf and the Respondents, or persons acting on their behalf whose subject matter concerns or relates in any way to the claims asserted in this action.

Request #9:

Each and every writing, document, compilation, correspondence, letter and record of any sort which was provided to any expert for the purposes of formulating an opinion as to any issue in this case and any writing, document, correspondence, letter of opinion, or writing of any sort produced by any person retained to be an expert witness at the trial of this case.

Request #10:

Any and all sketches, plats, photographs, diagrams, drawings, recordings, computer access information, CD-ROM or other similar material relating to the subject matter of this lawsuit, including but not limited to, the claims or allegations of any party.

Request #11:

Any statements, whether recorded or transcribed, of any party or witness relating to the facts of this case.

Request #12:

Any correspondence sent to or received from Peter Shoemaker or Mary Shoemaker regarding Polly Shoemaker, Jim Shoemaker, Sloan Shoemaker, Jonathan Shoemaker or Lesley Moore between January 1, 2015 and the present.

Request #13:

Any correspondence sent between attorney John Blincow and Mary or Peter Shoemaker.

Request #14:

Copies of any correspondence, emails, birthday cards, Christmas cards, etc. sent to or received by Marshall Shoemaker or his children from Jim or Polly Shoemaker.

Request #15:

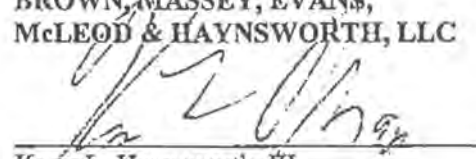
With the exception of communications to or from his attorney, all communications of whatever type or nature sent by or received by Marshall Shoemaker relative to the competency of his mother or father or which contain any mentions of substance abuse or dependency relative to his mother or father.

Request #16:

Any communication with Ned Sloan regarding Marshall Shoemaker's mother.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorneys for Respondents

Greenville, South Carolina
July 30, 2021

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF GREENVILLE)

C.A. NO.: 2020-ES-23-00073)

In the matter of:)

Mary Hunter Sloan Shoemaker)
Decedent)

James Marshall Shoemaker, III)

Petitioner,)

CERTIFICATE OF SERVICE)

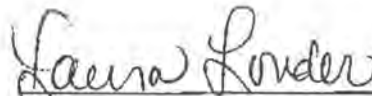
vs.)

Lesley Moore, Esquire as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker and Jonathan Evans Shoemaker)
as Beneficiaries)

Respondents.)

This is to certify that I am an employee in the firm of BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC attorneys for Respondents and that I have this day caused to be served upon the person(s) named below Respondents' First Set of Interrogatories and First Request for Production of Documents to Petitioner by placing copies of the same in the United States mail, with adequate postage thereon, addressed as follows:

John Blincow, Jr., Esquire
126 Meeting Street
Charleston, South Carolina 29401


 Laura Louder

Greenville, South Carolina
July 30, 2021

EXHIBIT

2

Laura Louder

From: Knox Haynsworth
Sent: Tuesday, November 30, 2021 2:40 PM
To: Laura Louder
Subject: FW: Polly Shoemaker case

Knox L. Haynsworth, III, Esquire
 Brown, Massey, Evans, McLeod & Haynsworth, LLC
 106 Williams Street
 Greenville, SC 29601
 P.O. Box 2464
 Greenville, SC 29602
 (864) 271-7424 Ext. 105 - Phone
 (864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

From: Knox Haynsworth
Sent: Friday, November 19, 2021 3:11 PM
To: John Blincow <jblincow@blincowgriffin.com>
Subject: RE: Polly Shoemaker case

John, as of tomorrow, "today" will have been 30 days ago. Per prior emails, don't worry about missing info from the doctor, just send me the rest. Will have no choice but to file a motion to compel if I don't have it by next week. Thanks, Knox

Knox L. Haynsworth, III, Esquire
 Brown, Massey, Evans, McLeod & Haynsworth, LLC
 106 Williams Street
 Greenville, SC 29601
 P.O. Box 2464
 Greenville, SC 29602
 (864) 271-7424 Ext. 105 - Phone
 (864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

From: John Blincow <jblincow@blincowgriffin.com>
Sent: Monday, September 20, 2021 11:30 AM
To: Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>
Subject: Re: Polly Shoemaker case

[EXTERNAL]

Today
 John Blincow Jr.
 Blincow Griffin Law PC
 126 Meeting Street
 Charleston, SC 29401
 Office: 843-872-6449



BlinchowGriffin.com

Blinchow Griffin Law PC Confidentiality Notice:

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IRS Circular 230 Notice:

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On Sep 16, 2021, at 9:11 AM, Knox Haynsworth <knoxhaynsworth@bmemhlaw.com> wrote:

John, I see my discovery served on July 30 is still outstanding. Can you let me know when I should expect your responses? Thanks, Knox

Knox L. Haynsworth, III, Esquire
Brown, Massey, Evans, McLeod & Haynsworth, LLC
106 Williams Street
Greenville, SC 29601
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424 Ext. 105 - Phone
(864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

Laura Louder

From: Knox Haynsworth
Sent: Tuesday, November 30, 2021 2:40 PM
To: Laura Louder
Subject: FW: Polly Shoemaker case

Knox L. Haynsworth, III, Esquire
 Brown, Massey, Evans, McLeod & Haynsworth, LLC
 106 Williams Street
 Greenville, SC 29601
 P.O. Box 2464
 Greenville, SC 29602
 (864) 271-7424 Ext. 105 - Phone
 (864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

From: Knox Haynsworth
Sent: Tuesday, November 9, 2021 6:10 PM
To: John Blincow <jblincow@blincowgriffin.com>
Subject: RE: Polly Shoemaker case

John, safe travels tomorrow. Once you are back, please go ahead and send me your responses, less what you are waiting on from Dr. Boor. You can send those later. I'd like to get the written discovery done so we can set up depositions of Marshall's kids. Thanks, Knox

Knox L. Haynsworth, III, Esquire
 Brown, Massey, Evans, McLeod & Haynsworth, LLC
 106 Williams Street
 Greenville, SC 29601
 P.O. Box 2464
 Greenville, SC 29602
 (864) 271-7424 Ext. 105 - Phone
 (864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

From: John Blincow <jblincow@blincowgriffin.com>
Sent: Thursday, November 4, 2021 10:25 AM
To: Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>
Subject: Re: Polly Shoemaker case

[EXTERNAL]
 Knox

These responses are sitting on my desk. I am waiting to get records from Dr. Boor. He was Ms. Shoemaker's neurologist. He has retired and closed his practice and we have had trouble getting in touch with him.. Should have those soon.

John

John Blincow Jr.
Blincow Griffin Law PC
126 Meeting Street
Charleston, SC 29401
Office: 843-872-6449



BlincowGriffin.com

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On Sep 20, 2021, at 10:54 AM, Knox Haynsworth <knoxhaynsworth@bmemhlaw.com> wrote:

John, just following up. Can you let me know? Thanks, Knox

Knox L. Haynsworth, III, Esquire
Brown, Massey, Evans, McLeod & Haynsworth, LLC
106 Williams Street
Greenville, SC 29601
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424 Ext. 105 - Phone
(864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

From: Knox Haynsworth
Sent: Thursday, September 16, 2021 9:12 AM
To: John Blincow <jblincow@blincowgriffin.com>
Subject: Polly Shoemaker case

John, I see my discovery served on July 30 is still outstanding. Can you let me know when I should expect your responses? Thanks, Knox

Knox L. Haynsworth, III, Esquire

Brown, Massey, Evans, McLeod & Haynsworth, LLC
106 Williams Street
Greenville, SC 29601
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424 Ext. 105 - Phone
(864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

Laura Louder

From: Knox Haynsworth
Sent: Tuesday, November 30, 2021 2:38 PM
To: Laura Louder
Subject: FW: Polly Shoemaker case

Knox L. Haynsworth, III, Esquire
 Brown, Massey, Evans, McLeod & Haynsworth, LLC
 106 Williams Street
 Greenville, SC 29601
 P.O. Box 2464
 Greenville, SC 29602
 (864) 271-7424 Ext. 105 - Phone
 (864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

From: Knox Haynsworth
Sent: Monday, September 20, 2021 11:34 AM
To: John Blincow <jblincow@blincowgriffin.com>
Subject: RE: Polly Shoemaker case

OK.

Knox L. Haynsworth, III, Esquire
 Brown, Massey, Evans, McLeod & Haynsworth, LLC
 106 Williams Street
 Greenville, SC 29601
 P.O. Box 2464
 Greenville, SC 29602
 (864) 271-7424 Ext. 105 - Phone
 (864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

From: John Blincow <jblincow@blincowgriffin.com>
Sent: Monday, September 20, 2021 11:30 AM
To: Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>
Subject: Re: Polly Shoemaker case

[EXTERNAL]

Today
 John Blincow Jr.
 Blincow Griffin Law PC
 126 Meeting Street
 Charleston, SC 29401
 Office: 843-872-6449



BlinchowGriffin.com

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On Sep 16, 2021, at 9:11 AM, Knox Haynsworth <knoxhaynsworth@bmemhlaw.com> wrote:

John, I see my discovery served on July 30 is still outstanding. Can you let me know when I should expect your responses? Thanks, Knox

Knox L. Haynsworth, III, Esquire
Brown, Massey, Evans, McLeod & Haynsworth, LLC
106 Williams Street
Greenville, SC 29601
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424 Ext. 105 - Phone
(864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF GREENVILLE

FILED**PROOF OF DELIVERY**

IN THE MATTER OF:

Case Number: 2020-ES-23-00073

Mary Hunter Sloan Shoemaker
Decedent**DEC 03 2021**James Marshall Shoemaker, III, **GREENVILLE COUNTY
PROBATE COURT**

Petitioner/Plaintiff

vs.

Lesley Moore, Esquire as PR and Trustee, Edward
Sloan Shoemaker and Jonathan Evans Shoemaker
as Beneficiaries

Respondents/Defendants

On November 30, 2021, I mailed or delivered the following document(s):

Notice of Motion and Motion to Compel

- ☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery ☒ ordinary first-class mail
☐ certified mail ☐ registered mail
☐ commercial delivery

to each of the following persons at the address shown:

NAME	ADDRESS
John Blincow, Jr., Esquire	126 Meeting Street Charleston, South Carolina 29401

SWORN to before me this 30 day of
November, 2021Laura Barry

Notary Public for South Carolina

My Commission Expires: 05/08/23FORM #120PC (1/2014)
62-1-401, 62-3-708, 62-3-1001 SCRPC (d)(6)Signature: [Signature]Print Name: Knox L. Haynsworth, III (S.C. Bar #010275)Address: Brown, Massey, Evans, McLeod &
Haynsworth, LLCP.O. Box 2464 Greenville, SC 29602Telephone (Work): 864-271-7424(Fax): 864-271-3192E-mail: knoxhaynsworth@bmemhlaw.comRelationship to Decedent/Estate: Attorney for Respondents



John Blincow, Jr.
126 Meeting Street
Charleston, SC 29401
JBlincow@BlinchowGriffin.com
Office (843) 872-6449

November 29, 2021

Knox L. Haynsworth, III
Brown Massey Evans McLeod and Haynsworth
PO Box 2464
Greenville, S.C. 29602

Re: Estate of Polly Shoemaker
Case No. 20-ES-23-00073

Dear Knox:

Enclosed for service please find Petitioner's discovery responses in the above referenced case.

Please call me if you have any questions or would like to discuss this matter.

Kind regards,

Yours truly,

John Blincow, Jr.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
IN THE MATTER OF:)
Mary Hunter Sloan Shoemaker)
(Decedent))
James Marshall Shoemaker, III)
Petitioner)
v)
Lesley R. Moore, Esq. as Personal)
Representative and Trustee,)
Edward Sloan Shoemaker, and)
and Jonathan Evans Shoemaker)
as Beneficiaries)
Respondents)

IN THE PROBATE COURT

Case No. 18-ES-23-01729

**PETITIONER'S ANSWERS TO
INTERROGATORIES**

To: Knox L Haynsworth, III, attorney for the Respondents

The Petitioner, James Marshall Shoemaker, III, answers the to the Respondents' Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure (SCRCP) as follows:

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witness and indicate who has possession of such statements.
Answer: Other than those witnesses named or to be named by the Respondents, and other than witnesses previously identified in the companion case involving the Estate of James Marshall Shoemaker, Jr., and other than witnesses whose names appear in the applicable medical records or Estate documents, the petitioner identifies the following:

a. James Marshall Shoemaker, III
c/o Blincow Griffin Law Firm
126 Meeting St.
Charleston, S.C. 29401

Mr. Shoemaker has given a deposition in the case involving his father's Estate and counsel for the Respondents has a copy of that transcript.

b. Mary Shoemaker
c/o Blincow Griffin Law Firm
126 Meeting St.
Charleston, S.C. 29401
No written or recorded statements

c. Peter Shoemaker
c/o Blincow Griffin Law Firm
126 Meeting St.
Charleston, S.C. 29401
No written or recorded statements

d. Darwin R. Boor, M.D.
Greenville Neurology consultants
4 Old Grove Rd.
Greenville, S.C. 29605
No written or recorded statements

e. Representatives of Merrill Lynch involved in obtaining the signature of Ms. Shoemaker to the beneficiary designation of the certain accounts in June 2018.
300 N. Main St.
Suite 301
Greenville, S.C. 29601
No written or recorded statements have been taken.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in this case.

Answer: The Petitioner has previously forwarded records received by subpoena from sitter's Registry, Browning Geriatric Consulting and Sam's Pharmacy. The Petitioner attaches records received from Darwin Boor, M.D., Amy Zampi Welcome, M.D., and Walgreens. The Petitioner reserves the right to supplement this Answer as additional information becomes available.

3. List the names and addresses of any expert witness whom the party proposes to use as an expert witness at the trial of this case.

Answer: The Petitioner has not decided which experts it intends to use at trial and reserves the right to supplement this answer as discovery progresses.

4. For each person known to the party or counsel to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Answer: The Petitioner, Marshall Shoemaker, will testify to his knowledge of his mother's Will and Trust as well as his knowledge regarding his mother's medical condition. The Petitioner's adult children, Mary and Peter Shoemaker, will testify to the bequest left to each of them by their grandmother and Respondents efforts to have them added as adverse parties to their father as well as their knowledge of their grandmother's medical condition. Dr. Darwin Boor is now retired but was Ms. Shoemaker's treating neurologist. He will testify regarding Ms. Shoemaker's neurological condition. Representatives of Merrill Lynch will testify to their knowledge of Ms. Shoemaker changing the beneficiary designation of, among other things, the Merrill Lynch IRA account. No written or recorded statements have been taken.

5. Please state whether or not you have discussed with your children the lawsuit you have instituted against your mother's Estate and Trust and if so, please state the substance of discussions with them including whether or not you have discussed that if you were successful, they will not receive the \$250,000 left to each of them by their grandmother.

Answer: Yes, the Petitioner has discussed his lawsuit with his children and the potential that they would not recover if the last Will and Trust is set aside.

6. Please identify by date all verbal communications with your mother from January 2017 until the date of her death and identify who else was present and specify the substance of the conversations.

Answer: The Petitioner has previously produced all documents and emails regarding the requested information. In addition, the Petitioner gave his deposition testimony in the case involving his father's Estate and the conversations with his parents prior to his father's death have been discussed fully. Since that time the Petitioner made several attempts to speak to his mother. A copy of a letter from the Petitioner to his mother dated March 5, 2019, is attached. The Petitioner spoke to his uncle (his mother's brother) Ned Sloan regarding a meeting with his mother. A copy of both letters is attached.

7. Please identify by date all written communications with your mother from January 2017 until the date of her death and identify the substance of the circumstances.

Answer: Please refer to discovery response number 6 above.

8. Please identify all persons to whom you have communicated regarding your mother's physical, mental or emotional health and wellbeing since January 2017 through the present and identify the date of the communications and the substance.

Answer: Please refer to discovery response number 6 above.

9. Please identify any persons whom you or your representatives have contacted concerning the physical or mental health of your mother or father, including regarding your mother or father's medical records since January 1, 2017.

Answer: Regarding Polly Shoemaker's case counsel for the Petitioner has sent six (6) subpoenas for medical records. Regarding Jim Shoemaker's case counsel for the Petitioner has contacted his treating pulmonologist and the two hospice services who cared for Mr. Shoemaker at home. Counsel for the Petitioner also contacted Dr. Thomas Hughes, a neurologist in Mr. Shoemaker's case.

10. Please identify any and all persons with whom you have communicated about your mother or father's testamentary capacity and any and all persons who provided information to you suggesting that your mother or father lacked testamentary capacity.

Answer: The Petitioner's uncle, Ned Sloan, the Petitioner's two brothers, Officer Drew Palmer of the Greenville Police Dept. and counsel

11. In paragraph 10 of your petition you allege that you are an interested person under the S.C. Probate Code. What is the basis for that contention?

Answer: Section 62-1-201 (23) defines an interested person as children having a claim against the Estate of a decedent.

12. In paragraph 11 of your Petition you contend that the time she executed the new Will and Trust the decedent lacked testamentary capacity to make a valid Will and Trust as defined by S.C. law. With regard to that allegation, as of the date you filed your petition on July 21, 2020, please specifically list all medical evidence in your possession supporting your contention that "decedent lacked testamentary capacity to make a valid Will and Trust as defined by SC law".

Answer: Please refer to the hospice records from Regency Southerncare Greenville and Kindred Hospice. In addition, there are emails by and between the Petitioner's two brothers that discuss their mother's condition.

13. Please list by name, address and phone number all persons with whom Petitioner has talked since January 2015 regarding his mother or his father and their Wills, Trusts or Estate plans.

Answer: Please refer to discovery response number 10 above.

14. For all persons identified in response to Interrogatory number 13 above, please state when the conversations took place, who was present, where the conversation took place and specify the substance of the conversation particularly any statements made by Petitioner.

Answer: Please refer to discovery response number 10 above.

15. Has petitioner ever sought counseling or treatment of any kind or nature regarding depression? If so, please provide the name, address and phone number of all persons Petitioner has consulted.

Answer: Objection. The Petitioner objects to this Interrogatory on the ground that the requested information is protected by privilege, is not relevant to any issue in this case, and is not reasonably calculated to lead to the discovery of admissible evidence.

16. Has petitioner ever sought counseling or treatment of any kind or nature regarding bipolar disorder? If so, please provide the name, address and phone number of all persons Petitioner has consulted.

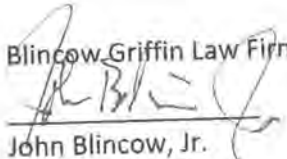
Answer: Objection. The Petitioner objects to this Interrogatory on the ground that the requested information is protected by privilege, is not relevant to any issue in this case, and is not reasonably calculated to lead to the discovery of admissible evidence.

17. Does Petitioner believe that is children are honest and truthful?

Answer: Yes.

18. Has Petitioner ever encouraged his children to be untruthful? If so, describe the circumstances.

Answer: No.


Blincow Griffin Law Firm
John Blincow, Jr.
126 Meeting St.
Charleston, S.C. 29401
843-872-6449
jblincow@blincowgriffin.com

Attorneys for the Petitioner

Date: November 29, 2021

CERTIFICATE OF SERVICE

I hereby certify that, on the 29th day of November 2021, a copy of Petitioner's **DISCOVERY RESPONSES** has been served on counsel for the Respondents, postage pre-paid and properly addressed as follows:

Knox L. Haynsworth, III
Brown, Massey, Evans, McLeod and Haynsworth, LLC
PO Box 2464
Greenville, S.C. 29602



John Blincow, Jr.

Date: November 29, 2021

STATE OF SOUTH CAROLINA

From: Jonathan Shoemaker jshoemaker@gmail.com
Subject: Re: Your Dad, my Brother
Date: May 14, 2018 at 1:53 PM
To: Sloan Shoemaker sloan@eporls.net
Cc: Katya Spouzza kaspouzza@yahoo.com, Francesca Gotthe Digge fdigge53@gmail.com, Danielle Gotthe kdgotthe@hotmail.com

Testimony of:
James Marshall
Shoemaker, III

Transcript of

JAMES MARSH

July 24, 2020

In the Matter of:

SHOEMAKER v. SHOEMAKER, et al

IRVETA J. SHOUSE/IJS
Court and Deposition Reporter
119 Jones Avenue
Greenville, SC 29601
Phone: 864-303-1723
E-mail: IrvetaJ@aol.com

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

RESTATEMENT OF
THE MARY S. SHOEMAKER REVOCABLE TRUST

Restatement of
The Mary S. Shoemaker
Revocable Trust

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

THIS AGREEMENT

April, 1998,

by and between JAMES M. SHOEMAKER, JR. and MARY S. SHOEMAKER
(hereinafter individually referred to as the "Grantor" and
collectively referred to as the "Grantors") and THE PALMETTO BANK
(hereinafter referred to as the "Trustee") in order to establish
a trust for the purposes and under the terms and conditions
hereinafter stated.

The Grantors, in consideration of the covenants herein
contained, hereby transfer and assign to the Trustee the assets
which are more particularly described in Exhibit "A," attached
hereto and by this reference made a part hereof.

The Trustee hereby acknowledges delivery of the assets
described in Exhibit A and agrees to hold and manage said assets,
together with all other property added to this trust, in trust,
for the uses and in the manner hereinafter set forth.

This trust shall be known as "THE SHOEMAKER FAMILY TRUST."

ITEM I

DIVISION OF TRUST

Upon the execution hereof, this trust shall be divided into
four separate share trusts as follows:

LESLEY R. MOORE
November 24, 2020

JONATHAN EVANS SHOEMAKER
November 23, 2020

the name of the case, but it's a guy who lives in a
hollow tree log out in the woods. It's a very, very
old case. But the gist of it was you can be crazy as a
bed bug, but on the day that you did your documents as
long as you know the objects of your bounty -- and I

Carolina Supreme Court opinion from 2003. It says "the
standard of proof in an undue influence case is
unmistakable and convincing evidence. There must be
more than a scintilla of evidence in order to defeat a
motion for summary judgment. A heightened standard for
summary judgment is not appropriate in this case."

ELECTRONICALLY FILED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

James Marshall Shoemaker

Dec

James Marshall Shoemaker

Petitioner,)

-vs-

Case No: 2018-ES-23-01729

Lesley R. Moore, Esq. as Personal)
Representative and Trustee,)
Edward Sloan Shoemaker, and)
Jonathan Evans Shoemaker, as)
Beneficiaries,)

Respondents.)

DEPOSITION OF EDWARD SLOAN SHOEMAKER

PURSUANT to Notice and/or agreement between the parties,
the deposition of Edward Sloan Shoemaker, called by the
Petitioner, was taken commencing at the hour of 11:00 a.m. on
Thursday, December 10, 2020, via Zoom teleconferencing with the
parties in separate locations.

IRVETA J. SHOUSE, Reporter

Irveta J. Shouse/IJS

119 Jones Avenue • Greenville, South Carolina 29601
864/303-1723

John Hancock

March 06, 2019

20-2300073

Greenville County
Probate Court

2020 JAN 10 AM 9:40

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, MARY S. SHOEMAKER, a resident and domiciliary of the State and County aforesaid,
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.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

THE SHOEMAKER

AGREES

THIS AGREEMENT OF TRUST

by and between JAMES M. SHOEMAKER, JR. and MARY S. SHOEMAKER
(hereinafter individually referred to as the "Grantor" and
collectively referred to as the "Grantors") and THE PALMETTO BANK
(hereinafter referred to as the "Trustee") in order to establish
a trust for the purposes and under the terms and conditions
hereinafter stated.

The Grantors, in consideration of the covenants herein
contained, hereby transfer and assign to the Trustee the assets
which are more particularly described in Exhibit "A," attached
hereto and by this reference made a part hereof.

The Trustee hereby acknowledges delivery of the assets
described in Exhibit A and agrees to hold and manage said assets,
together with all other property added to this trust, in trust,
for the uses and in the manner hereinafter set forth.

This trust shall be known as "THE SHOEMAKER FAMILY TRUST."

ITEM I

DIVISION OF TRUST

Upon the execution hereof, this trust shall be divided into
four separate share trusts as follows:

For more information, call 1-800-368-5868.

Chrysomelids: Ecology, Journal (1984) (3)

Carrington, Felipe, Jacob (1984) (5)

Copyright: Wayne, Andy (2014) (1)

Caragher, Edgo, James (1994) (3)

3. Shoemaker Records (pdf)

atient: Shoemaker, James A-MR#95883



Manulife Financial

Service Officer
200 BLOOR STREET EAST
TORONTO, ONTARIO
CANADA M5W 1E5

Policy No. _____

ty (U.S.A.)

Proposed Life Insured.
 and with this Medical Exam if it is being

Agent's Name William Dixon

Agent's Code

Proposed Life Insured

1. a) Name: MARY S Shoemaker
(first, middle, last)

c) Place of Birth Greenville SC

b) Date of Birth 7-5-31
(month/day/year)

d) Social Security / Tax ID No. 21570156122911

Smoking Questions

2. Have you ever used tobacco or nicotine products in any form (including cigarettes, cigars, ~~cigars~~, a pipe, chewing tobacco, nicotine patches or gun)? ☐ No ☒ Yes - give details in the chart.
Quit 23 years ago

Product	Frequency	Current	Past	Date last used
Cigarettes	_____ pack(s) / day	☐	☒	23 Apr 1991
Cigars	_____ x / day	☐	☐	
Other: _____	_____ x / day	☐	☐	

Health Questions

1. Have any of your immediate family members (parents, brothers and sisters) prior to age 65, died of or been diagnosed as having coronary artery disease, stroke or kidney disease? ☒ No ☐ Yes

4. Fatal History

Father	L	Age	Glen Details of Present State of Health	Father	D	Age	Cause of Death
Mother	I			Mother	E	73	Blood Anemia
Brothers	V	73	Good.	Brothers	A	76	PHT - Diabetes
Sisters	N			Sisters	S		

5. a) Your Height 5'2" b) Your Weight 204 lb

c) Have you had a loss of weight of more than 10 pounds within the past 12 months? ☐ No ☒ Yes - state how much and reason: 15 lbs

Due to diet

6. a) Name and address of personal or attending doctor

Dr Amy, welcome - internal medicine cross check

9 Doors in Greenville S. West 864 455-8400

b) Tetrachocia

g Data last consulted: Neurophysician not seen yet has All Mortgage Records

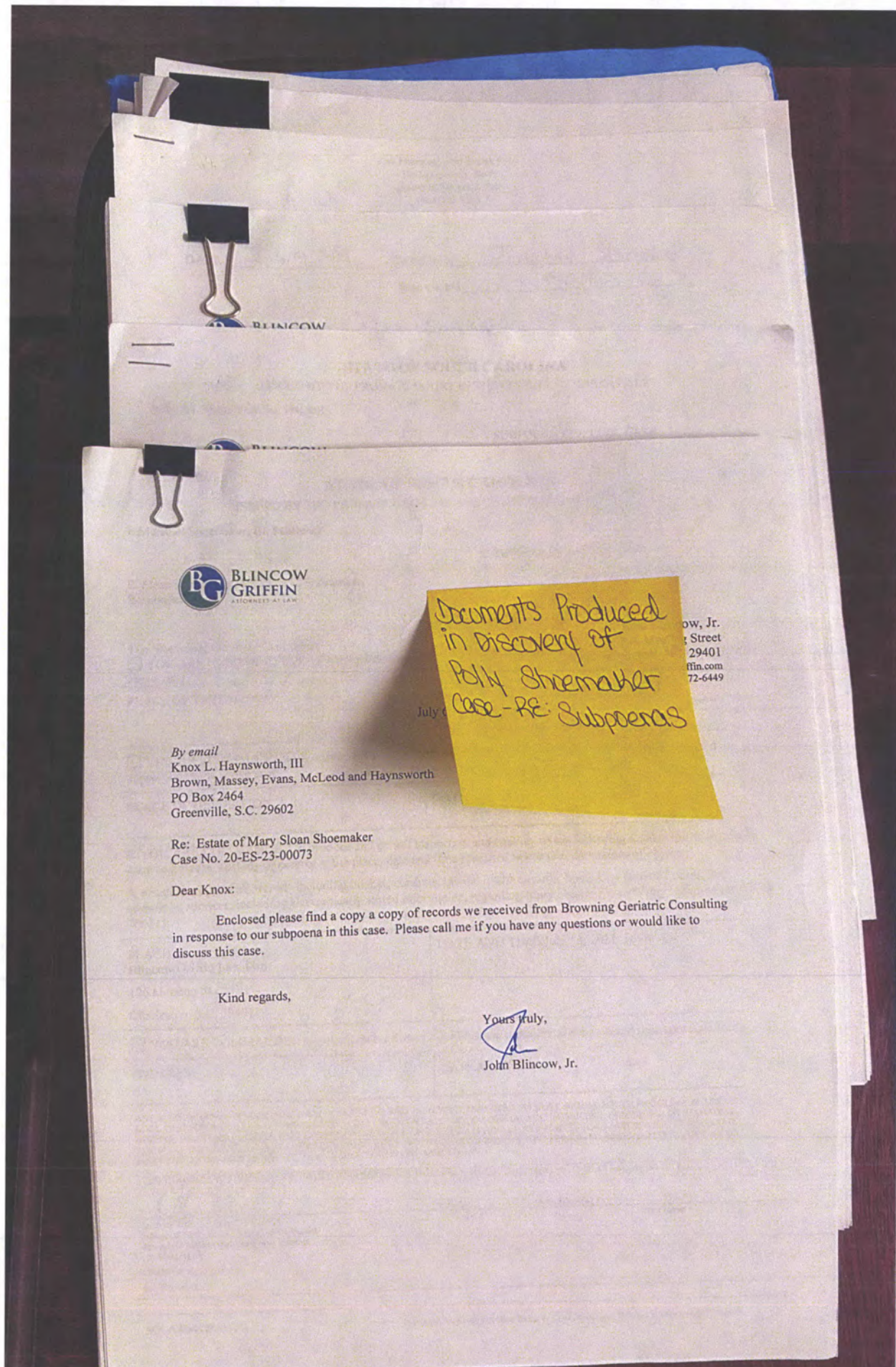
Reason and any medication/treatment given

d) List any medications (prescription or nonprescription) you are taking currently. Please See List

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ASTM74US (P12002)

Page 1 of 4



BLINCOW
GRIFFIN
ATTORNEYS AT LAW

July 1, 2024

By email
Knox L. Haynsworth, III
Brown, Massey, Evans, McLeod and Haynsworth
PO Box 2464
Greenville, S.C. 29602

Re: Estate of Mary Sloan Shoemaker
Case No. 20-ES-23-00073

Dear Knox:

Enclosed please find a copy a copy of records we received from Browning Geriatric Consulting in response to our subpoena in this case. Please call me if you have any questions or would like to discuss this case.

Kind regards,

Yours truly,

John Blincow, Jr.

ow, Jr.
Street
29401
ffin.com
72-6449

MARTHA LOUISE RAMAGE LEWIS LLC
 CERTIFIED PUBLIC ACCOUNTANTS (CPA)

MARTHA LOUISE R. LEWIS, CPA/PFS

TRACY L. COPE, CPA/PFS, CFP®
 TERRI C. OWEN, CPA/PFS

September 5, 2017

PRIVATE AND CONFIDENTIAL

Mr. and Mrs. James M. Shoemaker
 Post Office Box 728
 Greenville, SC 29602

Dear Mr. and Mrs. Shoemaker:

Enclosed are the original and file copies
 income tax returns:

Form 1040X, Amended U.S. Individual
 Form SC1040X, Amended South Carolina

Also included is the information provided
 Should your returns be reviewed at some future
 upon to produce books, records, and other documents
 recommend, therefore, that you retain and safeguard such material.

These returns were prepared from information provided by you or your representative. The
 preparation of tax returns does not include the independent verification of information used.
 Therefore, we recommend you review the returns before signing to ensure there are no omissions
 or misstatements. If you note anything that may require a change to the returns, please contact
 us before filing them.

The returns should be filed in accordance with the attached filing instructions.

We sincerely appreciate this opportunity to serve you. Please contact us if you have any
 questions or if we may be of further assistance.

Very truly yours,

Martha Louise Ramage Lewis LLC

Martha Louise R. Lewis

Martha Louise R. Lewis

MLRL:mj

Enclosures

(864) 250-1818 • fax (864) 250-1817
 1310 Augusta Street • P.O. Box 8499 • Greenville, SC 29604

Marshall Shoemaker

From: Marshall Shoemaker
Sent: Tuesday, June 12, 2018 12:07 PM
To: Drew Palmer
Cc: sloan@sopris.net; jshoemaker@gmail.com; chall@wyche.com
Subject: RE: concerns about elder fraud with my parents

+ Adding in Jonathan's new email: jshoemaker@gmail.com

From: Marshall Shoemaker
Sent: Tuesday, June 12, 2018 12:01 PM
To: 'Drew Palmer' <dpalmer@greenvillesc.gov>
Cc: 'sloan@sopris.net' <sloan@sopris.net>; 'Jonshoe@earthlink.net' <jonshoe@earthlink.net>; 'chall@wyche.com' <chall@wyche.com>
Subject: concerns about elder fraud with my parents

Dear Detective Palmer,

Thank you for taking my call and

My father and mother live in Greenville, SC. I live in Atlanta.

One of my brothers live in Colorado and the other lives in New York City.

My father is James M Shoemaker. Their phone number is: (864) 521-1111. Their address is: 10 Creekridge Road, Greenville, SC 29615.

The housekeeper that I mentioned on a regular time basis.

About one year ago, I was informed by my son, then later confirmed by my mother, that my mother had recently received a phone call from a stranger identifying himself as in the Dominican Republic. This stranger convinced my mother, and through her, my father and the housekeeper Debbie, that my son Peter, age 23, had been arrested while on vacation in the Dominican Republic. The stranger suggested that the only way to get my son free was for my parents to send, via his "contact" in New York City, a large amount of cash, which they unfortunately did. My mother refuses to disclose the full amount to this day, but led me to believe that it was around \$15,000. She and my father confirmed that they "road around town withdrawing cash and sent it in an envelope via FedEx."

They chose not to call my son or his mother, my ex-wife, to confirm his whereabouts until after sending the cash.

The fraud could have been easily avoided if they had called me, but they did not, for reasons which I address below. My son Peter has never been in the Dominican Republic.

My parents refused my requests that they report this crime to the Greenville Police.

They told me that they would call me if such a criminal scenario involving my son or daughter ever surfaced again: a promise which they have not kept.

PAST HISTORY: Chronic illnesses - afib with hx ablation and PPM, chronic coumadin followed by CTC, NIDDM, severe peripheral neuropathy, HTN, mild pulmonary HTN, Sjogrens syndrome--evaluated in past with serologies, buccal bx, and tear tests, hypothyroidism, hyperlipidemia, OA, diverticulosis,, moderate MR and GERD. Operations: TAH/BSO, pacemaker placement, rotator cuff repair, foot surgery and pacer replaced 3/06. Procedures: cath 1991, nuclear stress test 9/02, cath 6/05--clear coronaries and aorta 11/03 without aneurysm on US. Other: HTN, mild pulmonary HTN, moderate MR, Sjogrens syndrome--evaluated in past with serologies, buccal bx, and tear tests, GERD, afib with hx ablation and PPM, chronic coumadin followed by CTC, NIDDM, severe peripheral neuropathy, hypothyroidism, hyperlipidemia. FAMILY HISTORY: Father - Age 72, aortic aneurysm; Mother - Age 76, afib, niddm, Diabetes-unknown type and hypothyroidism; Brother 1 - Diabetes-Type II (NIDDM);

REVIEW OF SYSTEMS:

GENERAL - Denies fever or chills.
SKIN - no edema
EYES - Denies blurred vision, or change in vision
RESPIRATORY - Denies shortness of breath
CARDIOVASCULAR - No chest pain
GASTROINTESTINAL - See HPI, flatulence,
GERD
NEUROLOGICAL - No neurological complaint
ENDOCRINE - continues on specific meal
reduction

Medical Records of
Mary S. Shoemaker

EXAMINATION:

VITAL SIGNS: B/P - 116/70, Sitting, Right
Temperature - 98.2
Height: 63.25 inches
Weight: 185.40 lbs. BMI 32.58
CONSTITUTIONAL - in no distress, looks like stated age, well nourished and well developed

SKIN - no rash, no lesions, warm to touch, normal turgor
HEAD - no trauma, normocephalic

THORAX - symmetric, normal respiratory movement and no deformities

LUNGS - Auscultation - clear, equal in all lung fields, no rales, rhonci and or pleural rubs

HEART - Rhythm - regular rhythm;

ABDOMEN - Inspection - no masses, no lesions and healed lower abdominal surgical scar; Palpation - lower quad tenderness bilaterally, no guarding, + rebound; Auscultation - no bruits, no rubs, normal bowel sounds; BLADDER - Percussion - normal; Palpation - no tenderness;

RECTAL - Sphincter - normal sphincter tone; Anal Canal - normal; Rectum - normal; Stool Guaiac - Hemoccult negative

BACK/SPINE - Palpation - no CVA tenderness;

LOWER EXTREMITIES -

X-Ray Abdominal Acute Series 3V Results: films reviewed today, radiology review pending

ASSESSMENT:





Will McKibbin <will@legalcarolina.com>

FW: Shoemaker file

1 message

Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>

Thu, Mar 23, 2023 at 11:30 AM

To: "will@legalcarolina.com" <will@legalcarolina.com>

Will, attached is the letter just hand delivered to me. It appears you have simply delivered the entire files from John Blincow in both cases. I do not need nor want the docs in Jim's case. Thant case is over at present. I can't justify spending my time and client's money to try and glean what docs are related to which file. Please have you person come back and pick up the box. I only want docs responsive to my specific doc requests in Polly's case, not the other case. Thanks, Knox

Knox L. Haynsworth, III, Esquire
Brown, Massey, Evans, McLeod & Haynsworth, LLC
106 Williams Street
Greenville, SC 29601
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424 Ext. 105 - Phone
(864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

-----Original Message-----

From: ecopy@bmemhlaw.com <ecopy@bmemhlaw.com>

Sent: Thursday, March 23, 2023 11:27 AM

To: Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>

Subject: Shoemaker file

[EXTERNAL]

This E-mail was sent from "RNP58387941D315" (MP 6503).

Scan Date: 03.23.2023 11:27:11 (-0400)

Queries to: ecopy@bmemhlaw.com

**20230323112711241.pdf**

153K



Will McKibbon <will@legalcarolina.com>

Document production

1 message

Will McKibbon <will@legalcarolina.com>

Thu, Mar 23, 2023 at 10:54 AM

To: Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>, Jessica Franquiz <jessica@legalcarolina.com>

My paralegal completed the 'fixing' of the file provided by the Supreme Court and my assistant Bradly will be hand delivering it to your lobby shortly. I know the letter will say so, but just to make sure I am clear, this is the only copy of these documents and provided for inspection and copying as you see fit. Of course, there is no rush for you to review and copy, but whenever completed, let me know and I'll pick it up from you.

Will McKibbonWILLIAM R. MCKIBBON III
ATTORNEY AT LAW

601 E. McBee Ave., Ste. 104
Greenville, SC 29601
P: 864.235.0071
F: 864.235.0072



Will McKibbin <will@legalcarolina.com>

RE: Document production

1 message

Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>

Thu, Mar 23, 2023 at 10:58 AM

To: Will McKibbin <will@legalcarolina.com>

And the interrogatory answers?

Knox L. Haynsworth, III, Esquire

Brown, Massey, Evans, McLeod & Haynsworth, LLC

106 Williams Street

Greenville, SC 29601

P.O. Box 2464

Greenville, SC 29602

(864) 271-7424 Ext. 105 - Phone

(864) 242-6469 - Fax

knoxhaynsworth@bmemhlaw.com

From: Will McKibbin <will@legalcarolina.com>**Sent:** Thursday, March 23, 2023 10:54 AM**To:** Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>; Jessica Franquiz <jessica@legalcarolina.com>**Subject:** Document production

[EXTERNAL]

My paralegal completed the 'fixing' of the file provided by the Supreme Court and my assistant Bradly will be hand delivering it to your lobby shortly. I know the letter will say so, but just to make sure I am clear, this is the only copy of these documents and provided for inspection and copying as you see fit. Of course, there is no rush for you to review and copy, but whenever completed, let me know and I'll pick it up from you.

Will McKibbin

WILLIAM R. MCKIBBIN III
ATTORNEY AT LAW

601 E. McBee Ave., Ste. 104

Greenville, SC 29601

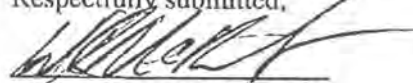
FILED**APR 11 2022**STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
GREENVILLE COUNTY)COUNTY OF GREENVILLE) C.A. No(s): 2020-ES-23-00073/2018-ES-23-01729
James Marshall Shoemaker, III,)
Petitioner,)**NOTICE OF REPRESENTATION**v.)
Mary Hunter Sloan Shoemaker,)
Edward Sloan Shoemaker,)
Jonathan Evans Shoemaker,)
Lesley Moore and John and Jan)
Doe,)
Respondents.)

Please take notice that William R. McKibbon III has been retained to represent the Petitioner in the above actions Mr. James Marshall Shoemaker, III. By this filing, the undersigned counsel requests the Clerk of Court to enter him as attorney of record.

This filing also certifies that this Notice of Representation has been served upon opposing counsel Knox L. Haynsworth, III by emailing to the following address:

knoxhaynsworth@bmemhlaw.com

Respectfully submitted,



William R. McKibbon, III
(S.C. Bar No. 68454)
601 E. McBee Ave., Ste. 104
Greenville, SC 29601
Phone: 864.235.0071
Fax: 864.235.0072
will@legalcarolina.com
Attorney for Petitioner

R. David Massey
F. Douglas P. Evans
Stanley E. McLeod
Knox L. Haynesworth, III
Tyler E. McLeod

BROWN, MASSEY, EVANS, MCLEOD & HAYNSWORTH, LLC
ATTORNEYS AT LAW
POST OFFICE BOX 2464
GREENVILLE, SOUTH CAROLINA 29602

106 WILLIAMS STREET
TELEPHONE (864) 271-7424
FAX (864) 242-6469
WEBSITE: bmenlaw.com
OF COUNSEL
Suzanne Massey Scherrin

June 30, 2022

Via Email

William R. McKibbin, III
601 E. McBee Avenue
Suite 204
Greenville, South Carolina 29601

Re: *James Marshall Shoemaker, III vs. Mary Hunter Sloan Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker, Debora Wine, Lesley Moore and John and Jan Doe*
C.A. No.: 2018-ES-23-01729

James Marshall Shoemaker, III vs. Lesley Moore, Esquire as Personal Representative and Trustee, Edward Sloan Shoemaker and Jonathan Evans Shoemaker as Beneficiaries
C.A. No.: 2020-ES-23-00073

Dear Will:

I know we have the circuit appeal of the summary judgment in Jim's case and my motion to dismiss that appeal coming up in a few months. I seem to recall when we spoke last, you were of the opinion that Polly's case essentially needed to be "on hold" pending the ultimate resolution of Jim's case. I believe your thought process was if Jim's most recent Will/Trust is overturned, that would somehow make or break some aspect of the issues in Polly's case. I may have misunderstood, so I am not necessarily saying that was your position, it is simply my recollection of our conversation.

In any event, I think we can and should move forward with Polly's case. To my knowledge one of the only practical distinctions between Jim Shoemaker's Will/Trust and his prior Will/Trust at the time of his death, is that the grandchildren (Marshall's son and daughter) did not receive a bequest from their grandfather in his prior Will/Trust. The \$250,000.00 bequests have already been paid from Jim Shoemaker's estate to his two grandchildren so the only difference would be if his Will/Trust were overturned, they would not be entitled to that money.

From my perspective, even if Marshall were ultimately successful in challenging his father's Will/Trust it does not prevent us from moving forward with Polly's case because both the Will/Trust being challenged and the prior one, left everything to Polly Shoemaker. So, even if we were dealing with Mr. Shoemaker's prior Will/Trust, once he died everything went to his wife and only upon her death would her children receive anything. Polly also had assets of her own that

had nothing to do with what she inherited from her husband. I do not see any reason why we need to delay moving Polly's case forward especially since the litigation continues to gum up the estate's ability to distribute its assets in accordance with the Shoemakers' Wills and Trusts.

You will note there is a pending motion to compel discovery in Polly Shoemaker's case as well as a pending motion to dismiss that case. There is also a pending motion to join Marshall's children (made by John Blincow) and I see no reason to not move forward with getting all of that heard now. You have made it clear Marshall intends to appeal everything as far as he can if the matter is not settled, so no point in my side in waiting since everything's going to be appealed anyway.

In light of the foregoing, how about check your schedule and talk with your client and then let's you and I get on the horn with Judge Queen and schedule hearings on the pending motions. Please also let me know regarding deposing Marshall's children. I had asked Blincow about that and I would like to move forward with lining up those depositions as soon as possible. I would like to do them in person so let me know if we need to travel to where the children are.

I think Blincow was planning on representing the children although I could not swear to that fact. It would seem that representation would have presented a conflict since if Blincow had been successful as Marshall's lawyer overturning Jim Shoemaker's most recent Will/Trust, the children would not be entitled to the \$250,000.00 each that was a direct bequest to them. That would seem to be a significant conflict but I never was really clear whether Blincow was going to represent the kids or exactly what the story was as to the representation. Obviously they don't have to have a lawyer but in fairness and in full disclosure to you, I intend to ask both kids about conversations they had with Blincow, if any, so we might as well flesh out any arguments over whether he was their lawyer and any sort of privilege that might be asserted as to those questions.

In any event, I just wanted to touch base while all of this was somewhat fresh in my mind. so give me a call and let's start trying to make some plans to get things moving in Polly's case.

With best regards, I remain

Sincerely,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III

KLH/II

R. David Massey
F. Douglas P. Evans
Stanley E. McLeod
Knox L. Haynesworth, III
Tyler E. McLeod

BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC

ATTORNEYS AT LAW
POST OFFICE BOX 2464
GREENVILLE, SOUTH CAROLINA 29602

106 WILLIAMS STREET
TELEPHONE (864) 271-7424
FAX (864) 242-6469
WEBSITE: bmenlaw.com

OF COUNSEL
Suzanne Massey Schermin

February 24, 2023

Via Email & US Mail

The Honorable Joshua L. Queen
Cherokee County Probate Judge
PO Box 22
Gaffney, SC 29342-0022

Re: *James Marshall Shoemaker, III vs. Lesley Moore, Esquire as Personal Representative and Trustee, Edward Sloan Shoemaker and Jonathan Evans Shoemaker as Beneficiaries*
C.A. No.: 2020-ES-23-00073

Dear Judge Queen:

I hate that I am having to contact the court regarding this matter but in all frankness, I do not think it would be fair to me or my client to have to go through all of the efforts of filing another motion to compel responses to my outstanding discovery which was served on July 30, 2021, nineteen months ago. The motion to compel was filed December 3, 2021.

As you may recall, you held a hearing on January 4, 2023 to address all pending motions in both cases involving Mr. and Mrs. Shoemaker and the petitioner, their son Marshall. At the hearing it was represented to both myself and the court that Mr. Shoemaker would be fully complying with the outstanding discovery subject to my motion to compel, without any objections to the discovery requests. Based upon that representation, we moved on to deal with the other matters pending before you. It has now been more than 30 days since we had the hearing and I have yet to have received a single sliver of paper. I contacted Mr. McKibbin on 2/15, 2/21 and yesterday, and have heard nothing.

As I indicated at the beginning of this letter, I will certainly file another motion to compel but since I have already had to go down that road once, I just don't think its fair that I have to expend that extra effort and spend that extra money when it is Mr. Shoemaker that has created this problem, not my clients.

In light of the foregoing, I would respectfully request the court strike Mr. Shoemaker's pleadings as a sanction for his continued exhibitions of contempt towards the orders of the probate court. As you know from the prior briefing, Mr. Shoemaker has been sanctioned at least twice by Judge Horlbeck and Judge Jennings of the Greenville probate court.

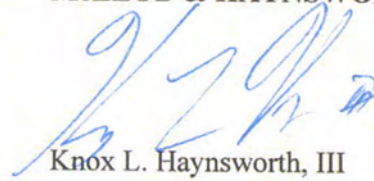
Again, please let me know if you believe it necessary for me to file a formal motion but my position is you have jurisdiction over the case and all aspects of it and certainly have the power without the need of a formal motion to sanction the parties as you deem appropriate.

Thank you for your consideration and I am sorry I had to write you about this, but felt I had no other option.

With best regards, I remain

Sincerely,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III

KLH/II

cc: William R. McKibbon, III, Esquire via email and US Mail

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF GREENVILLE)

C.A. NO.: 2020-ES-23-00073

In the matter of:)

Mary Hunter Sloan Shoemaker
Decedent)

James Marshall Shoemaker, III)

ORDER

Petitioner,)

vs.)

Lesley Moore, Esquire as Personal
Representative and Trustee, Edward Sloan
Shoemaker and Jonathan Evans Shoemaker
as Beneficiaries)

Respondents.)

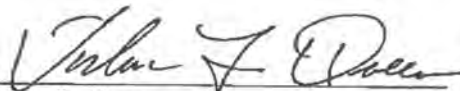


This matter came before the Court for a hearing on Wednesday, January 4, 2023, pursuant to Respondents' motion to compel discovery, originally filed on December 3, 2021. At the hearing it was represented by counsel that the discovery requests had initially been served on prior counsel for Petitioner, John Blincow; but notwithstanding, Petitioner, through current counsel, would respond to the outstanding discovery requests, without objection. Based upon these representations to the Court, no Order was issued regarding the motion to compel as Petitioner would be responding to the outstanding discovery previously served.

It has come to the attention of the Court that as of February 27, 2023, well in excess of thirty days since the hearing, Petitioner has not provided any materials to counsel for Respondents in connection with the motion to compel discovery. As such, it is hereby Ordered that Petitioner

shall respond fully and completely, without objection, to Respondents' interrogatories and requests for production originally served on July 30, 2021, within ten days of the entry of this Order.

IT IS SO ORDERED.


Joshua L. Queen
Special Probate Judge
Greenville County, South Carolina

Dated this 10th day of March, 2023

GREENVILLE, SC

R. David Massey
F. Douglas P. Evans
Stanley E. McLeod
Knox L. Haynesworth, III
Tyler E. McLeod

BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC
ATTORNEYS AT LAW
POST OFFICE BOX 2464
GREENVILLE, SOUTH CAROLINA 29602

106 WILLIAMS STREET
TELEPHONE (864) 271-7424
FAX (864) 242-6469
WEBSITE: bmcmblaw.com
OF COUNSEL
Suzanne Massey Schemm

March 22, 2023

Via Email & US Mail

The Honorable Joshua L. Queen
Cherokee County Probate Judge
PO Box 22
Gaffney, SC 29342-0022

Re: *James Marshall Shoemaker, III vs. Lesley Moore, Esquire as Personal Representative and Trustee, Edward Sloan Shoemaker and Jonathan Evans Shoemaker as Beneficiaries*
C.A. No.: 2020-ES-23-00073

Dear Judge Queen:

Enclosed is an Order you signed and filed on March 10th in response to the ongoing issue involving discovery responses in the Polly Shoemaker case. As you may recall from our last hearing, those responses were due roughly two years ago now and at the hearing I was advised that I would be given complete responses to the document requests and interrogatories, without objection. Thirty days after that hearing, I still had nothing so I sent you an email requesting sanctions be awarded against Mr. Shoemaker for failure to comply with the discovery requests. You indicated you were reluctant to sanction a party without an Order in place and hence you asked me to prepare the enclosed Order.

Today I received an e-mail from Mr. McKibbon indicating that he would provide his entire file, less any privileged material, for my review. Frankly, in my opinion that offer is too little, too late. Your Order filed March 10th was really the third item directed to this issue. I filed a motion to compel back when John Blincow had the case. (A copy is attached.) Mr. McKibbon indicated he would provide the responses during our last hearing, yet they were never provided. You issued an Order that complete responses were due by March 20th, and that deadline was missed as well.

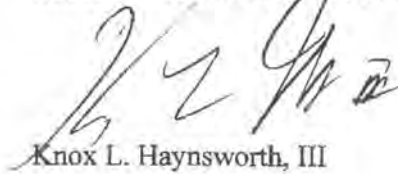
I certainly do not want to speak for Mr. McKibbon as far as what he believes to be his offer to provide his entire file, but my position is simply that that horse has left the barn and my clients should not have to continue dealing with the same issue over and over and over again. As such, I would like to renew my request that Mr. Shoemaker's pleadings be stricken as a sanction. Given that your Order was not complied with, I assume no motion for sanctions will be required but if so, let me know and I'll be happy to file the same.

Thank you for your consideration.

With best regards I remain

Sincerely,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III

KLH/II

cc: William R. McKibbon, III, Esquire via email and US Mail

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
In the matter of:)
Mary Hunter Sloan Shoemaker)
Decedent)
James Marshall Shoemaker, III)
Petitioner,)
vs.)
Lesley Moore, Esquire as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker and Jonathan Evans Shoemaker)
as Beneficiaries)
Respondents.)

IN THE PROBATE COURT

C.A. NO.: 2020-ES-23-00073

NOTICE OF MOTION
AND MOTION FOR SANCTIONS

TO: WILLIAM R. MCKIBBON, III, ESQUIRE, ATTORNEY FOR PETITIONER

You please take notice that Respondents will move on the 10th day following service hereof, or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 37 sanctioning Petitioner for his continued refusal to comply with the Orders of this court. Specifically, on July 30, 2021 interrogatories and document requests were served on counsel for Petitioner. (See Exhibit 1 of Motion to Compel Discovery filed on December 3, 2021) The matter came before the court for a hearing on January 4, 2023 at which time the court was advised the parties had resolved the dispute and the outstanding discovery requests would be answered fully, without objection. On February 28, 2023, more than 30 days following the hearing, counsel for Respondents had still received absolutely nothing and a second Motion to Compel was filed. On March 10, 2023 an Order was filed (copy attached as Exhibit 1) specifically stating "Petitioner shall respond fully and

completely, without objection, to Respondents' interrogatories and requests for production originally served on July 20, 2021, within ten days of the entry of this Order."

On March 23, 2023, a large box of documents was delivered to the undersigned counsel's office along with the attached letter. (Exhibit 2) To date, the outstanding interrogatories, which by this point in time are two years past due, have still never been answered. Further, attempting to comply with the document request by essentially dumping documents on the undersigned counsel in two different cases, is far from compliance. What was delivered pursuant to the March 23, 2023 letter from counsel for Petitioner was literally, as noted in the letter, all the files held by the Supreme Court after attorney John Blincow was suspended. However, delivering boxes of two different lawsuits does nothing to comply with the outstanding discovery requests. By simply providing a large batch of documents in two cases, Petitioner is attempting to shift the burden to Respondents to comply with the petitioner's discovery obligations. By mixing documents in the two different files, it is virtually impossible to glean which documents may be responsive to the outstanding document request in the present case involving the estate of Polly Shoemaker. Given Petitioner's continued examples of failing to comply with this court's Orders, Respondents respectfully submit that the only appropriate sanction for this continued conduct is to strike Petitioner's pleadings and summarily dismiss all pending claims of Petitioner. Further, given the fact this motion is directly brought about by Petitioner's conduct, Respondents request they be awarded the costs and attorney's fees associated with this motion pursuant to S.C. Code 32-1-111 and 62-7-1004.

This motion is based upon the exhibits attached here too, the prior Orders of this court and such other and further materials as the court may deem just and proper.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**

Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorneys for Respondents

Greenville, South Carolina
April 10, 2023

EXHIBIT

1

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF GREENVILLE)

C.A. NO.: 2020-ES-23-00073)

In the matter of:)

Mary Hunter Sloan Shoemaker)
Decedent)

James Marshall Shoemaker, III)

ORDER)

Petitioner,)

vs.)

Lesley Moore, Esquire as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker and Jonathan Evans Shoemaker)
as Beneficiaries)

Respondents.)



This matter came before the Court for a hearing on Wednesday, January 4, 2023, pursuant to Respondents' motion to compel discovery, originally filed on December 3, 2021. At the hearing it was represented by counsel that the discovery requests had initially been served on prior counsel for Petitioner, John Blincow; but notwithstanding, Petitioner, through current counsel, would respond to the outstanding discovery requests, without objection. Based upon these representations to the Court, no Order was issued regarding the motion to compel as Petitioner would be responding to the outstanding discovery previously served.

It has come to the attention of the Court that as of February 27, 2023, well in excess of thirty days since the hearing, Petitioner has not provided any materials to counsel for Respondents in connection with the motion to compel discovery. As such, it is hereby Ordered that Petitioner

shall respond fully and completely, without objection, to Respondents' interrogatories and requests for production originally served on July 30, 2021, within ten days of the entry of this Order.

IT IS SO ORDERED.


Joshua L. Queen
Special Probate Judge
Greenville County, South Carolina

Dated this 10th day of March, 2023

GREENVILLE, SC

EXHIBIT

2



WILLIAM R. MCKIBBON, III

ATTORNEY AT LAW

March 23, 2023

Brown, Massey, Evans, McLeod & Haynsworth
ATTN Knox L. Haynsworth
106 Williams St.
Greenville, SC 29601

(Via Hand-Delivery)

Re: Mary Shoemaker, J. Marshall Shoemaker

Mr. Haynsworth:

Please find delivered all documents relating to the Mary Shoemaker action, as well as the J. Marshall Shoemaker action.

All documents provided have been kept in the normal course of business and are provided exactly as they have been kept. This is the full and complete file, with the exception of any privileged communications between Mr. Blincow and Mr. Shoemaker.

This file is provided to you for your inspection and copying. Please note this is the only copy of the full and complete file.

Sincerely,

Jessica Franquiz
Paralegal to William R. McKibbon, III

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

In the matter of Mary Hunter Sloan
Shoemaker,

Decedent,

James Marshall Shoemaker, III,

Petitioner,

v.

Edward Sloan Shoemaker, Jonathan Evans
Shoemaker as Beneficiaries,

Respondents

IN THE PROBATE COURT

Docket No.: 2020-ES-23-00073

**PETITIONER'S RESPONSES TO
RESPONDENTS' INTERROGATORIES
AND REQUESTS FOR PRODUCTION
OF DOCUMENTS**

TO: Jenna McLeod, Counsel for Respondents.

Petitioner hereby supplements previous production of documents and interrogatory responses as follows:

Interrogatory 1: No witness statements have been recorded or written. Witnesses identified by name thus far include Marshall Shoemaker, Petitioner's mother's caretaker Debbie. Witnesses expected but not yet identified include medical providers of the Decedent, from whom Petitioner requires identification by Respondents, as well as identity of Pharmacists of Decedent, also requiring identification from Respondents.

Interrogatory 2: Petitioner is unaware of any at this time.

Interrogatory 3: Petitioner is unaware of any at this time

Interrogatory 4: Petitioner is unaware of any at this time

Interrogatory 5: Petitioner has discussed the action with his children, and the substance of the discussions were simply the substance of the suit itself, and yes, Petitioner did discuss the consequences of success regarding their \$250,000.00 bequests.

Interrogatory 6: Petitioner does not recall.

Interrogatory 7: Petitioner cannot identify all such documents or their substance except to the extent that he can refer counsel to their existence and produce the same, which Petitioner is informed and believes was provided through prior counsel.

Interrogatory 8: Petitioner does not recall all persons other than his family members, counsel, and likely several friends to whom he discussed these matters, and Petitioner does not recall the date of any such communications or the substance thereof.

Interrogatory 9: Petitioner refers to the same persons identified in his father's suit, and Petitioner is in possession of no medical records.

Interrogatory 10: The answer to this interrogatory was also provided in the existing suit regarding Petitioner's father; notwithstanding, Petitioner does not recall all persons other than family members, counsel, and likely several friends, but the dates and substance of each cannot be recalled.

Interrogatory 11: Petitioner responds that an "interested person" calls for a legal conclusion that he is not qualified to define.

Interrogatory 12: Petitioner has no medical evidence currently in his possession as all such information has been in possession of Respondents only and not provided to Petitioner.

Interrogatory 13: Petitioner has no recollection sufficient to answer this interrogatory and it is not reasonably possible to recall.

Interrogatory 14: Petitioner has no recollection sufficient to answer this interrogatory and it is not reasonably possible to recall.

Interrogatory 15: Respondents are in possession of this information as it was provided in the companion lawsuit.

Interrogatory 16: Respondents are in possession of this information as it was provided in the companion lawsuit.

Interrogatory 17: Petitioner does not and cannot know if his children are truthful and honest at all

times and in all things, but generally speaking, yes, he believes his children would seek to be truthful and honest.

Interrogatory 18: No.

REQUESTS FOR PRODUCTION OF DOCUMENTS

With regard to Requests for Production of Documents numbered 1-16, Petitioner submits all documents that are or could be responsive to the requests which are in Petitioner's possession were provided to Respondents' counsel by hand delivery March 23, 2023 for inspection and copying. Petitioner had believed that his previous counsel had provided all such responses in November of 2021.



William R. McKibbon, III (#68454)
601 E. McBee Ave., Ste. 104
Greenville, SC 29601
Phone: 864.235.0071
Fax: 864-235-0072
will@legalcarolina.com
Attorney for Plaintiff

Greenville, SC
March 26, 2024

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF GREENVILLE) C.A. NO.: 2020-ES-23-00073

In the matter of:) **COPY**
Mary Sloan "Polly" Shoemaker,)
Decedent)
James Marshall Shoemaker, III)
Petitioner,)
vs.)
Lesley Moore, Esquire as)
Personal Representative and)
Trustee, Edward Sloan Shoemaker)
and Jonathan Evans Shoemaker)
as Beneficiaries)
Respondents.)

RESPONDENTS' MOTION FOR SANCTIONS

Legal Eagle
P. O. Box 5682
Greenville, SC 29606
864-467-1373
depos@legaleagleinc.com

1 JUDGE QUEEN:

2 Probate Court is now in session. We're here this
3 morning in the matter of Mary Sloan Polly Shoemaker.
4 It is -- giving it a Cherokee County case number,
5 but it's actually a Greenville case number, as I am
6 sitting today as a special Probate Judge for
7 Greenville County. Greenville County case number is
8 2020-ES-23-73. Matters before the Court on a Motion
9 for Sanctions pursuant to Rule 73 of the South
10 Carolina Rules of Civil Procedure. Let's see, Mr.
11 McKibbon is here, he represents the Petitioner in
12 this matter, James Marshall Shoemaker, III. I
13 believe he goes by Marshall; is that correct?

14 MR. MCKIBBON:

15 Yes, Your Honor, it is.

16 JUDGE QUEEN:

17 And then Ms. McLeod, you're here on behalf of, I
18 guess, the Personal Representative and the other two
19 beneficiaries; is that correct?

20 MS. MCLEOD:

21 I am, Your Honor.

22 JUDGE QUEEN:

23 And you are the moving party here today?

24 MS. MCLEOD:

25 I am.

1 JUDGE QUEEN:

2 And if I remember correctly I think this was done
3 after the motion was filed. Seems like we did an
4 order adding the grandchildren or adding Mr.
5 Shoemaker's children as Respondents; is that
6 correct? Am I remembering that correct?

7 MS. MCLEOD:

8 I have got the order right here and don't remember
9 the date off the top of my head. Let's see.

10 JUDGE QUEEN:

11 It's probably something I should've looked at before
12 I came in.

13 MS. MCLEOD:

14 Yeah, April 19th, 2023.

15 JUDGE QUEEN:

16 Okay. And I'm showing that your -- the Motion for
17 Sanctions Mr. Haynsworth filed was April the 6th of
18 2023, so it doesn't reflect that but I'm just going
19 to note that for the record. So the way that I
20 usually do motions is I let the moving party begin,
21 then Mr. McKibbin I'll let you respond and then I
22 will let you if you, Ms. McLeod, if you so desire,
23 kind of let the moving party have the last say. So,
24 give you a little bit of a closing. So, at this
25 time I'm ready for you to begin.

1 MS. MCLEOD:

2 Thank you, Your Honor. May it please the Court. At
3 the outset I believe it's important in this case to
4 remember we're here for a Motion for Sanctions. I
5 think it'd be very easy for this to turn into a
6 Motion to Compel. We've already had that hearing,
7 you know, it's already been violated so we are here
8 at this point for sanctions. I've prepared a
9 timeline in this case. The procedural history is a
10 little bit convoluted but I think there's only a few
11 dates that are important to today's hearing. And
12 this case is important to note that discovery
13 requests were originally served on Petitioner in --
14 on July 30th, 2021. A Motion to Compel was filed
15 originally on December 3rd, 2021. Thereafter
16 Petitioner's counsel was suspended, Mr. McKibbon was
17 retained. So he joined the case on April 1st, 2022.
18 A motion hearing was held eight months after Mr.
19 McKibbon was retained. On January 4th, 2023 Mr.
20 McKibbon at that time assured the Court that he
21 would respond to discovery without objections within
22 30 days. Mr. McKibbon again did not comply with
23 discovery and on February 24th, 2023 we asked the
24 Court to strike Petitioner's pleadings. I believe
25 what I understand from prior counsel, Mr. Knox

1 Haynsworth, the Court was uncomfortable striking
2 pleadings without some order in place that had been
3 violated so an order was issued on March 10th, 2023
4 giving the Petitioner's 10 days to comply with
5 discovery. Once again that order was -- was totally
6 ignored. Twelve days later on March 22nd, 2023 we
7 again ask the Court to strike the Petitioner's
8 pleadings. Finally the next day on March 23rd, 2023
9 Petitioner's counsel dumped an entire box of
10 documents on us, including a letter stating that
11 this was the entire file he received from the
12 Supreme Court and both James Shoemaker, who we call
13 Shoe, and Polly Shoemaker's case. So, again, we
14 filed another Motion for Sanctions on April 6th,
15 2023, again, asking for to strike Petitioner's
16 pleadings and dismiss all pending claims of
17 Petitioner. In addition we are asking for costs and
18 attorney's fees associated with this motion pursuant
19 to SC Code Sections 32-1-111 and 62-7-1004. Dumping
20 Petitioner's file on us does not comply with
21 discovery obligations. I actually took pictures of
22 what was delivered just so Your Honor could kind of
23 have a visual representation of what we're talking
24 about here. It's a large box, definitely bigger
25 than a banker's box. And like I said before, it

1 included documents and files for both the present
2 case and the case of Petitioner's father, Jim "Shoe"
3 Shoemaker. Mixing documents in two different files
4 makes it virtually impossible to glean which
5 documents are responsive to the outstanding
6 requests. Petitioner's attempting to shift the
7 burden to Respondent's to comply with Petitioner's
8 discovery obligations. Our clients have incurred
9 significant legal bills, both in the father's case,
10 which is now in the Court of Appeals, so it's very
11 close to \$200,000 in that case and then in this case
12 it's almost at \$32,000. They should not have to pay
13 for us to go through a mixed-up giant box of files
14 to glean what, you know, what's responsive to what
15 we've requested. Like I said before this is him
16 shifting his discovery obligations and attempting to
17 shift the burden onto us. The rules require written
18 responses to the request for production of documents
19 and Petitioner must specify which documents are
20 responsive to which request. We've never received
21 that. Furthermore, Petitioner still to this date
22 has not sufficiently responded to interrogatories.
23 It's been almost three full years, specifically two
24 years, eight months, four days, since discovery
25 requests were served. I realize Mr. McKibbon was not

1 on the case until April of 2022 but that's still
2 been two full years that he's had to comply with
3 discovery. At 2:35 p.m. yesterday Mr. McKibbin sent
4 an email to me about today's hearing and attaching
5 interrogatory responses. The responses are totally
6 deficient. A quick glance will show Your Honor just
7 how deficient and incomplete they are. As just one
8 example they claim to have no photographs, no
9 documents, no expert witnesses, no fact witnesses,
10 they did not disclose the substance of any
11 discussions with Petitioner's children. They don't
12 recall any conversations with their mother. They --
13 so of 18 interrogatories they did not sufficiently
14 answer one. To submit these completely utterly
15 deficient interrogatories after years is quite
16 frankly insulting to Respondent's and more
17 importantly to the Court. I do have a copy of
18 those. Just honestly at a quick glance of their
19 answers will show you exactly what we're talking
20 about here. Sorry, I just have the answers and the
21 requests mixed up. And, you know, by contrast when
22 we were asked in interrogatories for verbal
23 conversations with the mothers of our parties, you
24 know, their answer was they do not recall,
25 Petitioner doesn't recall anything, you know, not to

1 mention he's bringing the suit so I think he should
2 have some more information but when we were asked
3 about visits we detailed dates, locations, people
4 present, we went on for two typed pages and
5 thoroughly answered their interrogatory. So, again,
6 counsel for petitioner let us -- did let us know
7 yesterday at 2:35 p.m. for the first time that he
8 did have some really trying personal things going
9 on. I understand his wife underwent a serious
10 surgery and three subsequent surgeries starting last
11 March. We are incredibly sympathetic to that but
12 like I said, we had no idea that was going on until
13 yesterday. And more importantly, once again, this
14 is -- it can't justify not responding for two years.
15 Petitioner's done nothing to move this case forward.
16 The litigation continues to go up, the State's
17 ability to distribute its assets in accordance with
18 the Shoemakers wills and trusts. Petitioner has
19 also pursued a case regarding his father's will, and
20 I say that because, you know, that case was
21 dismissed. It was dismissed at summary judgment.
22 It's now been appealed to the Court of Appeals, but
23 it's relevant to this fact because a lot of the
24 witnesses are the same. Both of his father's and
25 mother's will were prepared by Lesley Moore. They

1 were witnessed by the same people. So the
2 Petitioner is aware and has been aware of the
3 witnesses in this case. We answered interrogatories
4 and gave him information as to Ms. Shoemaker's
5 doctors and potential witnesses in this case back in
6 January of 2021. So he's been aware of the
7 witnesses in this case for well over three years.
8 Nevertheless, he's not bothered to take a single
9 deposition in an effort to legitimately pursue his
10 claims or make any effort to determine if his claims
11 were supported. Knox sent an email back in June
12 30th of 2022 asking to move the case forward, to
13 schedule hearings on pending motions and set
14 depositions of Marshall's children. That did not
15 happen. With exception of two sanctions, Petitioner
16 was required to pay in his father's case,
17 Respondents are unaware of a single dime Petitioner
18 has had to spend to challenge his mother's will.
19 Meanwhile, Petitioner has caused his mother's estate
20 and his siblings as well as the PR's and trustees
21 associated with his mother's will and trust great
22 time and expense in responding to all of this. Like
23 I said we're almost at \$32,000 in expenses at this
24 point. It's Respondent's contention that this is
25 exactly the behavior and the scenario that the Rules

1 contemplate when they allow for the sanction of
2 striking pleadings to dismiss the action. Similar
3 to the case of Griffin Grading the Court has issued
4 an order that has been ignored by Petitioner.
5 Previous sanctions in his father's case he was
6 sanctioned at least twice and had no effect on
7 Petitioner's conduct, did not induce Petitioner to
8 comply with court orders. We stand here today
9 saying he still has not complied with court orders.
10 The possibility of the sanction of dismissal is in
11 no way is it a surprise. We have asked the Court to
12 strike the Petitioner's pleading and dismiss their
13 action not just once, not just twice, but three
14 times. And the latest request was in our motion of
15 sanctions filed April 6th, 2023. Defendants have
16 had almost a full year since this last motion to
17 fully answer and they have not done so. And I think
18 it's important to note under the case of Samples
19 versus Mitchell that even though the imposition of
20 sanctions is usually left to the sound discretion of
21 the trial judge, whatever sanction the judge imposes
22 should serve to protect the rights of discovery
23 provided by the Rules. Overly lenient sanctions are
24 to be avoided where they result in inadequate
25 protection of discovery. In the case of Downey

1 versus Dixon, Judge -- Chief Judge Sanders says the
2 right of discovery provided by the Rules was not
3 protected in any way. Neither was Ms. Downey
4 accorded the rights of discovery provided by the
5 Rules, nor was the sanction imposed against Mr.
6 Dixon a meaningful deterrent to those who might fail
7 to submit to discovery in the future. It is
8 perfectly obvious that few, if any, litigants would
9 willingly submit to discovery if the alternative
10 were simply paying \$50. Indeed it can be argued
11 that the sanction imposed in that case tended to
12 encourage rather than discourage non-compliance with
13 the Rules. So again, we're here on a Motion for
14 Sanctions. He's already ignored the Motion to
15 Compel for well over a year. Discovery hasn't been
16 answered. You know, if he attempts to say what he
17 submitted yesterday is an answer I think you have
18 those, under Rule 37 (a)(3), incomplete evasive
19 answers are to be treated as a failure to answer.
20 Again, it's been two years and eight months since
21 discovery hasn't been answered and at this point the
22 sanction needs to protect discovery and serve as a
23 deterrent. Our client should not have to continue
24 to participate at great time and expense in this
25 lawsuit where rules and court orders have been

1 flagrantly ignored. Thank you, Your Honor.

2 JUDGE QUEEN:

3 Okay, thank you. All right, Mr. McKibbon?

4 MR. MCKIBBON:

5 Thank you, Your Honor, may it please the Court.

6 There are a couple things from a timeline standpoint
7 we're not going to have any disagreement and beg the
8 Court's indulgence to go into a little bit more of
9 the history of the case and sort of the reasons why
10 we're here. And I'm going to focus on my client, of
11 course, because it's my client's interests at stake.
12 I will state, and I will state this on the record,
13 is if there are deficiencies then those deficiencies
14 come from me and me only. However, the deficiencies
15 that I will admit in this situation were inadvertent
16 and I'll take that up first through interrogatories,
17 because I think that those are the shortest and
18 easiest for me to address. First off, while I
19 understand opposition's argument that they are
20 deficient, an answer to an interrogatory is an
21 answer and being unaware of or not knowing is in
22 fact an answer. It is not hiding. It is not doing
23 anything other than providing the answer that the
24 client knows. And those answers were provided as I
25 had mentioned in previous discussions. My

1 understanding was that those, from my understanding,
2 was incorrect, because those had been provided in
3 March of last year after the -- after the order
4 (inaudible). To the degree that Ms. McLeod as she
5 says, and I do appreciate the recognition of the
6 personal matters, here's the simple fact of that.
7 My wife was diagnosed in -- well shortly before our
8 hearing and it was -- I -- it's similar that I
9 didn't know about Knox's diagnosis either until
10 after our hearing; with breast cancer to have a
11 double mastectomy and between December and the end
12 of March of 2023 had four different surgeries all of
13 which I was a part of. All of which were life
14 threatening. One of them she was under for over
15 nine hours. She has a six-and-a-half-year-old son
16 who I primarily take care of, etcetera. And I say
17 that, I wanted to say this, if I was taken off of
18 the balder in this time, that was why, and it's on
19 me. And that's a fact. The discovery history, this
20 becomes very important. I believe it was propounded
21 again whenever it was back in 2021 Mr. John Blincow
22 (inaudible) who is my client's attorney. My client
23 provided everything to him. On November 6th Mr.
24 Blincow wrote Knox an email that actually said I've
25 got the responses on my desk and Knox kindly, as he

1 always is, kindly said get them to me. Okay. It
2 was about a month later apparently that Mr. Blincow
3 was -- was either indefinitely suspended or
4 disbarred, I'm not sure which. As part of the
5 appeal in Dad's case we have issues related if --
6 that are very, very specific to Mr. Blincow and that
7 whole time period because my client Mr. Shoemaker
8 was not even aware of this event -- these events
9 occurring in the Supreme Court in the end of -- in
10 December of 2021 and did not find out about that
11 until the middle of January and at this point the
12 case with his father was in substantial jeopardy
13 because this is was when a summary judgement motions
14 had been granted and all of a sudden he found
15 himself without a lawyer scrambling, filing notice
16 of appeal, trying to do this, trying to do this, and
17 spent time working to find counsel. He spoke with
18 several childhood friends, Sam Outten and, you know,
19 his buddy Billy down in Florida that he went to
20 school with and another folks and they all called me
21 to address the appeal, work on Mr. -- they call him
22 Jim, Jim's appeal, which is what I took on and did
23 those things. Throughout that period from the
24 beginning of 2022, now Mr. Blincow has been -- he is
25 now gone, out of the picture, not -- no longer Mr.

1 Shoemaker's lawyer. I don't know how the Supreme
2 Court does in terms of requiring files to be turned
3 over but I knew none of this. Mr. Shoemaker knew
4 none of where his file was or how it would be dealt
5 with. But apparently it's provided to the Supreme
6 Court until such time as the Supreme Court knows
7 what to do with it. I entered the case in April for
8 the purposes of the appeal and sometime after that,
9 and I do not have the specific date, the Supreme
10 Court sent me the box that you have seen a picture
11 of. That box contained 100 percent of the files
12 related to Jim Shoemaker's case and Polly
13 Shoemaker's case. That is what it contained. Mr.
14 Blincow had previously indicated he had those
15 responses. Marshall had indicated to me he had
16 given everything to him and in -- in Jim Shoemaker's
17 case but of course as with Polly Shoemaker's case
18 and all of that had been provided (inaudible) that
19 this is what was represented to me and it was what
20 was represented by Mr. Blincow to Knox. But Mr.
21 Shoemaker, again, Marshall being the focus of this,
22 a party, he gave everything to his attorney that he
23 was ever asked for and it was essentially it
24 vanished into the hands of the Supreme Court for
25 some period of time due to what occurred with his

1 attorney. Mr. Haynsworth filed a Motion to Compel
2 on -- in December of 2021, December 3rd. This was
3 like I said November 6th is when Blincow was saying,
4 you know, saying I've got responses. So, they then
5 get -- but then December that's also when all this
6 is coming down on the head of Mr. Blincow which Mr.
7 Shoemaker had been completely unaware of. Opposing
8 counsel, I know, Your Honor's not (inaudible)
9 involved in the appeal but opposing counsel has seen
10 all of that in the briefing and the matter that is
11 pending with the Court of Appeals. Through no fault
12 of Mr. Shoemaker, through no fault of the Court it
13 was unique, as you know it's a Greenville case. I
14 know you were appointed, Your Honor, it probably
15 would've been a better situation for it to actually
16 be transferred here to venue for future filings but
17 it wasn't for whatever reason, but it certainly
18 wasn't Mr. Shoemaker. The hearing on that motion
19 was not scheduled for two years. There's a lot
20 being made about this massive period of time. The
21 motion that Knox made December 3rd, which was made
22 and submitted to Mr. Blincow, the then disbarred
23 counsel was never made aware to anyone. I was not
24 the lawyer until the spring of 2022 I knew nothing
25 of it. Marshall knew nothing of it. The Supreme

1 Court had the file knew nothing of it. And to
2 Marshall's understanding things have been provide
3 before and as I said Mr. Blincow already said I've
4 got responses on my desk. He apparently never sent
5 those. This was all in that critical time where he
6 was being suspended, files confiscated, again
7 however that works. But that motion was never
8 provided to me. I never saw it. It was served upon
9 Mr. Blincow but for whatever reason, and I am not
10 suggesting any fault here, but that motion wasn't
11 scheduled December 2021 until January of 2023. The
12 reason that I mentioned that, Your Honor, is because
13 I believe that in looking at this that that's really
14 the time to start looking at this. We were here
15 before you and I submitted that we would be
16 providing -- Mr. Haynsworth and I essentially
17 agreed, you know, relatively informal I'd be getting
18 him that discovery. As I stated with the personal
19 matters I did have my staff going through that box
20 of documents primarily for the purposes of taking
21 out and seeking documents that would've been
22 attorney/client privilege. On March 10th about two
23 months after you had sent -- you -- you issued an
24 order, get this to these folks in 10 days. Your
25 Honor, my client on -- that was a March 10th order

1 that you issued. I have a March -- I have March 6th
2 before you issued that order my client Mr. Shoemaker
3 sent emails to my office on March 6th, four days
4 before you issued that order, providing me the
5 responses, four days before you sent that order he --
6 - he gave me those which do reflect the absence of
7 his knowledge of -- of things regarding the
8 interrogatories and what he does know he -- he
9 shared.

10 JUDGE QUEEN:

11 That was March 6th, '23? I'm sorry to interrupt
12 you.

13 MR. MCKIBBON:

14 Yes, Your Honor. And I'm not -- I've -- obviously,
15 you know, and I'm not seeking to admit anything to
16 exhibits but this was the -- I just noticed -- I
17 took out the portion of the response and just as a
18 confirmation you can see discovery responses
19 required urgent and there are two different ones.
20 One is that one which related to interrogatories and
21 the other email I have here regarding was -- listed
22 one through 16. One through 16 involved request to
23 produce. One through 18 were the interrogatories.
24 He did that before your order came out. I'm sorry.

25 JUDGE QUEEN:

1 You still need this?

2 MR. MCKIBBON:

3 During that time myself, my one assistant, and my
4 paralegal in response to that also it was you've got
5 to get these over to them, got to get them over. I
6 make sure, I went through to make sure the
7 attorney/client privilege documents were taken out
8 and the documents as quickly as we could do that, at
9 that point, were provided by that box. That has
10 been referred to numerous times now as a document
11 dump. Respectfully we disagree with that, Your
12 Honor. It involved everything for both cases. That
13 was on March 23 by hand delivery, you see that in
14 the motion with the letter that included the
15 (inaudible) and the full and complete file with the
16 exception of any privileged communications provided
17 to you for inspection and copying. Please note this
18 is the only copy of the full and complete file,
19 which they still have. The very same day without
20 even looking in it Mr. Haynsworth wrote back and
21 said not accepting this. The very same day. You've
22 dumped documents on us and then -- and -- and in
23 almost the exact same language you heard about
24 saying impossible to glean the differences between
25 the files and otherwise. Number one, that is one

1 box of documents and it is not some extraordinary
2 amount. Number two, we had been here before you to
3 say that we would provide everything without
4 objection and it was critical to me given the very,
5 very clear personal animus that I heard from -- that
6 I know exists between the parties, this is not
7 related to Mr. Haynsworth but his advocacy on their
8 behalf, that there better be every single document
9 that existed to go to the other side. Now Mr.
10 Haynsworth when he wrote me flat out stated in his
11 email to me which I just wanted to -- to have --
12 pull that up, it said I only want Jim's -- I don't
13 want anything to do with Jim's file, I only want
14 Polly's stuff. But the requests for production of
15 documents requests two, three, four, 12, 14 and 15
16 as I stated at one point in an email to Knox as well
17 as to you, are inextricably linked. The request
18 specifically talk about communications with Jim,
19 between Jim and Polly, between Polly and Marshall,
20 between Marshall and the children or otherwise. The
21 specifically all documents which support the claims
22 asserted by Petitioner, well we believe documents
23 related to his case in -- relate to Polly's case,
24 any and all documents which are relevant to the
25 claims or defenses in this case. Well we believe

1 documents from both cases have relevance to Polly's
2 case. All documents related to the facts in
3 Petitioner's petition. Well, these parties were
4 married. We have wills and issues that completely
5 interlock with one another. Therefore, making them
6 very possibly involve and relate, they relate to the
7 facts because they do. Any correspondence received
8 regarding Polly Shoemaker, Jim Shoemaker, Sloan, Joe
9 Johnson or Lesley Moore. Copies of any
10 correspondence sent or received by Marshall from Jim
11 or Polly. I understand it's a separate case but all
12 of these did very much include questions related to
13 things involving Jim and I -- I made the -- the
14 point in the email long ago as well as -- as I do
15 today, they are inextricably linked. We have no
16 intention nor attempting to shift any burden. The
17 purpose of -- of -- of discovery is to be able to
18 give to the other party everything that they may
19 need that we would be using or otherwise or
20 questions that they -- that they are asking to see
21 what we know or what we have. The purpose of
22 providing that box was very simple. It was provided
23 as kept in the ordinary course of business as
24 provided by the South Carolina Supreme Court,
25 completely and totally undisturbed, after

1 representations have been made by a previous
2 attorney whose file was taken from him and not
3 provided to us for many, many months later
4 (inaudible). It wasn't even reviewed. It was
5 refused to be reviewed. Knox wrote the same day and
6 said forget it, not looking at it, come get it. I
7 don't even have it today. It still sits. The --
8 when it's looked at in its totality, Your Honor,
9 again, and Ms. McLeod was correct when she -- you
10 know, mentioned convoluted timeline. This is no
11 doubt about it. A great deal in terms of years of
12 delay of this case is largely due to the original
13 counsel's situation with the Supreme Court, number
14 one. And then when I was finally made aware of this
15 motion and we did in fact come before your Court.
16 This is where I will -- I will say, Your Honor,
17 again on the record, to the degree that a mistake
18 was made and it was indeed inadvertent with not only
19 a small staff, but very, very intense things going
20 on at home, that I failed. I failed to -- to
21 provide those things in those 30 days. My client
22 did in fact provide me with the answers even before
23 your March 10th order and then with my skeleton crew
24 I did in fact direct them to get all of the
25 documents out of the -- the -- the Supreme Court box

1 attorney/client privilege and make sure the other
2 party had them so that they had 100 percents of the
3 documents, they could be responsive to all of these
4 requests which did in fact intertwine both Jim and
5 Polly Shoemakers. And that was in March, which
6 technically, again, my fault based on your March
7 10th order was three days delinquent. But they were
8 provided. Interrogatories that is pure inadvertence
9 whether Your Honor would say that -- that it is
10 inexcusable neglect on my part or not, I would hope
11 not. They were drafted, not provided. But again my
12 client provided, my client provided his responses to
13 those and he provided them truthfully on March 6th
14 before your order. And, Your Honor, I want to
15 address first and foremost we do have an appellate
16 case pending. A 100 percent of correspondence since
17 Knox filed that last motion, 100 percent has been
18 related to us working together, I mean obviously
19 against one another, on the appeal of Mr.
20 Shoemaker's case. That has -- that has entirely
21 been the focus there is no doubt about that. And
22 once we, despite Knox saying I don't accept this, we
23 didn't receive any letters of deficiencies of you
24 didn't answer this one or this one or this one. We
25 didn't receive anything saying it was just I don't

1 take you can't just hand me a box of documents when
2 I wrote and said these were kept in the ordinary
3 course of business provided it contains every single
4 thing responsive to this case and your questions.
5 Your Honor, the -- there's an important case and --
6 that I think is -- is helpful, Karppi v. Terrazo,
7 it's a '97 case. In this case pleadings were struck
8 and the Court of Appeals reversed it. A party
9 submitted discovery requests and the discovery
10 requests included written discovery as well as a
11 deposition notice. On February 27th, 1996 sending a
12 deposition notice to the opposing party, the
13 opposing party was Ogden Teck, for a guy named
14 Ogden; wanted to depose Ogden on March 14th. The
15 defendant verbally failed and refused, verbally,
16 very, very clearly stated not going to put him up,
17 not giving him to you for a deposition, which I
18 think is very important. It was very specifically
19 refused. May 15th of '96 the Plaintiff filed the
20 Motion to Compel. June 29th the court ordered full
21 compliance and for the deposition to be given as
22 requested. And this case was set on -- it was
23 already set on -- on a schedule and this was June
24 29th with the court at that time setting the trial
25 for August 12th, only six weeks later. That

1 happened on the same day. August 6th, six days
2 before the trial was set the opposing party, Ogden,
3 still refused to appear for the deposition. Then
4 August 9th, three days before this set trial another
5 Motion to Compel was filed, sanctions were sought.
6 They were struck and the Court of Appeals reversed
7 it. Court of Appeals very clearly stated, and this
8 can be found in numerous cases, but this is probably
9 some of the best language. When the court orders
10 default or dismissal the sanction itself results in
11 default or dismissal, the end result is nevertheless
12 harsh medicine that should not be administered
13 lightly. Before invoking this severe remedy, the
14 trial court must determine that there is an element
15 of bad faith, willfulness or gross indifference to
16 the rights of other litigants. The sanction imposed
17 should be reasonable, and the Court should not go
18 beyond the necessities of the situation to foreclose
19 a decision on the merits of a case. Sanctions
20 should be aimed at the specific misconduct of the
21 parties sanctioned. It cites Balloon versus --
22 Balloon Plantation versus Balloon Head. There's a
23 couple of other cases that say exactly the same
24 thing. Sanctions should be a rifle shot, not a
25 shotgun blast. In this case the sanction was a

1 hydrogen bomb. The courts have held there must be
2 some element of bad faith and willfulness. I
3 understand the opposing party's argument. I do not
4 believe any importance applies to this original two-
5 year gap between the December 2021 Motion to Compel
6 and when -- when you and Mr. Haynsworth and I and
7 Ms. Moore met in this courtroom last January. The
8 reason for that is the only person (inaudible) was
9 John Blincow, we didn't have any files, we had no
10 documents, we had nothing until the Supreme Court
11 order and at that case everything -- at that point
12 in time everything was about the appeal of Jim
13 Shoemaker. And when this came up we did in fact
14 make agreements on getting things out. That timing
15 was off. The off was because of me. Maybe for not
16 having enough staff. Maybe even from the fact that
17 I was extremely focused on not one but four separate
18 surgeries which in fact did go through March, which
19 I'll be glad to provide all of those dates
20 specifically which was a double mastectomy my wife
21 and took three separate reconstructions, they were
22 very dangerous and required months and months and
23 months of recovery with a lot of attention from me
24 at home. Mr. Shoemaker did provide answers on March
25 6th before you did -- before you even issued that

1 March 10th, here's your 10 -- here's your 10-day
2 window. He -- he gave that. He also has told me
3 numerous times as I've represented to the Court that
4 he gave all that to Blincow and Blincow had all of
5 that and I represented to the other side that the
6 entirety was provided in that box. All of it. And
7 that was precisely to avoid any claim that something
8 wasn't provided, but the cases are inextricably
9 linked. And despite Mr. Haynsworth saying I don't
10 want any of Jim's stuff, I want Polly's, come get
11 this box I'm not looking at it. We're not going to
12 spend our time looking at it. I provided it for
13 inspection and copying. We believe they were all
14 responsive and -- and they have those since that
15 time. It is not remotely the intent,
16 intentionality, willfulness, or bad faith. I would
17 never do such to the Court. Certainly, not to a
18 client ever. But even by Knox's own knowledge from
19 an email from Mr. Blincow, Mr. Blincow said I have
20 the responses which indicates that my client had
21 already done his part to get it to his first lawyer.
22 And when it finally came back around and the file
23 did exist and we knew everything and we were here,
24 we at that time had all of those same documents and
25 handed them over, albeit I was three days late from

1 your order for which I sincerely apologize. If
2 sanctions would be awarded provide them against me.
3 I do not believe that the willfulness and bad faith,
4 the Court specifically states, I mean, that those
5 must be found. This Court specifically state that.
6 I read you very -- I went over very closely a case
7 where there was a reversal where when you saw and
8 heard a party absolutely saying we are not going to
9 do this, forget it, right up to the day of trial and
10 the Court of Appeals even reversed a dismissal of
11 saying (inaudible). This case has far too much at
12 stake and there's no resolving these matters. We
13 have -- the appellate case has to take its run as
14 well. The -- the opposing parties want to blame
15 Marshall or -- or, you know, (inaudible) blame me
16 but if you blame Marshall for -- otherwise
17 (inaudible) us for all of this delay. It's -- and
18 that's just not so. Two years of delay was purely
19 systemic. And if it was so important to them who
20 filed it in December of 2021 they could have quite
21 easily have called the Court and said hey, we've got
22 this Motion to Compel, we need to get this on the
23 record. We -- we need to hear this now, you know,
24 we filed this. That never happened. They -- they
25 sat on it and I'm not -- I don't want to cast

1 aspersions in their directions but it is a reality.
2 They filed it and then just waited. I've had to
3 call courts many, many, many times wondering why we
4 haven't gotten something scheduled yet. And I would
5 think that two years of waiting would've caused that
6 concern. And to that point it's just to suggest,
7 Marshall didn't cause that delay, and didn't cause
8 the delay in this hearing either. We have truly a
9 period of time between January where a first Motion
10 of compel -- to Compel was held and March 23rd.
11 That is the effective time when you really look at
12 what happened. A Motion to Compel that was heard in
13 January, an agreement reached, which I through my
14 office technically failed upon and my client did
15 not. The deficiencies to the degree that they
16 suggest exist on interrogatories, all I can state to
17 you is my client can only say what he can say. He
18 doesn't recall things; he doesn't recall things.
19 They can use that as they -- as they see fit.
20 People can only state what they know based on the
21 information they have at the time and that was the
22 information provided and it was provided without
23 objection. And 100 percent of the documents were --
24 were produced on cases we believe were inextricably
25 linked. Now, Your Honor may feel that that was done

1 incorrectly. There's no doubt that your order was
2 not followed technically. That's 100 percent on me
3 and I sincerely apologize to Your Honor for that.
4 But through monetary sanct -- again, Knox said I'm
5 not even looking at them. That was in March so I
6 don't know what's happened since March other than us
7 coming over here because he said he wasn't looking
8 at them. We're not going to go through these will.
9 I don't want any of this stuff. If sanctions are
10 appropriate (inaudible) they do, they are to be
11 reasonable I do plead with the Court and recognize
12 that any delinquency that did not comply with the
13 order wasn't -- it wasn't Mr. Shoemaker. He
14 provided the responses to me before your order even
15 issued. And I was three days late for your
16 deadline. Thank you, Your Honor.

17 JUDGE QUEEN:

18 Thank you. Okay, Ms. McLeod, I'll let you have the
19 last say.

20 MS. MCLEOD:

21 Thank you so much. This is kind of out of order.
22 I'm going to go in the order that he went in. I
23 think it's undisputed discovery has still not been
24 complied with as of today. You have the answers to
25 interrogatories, it's clear under Rule 37(A)(3) any

1 answer is not an answer, you know, a base of
2 answers, non-responsive answers do not count as
3 answers. He makes a big deal out of these being
4 done in March of 2023. He sent -- didn't send them
5 to until yesterday and once again it's dated March
6 26, 2024. Once again he brought the lawsuit. How
7 does he not know any of these facts? The burden is
8 on him to prove his case. It's not -- this is not
9 Shoe's case and if documents are inextricably linked
10 that's fine, he needs -- you know, he can get us
11 documents in both but the request for production
12 require that he give written responses and specify
13 which documents are responsive to each request for
14 production. He didn't do that. I mean, he dumped
15 documents on us. If he thinks that's complying with
16 the rules he's probably the only one in the room.
17 And as you know this is typically done by Bates
18 stamping and given written answers where you
19 reference page numbers of your documents. That's
20 not done. I mean this -- once again, this is -- he
21 is the Petitioner, he is the Plaintiff, the burden
22 is on him to prove the case and he basically is
23 saying my client just doesn't know anything and I
24 dumped on you everything we have. Well that --
25 neither of those are complying with the rules of

1 discovery. So discovery as of today still has not
2 been complied with. Furthermore, we've got a letter
3 from Knox, it is detailed in your timeline, it was
4 from Knox to Mr. McKibbin where he lets him know
5 that there is a pending Motion to Compel discovery
6 in Polly Shoemaker's case as well as a pending
7 Motion to Dismiss that case. That's in June of
8 2022. So if we want to fight about a timeline,
9 okay, so maybe he didn't know the Motion to Compel -
10 - about the Motion to Compel in December 3rd, 2021
11 because he wasn't on the case yet. He knew at the
12 latest by June 30th, 2022 because we sent him a
13 letter saying that. You know, regardless of
14 whatever delays got us here, you know, we have stuff
15 going on in our personal life. I had a baby in
16 July, we were under court protection, this is my
17 husband, he's co-counsel on the case, he was also
18 under court protection. I had to be brought up to
19 speed of this because Knox has cancer and stopped
20 working. So, yeah, it's taken us some time but as
21 soon as I got back from maternity leave I got on the
22 phone with your office and got this scheduled and it
23 did take us awhile to get on the calendar but I
24 believe I got it scheduled, you know, months ago,
25 January at the latest. So once again he -- he talks

1 about -- a lot about the appeal. That's kind of
2 irrelevant to us. He wasn't -- he could've not
3 taken this case. He was retained for the appeal and
4 for Polly's case. Knox asked him to come get the
5 box of documents, it's been sitting there, he didn't
6 come get it so that's on him, that's not on us. We
7 didn't accept it. I think it's pretty clear we
8 didn't accept it. We hadn't gone through it. I do
9 not think it's fair absent a court order for us to
10 charge our clients to do his discovery, which would
11 be Bates stamping those documents and figuring out
12 what answers which request. He never filed a motion
13 for additional time. He never communicated with
14 counsel. None of this was communicated to Knox.
15 None of it was communicated with me. We have a case
16 with the Court of Appeals together and yesterday is
17 the first I've ever heard from him, ever. He didn't
18 ask for court protection, and during this period of
19 time it's relevant. I was under court protection
20 and so was my co-counsel and Knox obviously had some
21 health issues going on. As far as the Supreme Court
22 Blincow stuff, that's an excuse that has been used
23 and used and used and put to death. Like that's
24 over, he's on the case, we've had hearings. We've
25 had a Motion to Compel. We've got motions for

1 sanctions, like I think we can all agree that that
2 needs to quit being brought up. There -- there was
3 also April 19th, 2023 order from Your Honor to add
4 indispensable parties, that has also not been
5 complied with. I did not get a proposed amended
6 pleading until yesterday at 5:42 p.m. I mean, I
7 think just shows repeatedly that no orders from the
8 Court are going to be respected by Petitioner. I do
9 have an affidavit for attorney's fees that have to
10 do with this case only -- or this motion only.
11 Again, I think it's important to note that under the
12 trust and probate code allowing for recovering costs
13 and attorney's fees do not depend upon bad faith or
14 improper motive. So, the statutes that we are under
15 do not actually require any proof of bad faith.
16 About the attorney's fees for this motion that we
17 are here for today. He references a Balloon case.
18 I also came across that case in my research. I
19 think it's interesting to note that in that case
20 pleadings were dismissed where a court had ordered
21 that they -- that discovery be complied with by noon
22 and the discovery got there later that same day.
23 So, yeah, the Court of Appeals said that's not
24 appropriate, you got it the same day, it was just
25 afternoon. Our case couldn't be farther from that.

1 They've done nothing for two days shy of a full year
2 since the last Motion for Compel, like not to
3 mention how long the outstanding discovery has been.
4 I mean, you know, he's done nothing for a year.
5 We're not talking about a couple hours, the same
6 day, which is what the Balloon case is about. Let's
7 see. Attorney's fees continue to be incurred. We
8 were awarded attorney's fees in the other case and
9 they haven't been paid. So ordering attorney's
10 fees, ordering sanctions, they are not going to
11 change their conduct 'cause they're just not going
12 to pay them. I mean, maybe if you were to order
13 them against counsel that might change his conduct
14 but it's not going to change his client's conduct.
15 Again, I think it's undisputable that discovery has
16 not been complied with. You see the answers. He's
17 the Petitioner. He's -- his answers say he doesn't
18 know anything, he has no information. That's just
19 not how this works. And the same with the request
20 for production. You can't dump a box of documents
21 on somebody when the rule says you have to give
22 written responses. You were supposed to say which
23 documents are responsive to which request for
24 production. It is not our job to do that for him.
25 Our client should not continue to further -- to

1 further incur costs, which we are both in this case
2 and the other case. And again, as far as any
3 requirement for us to prove bad faith or ulterior
4 motives, I'm happy to brief that. I'm happy to
5 speak further on that today or at a later time. But
6 I think it's pretty obvious that his petition was
7 brought in bad faith over ulterior motives. I mean,
8 I don't know that we have to prove that. I'm not
9 conceding that we have to prove that but he brought
10 this action, not to genuinely challenge his parents'
11 wishes, but to use that challenge to embarrass his
12 siblings, to cause unnecessary expense to his
13 siblings and to his parents and his long-time -- and
14 their long-time trusted estate attorney Lesley
15 Moore. It's -- I mean, it's the willful nature of
16 his conduct that we believe are complete.
17 Attorney's fees are justified. You know, he doesn't
18 care how much this costs the estate because I think
19 he knows that ultimately he's not going to win and
20 he's not entitled to anything. He knows his parents
21 cut him off. This was a super contentious
22 relationship all throughout his life and he's been
23 dishonest about that in his depositions in other
24 cases. But it's pretty clear that, you know, he
25 lacked any sort of relationship with his parents,

1 Now he's challenging this and he doesn't care how
2 much it costs the estate because it's not his money.
3 And I think at this point I can't think of many
4 scenarios where it would be more appropriate to
5 dismiss a case as a sanction. I mean, at this point
6 how many years down the road we are. I mean, and
7 the thing is any delay that he's saying was our
8 fault, like we didn't call you, we didn't get a
9 motion, that just gave him more time to do what he
10 was supposed to do and he still didn't do it. Like
11 most people -- most attorneys when a Motion to
12 Compel is served on them comply, right. You comply
13 before the hearing and it goes away. That was not
14 done. I mean, he said -- he came to the hearing and
15 said he would do it in 30 days, we still had to get
16 an order that said he'd do it in 10 days, he still
17 didn't do it. I mean, I think it's pretty clear
18 they're not going to comply with court orders and I
19 think at this point the only way to deter and to
20 uphold the discovery process would be to strike
21 their entire case. Thank you, Your Honor.

22 JUDGE QUEEN:

23 Okay, thank you. All right. Well, so moving
24 forward this is what we're going to do. I do want
25 to take a look at the cases that both of you have

1 referenced. So let's do this, I want you to email
2 it. Let's just email -- email me any of the cases
3 that you've referenced. Why don't we say let's do
4 that by Friday at 5:00, so that's -- that'll be two
5 days. Just send me an email, it doesn't have to be
6 anything, just, you know, I think you referenced
7 Ogden or something like that.

8 MR. MCKIBBON:

9 Yes, Your Honor.

10 JUDGE QUEEN:

11 And I apologize that I'm not the -- I'm not a law
12 library guy so you'll have to -- you have to point
13 me in the right direction. So send me your -- send
14 me your cases that you want me to take a look at. I
15 will -- and I'll take a look at those and then, you
16 know, consider both of your arguments here today.
17 And I'll make a ruling here at a later date. I do
18 want to say, Mr. McKibbon, you know, I certainly
19 sympathize with you with the issues that you're --
20 that you have dealt with in your fam -- you know
21 with the health of your family. You know, the
22 concern I have is that today's the first day I've
23 heard about it. And I get it that some people, you
24 know, you don't want to put your personal business
25 out there to everybody but notifying me that hey,

1 I've got some family stuff going on and I can't
2 comply with this, I think, you know, I know you
3 haven't been over here that often but the times that
4 you've been over here I at least I hope I have been
5 pretty reasonable and understanding as far as I
6 think of Mr. Haynsworth and what they've dealt with.
7 I have been, or tried to be at least, at least I
8 hope I have been, pretty understanding and gracious.
9 So, I say all that to say yes, you are an attorney
10 but we are people and I'm understanding of things
11 like this. I'm a little disappointed that if things
12 are going on that you can't comply with orders I
13 don't know why here we are a year later that I'm
14 just now hearing about it. And I'm not asking for a
15 response, I'm just putting that to you that that's -
16 - that's something that, you know, going forward
17 maybe just bit of advice you don't have to tell me
18 these are what are I'm dealing with just hey, I've
19 got a personal family emergency and -- and it'll be
20 -- and it's okay and I think it would surprise me if
21 the black robes of this state are not understanding
22 and gracious with that. So, I just want to say that
23 kind of as our last word moving on. Get me those
24 cases please by Friday at 5:00. I'll take a look at
25 them and we will go from there. Is there anything

1 else that we need to put on the record here today?

2 MR. MCKIBBON:

3 Just this, Your Honor, I want to thank you for your
4 comments on that. I can tell you non-compliance
5 with the orders is neither my practice nor habit nor
6 has it been a concern before. I am deeply sorry
7 that I was late on that order that I -- that was
8 mine to provide to you. And I understand I could've
9 brought an indication of a family emergency. All I
10 can say is I was -- I was asking (inaudible) about
11 that.

12 JUDGE QUEEN:

13 I understand. I understand. Okay. Well, I'll take
14 the matter under advisement. Get me those cases and
15 we'll go from there. Okay?

16 MS. MCLEOD:

17 Thank you, Your Honor.

18 JUDGE QUEEN:

19 Thank y'all very much. Y'all be safe on your drive
20 back.

21 MS. MCLEOD:

22 Thank you.

23 MR. MCKIBBON:

24 Thank you, Judge.
25

CERTIFICATE

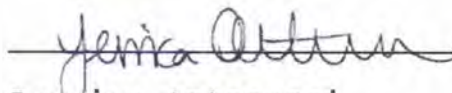
I, the undersigned, Jessica Antonucci, Notary Public in and for the State of South Carolina do hereby certify that:

That the foregoing tape was transcribed at the request of Jenna McLeod, Esquire;

A court reporter was not present at the proceedings and therefore cannot guarantee that every word of testimony could be heard or that the speaking parties are properly identified;

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 25th day of July, 2025.



Jessica Antonucci

Notary Public for South Carolina

My Commission expires 7/06/2025



STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF GREENVILLE)

C.A. NO.: 2020-ES-23-00073

In the matter of:)

Mary Sloan "Polly" Shoemaker
Decedent)

James Marshall Shoemaker, III)

ORDER

Petitioner,)

vs.)

Lesley Moore, Esquire as Personal
Representative and Trustee, Edward Sloan
Shoemaker and Jonathan Evans Shoemaker
as Beneficiaries)

Respondents.)



This matter came before the Court for a hearing on Wednesday, April 3, 2024, pursuant to Respondents' Motion for Sanctions, originally filed on April 6, 2023, in which the Respondents requested the sanction of striking Petitioner's pleadings for failure to comply with this Court's Order dated March 10, 2023.

Background and History

The background of this case is protracted and complicated. Petitioner originally filed a case contesting the will and trust of his father, James Marshall Shoemaker, Jr., in the Greenville County Probate Court on June 27, 2019. Petitioner's mother, Mary Sloan "Polly" Shoemaker, was named as a Respondent in that action. However, Ms. Shoemaker passed away on December 28, 2019, and the Petitioner filed the present action in the Greenville County Probate Court on July 24, 2020, contesting her will and trust. On January 5, 2022, then Greenville County Probate Court

1

Associate Judge Clayton Jennings recused himself in the entirety from the Estates of James Marshall Shoemaker, Jr., and Mary Sloan "Polly" Shoemaker. On February 1, 2022, the undersigned was appointed as special probate court judge by the Chief Justice of the South Carolina Supreme Court for all further hearings in the James Marshall Shoemaker, Jr. case and the Mary Sloan "Polly" Shoemaker case.

In the present case of Mary Sloan "Polly" Shoemaker, discovery requests were originally served on Petitioner on July 30, 2021. As a result of Petitioner's failure to answer the discovery requests, Respondents filed a motion to compel on December 3, 2021. Thereafter, Petitioner's then counsel, John Blincow, was suspended; and William McKibbon was retained, filing a notice of appearance on April 1, 2022.

On January 4, 2023, the Court heard arguments regarding motions in both the James Marshall Shoemaker, Jr., and the Mary Sloan "Polly" Shoemaker matters. At the onset of the hearing, Mr. McKibbon informed the Court that as to the motion to compel discovery, the Petitioner consented to a grant of the motion with a reasonable time to respond. Mr. McKibbon also consented to waive objections to discovery except for attorney-client privileged items. Both parties consented to the Petitioner providing responses to discovery within thirty (30) days of the date of the hearing. On the record, the Court granted the motion to compel within thirty (30) days.

No Order regarding the motion to compel discovery was issued at that time under the reasoning that the thirty-day deadline would run prior to the issuance of the Order regarding the other matters before the Court on January 4, and based upon Mr. McKibbon's assurances. On February 24, 2023, Respondents' Counsel notified the Court, via letter, that the Petitioner had failed to respond to discovery as agreed to on the record and asked the Court to strike Petitioner's pleadings. The Court was reluctant to sanction a party without an Order in place, so rather than

2 

strike the Petitioner's pleadings at that time, this Court issued an Order on March 10, 2023, ordering Petitioner to comply with discovery within ten (10) days.

Petitioner then failed to comply with the Court's Order of March 10, and on March 22, 2023, Respondents' Counsel wrote a letter to this Court renewing their request that Petitioner's pleadings be stricken as a sanction. On March 23, 2023, Petitioner's Counsel turned over a large box of documents to Respondents, including a letter stating this was his entire file as received from John Blincow, the former lawyer on the case. Petitioner still did not issue answers to interrogatories or written responses to Respondents Requests for Production.

Respondents filed a Motion for Sanctions on April 6, 2023, and again asked the court to strike Petitioner's pleadings and dismiss all pending claims of Petitioner. In addition, Respondents asked for the costs and attorney's fees associated with this motion pursuant to S.C. Code §§ 32-1-111 and 62-7-1004.

On April 3, 2024, one day prior to this hearing on the Motion for Sanctions, Petitioner submitted interrogatory responses to Respondents but still failed to respond to the Request for Production of Documents. Respondents argued that the evasive and incomplete answers provided by Petitioner should be treated as a failure to answer under Rule 37(a)(3), SCRCP.

Legal Standard

The selection of a sanction for discovery violations is within the trial court's discretion. *Kershaw County Bd. Of Educ. V. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990). If a party fails to obey an order to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment. Rule 37(b)(2)(C), SCRCP, *Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716 (Ct. App. 1999). "In determining the appropriateness of a

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sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice.” *Id.* at 199. Before ordering dismissal, “the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants.” *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 543, 489 S.E.2d 679, 682 (Ct. App. 1997).

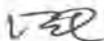
Sanctions in the Present Case

1. The March 10, 2023, Court Order was Ignored by Petitioner

Similar to the case of *Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc.*, in this matter, Court orders have been issued and ignored by Petitioner. 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999). A motion to compel discovery was heard on January 4, 2023, and Petitioner’s Counsel assured this Court that he would respond to discovery, without objections, within thirty (30) days. Petitioner did not respond, and Respondents asked for the pleadings to be stricken as a sanction. Instead, this Court issued a court order on March 10, 2023, giving the Petitioner an additional ten (10) days to comply with discovery. The Petitioner ignored the March 10 Order.

2. Previous sanctions have not induced Petitioner to comply with Court Orders

Petitioner brought a similar case contesting the will and trust of his father, James Marshall Shoemaker, Jr. which was dismissed at the summary judgment stage in probate court, affirmed by the court of common pleas, and is currently on appeal to the South Carolina Court of Appeals. Petitioner was sanctioned twice in that case and attorney’s fees were awarded against him. Petitioner has not paid any of the attorney’s fees that were ordered against him. Sanctions have not had any effect on Petitioner’s conduct or induced Petitioner to comply with court orders. Furthermore, the possibility of the sanction of dismissal is not a surprise to Petitioner, as

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Respondents have asked the Court to strike Petitioner's pleading and dismiss this action three (3) times. The latest request was in a motion for sanctions filed April 6, 2023, and Petitioner had almost a full year between April 6, 2023, and the last hearing on April 3, 2024, to fully answer discovery and failed to do so.

3. Petitioner acted in Bad Faith, Willfully, and with Gross Indifference to the Rights of Other Litigants

Counsel for the Petitioner argued that the case of *Balloon Plantation Inc. v. Head Balloons* was similar in that the sanction of dismissal is too harsh. In that case, discovery was ordered by no later than noon, and the discovery was mailed the day before it was due, but the postal service did not deliver the discovery until sometime in the afternoon on the day discovery was due. 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990). The present case is distinguishable from the *Balloon Plantation* case where discovery responses were a few hours late. In the present case, discovery was originally requested July 30, 2021, and Petitioner's current Counsel was aware of the deficiencies in discovery at least since he was notified by letter from Respondents' counsel of the pending motion to compel on June 30, 2022, making the answers to interrogatories almost two years late when they were finally emailed on April 2, 2024, the day before the present hearing.

Petitioner's interrogatory responses are evasive and incomplete. Petitioner claims to have no photographs, plats, sketches, or other prepared documents; no fact witnesses; no expert witnesses; and no recollection of any discussions with his mother. Petitioner refused to disclose conversations he had with his children. When asked about verbal conversations the Petitioner had with his mother, Petitioner stated he did not recall. Furthermore, the Petitioner has never issued responses to Respondents' Requests for Production.

Dumping the box of documents on Respondents' Counsel is far from compliance with the Petitioner's outstanding discovery obligations. Petitioner attempted to shift the responsibility of

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complying with his discovery requirements to the Respondents. Were the Court to allow this, the Respondents would bear the burden of responding to their own requests for production. Furthermore, the documents in the box were mixed from the files of both James Marshall Shoemaker, Jr., and Mary Sloan "Polly" Shoemaker. This made discovery of the requested documents in the Mary Sloan "Polly" Shoemaker case virtually impossible.

Petitioner's actions have caused his mother's estate, his siblings, the Personal Representative, and the Trustee associated with his mother's Will and Trust great time and expense. Petitioner also pursued a case in his father's will and trust and both cases have similar witnesses, as their wills and trusts were drafted by the same attorney and executed on the same date in front of the same witnesses. Respondents' interrogatory answers on January 6, 2021, detailed their potential witnesses. Petitioner has been aware of the witnesses in this case for well over three years. Nevertheless, Petitioner has not taken a single deposition in an effort to move this case forward.

This situation, where Petitioner disregarded his discovery obligations, was aware of multiple letters from the Respondents to the Court requesting relief, and flagrantly ignored a Court Order, is exactly the scenario the Rules of Civil Procedure contemplate when allowing for the sanction of striking the pleadings and dismissing the action. Dismissal is the only sanction that protects the rights of discovery as provided for by the rules and acts as a meaningful deterrent to those who might fail to submit to discovery in the future. "It is perfectly obvious that few, if any, litigants would willingly submit to the discovery provided by the Rules if the alternatives were simply paying \$50." *Downey v. Dixon*, 294 S.C. 42, 45-46, 362 S.E.2d 317, 318 (Ct. App. 1987). Respondents should not have to continue to participate, at great time and expense, in a lawsuit where the Rules of Civil Procedure and Court Orders have been obviously ignored.

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Due to Petitioner's continued failure to comply with discovery obligations and Court orders, the appropriate sanction is to strike Petitioner's pleadings and summarily dismiss all pending claims of Petitioner. No less drastic sanction would be effective in this case. I considered the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice. The multiple discovery abuses blocked Respondents' attempts to conduct meaningful discovery even after the case has been pending for several years.

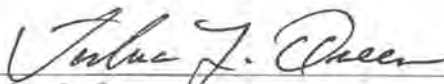
Further, since this Motion is due to Petitioner's conduct, Respondents are awarded attorney's fees and costs in the amount of \$11,449.67 pursuant to S.C. Code Ann. §§ 32-1-111 and 62-7-1004. Justice and equity require the awarding of said fees and costs as submitted to the Court by the Amended Affidavit of Counsel for Respondent. Regarding such fees, the Court considered all the elements required under the case of *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991) and finds such fees to be reasonable. Specifically, the Court assessed (1) the nature, extent and difficulty of the case, (2) the time necessarily devoted to the case, (3) the professional standing of counsel, (4) the contingent nature of the compensation, if any, (5) the beneficial results obtained, and (6) customary legal fees for similar services.

Order

Petitioner's pleadings are stricken, and all of Petitioner's claims are summarily dismissed in this matter. Petitioner is ordered to pay attorney's fees and costs of \$11,449.67 as enumerated in the Amended Affidavit for costs and fees dated April 4, 2024. Petitioner is ordered to pay such costs and fees within ten (10) days of entry and execution of this Order.

AND IT IS SO ORDERED.

May 17, 2024
Gaffney, SC


Joshua L. Queen
Special Probate Judge
Greenville County, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE PROBATE COURT

C.A. No.: 2022-ES-11-00088

In the matter of:

Mary Sloan "Polly" Shoemaker,
Decedent

James Marshall Shoemaker, III
Petitioner,

v.

Lesley Moore, Esquire as Personal
Representative and Trustee, Edward Sloan
Shoemaker and Jonathan Evans Shoemaker
as Beneficiaries,

Respondents.

**MOTION TO RECONSIDER, ALTER
OR AMEND ORDER GRANTING
RESPONDENTS' MOTION FOR
SANCTIONS**

Petitioner, by and through his counsel, pursuant to Rules 59(e) and 60(b)(1) of the South Carolina Rules of Civil Procedure, files this his Motion to Reconsider, Alter or Amend that certain Order entered May 17, 2024 granting Respondents' Motion for Sanctions and striking Petitioner's pleadings.

Introduction

Petitioner submits that upon reconsideration of the matter before the Court, that the record does not support the required legal findings for striking of a party's pleadings, the most extreme and harsh of all sanctions available to the Courts. Petitioner respectfully requests the Court a candid review and a determination that Petitioner's conduct did not rise to the level necessary to justify the striking of pleadings under applicable case law and guidance of the facts contained therein. Petitioner submits that such candid review will show that a combination of both procedural and substantive fact existed in the historical record that should give the Court

pause and compel it to determine that though inadvertence or otherwise excusable neglect may have been present in this discovery process, the Petitioner did not engage in a purposeful and willful plan, an intentional bad faith or exhibition of gross indifference of any kind related to the discovery process or the parties in this case.

Facts

On July 31, 2021, Respondents served upon Petitioner's then attorney Mr. John Blincow certain general interrogatories and requests for production of documents per the South Carolina Rules of Civil Procedure. It is undisputed that in November 2021, Respondent's counsel was communicating with Respondent's counsel seeking responses. It is further undisputed that Mr. Blincow communicated to Respondent's counsel in return that Mr. Shoemaker's responses were on his desk and being sent to opposition. Therefore, from the outset, indisputable evidence exists that Mr. Shoemaker, the actual party to this case seeking it to be heard on the merits, provided his responses. Mr. Shoemaker believed the production occurred. A Motion to Compel was filed in December of 2021, while Mr. Shoemaker was still represented, but this motion was unknown to Mr. Shoemaker. In an exceptional mitigating circumstance, during this particular holiday season, his attorney was in the process of being suspended from the practice of law, which occurred within a matter of days following this filing. Correspondingly during this time, Mr. Shoemaker's time to file an appeal regarding his case against his father's estate was running, and this, too was being drastically affected by what was occurring with Mr. Blincow (again, unknown to Mr. Shoemaker). Upon Blincow's suspension in mid-December, Mr. Shoemaker was no longer represented, though Mr. Shoemaker was not immediately made aware of this fact.

When Mr. Shoemaker was made aware of it, he was then 'flying blind' and found representing himself in a race against the clock in early January to appeal the companion case

involving his father's estate (an appeal to the Circuit Court). During this time, he did not have the file from his previous counsel, because Mr. Blincow had been required to turn his file over to the Supreme Court, and Mr. Shoemaker had no knowledge of its whereabouts nor access to it for many months.

Mr. Shoemaker had no further counsel until the end of April 2022, whom he hired to represent him in the appeal of his father's case, a task that took extraordinary amounts of time and effort over the ensuing months and well over a year to go through both the Circuit Court and into the Court of Appeals. It was not until after Shoemaker retained new counsel that his previous file in total was obtained, and counsel secured the file from the Supreme Court, which mailed the single banker's box of documents to Mr. Shoemaker's new counsel. Petitioner's counsel is unsure of the exact date of receiving such file, but it is presumed based upon date of retainer that receipt occurred sometime in May of 2022.

During this time, the Motion to Compel filed by Respondents in December 2021 still had not been scheduled, nor requested to be scheduled by Respondents. Also, Petitioner disputed the Motion and disputed any request that sanctions be ordered (as requested in the Motion to Compel), because Mr. Shoemaker believed all documents had been provided and turned over by in November/December 2021. Whether he was accurate or not, he believed he had complied with discovery requests, which is a critical point in the present Court's evaluation of whether he acted with any bad faith during this time.

A hearing on Respondents' Motion to Compel was finally scheduled - a full 13 months after Respondents had filed it. Respondents had taken no affirmative efforts to schedule the hearing, though that is what would be industry standard, especially if the Court did not initiate scheduling within a fairly short time after a motion was filed. Respondents, it would appear, had

no concerns about the passage of time or any urgency to have their motion heard. Yet when the time came for the one and only discovery motion that was filed in this case, Respondents sought to blame Mr. Shoemaker for the delay, and tried to claim discovery abuses and sought to have his pleadings struck and for attorney's fees for the entirety of their case be awarded. Petitioner makes this point NOT to cast blame, but only to make it very clear that Mr. Shoemaker played no role in delaying the case for this substantial duration; he had a genuine disagreement which would be addressed by hearing upon said motion, and Respondents could have, at any time following the filing of their Motion in 2021, contacted the Cherokee County Probate Court to schedule such hearing. Instead, they patiently waited, and when the hearing was scheduled 13 months later, Respondents inappropriately sought to blame Mr. Shoemaker for that.

At the hearing on Respondents' Motion to Compel, heard before this Honorable Court, agreements were reached among counsel, and though Petitioner's counsel was unable to get the responsive documents to Respondents within their agreed-upon time, Mr. Shoemaker did in fact provide responses to his counsel on March 6, referring again to all documents previously submitted to his prior counsel and opposing counsel. Mr. Shoemaker provided these responses to the undersigned counsel prior to any order on the motion to compel being issued by this Court. After such Order was issued on March 10, compelling responses to discovery, Mr. Shoemaker's counsel conducted a full review of the entirety of documents provided, retracted all privileged communications, and provided the documents to opposing counsel. While it is true that the v interrogatories were not included in that production, that was inadvertent error and counsel would pray the Court recognize it as such. Petitioner calls the Court's attention to the hearing on sanctions, wherein the Court was provided Mr. Shoemaker's emails for its review, both of which revealed Mr. Shoemaker had timely provided his responses to his prior counsel in 2021 and again

in his email March 6, 2023 after the Motion to Compel but without having been Ordered to do so. Both of these show that Mr. Shoemaker was engaged in discovery to actively comply with what was requested and there is no evidence of Mr. Shoemaker himself seeking to subvert, hide, avoid, or otherwise hinder the provision of responses.

Opposing counsel filed a motion for sanctions on April 6, 2023. Petitioner was not afforded any opportunity to have such motion retracted, regardless of any action he may have taken, and he was thus left to await a motion hearing on the same. Respondents again did not seek to schedule the motion. Instead, among the many communications between Respondents and Petitioner's counsel thereafter, the parties communicated about the pending appeal in Mr. Shoemaker's case against his Father's estate, not about any ongoing discovery issues in the Polly Shoemaker case.

Again, almost an entire year passed before Respondents sought to schedule the Motion for Sanctions. Petitioner again is not casting blame upon Respondents, but instead makes this point again to spotlight that the delay that Respondents relied so heavily upon at the hearing on this matter was caused by their failing to call or write Cherokee County to schedule a hearing (again, a hearing which Mr. Shoemaker substantively disputed, well within his rights).

The undisputed facts are that the Motion to Compel of Respondents was not scheduled for 13 months after their filing, and the Motion for Sanctions was not scheduled for an additional 13 months after their filing, and it cannot be disputed that Mr. Shoemaker had nothing to do with scheduling and no part whatsoever in that passage of time. Thus, a 26 month period of 'delay' was not in fact caused by Mr. Shoemaker, but by the opposing party choosing not to schedule hearings. Thus, the passage of time is a factor in this matter that should not prejudice Mr. Shoemaker and should not be considered in any evaluation of bad faith or gross indifference,

because the Respondents had complete control over scheduling with the Probate Court for both of its Motions.

Combined with the above facts as to timing, the following facts are true about Mr. Shoemaker's responses to discovery requests:

- 1) evidence was presented to the Court that Mr. Shoemaker provided discovery responses to his initial counsel in 2021, who indicated to opposing counsel via email that the responses were prepared and being sent, and Mr. Shoemaker reasonably relied upon that representation;
- 2) Mr. Shoemaker provided responses again via email to counsel 4 days before any Order on the Motion to Compel was issued; and
- 3) responsive documents were in fact provided to Respondents' counsel in full 13 days after the Order on the Motion to Compel was issued (3 days late due to mitigating circumstances raised at the hearing). Opposing counsel has been in possession of all responsive documents for over an entire year prior to the Motion for Sanctions being heard. During the entirety of this time, Respondents' counsel refused to even look at the documents, and have claimed that one box of documents (as provided by the Supreme Court) was a 'document dump,' despite the fact that the amount of documents was quite reasonable, and despite the fact that Petitioner's counsel represented to Respondents that all such documents were in fact appropriately produce and responsive to the specific requests. The choice of documents to provide was a decision ultimately left to counsel, not Mr. Shoemaker, and Mr. Shoemaker's counsel determined that the documents provided, which did include documents from both his father's case and his mother's case, all fell under the broad requests of Respondents such that production of all of the documents were appropriate to produce. In no event did the provision of a single box of

documents that Mr. Shoemaker's counsel believed to fall under the breadth of Respondent's requests constitute bad faith or a gross indifference from Petitioner.

The above stated facts are indisputable as to Mr. Shoemaker's actions, the timeline of the motions and hearings with the court, Mr. Shoemaker's responding to counsel in both 2021 and 2023, and the turning over of responsive documents in March 2023. Under all of the above facts, and given the extreme importance of the case to all parties, Petitioner submits that 1) delays of time in this case were not 'caused' by Petitioner, and 2) any discovery deficiencies were technical in nature and were mitigated by highly unusual procedural circumstances, and 3) there is no single piece of evidence that Mr. Shoemaker himself operated in bad faith or with gross indifference to the process or the parties in this case.

Mr. Shoemaker has a legal dispute he strongly believes in and as much motivation to proceed on the merits as Respondents. He has a companion case in a case with his father's estate that has taken countless hours and several years in substantive hearings, discovery, and now appeals to the highest courts of the State.

Standard of Review

The burden is on the appealing party to show the trial court abused its discretion in imposing sanctions for failing to comply with a discovery order. *Halverson v. Yawn*, 328 S.C. 618, 493 S.E.2d 883 (Ct.App. 1997). An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law. *Kershaw County Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990). In the present case, Petitioner respectfully suggests to the Court that the findings

required by law to strike Petitioner's pleadings were not without reasonable factual support and that Petitioner now suffers the greatest prejudice possible in his case, thereby amounting to an error of law.

L. Argument

The Court should amend its ruling and reinstate Petitioner's pleadings to allow the case to proceed on the merits, because Mr. Shoemaker, the party in interest, did not exhibit any element of bad faith, willfulness, or a gross indifference to the rights of other litigants.

In *Karppi v. Greenville Terrazzo Co. Inc. and Ogden Teck, Inc.* 489 S.E.2d 679, 327 S.C. 538 (Ct. App. 1997), the South Carolina Court of Appeals set forth the mandated framework regarding the imposition of sanctions against a party:

"[W]hen the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is nevertheless harsh medicine that should not be administered lightly. See generally *Orlando v. Boyd*, 320 S.C. 509, 466 S.E.2d 353 (1996); *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Before invoking this severe remedy, the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants. See *Orlando*; *Baughman*. The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. *Balloon Plantation v. Head Balloons*, 303 S.C. 152, 399 S.E.2d 439 (Ct.App.1990). The sanction should be aimed at the specific misconduct of the party sanctioned. *Balloon Plantation*, 303 S.C. at 154, 399 S.E.2d at 440." *Karppi*, at 489 S.E.2d 682. (hereinafter referred to as "Ogden Teck" due to Ogden Teck being the party what was challenging the striking of its pleadings, thus the party situated as Mr. Shoemaker).

In *Ogden Teck*, a case originally filed in June 1995, Respondent Karppi engaged in discovery requests in February 1996, seeking certain discovery from Ogden Teck, including requests for documents and a deposition of a Herbert Ogden. Ogden Teck **refused** (emphasis added) to produce the deponent, and also provided document responses unsatisfactory to Karppi, who filed a motion to compel. The trial court issued Order on June 29 1996 that Ogden Teck must fully and completely respond to all outstanding requests within 30 days and that Herbert

Ogden must be made available for deposition. On July 11, a status conference was held, and at that conference, the trial court again reiterated the Order, ordering Ogden Teck to comply with the discovery Order by July 31. Additionally, the Court set the case for trial during the week of August 12. *Id.* at 681.

Thus, at this stage in the *Ogden Teck* procedural history, 1) original discovery requests were 'refused' to be complied with, 2) the trial court issued an order requiring full compliance within 30 days, 3) within that 30 days, the trial court again ordered compliance while at a status conference, and 4) the discovery order and its ordered compliance was on the very eve of a scheduled trial of August 12, thus invoking incredible potential prejudice upon the aggrieved party.

Despite these two unequivocal orders from the Circuit Court, and even though trial was set for August 12, Ogden Teck again **refused** (emphasis added) to produce Herbert Ogden for an August 6th deposition (only 6 days before trial and in direct contravention of the discovery order). On August 9th (3 days before trial), Kaarpi filed a second motion to compel discovery and for sanctions. After a hearing on that second motion to compel, the Circuit Court struck Ogden Teck's pleadings and ruled it to be in default for willfully and intentionally failing to comply with the court's discovery order.

On appeal, the Appellate Court reversed the trial court, holding that it abused its discretion under the circumstances of the case, and remanded the case to the lower court, where the case was ultimately tried in Greenville County by a jury on the merits and disposed of on April 3, 1998. (See <https://www.sccourts.org/casesearch/>). The Court of Appeals held as follows: "Under these circumstances...the harsh sanction that was imposed was not commensurate with Ogden Teck's disobedience, and any number of lesser, more narrowly tailored sanctions would

have sufficed to protect Karppi's rights while adequately punishing the wrongdoing of Ogden Teck... Therefore, we find that the trial court abused its discretion with its imposition of this harsh and unjustifiable sanction." (citing *National Hockey League v. Metropolitan Hockey Club, Inc.* 427 U.S. 639, 643, 96 S.Ct. 2778,2781 (1976). *Id.* at 683.

In the present case, all evidence before the Court suggests that Mr. Shoemaker provided discovery responses to his first counsel, and that he proceeded thereafter with the honest belief that he had honored all discovery requests. Unlike *Ogden Teck*, where the offending party absolutely chose on its own to refuse to comply with discovery, on its own accord and multiple times, Mr. Shoemaker has never refused to comply with requests. When requested to provide responses initially, he did so in 2021, and he believed his counsel had turned over all such documents. Indeed, this Court was provided evidence that Mr. Shoemaker he provided his responses to his first counsel in 2021, that he again provided responses to his current counsel before any discovery Order even existed.

It is also undisputed that all responsive documents were provided to opposing counsel March 23, 2023, but that the documents were adamantly refused to be reviewed for inspection and copying by the opposition due to claims of a 'document dump' and the incorrect claim that there was an impossibility of separating the companion cases of Shoemaker's Father's estate and Mother's estate (Petitioner has indeed agreed with this point in some manner, in that the two cases are so inextricably linked that all documents provided were encompassed in the broad scope of the requests). Petitioner could not effectively separate the two without risk of failing to produce documentation. These facts indicate more of a typical discovery dispute with technical deficiencies and otherwise mere argument between counsel as to the responsiveness of document production. And while Respondents may have had an argument that Petitioner's counsel

provided the documents with technical deficiency, all responsive documents were in fact provided to opposing counsel (documents Shoemaker had provided to his first counsel for discovery production in 2021), and opposing counsel had them for an entire year refusing to even review them.

Furthermore, in *Ogden Teck*, there were two very important factors at the trial court level that were not present in the current case. The party, Ogden Teck, refused not 1, but 2 Orders compelling production of a witness for a deposition, and it did so only days before trial. If manifest injustice were to be found anywhere, certainly it would be present in the party preventing a scheduled trial by a twice-purposeful (absolute refusal) disobedience to a discovery Order. Certainly, if any facts could be considered gross indifference to the opposing litigants or bad faith, these facts would likely suffice, yet they did not in this case.

As the *Ogden* court stated, a sanction should not go beyond the necessities of a situation to foreclose a decision on the merits of a case. *Id.* at 684. In the case at bar, Petitioner submits that both monetary sanctions and/or limiting/expansive directives short of expelling Mr. Shoemaker from court would have been sufficiently remedial and punitive if it determined sanctions to be appropriate. There are a range of sanctions the Court can impose to ensure compliance with court rules and procedures such as monetary fines, contempt, preclusion orders, striking specific claims to limit the scope of the case, and conditional orders, but South Carolina has consistently regarded the sanction of dismissal drastic and extreme.

The Court has repeatedly stated that sanctions resulting in dismissal are harsh and should not be taken lightly and are to be imposed for more egregious violations. In *Ball v. Canadian American Express Co.*, counsel for the Defendants' "freely admitted his clients had refused to comply with discovery orders before a certain date and had still not complied with certain

discovery requests by the time of trial." *Ball v. Canadian American Express Co.*, 314 S.C. 272, 442 S.E.2d 620 (Ct. App. 1994). Despite this admission of blatant refusal, the Court upheld a finding of contempt as an appropriate sanction without dismissal.

Further, warning parties of the possibility of default before entering such harsh sanctions aligns with the principles of fairness, due process and judicial efficiency, encouraging compliance. A party "is entitled to be made aware of th[e] drastic consequence[s] of failing to meet the court's conditions at the time the conditions are imposed, when he still has the opportunity to satisfy the conditions and avoid" the sanction. *Choice Hotels Int'l v. Goodwin & Boone*, 11 F.3d 469, 473 (4th Cir.1993); see also *Griffin Grading Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct.App. 1999) (where the Court noted that the Appellant had been warned by court order of the possible consequences prior to its fourth discovery Order violation). Petitioner was not so warned in the one discovery Order in this case.

As a point of illustration as to the extremes it often takes before the Courts support the striking of pleadings, and standing in stark contrast to the present case, take the case of *Qzo, Inc. v. Moyer*, 358 S.C. 246, 594 S.E.2d 541 (S.C. App. 2004). In *Qzo*, the court found Appellant willfully destroyed evidence relevant to Palmetto's case when it failed to turn a computer over subject to a TRO, and held the computer for seven days, turned it over, only for it to be determined that in that intervening time period, the Appellant had erased the hard drive (or parts of it). *Id.* at 257. Thereafter, the trial court struck Appellant's pleadings and entered a judgment of liability in favor of Palmetto. In *Griffin Grading Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct.App. 1999), the Court of Appeals upheld the striking of pleadings after the defendant failed to comply with FOUR prior orders compelling discovery, even after prior

Orders had included the imposition of the assessment of attorney's fees and after also having been warned by the Court of the possible consequences of having its pleadings stricken.

Petitioner submits that the Court's sanction of attorney's fees, as already awarded, is no small penalty, and that the necessities of the situation in light of the facts warrant a more tailored remedy short of the most extreme chosen. Petitioner himself had no part in determining the manner in which to produce the discovery, only to produce the documents and information he had in his possession, custody, knowledge, and control that were responsive to what was asked of him. All documents that he had, he produced, and he did so without reservation, as he did with information requested of him. The manner in which they were produced was chosen by counsel, who after due consideration believed it best to turn over the entirety of the Petitioner's documents from both cases in a reasonable belief of the impossibility of truly 'separating' the two pending cases given their interwoven nature in many respects. Mr. Shoemaker's facts simply do not have reasonable factual support for a finding of bad faith, willful disobedience, or gross indifference to warrant the extreme sanction imposed upon him, especially given the representative caselaw providing guidance as to what levels of extremity should be present to justify this most drastic of sanctions.

In seeking the Court's reconsideration, counsel for Petitioner recognizes its tardiness and potentially technical deficiencies in the production, but Petitioner must also stand firm that Mr. Shoemaker is not the architect of delay in this matter, nor is there any evidence of his desire or attempt to do so. In fact, the Respondents bear some of their own responsibility in this regard. Respondents filed a motion to compel in December 2021 yet never sought to have the issue heard for over a year, not until January 2023, and Respondents then moved for sanctions yet failed to have that matter scheduled to be heard until April 2024. Again, this point is not made to

excuse discovery tardiness or neglect, but it is to point out the reality that Petitioner should not suffer the harshest of results nor should Respondents reap complete 'victory' by default by claiming they were the victims of years of delay when they not only had the vast majority of information they had requested for over a year yet refused to review it, but also because they were also clearly in no hurry to have these matters come before the court.

Mr. Shoemaker himself neither designed nor executed any scheme of noncompliance in either time or mode of production of discovery, and as such, there should be no finding against him of bad faith or gross indifference that would render the 'harsh medicine' the *Ogden Teck* court appropriate. In light of all facts in this case and its companion case's considerable procedural confusion and interconnectedness; in light of the evidence that Mr. Shoemaker provided discovery responses in 2021 to his counsel and again prior to any Order on Motion to Compel was issued; in light of all responsive documents being provided to Respondents by delivery of a single organized banker's box withholding nothing except privileged communications; and in light of the totality of the circumstances, Petitioner prays the Court reconsider its striking of Petitioner's pleadings, retract its finding of bad faith/willfulness and apply the sanction of attorney's fees as awarded as well as any other tailored sanctions that do not go beyond the necessities herein.

Conclusion

This present matter is without factual support demonstrating that Petitioner Shoemaker acted in bad faith, willfulness or gross indifference to substantiate the harshest of sanctions that exists in a pending legal matter. When boiled down to its essential core, Mr. Shoemaker has only failed to precisely comply with ONE discovery Order, even though that Order was ultimately substantially complied with by production of responsive documents, albeit 3 days late and not to

the Respondents' satisfaction (which is not unusual). The 2 years of 'delay' that are mentioned in the Order should not be held against Mr. Shoemaker. Those delays were not his to bear – they were due to Respondents choosing not to contact the court and schedule hearings.

On the other hand, evidence is clearly on the record that Mr. Shoemaker provided responses to discovery without overt and willful attempts to hide, destroy, subvert, delay, or otherwise interfere with the judicial process or the rules of discovery. He produced documents with certain technical deficiencies, but fully responsive documents nonetheless, and he did so to his first counsel with the belief they were provided to opposing counsel. They were provided in total to opposing counsel again by current counsel not as a document dump, but as a comprehensive production to ensure nothing was withheld.

Petitioner and counsel do not deny error, but Petitioner does deny willful disobedience or gross indifference. The errors committed, in the sound discretion of this Honorable Court, may deserve sanctions, and they were awarded with over \$11,000 in attorney's fees, which seems to comport with the vast majority of caselaw addressing the types of sanctions and the varying degrees of egregiousness warranting varying degrees of sanction, and there are many available to the court.

Petitioner respectfully submits that moderate sanctions would be more reasonable and meet the necessities of this case. The harshest penalty given in this case is generally reserved for the most egregious of offenses, as cases cited above clearly indicate. Petitioner prays the Court reconsider its Order and recognize that a technical or inadvertent error was committed in the discovery Order at issue in this case, and that the totality of the evidence does not provide reasonable factual support justifying a finding of Mr. Shoemaker acting in bad faith or showing a gross indifference to the interests of the party litigants. For those reasons, Petitioner respectfully

submits that striking the pleadings in this particular case would amount to an error of law under the controlling caselaw cited herein, and Petitioner prays that this Court's Order be amended to reflect the same.

As the *Ogden* Court aptly stated, a sanction should not go beyond the necessities of a situation to foreclose a decision on the merits of a case, and Petitioner submits that the necessities of this set of facts make an amendment to this Court's Order proper and just. Petitioner is specifically requesting that the striking of pleadings be retracted, that the award of attorney's fees be reconsidered, and that any sanction issued be commensurate and proportional to any discovery violations/errors which may have occurred in this case alone.

WHEREFORE, Petitioner prays for a reconsideration, alteration or amendment to this Court's Order of May 17, 2024 in the following ways:

- a) Retraction of the striking of Petitioner's pleadings and reinstatement of Petitioner's case;
- b) Reconsideration of the award of attorney's fees; and
- c) Tailoring any sanction against Petitioner to be commensurate and proportional to the factually supported discovery violations/errors as determined by the court.

Respectfully submitted,



William R. McKibbon III
601 E. McBee Ave. Ste 204
Greenville, SC 29601
(864) 235-0071
(864) 235-0072 (f)
will@legalcarolina.com
Attorney for Petitioner

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE PROBATE COURT

C.A. No.: 2022-ES-11-00088

In the matter of:

Mary Sloan "Polly" Shoemaker,
Decedent
James Marshall Shoemaker, III
Petitioner,

CERTIFICATE OF SERVICE

v.

Lesley Moore, Esquire as Personal
Representative and Trustee, Edward Sloan
Shoemaker and Jonathan Evans Shoemaker
as Beneficiaries.

Respondents.

I hereby certify that a copy of the *Motion to Reconsider, Alter or Amend Order Granting Respondents' Motion for Sanctions* was served upon the following parties by electronic mail and by hand delivering a copy of the same to counsel on this 28th day of May 2024, to the following address:

Brown, Massey, Evans, McLeod & Haynsworth, LLC
Attn: Jenna McLeod
106 Williams Street
Greenville, SC 29601
(864) 271-7424



William R. McKibbin, III (SC Bar No.68454)
601 E. McBee Ave., Suite 104
Greenville, SC 29601
Office: (864) 235-0071
Fax: (864) 235-0072
will@legalcarolina.com
Attorney for the Petitioner

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
In the matter of:)
Mary Sloan "Polly" Shoemaker)
Decedent)
James Marshall Shoemaker, III)
Petitioner,)
vs.)
Lesley Moore, Esquire as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker and Jonathan Evans Shoemaker)
as Beneficiaries)
Respondents.)

IN THE PROBATE COURT

C.A. NO.: 2020-ES-23-00073

**RESPONDENTS' RESPONSE TO
PETITIONER'S MOTION TO
RECONSIDER, ALTER OR AMEND
ORDER GRANTING
RESPONDENTS' MOTION FOR
SANCTIONS**

**TO: PETITIONER JAMES MARSHALL SHOEMAKER, III AND
PETITIONER'S ATTORNEY WILLIAM MCKIBBON**

YOU WILL PLEASE TAKE NOTICE, that Respondents Lesley Moore, Edward Sloan Shoemaker and Jonathan Evans Shoemaker (hereinafter "Respondent" or "Respondents") by and through their undersigned attorney, Jenna Hendricks McLeod of Brown, Massey, Evans, McLeod & Haynsworth, LLC, hereby respond to Petitioner Shoemaker's motion to reconsider, alter or amend the Court's May 17, 2024 Order ("Order") granting Respondents' motion for sanctions. The Court's Order should not be reconsidered, altered, or amended based on the following grounds:

Standard of Review

Under Rule 37, SCRCP, a trial judge may impose sanctions for a party's failure to comply with the court's order compelling discovery, including dismissal of the action. Rule 37(b)(2)(C), SCRCP, "The imposition of sanctions is generally entrusted to the sound discretion

of the Circuit Court.” Downey v. Dixon, 294 SC 42, 44, 362 S.E.2d 317, 318 (Ct. App. 1987). “Nevertheless, whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules.” Id. “[T]he most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.” Nat’l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 643, 96 S. Ct. 2778, 2781 (1976) (dictum).

“A trial judge’s exercise of his discretionary powers with respect to sanctions imposed in discovery matters will not be disturbed on appeal absent a clear abuse of discretion. The burden is on the party appealing from the order to demonstrate the trial court abused its discretion.” Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 541-43, 489 S.E.2d 679, 681-82 (Ct. App. 1997),

Argument

1. **The Court properly granted Respondents’ Motion for Sanctions and struck Petitioner’s pleadings based on Petitioner’s failure to ever provide written responses to Requests for Production and his deficient responses to interrogatories which were not sent until April 3, 2024, almost three full years after discovery requests were originally served on Petitioner on July 30, 2021**

Respondents originally served discovery requests on Petitioner on July 30, 2021. Petitioner failed to answer discovery and Respondents filed a motion to compel on December 3, 2021. Thereafter, Petitioner’s then counsel, John Blincow, was suspended; and William McKibbin was retained filing a notice of appearance on April 1, 2022. William McKibbin assured the Court that he would comply with discovery within thirty (30) days of the hearing on the motion to compel, which was held on January 4, 2023. Petitioner did not answer discovery within thirty (30) days and Respondents asked that his pleadings be struck and his case dismissed. Instead, an

Order was issued giving Petitioner ten (10) additional days to respond. Petitioner again did not respond within the ordered time period. On March 23, 2023, Petitioner's Counsel turned over a large box of documents to Respondents that had documents from both Polly Shoemaker and James Shoemaker cases. A motion to compel was filed and heard on April 3, 2024. Petitioner has still to this date not issued written and signed responses to the Requests for Production. Petitioner did not send interrogatory answers to Respondents until April 2, 2024. Respondents contend that the interrogatory answers are not only several years late, but also evasive and incomplete and should be treated as a failure to answer under SCRCP 37(a)(3). Rule 37(a)(3), SCRCP. A motion to compel was filed and heard on April 3, 2024.

There is no requirement that a Court warn a party of the possibility of their pleadings being struck as a sanction. However, Petitioner's Counsel was well aware of this possibility based on the fact that he was copied on not one, but two, letters asking the Court to strike Petitioner's pleadings and dismiss the action on February 24, 2023 and on March 22, 2023. Nevertheless, Petitioner still failed to answer the interrogatories or issue written responses to the requests for production. The Rules of Civil Procedure explicitly allow for the sanction of striking pleadings and dismissing the action under Rule 37(b)(2)(c). Rule 37(b)(2)(C), SCRCP.

Petitioner attempts to shift the blame for the delay caused by his failure to answer discovery for two (2) full years (at a minimum) to Respondents no less than seven (7) times in his motion. What Petitioner ignores, however, is his own continuing duty to not only answer discovery, but to supplement his answers from the time of service until the time of trial. Therefore, no delay that Petitioner attempts to blame on Respondents relieves him of his discovery obligations. These alleged delays, while Petitioner claims he was "patiently waiting" did nothing but give Petitioner additional time to comply with his discovery obligations before having to answer for

the lack of discovery in front of a judge. Nevertheless, Petitioner did not serve interrogatory answers on Respondents until April 2, 2024, one day before the hearing for sanctions, and has still to this date never issued written responses to the Requests for Production.

2. Petitioner presented no evidence to the Court for the Court to properly consider in support of Petitioner's claimed lack of bad faith, willfulness, or gross indifference to the rights of other litigants

Petitioner did not present any evidence in the form of sworn testimony or affidavits either at the April 3, 2024 hearing or in support of the present motion. Petitioner's motion mentions indisputable evidence, but no evidence has been admitted. A movant's failure to present and submit admissible evidence into the record sufficient to provide the court with evidentiary support for all required findings of fact is fatal to the relief requested. Regions Bank v. Owens, 402 S.C. 642, 648-49, 741 S.E.2d 51, 55 (Ct. App. 2013). "[S]uch evidence is usually provided through affidavits." Bowers v. Bowers, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991). "[T]he grounds upon which the motion were based were not supported by affidavit. There was no error in refusing to set aside the [default judgment] upon the mere statement of the defendant, contained in the notice of his motion, and unsupported by his affidavit." Duncan v. Duncan, 93 SC 487, 495, 76 S.E.2d 1099, 1011. Arguments of counsel are not considered evidence. "The arguments of Husband's counsel did not constitute competent evidence of the amount of any debt Wife may have owed Husband...In the absence of any other evidence establishing the existence or amount of the debt, we reverse the part of the order on reconsideration which reduces Wife's award of equitable distribution..." Jenkins v. Jenkins, 345 S.C. 88, 105, 545 S.E.2d 88 (Ct. App. 2001). A movant who "offered neither affidavits nor other proof" and instead "relie[d] on the allegations contained in his unverified counterclaim and arguments made

by his attorney during the hearing on his motion” failed to present evidence proving the facts essential to entitle him to relief. Bowers, 304 S.C. at 68, 403 S.E.2d at 129.

Petitioner’s Motion to Reconsider references two emails from Petitioner. These emails were not properly authenticated or entered into evidence. Counsel for Respondents does not even have a copy of these alleged emails or recall seeing them at the hearing. Reference to and submitting these emails to the Court at the hearing does not make them admitted evidence. The need for properly admitted evidence in the form of sworn testimony or affidavits is partly to avoid this exact scenario where the other party, in this case the Respondents, are unable to respond to what Petitioner is calling “evidence” when Respondents have not even been provided a copy and it was not attached to Petitioner’s motion.

3. Any deficiencies in discovery are imputable to the client

Petitioner’s Counsel stated at the hearing that any discovery deficiencies come from him and him alone and should not be held against his client. Petitioner’s Counsel states throughout his motion that Petitioner did not act in bad faith, had no part in determining the manner in which to produce discovery, and was not the architect of delay. Petitioner’s Counsel claims in his motion that Petitioner provided interrogatory responses to him via email four (4) days before any Order on the Motion to Compel (on March 10, 2023). In addition to the claim being unsupported by evidence, those incomplete interrogatory responses were not provided to Respondents for over an additional full year, until April 2, 2024. That deficiency is imputed to the Petitioner. Roberts v. Peterson, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987). The Respondents should not have to suffer the consequences of the Petitioner’s failure to comply with discovery.

Petitioner’s alleged belief that his previous Counsel provided answers to Respondents is irrelevant. The only salient fact is that Respondents did not receive **any** answers to

interrogatories until April 2, 2024 after an Order from the Court, writing two letters, filing a motion to compel and a motion for sanctions, and one day before the hearing on the motion for sanctions. It is also important to note that Respondents have still not received any written responses to the Requests for Production and the interrogatory responses provided are incomplete and evasive.

4. The Court properly found that Petitioner acted in Bad Faith, Willfully, and with Gross Indifference to the Rights of Other Litigants

The Court properly found that the Petitioner acted in bad faith, willfully and with gross indifference to the rights of others. The fact that Petitioner's interrogatory responses were almost two years late, and even then completely evasive and incomplete demonstrates the bad faith of the Petitioner. The Petitioner dumped a box of documents on Respondents, willfully and with gross indifference to their rights, in an attempt to shift his discovery burden onto Respondents. As the Court states in the May 17, 2024 order "Were the Court to allow this, the Respondents would bear the burden of responding to their own requests for production." Furthermore, the documents in the box were mixed from the files of both James Marshall Shoemaker, Jr. and Mary Sloan "Polly" Shoemaker making it virtually impossible to glean which documents are responsive to which case. The Petitioner ignored the Court's March 10, 2023 Order which is additional evidence of Petitioner's bad faith.

The Petitioner's actions have caused his mother's estate, his siblings, the Personal Representative and Trustee associated with his mother's Will and Trust great time and expense up to this point, just to attempt to force Petitioner to answer discovery that he is required to answer under the Rules, in a case that he brought. The Court properly considered the precise nature of the discovery and the discovery posture of the case, willfulness and degree of prejudice and found that the appropriate sanction was to strike Petitioner's pleadings and summarily

dismiss all pending claims of Petitioner. The Court did not abuse its discretion. Petitioner has not met its burden.

Conclusion

The Court properly granted Respondents' Motion for Sanctions and struck Petitioner's pleadings based on Petitioner disregarding the Court's March 10, 2023 Order, Petitioner's failure to ever provide written responses to Requests for Production and his deficient responses to interrogatories which were not sent until April 3, 2024, almost three full years after discovery requests were originally served on Petitioner on July 30, 2021. The Court properly found that Petitioner acted in bad faith, willfully, and with gross indifference to the rights of other litigants. Furthermore, the Petitioner has not submitted any evidence to the Court in support of his motion to reconsider. For these reasons, the motion to reconsider, alter, or amend should be denied.

**BROWN, MASSEY, EVANS,
MCLEOD & HAYNSWORTH, LLC**


Jenna Hendricks McLeod
SC Bar No.: 101236
106 Williams St.
Greenville, SC 29602
(864) – 271-7424
jennamcleod@bmemhlaw.com

Attorney for Respondents

June 11, 2024

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
IN THE MATTER OF:)
MARY SLOAN "POLLY" SHOEMAKER,)
DECEDENT)
JAMES MARSHALL SHOEMAKER, III)
PETITIONER,)
VS.)
LESLEY MOORE, ESQUIRE AS)
PERSONAL REPRESENTATIVE AND)
TRUSTEE, EDWARD SLOAN)
SHOEMAKER AND JONATHAN EVANS)
SHOEMAKER AS BENEFICIARIES,)
RESPONDENTS.)

IN THE PROBATE COURT
CASE NO.: 2020-ES-23-00073¹

ORDER



This matter is before the Court on Petitioner's Motion pursuant to Rule 59(e) and Rule 60(b)(1) of the South Carolina Rules of Civil Procedure. Specifically, Petitioner moves this Court for an Order to Reconsider, Alter or Amend this Court's Order entered May 17, 2024. The motion was filed with the Court on May 30, 2024. The Respondents filed a Response to the Petitioner's Motion on June 14, 2024.

After a full review of the Motion and Response, the Court trusts that the result reached in the Order of May 17, 2024, is correct. The Court is satisfied that the arguments and evidence

¹ Petitioner's Motion references case number 2022-ES-11-00088. This case number was created for filing and case management purposes of the Cherokee County Probate Court. As has been discussed in previous orders, this matter was assigned to the undersigned due to a recusal from the Greenville County Probate Court. The Greenville County case number is 2020-ES-23-00073.

presented, along with the Court's interpretation of the rules of civil procedure, the statutory law, and case law before it, was sufficient to establish the rulings in its Order of May 17, 2024.

Therefore, the Motion before the Court is DENIED.

AND IT IS SO ORDERED.


Joshua L. Queen
Special Probate Judge
Greenville County, South Carolina

June 20, 2024
Gaffney, South Carolina

THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM GREENVILLE COUNTY
Probate Court

Joshua L. Queen, Probate Judge

Appellate Case No. 2024CP2304068

James Marshall Shoemaker, III.....Appellant

v.

Lesley R. Moore, Esq. as Personal Representative and Trustee,
Edward Sloan Shoemaker and Jonathan Evans Shoemaker.....Respondents

SUPPLEMENTAL RECORD ON APPEAL

Respectfully submitted,
**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH,
LLC**

s/ Jenna Hendricks McLeod
Jenna Hendricks McLeod
SC Bar No.: 101236
s/Tyler McLeod
Tyler McLeod
SC Bar No.: 101309
jennamcleod@bmemhlaw.com
tmcleod@bmemhlaw.com
PO Box 2464
Greenville, SC 29602
T: (864) 271-7424
Attorneys for Respondent

Greenville, South Carolina
September 24, 2025

James Marshall Shoemaker III,
Representing myself
1859 Tecumseh Trail SE
Smyrna, Georgia 30080
678-558-3259
marshall@flockingbehavior.com

FILED

FEB 20 2020

**GREENVILLE COUNTY
PROBATE COURT**

STATE OF SOUTH CAROLINA

GREENVILLE COUNTY PROBATE COURT

HON. DEBORA A. FAULKNER

JAMES MARSHAL SHOEMAKER III,

Case No.: 18-2301729

Petitioner/Plaintiff,

vs.

PETITION FOR FORMAL HEARING IN THE
ESTATE OF JAMES M. SHOEMAKER, JR.
(ORIGINALLY FILED JUNE 27, 2019) –
AMENDED PER ORDER OF JUDGE
HORLBECK (DECEMBER, 13, 2019)

MARY HUNTER SLOAN SHOEMAKER,

EDWARD SLOAN SHOEMAKER,

JONATHAN EVANS SHOEMAKER,

DEBORA WINE,

LESLEY MOORE,

JOHN AND JAN DOE.

Respondents/Defendants

My name is James Marshall Shoemaker III. I am the oldest son of James Marshall
Shoemaker Jr. My father passed away July 14, 2018.

PETITION FOR FORMAL HEARING IN THE ESTATE OF JAMES M. SHOEMAKER, JR. (ORIGINALLY
FILED JUNE 27, 2019) – AMENDED PER ORDER OF JUDGE HORLBECK (DECEMBER, 13, 2019) - 1

1 At the time that my father executed the will that has been presented for probate in
2 this Court¹, he was suffering from last-stage pulmonary fibrosis, under constant hospice care,
3 under the influence of mind-altering pain medications and other chemical substances, and
4 suffering from long-term untreated alcoholism. Because he was basically suffocating to death,
5 heavily medicated, and emotionally and spiritually disturbed, he was not of sound mind over the
6 last several months of his life. He was also heavily influenced by my mother, Mary Hunter Sloan
7 Shoemaker, and my two brothers, Edward Sloan Shoemaker and Jonathan Evans Shoemaker.
8

9 My brothers stand to benefit substantially, both financially and emotionally (per
10 the twisted logic of severely dysfunctional families), if my father were to amend his previous
11 testamentary arrangements, under which the three brothers shared equally, and exclude me from
12 sharing in the estate remaining after my mother's death. As a result of his weakened, disturbed
13 and distorted state of mind during his final months, and the collusion of my mother and brothers
14 to vilify me to, and separate me from, my father, he was persuaded to sign revisions of his will
15 and trusts, less than three weeks before his passing, which expressly excluded me from
16 benefiting from his estate.
17

18 During the last several months of my father's life, my mother and brothers refused
19 to communicate with me the seriousness of my father's failing health. I only learned that people
20 were making their lasts visits to his bedside by a distant family friend who kindly reached out to
21 me, outside of family channels, four weeks before his death. When my girlfriend and I attempted
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¹ Exhibit 9 - Will of James M. Shoemaker, Jr. of June 24, 2018

1 to visit my father in person three weeks before his death, I was prevented from saying goodbye
2 to my father at his bedside by my mother, despite my repeated polite requests, in the presence of
3 my girlfriend, of my mother to allow me to have access to my father's bedroom. My mother's
4 influence over my relationship with my father was undue, hostile, and filled with anger at me for
5 suggesting that father required treatment for chemical dependency.
6

7 My brothers have been edging me out of the family for years, in a cold and
8 calculated manner. Weeks before my father's death my brothers abused my trust and misused my
9 private communications to them, meant only for their eyes, (and the eyes of a concerned
10 Greenville Police Officer and Cary Hall, a former law partner of my father and co-trustee of his
11 Irrevocable Trust). In these communications I expressed clearly and specifically my concerns
12 about my parents' victimization in a successful elder fraud crime, and their declining mental and
13 emotional health, and general vulnerability. By placing these communications in front of my
14 father while he lay dying, they engendered in my heavily-medicated father a demented anger that
15 led to the last minute changes to his will.
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18 As a result of my father's highly disturbed and distorted state of mind during his
19 final months alive, and the collusion of my mother and brothers to vilify me to, and separate me
20 from, my father, he allegedly signed on June 24, 2019, revisions of his will and trusts². These
21 revisions expressly excluded me, and my children Mary and Peter, from benefiting from his
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26 ² Exhibit 9 - Will of James M. Shoemaker, Jr. of June 24, 2018;
27 Exhibit 10 - Restatement of the James M. Shoemaker, Jr. Revocable Trust of June 24,
28 2018

1 estate as originally intended, and twice later confirmed³. Although I am not certain, I believe that
2 the estate is valued somewhere between \$10,000,000 and \$15,000,000. It may even be larger.

3 Under conditions of physical, emotional and spiritual agony, my father was
4 influenced, three weeks before his death, to take drastic action contrary to the principles of love
5 and equity which he had previously shown explicitly, here documented, me and my brothers, and
6 all of our collective children, for the previous 20 years. On April 6, 1998, my father created an
7 Irrevocable Life Insurance Trust⁴ (value of \$4.9 million in 2010), second to die policy, the
8 proceeds of which are to be split in three equal parts between my two brothers, and my children
9 and me.⁵ On August 12, 2010, he wrote me (Marshall Shoemaker, Petitioner) a handwritten note
10 making very clear his intention to treat this three sons and their issue with complete equity.⁶ This
11 note from my father was followed one day later with confirmation from his two then law
12 partners, Cary Hall and Lesley Moore.⁷

13 On June 5, 2015, my father executed the first of four historical versions of his
14 Revocable Will and Trust.⁸ The language of love and fairness is unequivocal: "Upon POLLY's
15 (my mother's nickname) death, if any of the Grantor's issue survives POLLY, such property shall
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22 ³ Exhibit 5 - Will of James M. Shoemaker, Jr. of June 5, 2015;
23 Exhibit 6 - The James M. Shoemaker, Jr. Revocable Trust of June 5, 2015;
24 Exhibit 7 - Restatement of the James M. Shoemaker, Jr. Revocable Trust of December
25 23, 2016;
26 Exhibit 8 - First Amendment to the James M. Shoemaker, Jr. Revocable Trust of
27 February 2, 2018

28 ⁴ Exhibit 2 - The John Hancock Life Insurance Policy, 59-148-650

⁵ Exhibit 1 - The Shoemaker Family Trust of April 6, 1998

⁶ Exhibit 3 - 081210 Letter from Dad to Marshall re: Irrevocable Trust

⁷ Exhibit 4 - 081110 Letter from Hall and Moore to Marshall re: Irrevocable Trust

⁸ Exhibit 5 - Will of James M. Shoemaker, Jr. of June 5, 2015;

Exhibit 6 - The James M. Shoemaker, Jr. Revocable Trust of June 5, 2015;

1 be distributed as follows: One-third of such property shall be distributed to the Grantor's son,
 2 MARSHALL . . . One-third of the property shall be distributed to the Grantor's son, SLOAN . . .
 3 One-third of the property shall be distributed to the Grantor's son, JONATHAN This
 4 original Will and Trust model, of equal divisions to this three sons, was later formally confirmed
 5 twice: in a restatement on December 23, 2016⁹, and an amendment on February 5, 2018¹⁰
 6 (slightly more than six months prior to his passing). On three separate occasions, over 2.5 years,
 7 he unequivocally affirmed his wish that sons and grandchildren, and their future children, be
 8 treated in a fair, loving and equal manner, a manner designed with intention to leave a legacy of
 9 family unity, cooperation and cohesion. It makes absolutely no sense that this sophisticated
 10 businessman, an attorney himself, who previously fairly and equitably managed significant
 11 wealth left for his three sons by his wife's father, would decide on his death bed to take action
 12 which would predictably destroy the relationships between his offspring, and their offspring.

13 I hereby request that the Court set aside the Will and Trusts executed on June 24,
 14 2018¹¹ and thereby revert to my father's repeated, clear, considered and rational wishes (as
 15 expressed in his Will and Trusts of June 5, 2015, as restated on December 23, 2016, as amended
 16 February 5, 2018)¹² to treat his three sons and their offspring equally.

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 22
 23 ⁹ Exhibit 7 - Restatement of the James M. Shoemaker, Jr. Revocable Trust of December 23, 2016

24 ¹⁰ Exhibit 8 - First Amendment to the James M. Shoemaker, Jr. Revocable Trust of February 2,
 25 2018

26 ¹¹ Exhibit 9 - Will of James M. Shoemaker, Jr. of June 24, 2018

27 Exhibit 10 - Restatement of the James M. Shoemaker, Jr. Revocable Trust of June 24,
 28 2018

¹² Exhibit 5 - Will of James M. Shoemaker, Jr. of June 5, 2015;

Exhibit 6 - The James M. Shoemaker, Jr. Revocable Trust of June 5, 2015;

Exhibit 7 - Restatement of the James M. Shoemaker, Jr. Revocable Trust of December
 23, 2016;

1 The Court should grant the relief requested, because of the following (among
 2 other things): 1) my father's long-term evidenced and sane wishes for the welfare of all of his
 3 sons and grandchildren; 2) his incapacity at the time of the alleged revisions to his will; 3) my
 4 mother's and brothers' actions (with so called professional assistance), which, three weeks before
 5 his death, unduly influenced my very sick and vulnerable father, resulting in the changes to the
 6 June 24, 2018, Will and Trusts¹³. The behavior referred to in item 3 above was graphically
 7 repeated in the partially successful attempt by my mother and brothers, in the days after my
 8 father's death, to exclude me from his funeral and related family gatherings.
 9

10 The attorney who is presently tasked with, and compensated for, administering
 11 the Will and managing my father's Revocable Trusts, Lesley Moore, knew or should have known
 12 of my father's lack of capacity and the undue influence of my mother and brothers, and yet did
 13 nothing, and allowed her personal prejudice, and her self-interest in earning fees for service as
 14 Personal Representative, Trustee and/or counsel to the same, to cloud her judgement. As such,
 15 she is unable to fulfill her fiduciary duty of loyalty to all the beneficiaries, including me and my
 16 children. Accordingly, I ask that the Court remove Lesley Moore from serving as Personal
 17 Representative of my father's Estate, as Trustee of any Trust created by my Father or his Will,
 18 and/or service as the attorney for any of the foregoing. I ask that the Court instead appoint a
 19 nationally reputable trust company to serve as replacement Personal Representative and Trustee.
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 25 Exhibit 8 - First Amendment to the James M. Shoemaker, Jr. Revocable Trust of
 February 2, 2018

26 ¹³ Exhibit 9 - Will of James M. Shoemaker, Jr. of June 24, 2018;
 27 Exhibit 10 - Restatement of the James M. Shoemaker, Jr. Revocable Trust of June 24,
 2018
 28

PETITION FOR FORMAL HEARING IN THE ESTATE OF JAMES M. SHOEMAKER, JR. (ORIGINALLY
 FILED JUNE 27, 2019) – AMENDED PER ORDER OF JUDGE HORLBECK (DECEMBER, 13, 2019) - 6

1 I have formed this opinion based on 1) Ms. Moore's expression of animus towards me in
2 my first phone conversation with her in many years, when I called in December 2018 to ask for
3 copies of the estate documents six months after my father's death, and 2) Ms. Moore's expression
4 to me of having "great personal feelings" for, and very personal involvement in the day to day
5 lives of both my father, previously, and my mother, to this day. In January, February and March
6 of 2019, as I tried to recover from my shock at learning of the existence and impact of the last
7 hour Will revisions (which I assume Ms. Moore was paid to draft and put in writing and had
8 witnessed at my father's bedside), and to gather information about the history of my father's
9 estate plan, I did not receive professional, forthcoming and prompt responses from Attorney
10 Moore. She has proved herself lacking in the objectivity and assertiveness required to manage
11 both the money and the personalities component to this terrible and absolutely avoidable mess. I
12 do not know what actions she may have taken to encourage the last minute changes, three weeks
13 prior to death, by an unsound man, under undue influence, but it certainly seems by the evidence
14 that she was ineffective in any attempts, if at all made, to discourage the resulting financial and
15 interpersonal disaster for me, my children, my father's legacy and for the Shoemaker family as a
16 whole.
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20 Furthermore, I ask that the court grant me an award of any and all attorneys' fees,
21 and costs, incurred by me in connection with pursuing this matter.
22

23 Finally, I ask for all other legal and equitable relief to which I may be entitled.

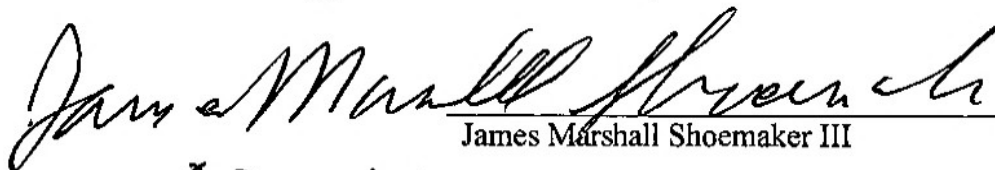
24 To the extent provided by law, I ask for a jury trial.
25
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27
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1 Since I am representing myself in this matter, and am completely without legal
2 training, I will undoubtedly make some mistakes in this complicated process. I request the Court
3 to please advise me how to correct any such mistakes.
4

5 I beg the Court's intervention on the side of justice, compassion and the long term
6 best interests of all Shoemaker family members.
7

8 Date: February 2, 2020
9

10 James Marshall Shoemaker
11

12 
13
14 James Marshall Shoemaker III

15 02-16-2020
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Office of the Probate Court

Debora A. Faulkner
Probate Judge for Greenville County
Greenville, South Carolina

www.greenvillecounty.org/probate

DATE: January 5, 2022

TO: Director of Court Administration

RE: Requesting appointment of a special probate judge

FROM: Kim Campos-Ivey, ACP
Judicial Assistant – Estate Litigation
Assistant to Probate Judge, Debora A. Faulkner
Greenville County Probate Court
301 University Ridge, Suite 1200
Greenville, SC 29601
Phone: 864-467-7179
Fax: 864-467-7198

COMMENTS:

ELECTRONICALLY FILED - 2025 Sep 24 10:39 AM - GREENVILLE - COMMON PLEAS - CASE#2024CP2304068

STATE OF SOUTH CAROLINA)
)
 COUNTY OF: GREENVILLE)
)
 IN THE MATTER OF:)
 James Marshall Shoemaker, Jr. &)
 Mary Sloan "Polly" Shoemaker)
☒ Decedent ☐ Alleged Incapacitated Person)

IN THE PROBATE COURT

**RECUSAL AND REQUEST FOR APPOINTMENT
OF SPECIAL PROBATE COURT JUDGE**

CASE NUMBER: 2018ES2301729 &
2020ES2300073

I hereby recuse myself in the above referenced case and request the appointment of a Special Probate Court Judge.

Explanation: SEE ATTACHED SIGNED ORDER FOR RECUSAL ISSUED DECEMBER 15, 2021. FOR ANY
 (Optional): FUTURE MATTERS HEARD IN THE PRESENT ACTION IN THE ESTATE OF JAMES
MARSHALL SHOEMAKER, III AND ANY RELATED ACTION INVOLVING THE ESTATE OF
MARY SLOAN "POLLY" SHOEMAKER.

☒ I recuse myself from said case in its entirety.

☐ I recuse myself from a portion of said case:

☐ Administration

☐ Litigation

Describe the litigation: PENDING ISSUES: RESPONDENT'S MOTION TO DISMISS THE PETITION IN THE
ESTATE OF MARY SLOAN "POLLY" SHOEMAKER, CASE#2020ES2300073, FOR FAILURE TO JOIN AN
INDISPENSABLE PARTY (PETITIONER'S 2 CHILDREN); PETITIONER'S MOTION TO JOIN THE 2 CHILDREN AS
PARTIES.

Pursuant SCPC 62-1-303(e), venue for subsequent matters, including appeals, will remain with the county where that
proceeding or file commenced.

List all Party(ies) and/or Attorney(s) involved:

Name of Party/Attorney: KNOX L. HAYNSWORTH

Address: P.O. BOX 2464

GREENVILLE, SC 29601

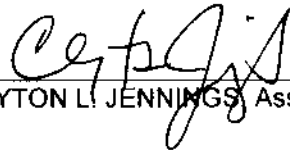
Name of Party/Attorney: JOHN BLINCOW

Address: 126 MEETING STREET

CHARLESTON, SC 29401

Name of Party/Attorney:

Address:


 CLAYTON L. JENNINGS, Associate Probate Court Judge

DATE: JANUARY 5, 2022

FILED

DEC 15 2021

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE GREENVILLE COUNTY
PROBATE COURT

IN THE PROBATE COURT

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III

Petitioner.

VS.

Mary Hunter Sloan Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker, Lesley Moore and John and Jan Doe

Respondents.

ORDER

This matter came before the Court for a hearing on Wednesday November 10, 2021 pursuant to Petitioner's motion that the undersigned recuse himself and to vacate prior Orders.

As explained below, the Court denies Petitioner's Motion to Vacate this Court's prior Order granting summary judgment and oral ruling granting Respondents' motion to alter or amend that summary judgment order. The Court grants Petitioner's Motion for Recusal as to any future matters heard in the present action as well as the related action involving the Estate of Polly Shoemaker pending under C.A. No.: 2020-ES-23-00073.

Petitioner bases his Motion to Vacate this Court's prior Order Granting Summary Judgment and seeks recusal of the undersigned based on the relationship of the undersigned as co-counsel with Stanley McLeod, who is a partner in the firm in which Knox Haynsworth, III practices. However, as disclosed to counsel: I have never served as co-counsel with a member of the firm of which Mr. Haynsworth is a member until serving with Stanley McLeod; I agreed to represent a friend, Jeff Gaafary, in litigation involving him and a limited liability company in which he is a member; I filed a notice of appearance on April 7, 2021 in anticipation of needing

to appear at a motion hearing on the following day, but co-counsel (Stanley McLeod) appeared at the hearing, and my service was not needed, and I did not appear in court; I have received no retainer or fee in connection with my representation; I have not appeared at any hearing or proceeding in the subject representation of Mr. Gaafary of his company; and I have not billed or recorded any time for my representation, and my representation is not subject to a contingency fee agreement. However, I anticipate that I will need to spend time on the cases involving Mr. Gaafary and his company at some point in the coming months.

I disclosed my representation in these matters only after it occurred to me that my co-counsel on these cases was in practice with Attorney Haynsworth, who represents the respondents in this matter. This disclosure was to demonstrate sensitivity to assuaging any concerns about my impartiality. See Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E. 2d 535, 546 (S.C. 2014), at 546, citing Simpson v. Simpson, 377 S.C. at 525, 660 S.E. 2d at 277.

Petitioner argues that the case of Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009), requires recusal where an objective inquiry into the co-counsel relationship “would offer a possible temptation to the average judge to lead him not to hold the balance nice, clear and true.” Petitioner also argues that the Judicial Merit Selection Commission’s decision in In Re: Public Hearing on Judicial Qualification of Judge Segars-Andrew S.C. December 18, 2009 requires a judge to recuse himself if the judge’s impartiality might reasonably be questioned. Petitioner argues that the refusal of the South Carolina Supreme Court to hear the matter of Judge Segars-Andrews signifies that there is no longer a requirement to present evidence of actual bias as required by prior South Carolina law such as in Simpson v. Simpson, 660 S.E. 2d 274 (S.C. App. 2008).

The facts related to Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009) are clearly distinguishable from the present case in that the judge in Caperton received \$3 million in campaign contributions from Massey Coal Co. prior to issuing a decision in a case involving Massey Coal Co. as a party. In this case, I have received no payment and billed for no time or services. I have had no financial interest in the instant case or in the cases in which I have appeared as co-counsel with Mr. McLeod.

In addition, the case of Davis v. Parkview Apartments, 409 SC 266, 762 SE 2d 535 (2014) makes it clear that “Under South Carolina law, if there is no evidence of judicial prejudice, a judge’s failure to disqualify himself will not be reversed on appeal.” *Id.* at 545 “It is the movant’s responsibility to provide some evidence of the existence of the judge’s impartiality.” *Id.* at 545, quoting Lyvers v. Lyvers, 280 S.C. 361, 367, 213 S.E. 2d 590, 594. “The party seeking disqualification must do more than merely allege bias on the judge’s behalf; the party must present some evidence of judicial prejudice or bias.” Simpson, at 277, quoting Patel v. Patel, 359 S.C. 515, 599 S.E. 2d 114 (2004). Considering that the opinion of the Judicial Merit Selection Commission related to Judge Segars-Andrews was issued in the year 2009, roughly 5 years prior to the decision in Davis v. Parkview Apartments, *supra*, in 2014, it appears quite clear that the law of South Carolina still requires both a reasonable basis for questioning a judge’s impartiality and evidence of actual prejudice. Moreover, the opinion from Davis v. Parkview Apartments, *supra*, in 2014, was issued nearly years after the decision in Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009). Thus, Petitioner’s argument that evidence of actual prejudice was no longer required following the matter of Judge Segars-Andrews is invalid. Although the court requested Petitioner to provide South Carolina law

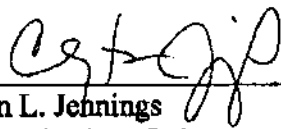
holding that evidence of actual prejudice was no longer required after the opinion concerning Judge Segars-Andrews, Petitioner produced none.

I find that Petitioner has failed to show a reasonable basis for questioning my impartiality in this matter. Petitioner admits that he has no evidence of actual prejudice, but contends that such is not necessary.

Therefore, for the reasons set forth above, the Motion to Vacate this court's prior Order Granting Summary Judgment is DENIED. The court also notes that parties have expended a great deal of time and expense on the proceedings to date, and it would be a colossal injustice for them to relitigate matters already heard and decided by this court, especially knowing that the matters were decided impartially.

Nevertheless, because I expect over the coming months to begin working on the subject cases involving Stanley McLeod as co-counsel, because there may be billing and payments associated with such work, and because Petitioner may renew his objection or file additional motions for recusal and to vacate prior Orders based on a financial interest in the cases involving Stanley McLeod as co-counsel, I recuse myself from future proceedings in the matters of James Marshall Shoemaker, Jr. (2018ES2301729) and Mary Sloan Shoemaker (2020ES2300073),
decedents.

AND IT IS SO ORDERED.



Clayton L. Jennings
Associate Probate Judge

Greenville, South Carolina
December 15, 2021

The Supreme Court of South Carolina

FILED

ORDER

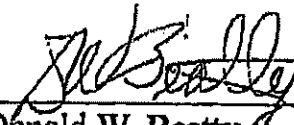
FEB 01 2022

GREENVILLE COUNTY
PROBATE COURT

I find that the Honorable Debora A. Faulkner, Probate Judge for Greenville County, and the Associate Probate Judges for Greenville County are disqualified from any further hearings In the Matter of James Marshall Shoemaker, Jr. and Mary Sloan "Polly" Shoemaker (Case Nos. 2018-ES-23-01729 and 2020-ES-23-00073) and unable to sit as judge of probate in these matters in their entirety.

Pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution and S.C. Code Ann. § 14-23-1080 (2017),

IT IS ORDERED that the Honorable Joshua L. Queen, Probate Judge for Cherokee County, is appointed as special probate court judge to sit in the above matter in its entirety. The Honorable Joshua L. Queen shall have all the powers and duties appertaining to a probate court judge for Greenville County in the handling of the above matter.



Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
February 1, 2022

ELECTRONICALLY FILED - 2025 Sep 24 10:39 AM - GREENVILLE - COMMON PLEAS - CASE#2024CP2304068

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
In the matter of:)
Mary Hunter Sloan Shoemaker)
Decedent)
James Marshall Shoemaker, III)
Petitioner,)
vs.)
Lesley Moore, Esquire as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker and Jonathan Evans Shoemaker)
as Beneficiaries)
Respondents.)

IN THE PROBATE COURT

C.A. NO.: 2020-ES-23-00073

RESPONDENTS' FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS
TO PETITIONER

TO: JOHN BLINCOW, JR., ESQUIRE, ATTORNEY FOR PETITIONER

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, you are requested to produce and permit inspection and copying of all things listed herein below within thirty days of this request.

Request #1:

Any and all documents identified in your answers to these Respondents' First Set of Interrogatories.

Request #2:

Any and all documents you intend to introduce as an exhibit at the trial of this case.

Request #3:

Any and all documents which support the claims asserted by Petitioner.

Request #4:

Any and all documents which are relevant to the claims or defenses in this case.

Request #5:

Any documents subpoenaed or obtained via a records release from third parties in connection with this case.

Request #6:

Any and all sketches, plats, photographs, or similar tangible evidence relating to the subject matter of this lawsuit, including but not limited to, the claims or allegations of any party.

Request #7:

All documents related to the facts in the Petitioner's Petition.

Request #8:

Any and all correspondence, memoranda, writings, documents, writing of any sort, by and between Petitioner or persons acting on its behalf and the Respondents, or persons acting on their behalf whose subject matter concerns or relates in any way to the claims asserted in this action.

Request #9:

Each and every writing, document, compilation, correspondence, letter and record of any sort which was provided to any expert for the purposes of formulating an opinion as to any issue in this case and any writing, document, correspondence, letter of opinion, or writing of any sort produced by any person retained to be an expert witness at the trial of this case.

Request #10:

Any and all sketches, plats, photographs, diagrams, drawings, recordings, computer access information, CD-ROM or other similar material relating to the subject matter of this lawsuit, including but not limited to, the claims or allegations of any party.

Request #11:

Any statements, whether recorded or transcribed, of any party or witness relating to the facts of this case.

Request #12:

Any correspondence sent to or received from Peter Shoemaker or Mary Shoemaker regarding Polly Shoemaker, Jim Shoemaker, Sloan Shoemaker, Jonathan Shoemaker or Lesley Moore between January 1, 2015 and the present.

Request #13:

Any correspondence sent between attorney John Blincow and Mary or Peter Shoemaker.

Request #14:

Copies of any correspondence, emails, birthday cards, Christmas cards, etc. sent to or received by Marshall Shoemaker or his children from Jim or Polly Shoemaker.

Request #15:

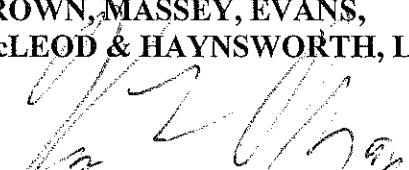
With the exception of communications to or from his attorney, all communications of whatever type or nature sent by or received by Marshall Shoemaker relative to the competency of his mother or father or which contain any mentions of substance abuse or dependency relative to his mother or father.

Request #16:

Any communication with Ned Sloan regarding Marshall Shoemaker's mother.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorneys for Respondents

Greenville, South Carolina
July 30, 2021

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF GREENVILLE)

C.A. NO.: 2020-ES-23-00073

In the matter of:)

Mary Hunter Sloan Shoemaker)
Decedent)

James Marshall Shoemaker, III)
Petitioner,)

RESPONDENTS' FIRST SET OF
INTERROGATORIES TO PETITIONER

vs.)

Lesley Moore, Esquire as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker and Jonathan Evans Shoemaker)
as Beneficiaries)

Respondents.)

TO: JOHN BLINCOW, JR., ESQUIRE, ATTORNEY FOR PETITIONER

You will place take notice that Respondents, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, hereby propounds the following Interrogatories to be answered fully and under oath within thirty (30) days after service hereof.

Interrogatory No. 1:

Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Interrogatory No. 2:

Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

Interrogatory No. 3:

List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Interrogatory No. 4:

For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Interrogatory #5:

Please state whether or not you have discussed with your children the lawsuit you have instituted against your mother's Estate and Trust and if so, please state the substance of the discussions with them including whether or not you discussed that if you were successful, they will not receive the \$250,000.00 each left to them by their grandmother.

Interrogatory #6:

Please identify by date all verbal conversations with your mother from January 1, 2017 until the date of her death and identify who else was present and specify the substance of the conversations.

Interrogatory #7:

Please identify by date all written communications with your mother from January 1, 2015 until the date of her death and identify the substance of the circumstances.

Interrogatory #8:

Please identify all persons to whom you have communicated regarding your mother's physical, mental or emotional health and wellbeing since January 1, 2017 through the present and identify the date of the communications and the substance.

Interrogatory #9:

Please identify any persons whom you or your representatives have contacted concerning the physical or mental health of your mother or father, including regarding your mother or father's medical records, since January 1, 2017.

Interrogatory #10:

Please identify any and all persons with whom you have communicated about your mother or father's testamentary capacity and any and all persons who provided information to you suggesting that your mother or father lacked testamentary capacity.

Interrogatory #11:

In paragraph 10 of your petition, you allege that you are a "interested person" under the SC probate code. What is the basis for that contention?

Interrogatory #12:

In paragraph 11 of your petition, you contend that at the time she executed "the new Will and Trust the decedent lacked testamentary capacity to make a valid Will and Trust as defined by SC law." With regard to that allegation, as of the date your petition was filed on July 21, 2020 please specifically list all medical evidence in your possession supporting your contention "that decedent lacked testamentary capacity to make a valid Will and Trust as defined by SC law".

Interrogatory #13:

Please list by name, address and phone number all persons with whom Petitioner has talked since

January 1, 2015 regarding his mother or his father and their Wills, Trusts or estate plans.

Interrogatory #14:

For all persons identified in response to Interrogatory #13 above, please state when the conversation(s) took place, who was present, where the conversation took place and specify the substance of the conversation, particularly any statements made by Petitioner.

Interrogatory #15:

Has Petitioner ever sought counseling or treatment of any kind or nature regarding depression?

If so, please provide the name, address and phone number of all persons Petitioner has consulted.

Interrogatory #16:

Has Petitioner ever sought counseling or treatment of any kind or nature regarding bipolar disorder? If so, please provide the name, address and phone number of all persons Petitioner has consulted.

Interrogatory #17:

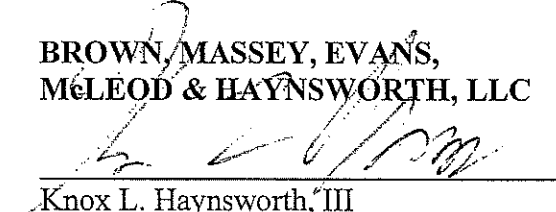
Does Petitioner believe that his children are honest and truthful?

Interrogatory #18:

Has Petitioner ever encouraged his children to be untruthful? If so, describe the circumstances.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**


Knox L. Haynsworth, III

S.C. Bar #: 010275

Post Office Box 2464

Greenville, SC 29602

Telephone: (864) 271-7424

Attorneys for Respondents

Greenville, South Carolina
July 30, 2021

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF GREENVILLE)

C.A. NO.: 2020-ES-23-00073

In the matter of:)

Mary Hunter Sloan Shoemaker)
Decedent)

James Marshall Shoemaker, III)

Petitioner,)

CERTIFICATE OF SERVICE

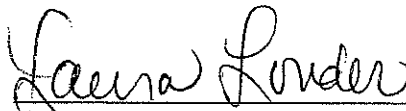
vs.)

Lesley Moore, Esquire as Personal)
Representative and Trustee, Edward Sloan)
Shoemaker and Jonathan Evans Shoemaker)
as Beneficiaries)

Respondents.)

This is to certify that I am an employee in the firm of **BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC** attorneys for Respondents and that I have this day caused to be served upon the person(s) named below Respondents' First Set of Interrogatories and First Request for Production of Documents to Petitioner by placing copies of the same in the United States mail, with adequate postage thereon, addressed as follows:

John Blincow, Jr., Esquire
126 Meeting Street
Charleston, South Carolina 29401


 Laura Louder

Greenville, South Carolina
July 30, 2021

R. David Massey
F. Douglas P. Evans
Stanley E. McLeod
Knox L. Haynesworth, III
Tyler E. McLeod

BROWN, MASSEY, EVANS, MCLEOD & HAYNSWORTH, LLC
ATTORNEYS AT LAW
POST OFFICE BOX 2464
GREENVILLE, SOUTH CAROLINA 29602

106 WILLIAMS STREET
TELEPHONE (864) 271-7424
FAX (864) 242-6469
WEBSITE: bmemhlaw.com
OF COUNSEL
Suzanne Massey Schemm

July 25, 2022

The Honorable Joshua L. Queen
Cherokee County Probate Judge
PO Box 22
Gaffney, SC 29342-0022

Re: *James Marshall Shoemaker, III vs. Lesley Moore, Esquire as Personal Representative and Trustee, Edward Sloan Shoemaker and Jonathan Evans Shoemaker as Beneficiaries*
C.A. No.: 2020-ES-23-00073

Dear Judge Queen:

With reference to the above matter, my firm represents the estate of Polly Shoemaker and the other respondents. This case is related to a prior action which was brought by Mr. Shoemaker against his father's estate, two brothers, mother, former housekeeper and Lesley Moore, the PR of Mr. Shoemaker's estate in the case of *James Marshall Shoemaker, III vs. Mary Hunter Sloan Shoemaker, Edward Sloan Shoemaker, Jonathan Evans Shoemaker, Debora Wine, Lesley Moore and John and Jan Doe* C.A. 2018-ES-23-01729. Summary judgment was granted in that matter by the Honorable Clayton Jennings and that case is presently on appeal in the circuit court for Greenville County.

There are a number of pending motions and other matters in the above case that have essentially been on hold since Judge Jennings recused himself and Judge Faulkner ultimately requested court administration assign a probate judge from outside of Greenville County to hear all matters going forward. I wanted to write you to outline what I believe to be the matters that need to be addressed by the court and seek your guidance as to scheduling hearings on various motions so the case can get moving.

To the best of my knowledge there is a pending motion to compel discovery I filed against petitioner dated November 30, 2021. There is also a motion to dismiss the entire case for petitioner's failure to join indispensable parties, his two children. That motion was argued before Judge Jennings but before he made a decision, he recused himself so no decision has ever been rendered. Connected to the motion to dismiss for failure to join indispensable parties is Mr. Shoemaker's motion, through his prior counsel John Blincow, to amend the petition and add his two children as parties.

There actually is one additional matter involving Jim Shoemaker's case (2018-ES-23-01729) that remains undecided. After respondents were granted summary judgment in Mr. Shoemaker's case we filed a motion for costs and attorney's fees pursuant to S.C. Code Ann. §62-7-1004 and S.C. Code Ann. §62-1-111. As with the motion to dismiss the action against Mrs. Shoemaker's estate for failure to join indispensable parties which was argued before the

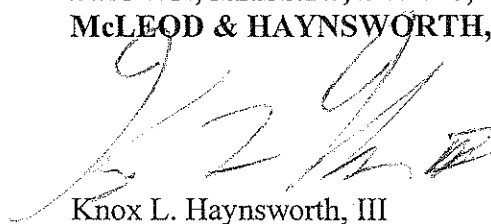
court but not yet decided, likewise, Judge Jennings heard arguments regarding the attorney's fees and had that matter under advisement at the time he decided to recuse himself from any further decisions in either case.

So, to the best of my recollection I think we have one pending motion/decision in Mr. Shoemaker's case and three pending motions in Mrs. Shoemaker's case, two of which have already been argued before Judge Jennings. I am happy to re-argue those motions before you if you would like to schedule a hearing.

With best regards, I remain

Sincerely,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**

A handwritten signature in dark ink, appearing to read 'Knox L. Haynsworth, III', is written over the printed name.

Knox L. Haynsworth, III

KLH/II

cc: William R. McKibbin, III, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

In the matter of Mary Hunter Sloan
Shoemaker,

Decedent,

James Marshall Shoemaker, III,

Petitioner,

v.

Edward Sloan Shoemaker, Jonathan Evans
Shoemaker as Beneficiaries,

Respondents

IN THE PROBATE COURT

Docket No.: 2020-ES-23-00073

**PETITIONER'S RESPONSES TO
RESPONDENTS' INTERROGATORIES
AND REQUESTS FOR PRODUCTION
OF DOCUMENTS**

TO: Jenna McLeod, Counsel for Respondents.

Petitioner hereby supplements previous production of documents and interrogatory responses as follows:

Interrogatory 1: No witness statements have been recorded or written. Witnesses identified by name thus far include Marshall Shoemaker, Petitioner's mother's caretaker Debbie. Witnesses expected but not yet identified include medical providers of the Decedent, from whom Petitioner requires identification by Respondents, as well as identity of Pharmacists of Decedent, also requiring identification from Respondents.

Interrogatory 2: Petitioner is unaware of any at this time.

Interrogatory 3: Petitioner is unaware of any at this time

Interrogatory 4: Petitioner is unaware of any at this time

Interrogatory 5: Petitioner has discussed the action with his children, and the substance of the discussions were simply the substance of the suit itself, and yes, Petitioner did discuss the consequences of success regarding their \$250,000.00 bequests.

Interrogatory 6: Petitioner does not recall.

Interrogatory 7: Petitioner cannot identify all such documents or their substance except to the extent that he can refer counsel to their existence and produce the same, which Petitioner is informed and believes was provided through prior counsel.

Interrogatory 8: Petitioner does not recall all persons other than his family members, counsel, and likely several friends to whom he discussed these matters, and Petitioner does not recall the date of any such communications or the substance thereof.

Interrogatory 9: Petitioner refers to the same persons identified in his father's suit, and Petitioner is in possession of no medical records.

Interrogatory 10: The answer to this interrogatory was also provided in the existing suit regarding Petitioner's father; notwithstanding, Petitioner does not recall all persons other than family members, counsel, and likely several friends, but the dates and substance of each cannot be recalled.

Interrogatory 11: Petitioner responds that an "interested person" calls for a legal conclusion that he is not qualified to define.

Interrogatory 12: Petitioner has no medical evidence currently in his possession as all such information has been in possession of Respondents only and not provided to Petitioner.

Interrogatory 13: Petitioner has no recollection sufficient to answer this interrogatory and it is not reasonably possible to recall.

Interrogatory 14: Petitioner has no recollection sufficient to answer this interrogatory and it is not reasonably possible to recall.

Interrogatory 15: Respondents are in possession of this information as it was provided in the companion lawsuit.

Interrogatory 16: Respondents are in possession of this information as it was provided in the companion lawsuit.

Interrogatory 17: Petitioner does not and cannot know if his children are truthful and honest at all

times and in all things, but generally speaking, yes, he believes his children would seek to be truthful and honest.

Interrogatory 18: No.

REQUESTS FOR PRODUCTION OF DOCUMENTS

With regard to Requests for Production of Documents numbered 1-16, Petitioner submits all documents that are or could be responsive to the requests which are in Petitioner's possession were provided to Respondents' counsel by hand delivery March 23, 2023 for inspection and copying. Petitioner had believed that his previous counsel had provided all such responses in November of 2021.



William R. McKibbon, III (#68454)
601 E. McBee Ave., Ste. 104
Greenville, SC 29601
Phone: 864.235.0071
Fax: 864-235-0072
will@legalcarolina.com
Attorney for Plaintiff

Greenville, SC
March 26, 2024

Jenna McLeod

From: Will McKibbon <will@legalcarolina.com>
Sent: Tuesday, April 2, 2024 2:34 PM
To: Jenna McLeod; Emilee Akers
Subject: Shoemaker hearing
Attachments: Int. and RFP response.pdf

[EXTERNAL]
Jenna,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sincerely,
Will McKibbon

--


Will McKibbin



601 E. McBee Ave., Ste. 104
Greenville, SC 29601
P: 864.235.0071
F: 864.235.0072