

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-CP-30-258

In The Matter of the Estate of Marion M. Kay

Edward D. Sullivan, as Personal Representative
of the Estate of Marion M. Kay, Appellant/Cross-Respondent

v.

Martha Brown and Mary Moses Respondents/Cross-Appellants.

**APPELLANT-CROSS RESPONDENT'S RETURN TO MOTION
FOR ESCROW OF FUNDS**

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF
APPEALS:

Pursuant to Rule 240(e), SCACR, Appellant-Cross Respondent
Edward D. Sullivan, Personal Representative, respectfully submits the
following response in opposition to Respondents/Cross-Appellants Brown
and Moses' motion for escrow of funds:

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SC Court of Appeals

FACTS

Marion M. Kay died testate on May 3, 2007. Her will was duly probated and Edward D. Sullivan, a family friend and attorney who had represented Ms. Kay since 1997 in various matters, was appointed as Personal Representative on May 16, 2007. The will provides that the Personal Representative “shall receive reasonable compensation” and be reimbursed for “reasonable expenses.” (See Will attached as pages 13 - 19) At the time of Ms. Kay’s death, she owned, among other things, a ½ undivided interest in a 330 acre tract in Mountville, South Carolina (the “Farm”). The other ½ undivided interest was titled in the name of “The Heirs of W.H. Milam”. The heirs of W.H. Milam consisted of Respondents/Cross-Appellants Martha M. Brown and Mary Leona M. Moses, who were each named as 1/10 residuary beneficiaries of Ms. Kay’s estate.¹

¹ Item IV of Ms. Kay’s will (See Exhibit C-3) provides:

Outright Gift of Residuary. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises) wherever situate and whether acquired before or after the execution of this Will, absolutely and forever, as follows:

One-fourth (1/4) interest to Lisbon Presbyterian Church, absolutely forever;

The Personal Representative understood that it was Ms. Kay's intent for the property to be divided and sold. In fact, prior to her death, the Personal Representative had represented Ms. Kay when she expressed an interest for the property to be divided. Furthermore, certain beneficiaries expressed their desire for their interest in the Estate to be liquidated so that they could receive cash rather than an undivided interest in land. Despite his best efforts, the PR could not reach an agreement with the co-tenants to divide the land so he filed a partition/declaratory judgment

One-fourth (1/4) interest to Lisbon Presbyterian Church Cemetery fund, absolutely forever, the interest to be used to keep up the Milam-Kay plot;

One-tenth (1/10) interest to Marla Elizabeth Heard, (per stirpes), to be hers absolutely forever;

One-tenth (1/10) interest to Bart Edward Heard, (per stirpes), to be his absolutely forever;

One-tenth (1/10) interest to Martha Milam Brown (per stirpes), to be hers absolutely forever;

One-tenth (1/10) interest to Mary Leona Milam Moses (per stirpes), to be hers absolutely forever;

One-tenth (1/10) interest to Presbyterian Home of South Carolina, Clinton, South Carolina.;

action to determine the rights of the various claimants.² The Respondents/Cross-Appellants filed a counterclaim against the Estate. On the eve of the trial of the action, the Personal Representative negotiated an agreement to sell the Estate's interest, successfully resolved the issues and various claims surrounding the property, and the case was dismissed and the sale closed. (See "Statement of Facts and Issues" admitted into evidence at February 2, 2011 hearing as Court Exhibit C-1, attached hereto as pages 20 - 28.)

In November 2010, after 3 years and 9 months, the Personal Representative filed a Petition for Settlement and Proposal for Distribution. (Thereafter an Amended Proposal for Distribution.) See attached pages 29 - 36. Upon the filing of the Petition for Settlement of the Estate and Proposal for Distribution, Respondents/Cross Appellants requested a hearing. (See attached pages

² Further complications included the claims of Respondents/Cross-Appellants to 5 acres that was included in the Estate as well as a "Right of First Refusal." In addition, the will included an option which read:

Option to Purchase. It is my desire and I hereby direct that Charles P. Copeland be permitted to buy my interest in the real estate within eight (8) months after my death at the fair market price on the date of my death, the decision of my Personal Representative regarding the fair market price to be final.

37 - 38). No responsive filing to the Personal Representative's Petition for Settlement was made. Hearings were held on the Personal Representative's Petition and the court issued an Order requiring the Personal Representative to refund a substantial portion of his compensation based in part on the Court's finding that the Personal Representative should not have pursued a Partition/Declaratory Judgment Action but rather should have deeded out the undivided interests in the real estate to the various beneficiaries (notwithstanding the Personal Representative's understanding of the intent of Ms. Kay, his interpretation of the will, his powers under the will and those provided by statute, his professional discretion and the expressed desire of certain beneficiaries that he liquidate their interests as opposed to deeding out the property).

The Personal Representative made a Rule 59 motion which was denied. Both sides then appealed to the Circuit Court. The Circuit Court affirmed the orders of the Probate Court.

This appeal, for the most part, pertains to the determination of the amount of "reasonable compensation" for the services of the personal representative and the amount of "reimbursement for services."

During the appeal, the Personal Representative has attempted to settle, and has in fact reached agreement, with several of the beneficiaries to resolve this matter. See attached pages 39 - 51. Upon information and belief, the Respondents-Cross Appellants have attempted to obstruct these efforts. See attached pages 52 - 53. In addition, the Personal Representative has attempted to disburse the remaining estate proceeds to all of the beneficiaries and has filed such a Petition to Disburse the Estate Proceeds in the Probate Court. The Respondents-Cross Appellants objected to the Petition resulting in the Court's denial thereby further thwarting the ongoing efforts to move the Estate toward settlement. See attached pages 54 - 55.

It should be noted that the Order of the lower court awarded \$19,860 to counsel for Respondents/Cross-Appellants Brown and Moses pursuant to the common fund doctrine, approximately 50% of the amount ordered to be refunded to the Estate (\$42,375 less \$2500 additional compensation to complete the Estate = $\$39,975 \times 50\% = \$19,988$ as compared to \$19,860.) It should also be noted that Brown and Moses stand to gain less than \$2,000 each even if the lower court's order is ultimately affirmed. ($\$39,975$ less \$19,860) x 10% reduced by one-half of the costs of court transcripts.) See Orders attached as pages 56 - 76. Also attached in support of the foregoing facts is Affidavit of Edward D. Sullivan, pages 77 - 81.

Respondents-Cross Appellants have filed a motion for escrow of funds by the Personal Representative. Appellant-Cross Respondent Personal Representative opposes the motion on the following grounds:

I. The Lower Court's ruling is not an exception to the general rule that service of a notice of appeal in a civil matter automatically stays matters decided in the order and automatically stay the relief ordered in the order.

Rule 241 (a) provides “[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decrees or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decisions. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.” Pursuant to the general rule, the ruling ordering refund of compensation to the Estate is stayed pending this appeal.

Furthermore, the lower court's order to refund compensation to the Estate does not meet any exceptions to the general rule. Reliance by Respondent/Cross-Appellant on 241(a) (1) is misplaced. In State v Cooper, the South Carolina Supreme Court considered whether the exception to the

automatic stay applied where there was an order to pay expert fees. After stating the general rule and the exception pertaining to money judgments, the Court held “the payments in this case are not ‘money judgments’ within the contemplation of section 18-9-30. . . . Expert fees are matters incidental to the case and do not constitute a traditional judgment as contemplated by the statute. Therefore, because the payment of expert fees is a collateral issue, no exception applies and the circuit court orders were automatically stayed by the filing of the notice of appeal.” The Court cited with approval Pelzer Mfg. Co. v. Cely, 40 S.C. 430, 18 S.E. 790 (1894) holding that Section 18-9-130 applies to judgments directing money be paid by one party to another party (emphasis added).

In this case, the order requiring a refund of compensation is not a judgment directing money to be paid by one party to another party. The Personal Representative is not a party in the traditional sense, he simply filed a Petition for Settlement. The recipient of the required refund of compensation, the Estate, is also not party to an action. Accordingly, the lower court’s ruling does not constitute a money judgment and does not constitute an exception to the general rule. Furthermore, as is the case in State v. Cooper concerning expert fees, a requirement to refund compensation is incidental to the “case”, a Petition for Settlement. In

addition, nearly 50% of the refund is the source for legal fees for counsel for Brown and Moses under the common fund doctrine. Therefore, not unlike expert fees, the refund of compensation to the Estate is a collateral issue, no exception applies and the order of the lower court stayed by the filing of a notice of appeal. In any event, the lower court retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Respondents/Cross-Appellants Brown and Moses rely on Blakely v. State Board of Medical Examiners, 310 S.C. 29, 435 S.E. 2d 37 (1993) as authority to support their extraordinary request to require the escrow of funds. However, a close reading of Blakely shows that it does not support their contention. In the case at hand, the lower court order has been appealed. It should also be noted that in Blakely the Court held that an order compelling compliance was not proper.

II. The issue of whether the refund of compensation should be escrowed pending appeal is not preserved for review because it was not properly raised or preserved and to the extent the issue can be said to have been raised below, it was denied and no appeal taken.

The issue of whether the ordered refund of compensation was required to be escrowed was not briefed in the lower court, was not ruled upon by the court in its written order (See Orders attached at pages 56 - 76), and was not

included in the Grounds for Appeal by Respondent/Cross-Appellants. (See Grounds for Appeal attached at pages 73 - 76). “In order for an issue to be preserved for appellate review, it must have been raised and ruled upon by the trial judge. Issues not raised and ruled upon by the trial court will not be considered on appeal.” State v. Dunbar, 356 S.C. 138, 587 S.E.2d (2003) citing Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). Accordingly, the issue of whether the compensation ordered to be refunded should be escrowed pending appeal is not preserved for appellate review and the motion should be denied. ³

III. Equity does not require the extraordinary request made by Brown and Moses.

Brown and Moses cite equitable maxims “[h]e who comes into equity must come with clean hands” and “[h]e who seeks equity must do equity.” Motion at 2. Yet, Brown and Moses have obstructed the administration of the Estate by the Personal Representative beginning from its inception and

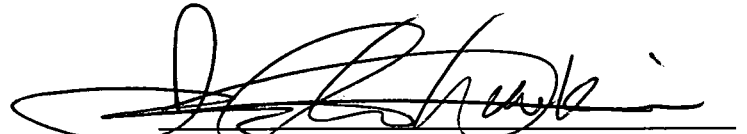
³ The Circuit Court Judge did imply that that no refund was due pending this appeal. At the hearing in Circuit Court, Counsel for Brown and Moses stated, “. . . The Cemetery fund and the Lisbon Church, they are due over \$21,000 from the personal representative under Judge Hocker’s order because of the way he did things. He had not put that money back in the estate despite the fact that the order gave him 30 days. So if he was so concerned about the heirs Mr. Heard has not received over \$4,000 that he was supposed to have received under the previous order.” Judge Addy replied, “While it is under appeal I can’t hold that against him.” See portion of hearing transcript attached at pages 82 - 88).

continuing to the present date by blocking the efforts to divide the property and now objecting to disbursement of the estate proceeds. The equitable maxims cited above do not support their extraordinary request, but rather provide additional grounds for denial of their motion.

CONCLUSION

For the foregoing reasons, Appellant/Cross-Respondent respectfully requests the Court deny Brown and Moses' motion for escrow of funds.

**LAW OFFICE OF DARYL G. HAWKINS,
LLC**



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January 20, 2014

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-CP-30-258

In The Matter of the Estate of Marion M. Kay

Edward D. Sullivan, as Personal Representative
of the Estate of Marion M. Kay, Appellant/Cross-Respondent

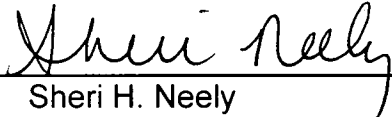
v.

Martha Brown and Mary Moses Respondents/Cross-Appellants.

PROOF OF SERVICE

I certify that I served the Appellant/Cross-Respondent's Return to Motion for Escrow of Funds on Martha Brown and Mary Moses by depositing a copy of it in the United States Mail, postage prepaid, on January 21, 2014 to their attorney of record, John R. Ferguson, Post Office Box 286, Laurens, South Carolina 29360.

LAW OFFICE OF DARYL G. HAWKINS, LLC



Sheri H. Neely
Paralegal

January 21, 2014

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JAN 21 2014

SC Court of Appeals

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January 20, 2014

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Edward D. Sullivan, as Personal Representative of The Estate of Marion M. Kay
v. Martha Brown and Mary Moses
Case No. 2012-CP-30-00258

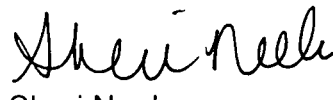
Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of Appellant/Cross-Respondent's Return to Motion for Escrow of Funds in the above-referenced matter. A copy of this Return has been forwarded for service upon counsel for Respondent/Cross-Appellant.

Please return a clocked copy to me via my courier.

If you have any questions, please do not hesitate to call. Thank you for your assistance.

Very truly yours,



Sheri Neely
Legal Assistant

Enclosures

cc: John R. Ferguson

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JAN 21 2014

SC Court of Appeals

LAST WILL AND TESTAMENT
OF
MARION M. KAY

Introductory Clause. I, Marion M. Kay, a resident of and domiciled in the County of Laurens and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

ITEM I

Direction to Pay Debts. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. If at the time of my death any of the real property herein devised is subject to any mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my general estate.

ITEM II

Direction to Pay All Taxes from Residuary Estate. I direct that all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), or on any insurance upon my life or on any property held jointly by me with another or on any transfer made by me during my lifetime or on any other property or interests in property included in my estate for such tax purposes be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

ITEM III

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Personal Representative within ninety (90) days after my Personal Representative's

Last Will and Testament of Marion M. Kay Page 1

qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my Personal Representative, who shall distribute my personal and household effects to my family and friends as (s)he shall deem appropriate. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

ITEM IV

Outright Gift of Residuary. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises) wherever situate and whether acquired before or after the execution of this Will, absolutely forever, as follows:

One-fourth (1/4) interest to Lisbon Presbyterian Church,
absolutely forever;

One-fourth (1/4) interest to Lisbon Presbyterian Church
Cemetery fund, absolutely forever, the interest to be used to keep up the Milam-
Kay plot;

One-tenth (1/10) interest to Marla Elizabeth Heard, *per stirpes, M.M.K. CCC*
absolutely forever;

One-tenth (1/10) interest to Bart Edward Heard, *per stirpes, M.M.K. CCC*
absolutely forever;

One-tenth (1/10) interest to Martha Milam Brown, *per stirpes, M.M.K. CCC*
absolutely forever;

One-tenth (1/10) interest to Mary Leona Milam Moses, *per stirpes, M.M.K. CCC*
absolutely forever; and

One-tenth (1/10) interest to the Presbyterian Home of South
Carolina, Clinton, South Carolina.

*2 of 7
M.M.K.
CCC
js*

ITEM V

Naming the Personal Representative, Personal Representative Succession, Personal Representative's Fees and Other Matters. The provisions for naming the Personal Representative, Personal Representative succession, Personal Representative's fees and other matters are set forth below:

(1) Naming an Individual Personal Representative. I hereby nominate, constitute, and appoint as Personal Representative of this my Last Will and Testament Edward D. Sullivan and direct that he shall serve without bond.

(2) Naming Individual Successor or Substitute Personal Representative. If my individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representative who shall also serve without bond shall be Joann Ball. *m.m.k. ps*

(3) Fee Schedule for Individual Personal Representative. For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

ITEM VI

Definition of Personal Representative. Whenever the word "Personal Representative" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

ITEM VII

Powers for Personal Representative. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and

Last Will and Testament of Marion M. Kay Page 3

deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VIII

Provision for Personal Representative to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Personal Representative acting as Trustee shall retain possession of the share or property in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Personal Representative deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Personal Representative deems advisable any other income or resources of the beneficiary or his or her parents known to my Personal Representative. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. Whenever my Personal Representative determines it appropriate to pay any money for the benefit of a beneficiary for whom a trust is created hereunder, then the amounts shall be paid out by my Personal Representative in such of the following ways as my Personal Representative deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Personal Representative using such amounts directly for the beneficiary's care, support and education. My Personal Representative as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Personal Representative.

ITEM IX

Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my

4 of 7
M. Kay
cc
PS

estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions.

ITEM X

Definition of Children. For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent.

The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM XI

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XII

Statement by Testatrix of Intent Not to Exercise Power of Appointment. I hereby refrain from exercising any power of appointment that I may have at the time of my death.

5 of 7
M. M. Kay
Ces
ps

ITEM XIII

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XIV

Option to Purchase. It is my desire and I hereby direct that Charles P. Copeland be permitted to buy my interest in the real estate within eight (8) months after my death at the fair market price on the date of my death, the decision of my Personal Representative regarding the fair market price to be final.

Testimonium, Attestation and Self-Proving Affidavit. I, Marion M. Kay, the Testatrix, sign my name to this instrument this 30th day of October, 1997, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Marion M. Kay
Marion M. Kay

We, Charlene C. Stroud and Pam Simpson, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, and in the presence of each other, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Charlene C. Stroud
(Witness)
Pam Simpson
(Witness)

6 of 7
m. m. x.
ces
ps

The State of South Carolina

County of Laurens

Subscribed, sworn to, and acknowledged before me by Marion M. Kay, the
~~Testatrix~~, and subscribed and sworn to before me by Charlene C. Stroud and
Ram Simpson, witnesses, this 30 day of October, 1997.

Ram Simpson (Seal)
Notary Public for South Carolina

My Commission Expires: 12-18-2005

7 of 7
M.M.K.
CCS
RS

Statement of Facts and Issues

→ Testamentary Intent ←

1. At the time of Ms. Kay's death, she owned a ½ undivided interest in a 330 acre tract in Mountville, South Carolina (the "Farm"). The other ½ undivided interest was titled in the name of "The Heirs of W.H. Milam". The heirs of W.H. Milam consist of Martha M. Brown and Mary Leona M. Moses.
2. Prior to Ms. Kay's death, she expressed her dissatisfaction to Ms. Brown and Ms. Moses about the manner in which they had made decisions about the Farm (See Exhibit C-1).
3. Furthermore, Ms. Kay desired to divide the Farm prior to her death (See Exhibit C-2).
4. Ms. Kay also owned a house and 10 acres of land which adjoined the Farm. The house and 6.238 acres (the "Homeplace") were separated from the remaining 3.762 acres (the "Lot") by the public roadway
5. Item IV of Ms. Kay's will (See Exhibit C-3) provides:

Outright Gift of Residuary. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises) wherever situate and whether acquired before or after the execution of this Will, absolutely and forever, as follows:

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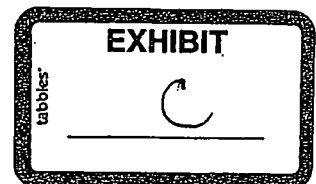
One-tenth (1/10) interest to Marla Elizabeth Heard, (per stirpes), to be hers absolutely forever;

One-tenth (1/10) interest to Bart Edward Heard, (per stirpes), to be his absolutely forever;

One-tenth (1/10) interest to Martha Milam Brown (per stirpes), to be hers absolutely forever;

One-tenth (1/10) interest to Mary Leona Milam Moses (per stirpes), to be hers absolutely forever;

One-tenth (1/10) interest to Presbyterian Home of South Carolina, Clinton, South Carolina.;



6. In addition, Item XIV of the Will provides as follows:

Option to Purchase. It is my desire and I hereby direct that Charles P. Copeland be permitted to buy my interest in the real estate within eight (8) months after my death at the fair market price on the date of my death, the decision of my Personal Representative regarding the fair market price to be final.

7. It was Ms. Kay's intention that her real estate be sold and the proceeds distributed to the devisees. For example, the provision of the Will referenced above refers to the "interest to be used to keep up the Milam-Kay plot."
8. At least 2 residuary beneficiaries have indicated they preferred their share of the estate assets in cash rather than an interest in the real estate.
9. Ms. Moses and Ms. Brown were bitterly disappointed that they did not inherit Ms. Kay's interest in the Farm.
10. The settlement of the Estate was very complicated and involved many novel issues, such as:
 - a. In 1972, owners of the Farm granted to each other a "right of refusal" thereby creating a conflict with Copeland's Option to Purchase.
 - b. Ms. Brown and Ms. Moses claimed they were entitled to approximately 5 acres of the Farm that had never been deeded to them.
 - c. There were claims that Ms. Kay either did not have title and/or did not have the right to devise her interest to anyone other than the Heirs of W.H. Milam.
11. Copeland desired to exercise his option by purchasing 46.85 acres that adjoined his property. He made a written offer of \$56,400 on April 16, 2008 (See Exhibit C-5). Later he agreed to pay \$1500 per acre, the appraised value.
12. In an effort to sort out these claims, I obtained bids from surveyors and appraisers. Ultimately I hired a surveyor and an appraiser.
13. The Farm appraised at \$614,000 (See Exhibit C-6), the Estate's interest being \$307,000.
14. The Homeplace appraised at \$64,000 (See Exhibit C-7) and the Lot appraised at \$20,000 (See Exhibit C-8).
15. Other issues that had to be dealt with included ensuring that I, as Personal Representative, had the right to sell the property. To make this determination, I researched the statutes, read and re-read the will, had many conversations with title insurance counsel and a real estate attorney.
16. Another issue was what action was required by church protocol to properly approve and consent to the sale of the real estate. I had several telephone conferences with Robert Fuller, and received and reviewed his "opinion" letter (See Exhibit C-9).
17. It was discovered during this process that Mary Leona M. Moses had judgments against her. I was concerned how these judgments might affect the title to the property (See Exhibit C-10). I personally looked at the records at the Laurens Courthouse.

18. In order to reach a resolution, I met several times with Charles Copeland and his wife, Patsy Copeland about Mr. Copeland's option.
19. On Saturday evening, April 26, 2008, I met with the Lisbon Church Session to discuss a compromise proposal.
20. On May 2, 2008, I submitted this written proposal to Ms. Brown, Ms. Moses, and Mr. Copeland in an attempt to resolve the issues (See Exhibit C-11). The proposal, subject to approval from the heirs and the probate court, was to convey 5 acres to Ms. Brown (as she claimed was hers) at no cost, convey 46.85 acres to Mr. Copeland that adjoined his property, and sell the remainder to Ms. Moses and Ms. Brown at the appraised value. No response was received from Ms. Brown and Ms. Moses.
21. In another attempt to reach a resolution, I arranged a meeting with representatives from Lisbon Presbyterian Church, Presbyterian Home of South Carolina, Mary Moses, Martha Brown, and Paul Major, appraiser. The meeting was held in Newberry, SC at Paul Major's office on July 31, 2008. Rev Hampton Hunter attended the meeting on behalf of the church. Penny Arnold attended the meeting on behalf of Presbyterian Home of SC. The purpose of the meeting was to discuss an equitable division of the property. Initially, Ms. Moses and Ms. Brown refused to discuss any proposal with Mr. Major and me as long as Rev. Hunter and Ms. Arnold were allowed to attend the meeting. Subsequently, the meeting was held and it was decided that Mr. Major would prepare a proposed division of the property and present a written proposal to the parties.
22. A proposal was ultimately prepared and presented to Ms. Moses and Ms. Brown. They retained counsel. No comment was ever received on the proposal, nor did Ms. Moses or Ms. Brown ever submit a counter-proposal on a division of the Farm.
23. Having not made progress toward a resolution after approximately 20 months, I filed a partition and declaratory judgment action on or about January 1, 2009 in the Circuit Court. The purpose of the litigation was to determine the rights of the parties arising out of Copeland's Option to Purchase, the Right of First Refusal and other claims made by Brown and Moses, clear the title to the property, and divide or sell the property so that Estate could be settled. (The Complaint was amended on March 4, 2009. See Exhibit C-12). The litigation ensued and the parties engaged in discovery. After 15 months or so, a mediator was retained to mediate the dispute.
24. Throughout this time period, I took phone calls from people who were interested in the property. I showed the Homeplace at least once to potential buyers. I also showed the Farm to a potential buyer.
25. In the summer of 2009, I was contacted by Rowland W. Milam who expressed an interest buying the Estate's interest in Farm.
26. The first offer received from Rowland Milam was forwarded to the beneficiaries on March 1, 2010. Milam offered \$48,000 for the Homeplace, \$4500 for the Lot and \$224,410 for the Estate's interest in the Farm, approximately 71% of the appraised value (See Exhibit C-13). The offers included terms requiring to Estate to give general warranty deeds and pay for a termite inspection and be responsible for repairs.

27. Two or three more rounds of negotiations with Rowland Milam followed.
28. At some point during my negotiations with Rowland Milam, Copeland indicated he would release his option to purchase if the Estate's undivided interest was sold to Rowland Milam.
29. On the eve of mediation, I reached an agreement to sell Rowland Milam the Estate's ½ undivided interest in the Farm, the Homeplace, and the Lot, subject to the necessary approval, if any, of the beneficiaries and the Probate Court. The sales price for the property was as follows: ½ undivided interest in Farm, \$292,500, Homeplace, \$57,000 and Lot, \$17,500. The Estate was not responsible for any repairs and the type of deed was "quit-claim".
30. I prepared three contracts which were signed and dated May 4, 2010. The total purchase price for the all of the Property was \$367,000, approximately 94% of the 2007/2008 appraised values. (See Exhibit C - 14.)
31. I prepared and obtained the consents of all interested parties to close the sale of the property subject to the terms of the Contract. (See Exhibit C-15).
32. I prepared the deeds and attended the closing of the transactions in Laurens, SC on July 9, 2010. (See Exhibit C-16). There was no sales commission. The net proceeds collected by the Estate were \$365,012.85. (See Exhibit C-16). Furthermore, the Estate was expressly relieved of any responsibility for roll-back taxes.
33. From September 1, 2010 until November 12, 2010, I made the final distribution of personal effects, met with beneficiaries, and sorted through the personal papers, pictures, books and remaining personal effects of Ms. Kay.
34. In addition to the foregoing, I took the following action as the Personal Representative:

Personal Property:

- a) cleaned out, with the assistance of others, Marion's apartment in Clinton.
- b) cleaned out, with the assistance of others, Marion's home and outbuildings in Mountville.
- c) distributed, with the assistance of others, Marion's many, many personal effects and heirlooms to various designees in accordance with Marion's wishes as best I could discern.
- d) conveyed Marion's automobile to one of the beneficiaries in accordance with Marion's wishes.

Real Estate

- a) interviewed several appraisers and then hired Paul Major of Newberry for the 330 tract and timber and another for the house and 10 acres
- b) interviewed several land surveyors and then hired Foard Tarbert.
- c) hired a timber consultant, Johnny Wilson, for his advice and assistance. I met with and conferred with Johnny frequently
- d) met with and conferred with Rev. Hampton Hunter repeatedly about updates and possible resolutions.
- e) met with and conferred with Rev. Hampton Hunter and Johnny Wilson at the site.

- f) had several discussions with Attorney Robert Fuller about the Church's rights in the real property and Presbytery's requirements to properly authorize any land conveyance.
- g) hired a title abstractor to search the title to the real property in the County Records. I reviewed the documents repeatedly
- h) review old probate court records
- i) pulled and reviewed old probate files for information relating to title of the estate.
- j) After discovering the public records reflected that a judgment had been filed against one of the beneficiaries, I conducted further investigation to determine the effect on the title to the real property.
- k) met with and conferred several times with the other co-tenants of the 330-acre tract in an effort to divide the acreage.
- l) met with and conferred with Mr. and Mrs. Copeland numerous times about Chuck's option to buy the real estate.
- m) researched the legality and binding effect of the "rights of first refusal".
- n) showed the Homeplace and Farm to potential buyers on at least 2 occasions.
- o) constantly visited and inspected the property.
- p) filed an insurance claim after a storm in Summer 2009 and had the debris removed.
- q) responded to several telephone inquiries about the property and its availability for sale.
- r) met with the Church Session on a Saturday evening in April 2008, as I recall, to review this matter and my proposal to the co-tenants to divide the property.
- s) strategized with various advisors repeatedly to determine the best course of action.
- t) ultimately filed a partition action in circuit court.
- u) pursued the litigation, filing pleadings, responding to pleadings and engaged in discovery.
- v) After the co-tenants noticed Cecil Milam's deposition, met with Cecil and my co-counsel at Mike Turner's office.
- w) negotiated the sale to Rowland Milam.
- x) succeeded in negotiating a sale of the property to Rowland for approximately 95% of its appraised value – despite owning an undivided interest, the claims of all the other parties to the property as well as the bad economy.
- y) researched the law concerning deeds from Estates.
- z) conferred numerous times with a title attorney concerning the deeds and the quality of title of an Estate.
- aa) Recorded the plat of survey on the 330 tract
- bb) drafted the contracts with Rowland Milam for the sale of the real estate.
- cc) drafted the consents and releases for the beneficiaries.
- dd) obtained a release from Chuck Copeland. In doing so, I literally drove by his home, picked him up at his barn, and drove him to Mike Turner's office in Laurens so that his signature could be witnessed and notarized, and then drove him back home.
- ee) obtained approvals from the other beneficiaries to sell the real estate to Rowland.
- ff) considered whether to request probate court approval of the sale. Since I had approval of all interested parties, I proceeded with the sale.
- gg) researched the law concerning conveyances by estates.
- hh) prepared the deeds.
- ii) reviewed the settlement statements for accuracy.
- jj) attended the closing of the sale of the Real Estate in Laurens.
- kk) avoided a real estate commission in selling the property.
- ll) reviewed the settlement documents ending the litigation with the co-tenants.

Other-

- a. prepared the accountings and probate documents
- b. engaged a CPA to prepare the tax returns which I reviewed
- c. recovered \$6675 in insurance proceeds

35. A timeline of significant events is attached as Exhibit 17.

IN THE MATTER OF: MARION M. KAY

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STATE OF SOUTH CAROLINA) IN THE PROBATE COURT

)

)

COUNTY OF LAURENS) CASE NO.: 2007ES3000208

IN THE MATTER OF:)

)

)

MARION M. KAY)

)

)

Probate Hearing, reported by Sonya K. Grice, Court Reporter and Notary Public in and for the State of South Carolina; before the Honorable Donald B. Hocker, Laurens County Probate Court, 100 Hillcrest Square, Laurens, South Carolina, on the 2nd day of February, 2011, scheduled for 10:00 a.m. and commencing at the hour of 10:13 a.m.

1 to authenticate it then we can mark it as -- whatever
2 we're going to mark it as.

3 MR. FERGUSON: And I've been informed that I will get a
4 copy of that at some time?

5 MR. HAWKINS: Yes, you will.

6 THE COURT: Is that the only copy you have?

7 MR. HAWKINS: It is, I believe.

8 THE COURT: Well, don't worry about it. Let's get it
9 marked.

0 MR. HAWKINS: I can get it.

1 THE COURT: Well, we've -- I'll ask my Bailiff to give it
2 to one of the girls and they'll make a copy and bring
3 it right back to us.

4 MR. HAWKINS: Well, let me ask you -- Mr. Sullivan, can
5 you identify Exhibit C for us and tell us what that is
6 and how it was prepared?

7 A: Yes, this is a statement of facts and issues that I
8 put together based on my recollection of the events of
9 the administration of the Estate.

0 Q: Does it generally state the actions that you took as
1 the Administrator -- I'm sorry, the Personal
2 Representative?

3 A: Yes, it does.

4 MR. HAWKINS: Your Honor, we'd offer it on that basis.

5 THE COURT: All right. It's without objection. Let's

mark it as C-1.

2 MR. HAWKINS: If you don't mind, Your Honor, let's just --
3 well, C-1 works. C-1 is fine. I'm not using what was
4 C-1.

5 THE COURT: Okay.

6 (Plaintiff's Exhibit C-1 was admitted into evidence.)

7 Q: Let me hand you now what -- and I'm going to show it
8 to Mr. Ferguson first in the event something happened
9 this was not in his package.

10 MR. FERGUSON: Is Mr. Copeland here today?

11 MR. HAWKINS: He's not. I think Mr. Sullivan can
12 authenticate it.

13 MR. FERGUSON: Well, let's see if Mr. Sullivan can
14 authenticate it.

15 MR. HAWKINS: Okay.

16 Q: Mr. Sullivan, I'm going to offer you now what was pre-
17 marked for identification as Exhibit C-5. Do you
18 recognize that document?

19 A: I do.

20 Q: What is it?

21 A: It's a note to me, or a letter to me, essentially from
22 Charles P. Copeland, essentially making an offer of
23 \$56,400 for 46.85 acres of land that adjoins his
24 property.

25 Q: And what's the date on that letter, if it has one?

STATE OF SOUTH CAROLINA)
)
COUNTY OF: LAURENS)
)
IN THE MATTER OF: MARION MILAM KAY)
)

IN THE PROBATE COURT
PETITION FOR SETTLEMENT

CASE NUMBER: 2007ES3000208

1. The undersigned as the Personal Representative(s) has/have collected and managed the assets of the estate; has/have paid all lawful claims against the estate; either has/have distributed assets or propose(s) to distribute as designated on the Proposal for Distribution; and has/have performed all other required acts pertaining to estate of decedent.
2. The Personal Representative(s) has/have filed:
 - Proof of Publication
 - an Inventory
 - a Proposal for Distribution
 - a Final Accounting
 - all required returns (including final income tax return, fiduciary income tax return, estate tax return). If not, please explain.
** FINAL FIDUCIARY INCOME TAX RETURN IS BEING PREPARED*
3. The time period for submission of claims has expired.
4. I request that the Court issue Orders as appropriate together with such other Orders as the law may require and as the Court may deem applicable and proper.
5. I request that the Court (check all that apply)
 - A. Consider and approve an accounting and the proposal for Distribution.
 - B. Approve the distributions previously made and authorize the Personal Representative(s) to transfer title to the assets and distribute them to the distributees in the amount and manner set forth in the Proposal for distribution (Form #410PC)
 - C. Find that the decedent died testate and make a determination of the testacy status and beneficiaries of the decedent.
 - D. Find that the decedent died intestate and make a determination of the heirs at law of the decedent.
 - E. Discharge, or set forth the conditions of the termination of the appointment of the Personal Representative, and the release of the Personal Representative's bond, if any.
 - F. (Other:)
6. Notice of right to demand hearing and copies of the final accounting, the proposal for Distribution, and this petition have been/are being sent to all interested persons as required by law.

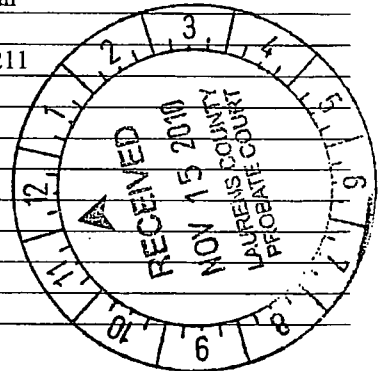
COPY

Executed this 12th day of November, 20 10

SWORN to before me this 12 day of
November, 20 10

Kristin M. Sehn
Notary Public for South Carolina
My Commission Expires: 11/07/16

Signature: *Edward D. Sullivan*
Name: Edward D. Sullivan
Address: PO Box 11714
Columbia, SC 29211
Telephone (O): 803.451.2775
(H): cell 803.261.8475
Signature: _____
Name: _____
Address: _____
Telephone (O): _____
(H): _____



STATE OF SOUTH CAROLINA)
)
 COUNTY OF: LAURENS)
)
 IN THE MATTER OF: MARION MILAM KAY)
)

IN THE PROBATE COURT

PROOF OF DELIVERY

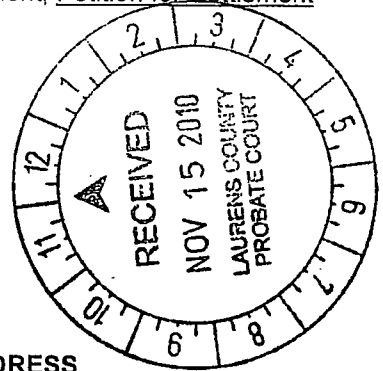
CASE NUMBER: 2007ES3000208

On the 12~~th~~ day of November, 2010, I mailed or delivered the following document, Petition for Settlement

- A copy of which is attached hereto and incorporated herein, or
 The original of which is on file with the court and incorporated herein,

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

- personal delivery ordinary first class mail
 certified mail registered mail



to each of the following persons at the address shown:

NAME	ADDRESS
Lisbon Presbyterian Church	c/o Neely Blackmon, Clerk of Session 3771 Hwy 56 S Clinton, SC 29325-6858
Lisbon Presbyterian Church Cemetery Fund	c/o Neely Blackmon, Clerk of Session 3771 Hwy 56 S Clinton, SC 29325-6858
Presbyterian Home of South Carolina	c/o Penny Arnold 2817 Ashland Road Columbia, SC 29210
Mary Leona Moses	PO Box 371 Mauldin, SC 29662
Marth Milam Brown	2205 Pine Knoll Circle Conyers, Georgia 30208
Marla Oriias	206 Adair Place Laurens, SC 29360
Bart Heard	982 Reynolds Drive West Columbia, SC 29172

SWORN to before me this 12 day of
 November, 2010

Kristin M'Leone
 Notary Public for South Carolina
 My Commission Expires: 11/07/16

Signature: Edward D. Sullivan
 Name: Edward D. Sullivan
 Address: PO Box 11714
Columbia, SC 29211
 Telephone (O): 803.451.2775
 (H): cell 803.261.8475
 E-mail: esullivan@esullivanlaw.com

Signature: _____
 Name: _____
 Address: _____

Telephone (O): _____
 (H): _____
 E-mail: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF: LAURENS)
)
 IN THE MATTER OF: MARION MILAM KAY)
)

IN THE PROBATE COURT
PROPOSAL FOR DISTRIBUTION

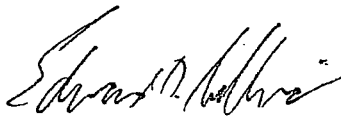
CASE NUMBER: 2007ES3000208

Personal Representative(s): Edward D. Sullivan
Page 1

Name and Address of Distributee	Amount or Item
Collins and Lacy, PC - legal fees and costs pertaining to real estate litigation PO Box 12748 Columbia, SC 29211	\$7714.57
Collins and Lacy, PC - legal fees pertaining to estate administration PO Box 12487 Columbia, SC 29211	\$4,592.23
Clifton D. Bodiford, CPA - final tax return preparation 4406 Forest Drive Columbia, SC 29206	\$1,000.00
Lisbon Presbyterin Church c/o Neely Blackmon, Clerk of Session 3771 Highway 56 S Clinton, SC 29325-6858	1/4 of residuary estate assets
Lisbon Presbyterian Church Cemetery Fund c/o Neely Blackmon, Clerk of Session 3771 Highway 56 S Clinton, SC 29325-6858	1/4 of residuary estate assets
Presbyterian Home of South Carolina Management Services Office PO Box 210037 Columbia, SC 29221	1/10 of residuary estate assets
Edward Bart Heard 3221 Fish Hatchery Rd Gaston, SC 29053	1/10 of residuary estate assets less advance of \$6000.00

Executed this 12th day of November, 2010.

Signature: _____
 Name: _____
 Address: _____

Signature: 
 Name: Edward D. Sullivan
 Address: PO Box 11714
 Columbia, SC 29211

STATE OF SOUTH CAROLINA)
)
 COUNTY OF: LAURENS)
)
 IN THE MATTER OF: MARION MILAM KAY)
)

IN THE PROBATE COURT
PROOF OF DELIVERY

CASE NUMBER: 2007ES3000208

On the 12th day of November, 2010, I mailed or delivered the following document, Proposal for Distribution

- A copy of which is attached hereto and incorporated herein, or
 The original of which is on file with the court and incorporated herein,

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

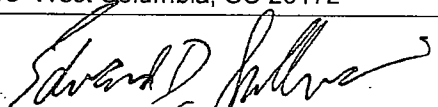
- personal delivery ordinary first class mail
 certified mail registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
Lisbon Presbyterian Church	c/o Neely Blackmon, Clerk of Session 3771 Hwy 56 S Clinton, SC 29325-6858
Lisbon Presbyterian Church Cemetery Fund	c/o Neely Blackmon, Clerk of Session 3771 Hwy 56 S Clinton, SC 29325-6858
Presbyterian Home of South Carolina	c/o Penny Arnold 2817 Ashland Road Columbia, SC 29210
Mary Leona Moses	PO Box 371 Mauldin, SC 29662
Marth Milam Brown	2205 Pine Knoll Circle Conyers, Georgia 30208
Marla Oriias	206 Adair Place Laurens, SC 29360
Bart Heard	982 Reynolds Drive West Columbia, SC 29172

SWORN to before me this 12 day of
 November, 2010

Kristin M. Sweeney
 Notary Public for South Carolina
 My Commission Expires: 11/07/16

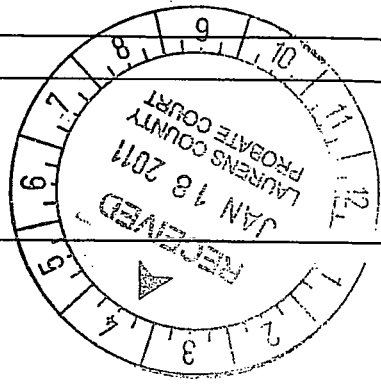
Signature: 
 Name: Edward D. Sullivan
 Address: PO Box 11714
Columbia, SC 29211
 Telephone (O): 803.451.2775
 (H): cell 803.261.8475
 E-mail: esullivan@esullivanlaw.com

Signature: _____
 Name: _____
 Address: _____
 Telephone (O): _____
 (H): _____
 E-mail: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF: LAURENS)
)
 IN THE MATTER OF: MARION MILAM KAY)
)

IN THE PROBATE COURT
AMENDED PROPOSAL FOR DISTRIBUTION
 CASE NUMBER: 2007ES3000208

Personal Representative(s): Edward D. Sullivan
Page 1



Name and Address of Distributee	Amount or Item
Collins and Lacy, PC - legal fees and costs pertaining to real estate litigation PO Box 12748 Columbia, SC 29211	\$7714.57
Collins and Lacy, PC - legal fees pertaining to estate administration PO Box 12487 Columbia, SC 29211	\$4,592.23
Clifton D. Bodiford, CPA - final tax return preparation 4406 Forest Drive Columbia, SC 29206	\$1,000.00
Lisbon Presbyterian Church c/o Neely Blackmon, Clerk of Session 3771 Highway 56 S Clinton, SC 29325-6858	1/4 of residuary estate assets
Lisbon Presbyterian Church Cemetery Fund c/o Neely Blackmon, Clerk of Session 3771 Highway 56 S Clinton, SC 29325-6858	1/4 of residuary estate assets
Presbyterian Home of South Carolina Management Services Office c/o Penny Arnold 2817 Ashland Road Columbia, SC 29210	1/10 of residuary estate assets
Edward Bart Heard 982 Reynolds Drive West Columbia, SC 29172	1/10 of residuary estate assets less advance of Six Thousand (\$6000.00) dollars

Executed this 13th day of January, 2011.

Signature: _____
 Name: _____
 Address: _____
 Telephone (O): _____
 (H): _____

Signature: Edward D. Sullivan
 Name: Edward D. Sullivan
 Address: PO Box 11714
 Columbia, SC 29211
 Telephone (O): 803.451.2775
 (C): cell 803.261.8475

STATE OF SOUTH CAROLINA)
)
 COUNTY OF: LAURENS)
)
 IN THE MATTER OF: MARION MILAM KAY)
)

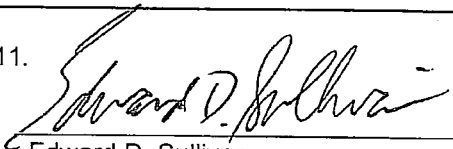
IN THE PROBATE COURT
AMENDED PROPOSAL FOR DISTRIBUTION
 CASE NUMBER: 2007ES3000208

Personal Representative(s): Edward D. Sullivan
page 2

Name and Address of Distributee	Amount or Item
Marla Orias 206 Adair Place Laurens, SC 29360	1/10 of residuary estate assets
Martha Milam Brown c/o John Ferguson Cox & Ferguson PO Box 286 Laurens, SC 29360-0286	1/10 of residuary estate assets, net of setoff relating to Estate expenditures for survey and appraisal benefiting jointly held property, as determined by the Court
Mary Leona Moses c/o John Ferguson Cox & Ferguson PO Box 286 Laurens, SC 29360-0286	1/10 of residuary estate assets, net of setoff relating to Estate expenditures for survey and appraisal benefiting jointly held property, unauthorized removal and sale of hay, and proceeds from hunting leases, if any, a portion of which belong to the Estate, as determined by the Court
Edward D. Sullivan PO Box 11714 Columbia, SC 29211	Payment for legal fees, expert witness fees, and other costs incurred as Personal Representative, as determined by the Court.
Edward D. Sullivan PO Box 11714 Columbia, SC 29211	Personal Representative Compensation from Petition for Settlement (November 12, 2010) to Conclusion, as determined by the Court

Executed this 13th day of January, 2011.

Signature: _____
 Name: _____
 Address: _____
 Telephone (O): _____
 (H): _____

Signature: 
 Name: Edward D. Sullivan
 Address: PO Box 11714
Columbia, SC 29211
 Telephone (O): 803-451-2775
 (C): 803-261-8475

STATE OF SOUTH CAROLINA)
)
 COUNTY OF: LAURENS)
)
 IN THE MATTER OF: MARION MILAM KAY)
)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2007ES3000208

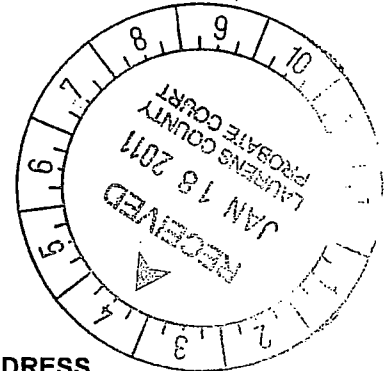
On the 13th day of January, 2011, I mailed or delivered the following document, Amended Proposal for Distribution

- A copy of which is attached hereto and incorporated herein, or
 The original of which is on file with the court and incorporated herein,

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

- personal delivery ordinary first class mail
 certified mail registered mail

to each of the following persons at the address shown:



NAME	ADDRESS
Lisbon Presbyterian Church	c/o Neely Blackmon, Clerk of Session 3771 Hwy 56 S Clinton, SC 29325-6858
Lisbon Presbyterian Church Cemetery Fund Presbyterian Home of South Carolina	c/o Neely Blackmon, Clerk of Session 3771 Hwy 56 S Clinton, SC 29325-6858
Mary Leona Moses	c/o Penny Arnold 2817 Ashland Road Columbia, SC 29210 c/o John Ferguson Cox & Ferguson PO Box 286 Laurens, SC 29360-0286
Martha Milam Brown	c/o John Ferguson Cox & Ferguson PO Box 286 Laurens, SC 29360-0286
Marla Orias	206 Adair Place Laurens, SC 29360
Bart Heard	982 Reynolds Drive West Columbia, SC 29172
Collins and Lacy, PC	c/o Eddie Benton, COO PO Box 12487 Columbia, SC 29211
Clifton D. Bodiford, CPA	4406 Forest Drive Columbia, SC 29206

Executed this 13th day of January, 2011

SWORN to before me this 13th day of
January, 2011

Sherrill M. Neely
 Notary Public for South Carolina
 My Commission Expires: 12-11-2018

Signature: *Edward D. Sullivan*
 Name: Edward D. Sullivan
 Address: PO Box 11714
Columbia, SC 29211
 Telephone (O): 803.451.2775
 (C): cell 803.261.8475
 E-mail: esullivan@esullivanlaw.com
 Signature: _____
 Name: _____
 Address: _____
 Telephone (O): _____
 (H): _____
 E-mail: _____

COX & FERGUSON

ATTORNEYS AT LAW
P.O. Box 286
LAURENS, SOUTH CAROLINA 29360-0286

W. REID COX, JR.
JOHN R. FERGUSON

ALLEN M. WHAM

PHONE: (864) 984-2126
FAX: (864) 984-7372
E-MAIL: jferg@backroads.net

December 6, 2010

The Honorable Kaye W. Fridy
Laurens County Probate Court
P.O. Box 194
Laurens, SC 29360

Re: Estate of Marion M. Kay

Dear Judge Fridy:

On behalf of Mary Leona Milam Moses and Martha Milam Brown, I request that there be a hearing on the final accounting proposed by the Personal Representative of the Marion Kay Estate. My clients have numerous questions, and it does not appear that we will be able to deal with these before the deadline to request a hearing. Therefore, to preserve my clients' rights, I am requesting this hearing.

Ms. Brown is dealing with illness in her family and will not be available until mid-January, but I suspect that you have enough accumulated business to keep you busy until then anyway. This delay will also give time for the PR, Edward Sullivan, and me to discuss possible ways to settle the matter.

Sincerely,

John R. Ferguson

JRF/wp

CC: Ms. Neely Blackmon, Clerk of Session
Lisbon Presbyterian Church
3771 Hwy. 56 S
Clinton, SC 29325

December 6, 2010

Page 2

Presbyterian Home of South Carolina
2817 Ashland Rd.
Columbia, SC 29210

Marla Orias
206 Adair Place
Laurens, SC 29360

Mr. Bart Heard
982 Reynolds Dr.
West Columbia, SC 29172

Ms. Martha Milam Brown
2205 Pine Knoll Circle
Conyers, GA 30208

Ms. Mary Leona Moses
P.O. Box 371
Mauldin, SC 29662

Edward D. Sullivan, Esq. ✓
Personal Representative
P.O. Box 1714
Columbia, SC 29211-1714

EXHIBIT F-1

TELEPHONE
803-451-2775

EDWARD D. SULLIVAN
ATTORNEY AT LAW
Post Office Box 11714
1331 Elmwood Avenue • Suite 305 (29201)
Columbia, South Carolina 29211-1714

FACSIMILE
803-451-2770

esullivan@esullivanlaw.com

April 3, 2013

VIA HAND-DELIVERY

George McElveen
2229 Bull Street
Columbia, SC 29201

RE: Estate of Marion M. Kay

Dear George:

This correspondence is to outline the material terms of my proposal to disburse the cash in the Estate.

The November 2010 Accounting reflected cash in the amount of \$315,981.82 (net of a previous distribution of \$6,000 to Mr. Heard.) The legal and accounting fees which were proposed for distribution and subsequently approved by the court totaled \$13,306.80. Accordingly, the amount proposed for total distribution to the beneficiaries was \$308,675.02 (315,981.82 plus \$6,000.00 less \$13,306.80). Mr. Heard's interest (10%) would have been \$30,867.50 (less a \$6,000 previous advance - \$24,867.50).

As of February 2013, the estate has received \$4,815.67 in interest and other miscellaneous income since the November 2010 accountings. In addition to the distributions approved by the court, the estate has disbursed \$14,344.06. These disbursements are \$1695.96 witness fee; legal fees \$3331.00, \$2917.10 court reporter fees, additional \$400 in professional accounting fees, and a \$6000 advance to Mr. Heard. The balance in the Estate account as of February 28, 2013 is \$293,146.63

As I recall, Mr. Heard did not oppose the accounting, proposed distribution, and settlement of the Estate based on the November 2010 amounts. It is my understanding based on my conversation with you that Mr. Heard continues to be in agreement with the settlement of the Estate provided his interest is not diminished by the ongoing litigation to which he has been, and continues to be, opposed.

I am writing to propose a resolution in which Mr. Heard's interest in the Estate for distribution at this time would be equivalent of that in November 2010 (plus interest that has accrued.) In order to bring a resolution to this matter, I propose the following:

1. I will reimburse the Estate for the total of the legal fees and witness fees in the amount of \$5,026.96.

2. I will pay directly to Mr. Heard \$331.71 (\$40 plus \$ 291.71 [\$40 being 10% of the \$400 accounting fees incurred by Mr. Heard in addition to the \$1000 proposed for distribution in November 2010, subsequently approved by the court, and \$291.71 being 10% of the \$2917.10 court reporter costs]).
3. I will execute and deliver a release and hold harmless agreement to Mr. Heard releasing him from any further claim against his interest in the Estate for compensation as Personal Representative, other than that previously received and reported as of November 2010, including the \$2500 contemplated by the Probate Court for completing the Estate, and from any further claim against his interest in the Estate for reimbursement for "reasonable expenses" as indicated by Ms. Kay's will, other than that previously received and reported in November 2010.
4. Mr. Heard will execute a release and hold harmless agreement releasing me from any further obligation to him directly and indirectly, by way of his interest in the Estate, arising out of the ongoing litigation or otherwise.
5. I will promptly petition the court for its approval to disburse the cash of the Estate to the beneficiaries, and will disburse when and if approved. I will also file the final tax return at my expense and wind up the Estate.

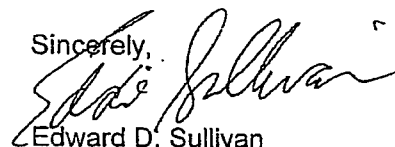
The effect of the foregoing is to put Mr. Heard's interest in the same position as it appeared in November 2010 accounting and proposal for distribution, in addition to his interest of the earnings received in the Estate since November 2010. (See analysis and reconciliation attached.)

Updated formal accountings are being finalized and will be sent out shortly. Mr. Heard's gross share of the distributable estate is estimated to be \$31,309.06. Allowing for the \$12,000 in previous advances, his net distribution is estimated to be \$19,309.06. Cliff Bodiford, CPA, has preliminarily reviewed the worksheets upon which I've based these calculations for accuracy. However, final accountings are subject to his final review.

\$ 19,349.06

If you agree in principle, please ask Mr. Heard to sign below and I'll prepare a definitive agreement and related documents. If you have any questions, please do not hesitate to call.

Sincerely,



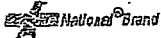
Edward D. Sullivan
Personal Representative for
The Estate of Marion M. Kay

I agree:

Edward Bart Heard

Bart Edward Heard

Edward Bart Heard



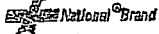
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State of Maine Mr. King
Reconciliation of Distribution Asset - with Selling Point

Prepared By	Initials	Date
Approved By		

2/28/13

	1	2	3	4	5
2013					
1	Bal @ Feb 28, 2013	29314863			
2	ES Reimbursement	502698			
3	ADVANCES - Hand	120000			
4	TOTAL Distribution	31017559			
5					
6	10% - Hand Share	3101756			
7	Per Advance	(120000)			
8	Amnt to be dist	1901736		1901736	
9				* 33171	pol estimate
10	2010			1934907	
11	Balance @ Nov 2010	31548188			
12	Per Dept & Govt Files	1330680			
13		30267502			
14	Add Back - Hand Advance	600000			
15		30867502			
16	Interest - Nov 10 - Feb 13	481567			
17		31349069			
18					
19	10% Hand Share	3134907			
20	Per Advance	(120000)			
21		1934907			
22					
23					
24					
25	* Diff in 1000 in				
26	acct from approved				
27	in 2010 - \$1200				
28	actually paid -				
29	\$200 diff x 102.5	4000			
30					
31	plus 10% of 291710 diff	29171			
32		33171			
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Estate of Maria M. Kay
Analysis of Distributable Assets - v/ Bellini
 2/28/13

Prepared By	Initials	Date
Approved By		

	1	3	4	5
1	Cost @ Nov 2010	325,981.82		
2	Nov 2010 Proposed Dist	(133,068.00)		
3		302,675.02		
4	Interest Income - 11/10 - 2/13	8,805.67		
5	Witness Fee	(1,695.96)	1,695.96	
6	Legal Fee	(3,331.00)	3,331.00	
7	Court Reporter	(2,917.12)	5,026.96	
8	Additional Acc'g Fee	(4,000.00)		
9	Advances to Heir	(6,000.00)		
10	Bal @ 2/28/13	293,146.63		
11				
12				
13				
14				
15	Bal @ 2/28/13	293,146.63		
16	Reimbursement from E&S	5,026.96		
17	Advances to Heir	(12,000.00)		
18	Total Dist Assets	310,173.59		
19				
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EXHIBIT F-2

TELEPHONE
803-451-2775

EDWARD D. SULLIVAN

ATTORNEY AT LAW

Post Office Box 11714

1331 Elmwood Avenue • Suite 305 (29201)

Columbia, South Carolina 29211-1714

esullivan@esullivanlaw.com

FACSIMILE
803-451-2770

April 4, 2013

Via email marlaorlas@charter.net

Ms. Marla Orlas

206 Adair Place

Laurens, South Carolina 29360

RE: Estate of Marion M. Kay

Dear Marla:

This correspondence is to outline the material terms of my proposal to disburse the cash in the Estate and reach a settlement with you (and others).

The November 2010 Accounting reflected cash in the amount of \$315,981.82 (net of a previous distribution of \$6,000 to Mr. Heard.) The legal and accounting fees which were proposed for distribution and subsequently approved by the court totaled \$13,306.80. Accordingly, the amount proposed for total distribution to the beneficiaries was \$308,675.02 (\$315,981.82 plus \$6,000.00 less \$13,306.80). Your interest (10%) would have been \$30,867.50.

As of February, 2013, the estate has received \$4,815.67 in interest and other miscellaneous income since the November 2010 accountings. In addition to the distributions approved by the court, the estate has disbursed \$14,344.06. These disbursements are \$1,695.96 witness fee; legal fees \$3,331.00; \$2,917.10 court reporter fees; additional \$400 in professional accounting fees, and a \$6,000 advance to Mr. Heard. The balance in the Estate account as of February 28, 2013 is \$293,146.63.

I am writing to propose a resolution in which your interest in the Estate for distribution at this time would be equivalent of that in November 2010 (plus interest that has accrued.) In order to bring a resolution to this matter, I propose the following:

1. I will reimburse the Estate for the total of the legal fees and witness fees in the amount of \$5,026.96.
2. I will pay directly to you \$331.71 (\$40 plus \$291.71 [\$40 being 10% of the \$400 accounting fees incurred by the Estate in addition to the \$1000 proposed for distribution in November 2010, subsequently approved by the court, and \$291.71 being 10% of the \$2,917.10 court reporter costs]).

April 4, 2013
Page 2 of 2

3. I will execute and deliver a release and hold harmless agreement to you releasing you from any further claim against its interest in the Estate for compensation as Personal Representative, other than that previously received and reported as of November 2010, including the \$2500 contemplated by the Probate Court for completing the Estate, and from any further claim against its interest in the Estate for reimbursement for reasonable expenses as indicated by Ms. Kay's will, other than that previously received and reported in November 2010.
4. In exchange, you will execute a release, indemnity and hold harmless agreement releasing me from any further obligation to it directly and indirectly, by way of his interest in the Estate, arising out of the ongoing litigation or otherwise.
5. I will promptly petition the court for its approval to disburse the cash of the Estate to the beneficiaries, and will disburse if and when approved. I will also file the final tax returns at my expense and wind up the Estate.

The effect of the foregoing is to put your interest in the same position as it appeared in November 2010 accounting and proposal for distribution, in addition to his interest of the earnings received in the Estate since November 2010. (See analysis and reconciliation attached.)

Updated formal accountings are being finalized and will be sent out shortly. Your gross share of the distributable estate is estimated to be \$31,349.06. Cliff Bodiford, CPA, has preliminarily reviewed the worksheets upon which I've based these calculations for accuracy. However, final accountings are subject to his final review.

If you agree in principle, please sign below, scan and return to esullivan@esullivanlaw.com and I'll prepare a definitive agreement and related documents. If you have any questions, please do not hesitate to call.

Sincerely,



Edward D. Sullivan
Personal Representative for
The Estate of Marion M. Kay

I agree:



Maria Oras

Date:

4/4/2013

Estate of Maria M. Kay
Analysis of Distributable Assets - v/ Ballerich
 2/28/13

Prepared By	Initials	Date
Approved By		

1	Cash @ Nov 2010	365981.82		
2	Nov 2010 Proposed Dist	(133068.80)		
3		302675.02		
4	Interest Income - 11/10 - 2/13	4815.67		
5	Waiver Fee	(1695.96)	1695.96	
6	Legal fees	(2331.00)	3331.00	
7	Court Reporter	(2917.10)	5026.96	
8	Additional Acc'g Fee	(4000.00)		
9	Advances to H/land	(6000.00)		
10	Bal @ 2/28/13	293146.63		
11				
12				
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14				
15	Bal @ 2/28/13	293146.63		
16	Reimbursement from E8	5026.96		
17	Advances to H/land	12000.00		
18	Total Dist Assets	310173.59		
19				
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Estelle Marie M. Key
Reconciliation of Distributable Assets - with fellow partner

Prepared By	Initials	Date
Approved By		

2/28/13

	1	2	3	4	5
2013					
Bal @ 7/1 28, 2013		293,146.63			
ES Reimbursement		5,926.96			
ADVANCES - HEARD		12,000.00			
Total Distributable		311,073.59			
10% - Marla Owen		31,107.36			
				31,107.36	
				* 33,171	not distributed
				313,490.7	
2010					
Balance @ Nov 2010		315,981.80			
Rev Legal + acct fees		13,706.80			
		302,675.02			
Add Back - HEARD Advances		6,000.00			
		308,675.02			
Interest - Nov 10 - Feb 13		48,156.7			
		313,490.64			
10% flow to Marla Owen		31,349.07			
* Diff in \$1000 = in acct fees approved in 2010 - \$1200					
actually paid - \$400 diff x 10% =		400			
plus 10% of 2917.10 diff		291.71			
		73,171			

EXHIBIT F-3

EDWARD D. SULLIVAN

ATTORNEY AT LAW

Post Office Box 11714

1331 Elmwood Avenue • Suite 305 (29201)

Columbia, South Carolina 29211-1714

esullivan@esullivanlaw.com

TELEPHONE
803-451-2775

FACSIMILE
803-451-2770

April 3, 2013

Via email angela.smith@preshomesc.org
Presbyterian Home of South Carolina
c/o Ms. Angela Smith
2817 Ashland Road
Columbia, SC 29210

RE: Estate of Marion M. Kay

Dear Ms. Smith:

This correspondence is to outline the material terms of my proposal to disburse the cash in the Estate and reach a settlement with Presbyterian Home of South Carolina (and others).

The November 2010 Accounting reflected cash in the amount of \$315,981.82 (net of a previous distribution of \$6,000 to Mr. Heard.) The legal and accounting fees which were proposed for distribution and subsequently approved by the court totaled \$13,306.80. Accordingly, the amount proposed for total distribution to the beneficiaries was \$308,675.02 (315,981.82 plus \$6,000.00 less \$13,306.80). Presbyterian Home's interest (10%) would have been \$30,867.50).

As of February 2013, the estate has received \$4,815.67 in interest and other miscellaneous income since the November 2010 accountings. In addition to the distributions approved by the court, the estate has disbursed \$14,344.06. These disbursements are \$1695.96 witness fee; legal fees \$3331.00, \$2917.10 court reporter fees, additional \$400 in professional accounting fees, and a \$6000 advance to Mr. Heard. The balance in the Estate account as of February 28, 2013 is \$293,146.63

As I recall, Presbyterian Home did not oppose the accounting, proposed distribution, and settlement of the Estate based on the November 2010 amounts. It is my understanding based on my conversation with you that Presbyterian Home continues to be in agreement with the settlement of the Estate based on those amounts.

I am writing to propose a resolution in which Presbyterian Home's interest in the Estate for distribution at this time would be equivalent of that in November 2010 (plus interest that has accrued.) In order to bring a resolution to this matter, I propose the following:

1. I will reimburse the Estate for the total of the legal fees and witness fees in the amount of \$5,026.96.

2. I will pay directly to Presbyterian Home \$331.71 (\$40 plus \$ 291.71 [\$40 being 10% of the \$400 accounting fees incurred by Presbyterian Home in addition to the \$1000 proposed for distribution in November 2010, subsequently approved by the court, and \$291.71 being 10% of the \$2917.10 court reporter costs]).
3. I will execute and deliver a release and hold harmless agreement to Presbyterian Home releasing it from any further claim against its interest in the Estate for compensation as Personal Representative, other than that previously received and reported as of November 2010, including the \$2500 contemplated by the Probate Court for completing the Estate, and from any further claim against its interest in the Estate for reimbursement for "reasonable expenses" as indicated by Ms. Kay's will, other than that previously received and reported in November 2010.
4. Presbyterian Home will execute a release, indemnity and hold harmless agreement releasing me from any further obligation to it directly and indirectly, by way of his interest in the Estate, arising out of the ongoing litigation or otherwise.
5. I will promptly petition the court for its approval to disburse the cash of the Estate to the beneficiaries, and will disburse when and if approved. I will also file the final tax return at my expense and wind up the Estate.

The effect of the foregoing is to put Presbyterian Home's interest in the same position as it appeared in November 2010 accounting and proposal for distribution, in addition to his interest of the earnings received in the Estate since November 2010. (See analysis and reconciliation attached.)

Updated formal accountings are being finalized and will be sent out shortly. Presbyterian Home's gross share of the distributable estate is estimated to be \$31,309.06. Cliff Bodiford, CPA, has preliminarily reviewed the worksheets upon which I've based these calculations for accuracy. However, final accountings are subject to his final review.

If you agree in principle, please sign below and I'll prepare a definitive agreement and related documents. If you have any questions, please do not hesitate to call.

Sincerely,



Edward D. Sullivan
Personal Representative for
The Estate of Marion M. Kay

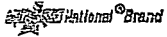
April 3, 2013
Page 3 of 3

We agree:

Presbyterian Home of South Carolina

By: Lathumet K. Highm
Its: President & CEO

Date: 04.05.13

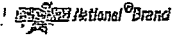


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Estate of Maria A. Kay
Analysis of Debtor's Assets - v/ Bellini
 2/28/13

Prepared By	Initials	Date
Approved By		

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Letter of Maria M. King
 Reconciliation of Distributable - with Julie Pat

Prepared By	Initials	Date
Approved By		

2/28/13

	1	2	3	4	5
2013					
BAL @ Feb 28, 2013		293,146.63			
ES Reimbursements		58,269.98			
ADVANCE - Annual		12,400.00			
Total Distributable		310,177.59			
10% - Prescription Home		31,017.76			
				31,017.76	
				* 33,171	per contract
				<u>313,490.7</u>	
2010					
Balance @ NW 2010		315,981.52			
Rev Dept & Sect 700		13,306.50			
		302,675.02			
Add Back - Annual Advance		6,000.00			
		308,675.02			
Interest - NW 2010 - Feb 13		48,156.7			
		313,490.69			
10% Home to Presby Home		31,349.07			
* Diff in 1000 in acct per approved in 2010 - \$1200					
actually paid - \$400 diff x 102.5		400			
plus 10% of 291,171		29,117.1			
		<u>33,171</u>			

COX & FERGUSON
ATTORNEYS AT LAW
P.O. Box 286
LAURENS, SOUTH CAROLINA 29360-0286

W. REID COX, JR.
JOHN R. FERGUSON
ALLEN M. WHAM

PHONE: (864) 934-2126
FAX: (864) 934-7372
E-MAIL: jferg@backroads.net

April 18, 2013

Presbyterian Home of S.C.
2817 Ashland Rd.
Columbia, SC 29210

Re: Marion Kay Estate

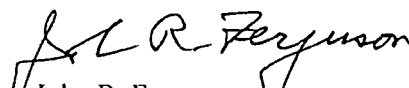
Gentlemen:

I am disappointed that you did not respond to my April 9 letter. I assume from that that you have decided to accept Mr. Sullivan's settlement offer, even though it gives you less than you should receive.

Although as a Presbyterian I am disappointed at this approach to justice and to stewardship, I accept that this is your right. However, I want to avoid any implication that you accept that this settlement is all you are entitled to, because Mr. Sullivan will attempt to use that implication to prejudice my clients. I therefore ask that you sign the enclosed statement, which I believe accurately sets out your position. (If you want to re-word it, let me know.) This costs you nothing and allows you to do what you want to do without damaging my clients' interests.

Thank you for your help.

Sincerely,


John R. Ferguson

JRF/wp
Encl.
CC: Mary Moses
Martha Brown

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas
APPEAL FROM LAURENS COUNTY
Probate Court

2012-CP-30-258

Donald B. Hocker, Associate Probate Judge

Mary M. Moses and Martha M. Brown. Appellants

STATEMENT OF PRESBYTERIAN HOME OF S.C.

We are an heir of the late Marion Kay. Although we realize that we might be entitled to more money if we stayed with the case, We are tired of it and want our money. We have therefore decided to accept what the Personal Representative has offered. This does not indicate that we agree with his position; it just means that we want to be out of the whole thing.

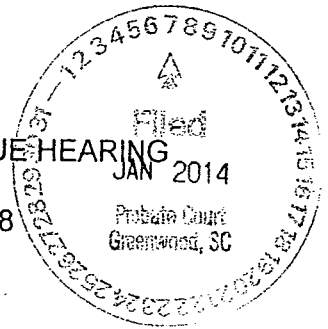
Authorized Representative
Presbyterian Home of S.C.

April _____, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)
)
IN THE MATTER OF: MARION M. KAY)

ORDER TO CONTINUE HEARING

2007-ES-30-208



This issue came before the court pursuant to a Motion to Distribute Proceeds filed by Deryl G. Hawkins, Esquire who represents Edward D. Sullivan, Esquire, the Personal Representative of the above-reference Estate. A hearing to Distribute Estate Proceeds was scheduled on the matter on Thursday, January 9, 2014 at 11:00 a.m.

Mr. Ferguson, attorney for two of the beneficiaries, wrote a letter dated December 4, 2013 to this court objecting to the hearing based on the fact that portions of the Final Order are currently on appeal in the Court of Appeals. Mr. Ferguson does not believe this Court has jurisdiction due to the appeal.

Upon review of the file, it does appear that a portion of the case is, in fact, on appeal with the South Carolina Court of Appeals. Upon learning of the appeal, this Court was hesitant to conduct the hearing to Distribute Estate Proceeds that was scheduled for Thursday, January 9, 2014 based on S. C. Code § 62-1-308 (c), which states:

When appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals, or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken.

This court requested a conference call with the parties on Monday, January 6, 2014 to discuss the issue of jurisdiction. Prior to the call, the court received a Brief in support of Petition to Distribute Estate Proceeds from Edward D. Sullivan, Esquire, who is the PR of the Estate of Marion Kay. No other parties submitted a brief.

A conference call was held on January 6, 2014 at 9:30 am. Present for the conference call were Mr. Sullivan (PR), his attorney Mr. Hawkins, Mr. Ferguson, and George R. McElveen, III, Esquire, who represents one beneficiary (Bart Heard).

At the outset of the conference call, Mr. Sullivan informed the court that the issues on appeal would not affect the distribution. He stated that it has been 3 ½ years and he simply wanted to go ahead and distribute the money in the Estate account, which was approximately \$299,000.00, to the beneficiaries. To support his position, he cited Ulmer vs. Ulmer, 369 SC 486, 492, 632 SE 2d 858 (2006) where the South Carolina Supreme Court held that 62-1-308(c) "does not apply to all orders of the

probate court concerning the parties. The only proceedings required to cease are those proceedings addressed in the orders from which an appeal was taken."

However, Mr. Ferguson believes that the issue(s) before the Court of Appeals would, in fact, affect the proposed distribution and the issue(s) before this court. Specifically, the issue on appeal is whether the PR must reimburse \$42,475.00 to the Estate Account. Mr. Ferguson believes that if the Court of Appeals affirms the lower court's decision, this money may be required to be added back to the Estate Account; which would directly affect the amount of the distribution to the beneficiaries.

Mr. Sullivan simply wants to distribute the funds to the beneficiaries as soon as possible and feels this court does have jurisdiction since the only issues on appeal do not affect the proposed distribution.

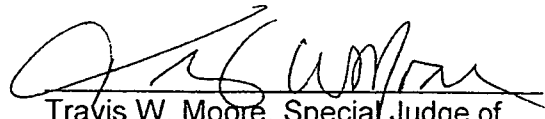
This court finds that § 62-1-308(c) is clear. It states that "all proceedingsshall cease until the judgment of the court of appeals." The statute does not have any exceptions. Mr. Sullivan relies on Ulmer, however this court does feel that the proposed distribution would be affected by the court of appeals ruling. This court finds that the issue(s) before the Court of Appeals would have a direct, or indirect, affect on the amount of distribution to the beneficiaries.

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Moreover, as a matter of judicial economy, this court would like to streamline any and all remaining issues into one final hearing, if possible. If the Court of Appeals remands and/or reverses any portion of the case, it is possible another hearing would be required. All parties involved would benefit by having one final hearing to resolve all the issues at one time rather than piecemealing them. According to the file, all parties have incurred substantial attorney fees and costs, so streamlining the issues into one hearing would be beneficial for everyone.

Therefore, the hearing on the Motion to Distribute Estate Proceeds shall be continued until the Court of Appeals has ruled on all issues before them.

It is so Ordered.


Travis W. Moore, Special Judge of
Probate for Laurens County

January 7, 2014

Greenwood, SC

EXHIBIT D

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
IN THE PROBATE COURT

JUDGMENT IN A CIVIL CASE

CASE NO.: 2007ES3000208

IN THE MATTER OF
THE ESTATE OF MARION M. KAY

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED. (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other -
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other -
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- See attached order. (Formal order to follow)
 Statement of Judgment by the Court:

Dated at Laurens, South Carolina, this 24th day of May, 2011.

Donald B. Hocker
PRESIDING JUDGE

This judgment was entered on the 24th day of May, 2011, and a copy mailed first class this 24th day of May, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

John R. Ferguson, Esquire

Daryl G. Hawkins, Esquire

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Betty W. Hoke
Clerk of Court

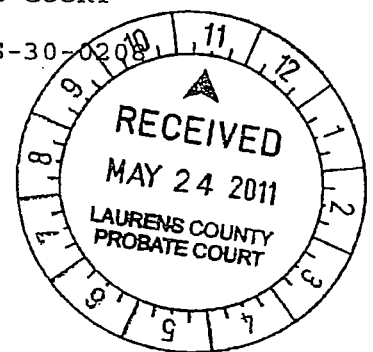
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STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE PROBATE COURT

Case No. 2007-ES-30-0208

IN THE MATTER OF MARION M. KAY



FINAL ORDER

This matter came before me on February 21 and 22, 2011 to consider Personal Representative Edward D. Sullivan's Petition for Settlement of the estate and related issues. Those related issues include determining PR commissions and costs, the parties' requests for attorney fees, the consideration of an offset pursuant to S.C. Code § 62-3-903, PR expenses pursuant to S.C. Code § 62-3-715(16) and (19), requested commissions for an unknown amount of PR work preparing tax returns and closing the estate, the treatment of exhibits marked for identification and a Motion to Remove the Personal Representative. Heirs Mary M. Moses and Martha M. Brown (hereinafter the Defendants) oppose the relief sought by the PR.

The Personal Representative has requested approval of the following:

- a) \$ 93,775.00 total commissions already paid;
- b) \$ 13,447.05 additional commissions not yet paid;
- c) \$ 12,195.93 paid to Collins and Lacey for attorney's fees and costs;
- d) \$ 5,000.00 paid to Paul Major for an appraisal;
- e) \$ 1,303.65 paid to Collins and Lacey for additional attorney fees and costs;
- f) \$ 750.00 paid to Wilson Forestry for consultant work;
- g) \$ 7,714.57 billed by Collins and Lacey for attorney's fees and costs but not yet paid;
- h) \$ 4,592.23 billed by Collins and Lacey for attorney's fees and costs but not yet paid;

- I) \$ 13,447.05 to Daryl Hawkins for attorney's fees and costs;
- j) \$ 1,695.00 for expert fees to Major and Co.;
- k) \$ 350.00 for expert fees to Wilson Forestry;
- l) \$ 285.00 court reporting fees to Shorb Court Reporting;
- m) \$ 875.00 court reporting fees to Garber Court Reporting.

Together these fees and costs total \$ 157,179.00; and the PR is claiming an additional unspecified amount for preparation of tax returns and closing the estate. Of this amount, only \$ 7,714.57 (5% of the total) related to litigation outside of litigation costs in connection with approval of all of these fees and expenses in the current action.

I make the following findings of fact:

1. The twin flaws in the PR's position are his failure to provide adequate proof for the hours he claims and his failure to prove a necessity for most of the hours he claims.

2. The PR unnecessarily complicated the Estate by insisting on filing a partition action. This was a fairly basic estate which could have been easily, quickly and cheaply settled by a deed of distribution. This would also have been in conformity with the Testatrix's Will.

3. The PR unnecessarily complicated the Estate by converting an eight month option to purchase the Estate's one half interest in its real estate into an indefinite right to purchase and by giving the option holder the right to buy only a portion of the property contrary to the Will.

4. There was no necessity for a sale of the real estate. The Court understands that a sale of real property generates proceeds.

5. The Court does not understand why the PR began charging the

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Estate before the Testatrix died on May 3, 2007 and before he was appointed PR on May 16, 2007.

6. The PR did an excellent job in securing the sales price for the real estate, but this does not justify the commission sought.

7. Although the PR argued the existence of novel issues regarding the real estate, I do not find any.

8. The PR failed to provide any legitimate basis for the fees he claimed and instead testified that he had no method or formula for determining the amount for the four draws he gave himself other than by pulling a figure out of the air. Although the PR in Memorandum argued that he had 468.6 hours of time as PR, the proof he provided failed to support this.

9. No explanation was offered to explain or excuse the PR's failure to provide interim accountings until the latter part of 2010 when the final accounting was in the offing, about three and a half years after the estate was opened.

10. The Supplemental Inventory reflects an Estate value, including real estate, of \$ 513,491.00; however, the addition of the personal property value of \$ 122,491.00, real estate proceeds of \$ 365,012.00 and additional income to the Estate of \$ 24,682.47 produces a total Estate value of \$ 512,185.47.

11. The PR's total draws to date equal 18.3% of the estate value. Adding the additional request of \$ 13,447.05 would boost the PR's share to 21.0% of the estate, and this percentage would go even higher if additional compensation were allowed for preparation of tax returns and closing of the estate. By contrast, the

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statutory rate of 5% would produce a commission of \$ 25,650; and a 10% commission would be \$ 51,300.

12. The claimed \$ 157,179.00 in commissions, attorney's fees and expenses would constitute 31% of the Estate's value. Although litigation can deplete an estate, that is not the situation here. Most of the amount claimed is not related to litigation resulting from the demand for a hearing on the final accounting.

13. The commissions sought by the PR are clearly excessive, and he failed to provide the Court with an alternate proposal for valuing his services.

14. I find that a PR fee of \$ 51,300, which is about ten (10%) percent of the Estate, is reasonable. The PR had previously paid himself \$ 93,775.00 without prior court approval. The balance of the commission draws previously taken (\$ 42,475.00) must be promptly refunded to the Estate. This compromise takes into account that not all of the heirs opposed the PR's final accounting and that the PR may face difficulties in obtaining the necessary funds to make the refund. The PR is not entitled to the additional \$ 13,447.05 he has claimed.

15. Although the PR has exemplary credentials and good standing in the Bar, this in and of itself does not ^{automatically} justify the relief requested. DWH

16. I do not find bad faith on the part of the PR.

17. I approve the previous payment of \$ 13,499.58 to Collins and Lacey and find that the Collins and Lacey is entitled to be paid an additional \$ 12,306.80. Although the Court questions the

necessity of 204.6 hours of paralegal time, they should be compensated for their work.

18. The PR is entitled to have the Estate pay \$ 5000 to Paul Major for an appraisal and \$ 750 to Wilson Forestry for consultant work.

19. Although Daryl G. Hawkins represented the PR well, his representation was primarily of the PR in his individual capacity seeking approval of the PR's commissions and expenses. I therefore do not find that the Estate should pay Mr. Hawkins or the trial expenses for his three experts, Major, Wilson and Massey.

20. There were three exhibits marked for identification (Plaintiff's L and Defendants' 4 and 14). All of these shall come into evidence and be made part of the record.

21. Defendants have sought attorney's fees for their attorney, John R. Ferguson; and I find that this is warranted. Mr. Ferguson has been in practice for more than 30 years and enjoys a high reputation. He is the author of a legal reference work. He necessarily devoted 99.3 hours to this case to date (all of which appears related to the merits of the matter) and the usual compensation rate in such situations is \$ 200 per hour. Through his efforts the Estate has benefitted substantially. Having considered all the *Glasscock* factors, I therefore find that he is entitled to be paid \$ 19,860.00 as his fee from the Estate.

I make the following conclusions of law:

1. Inasmuch as the Testatrix was a resident of Laurens County, jurisdiction and venue are properly with this court.

2. A personal representative has a duty to settle and distribute the estate in accordance with the terms of the Will and the Code as expeditiously and efficiently as is consistent with the best interests of the Estate. S.C. Code § 62-3-703.

3. A personal representative is a fiduciary and in equity and good conscience is bound to act in good faith and with due regard to the interests of the estate. *Ex Parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 838 (Ct. App. 2009).

4. Equity requires that all the heirs pay for the work of Defendants' attorney, because his work preserved and protected a common fund, not just for the benefit of the Defendants, but for all the heirs. *Layman v. State*, 376 S.C. 434, 452, 658 S.E.2d 320 (2008).

5. While S.C. Code § 62-3-720 allows litigation expenses, including attorney's fees for the PR, I do not find this statute to be applicable to a situation where the representation was primarily for the benefit of the PR individually and not the Estate.

6. In light of the fact that this Estate is ready to be closed, Defendants' Motion for Removal of Personal Representative is denied. If the PR is willing to finish wrapping up the Estate (including filing the necessary tax forms), he shall be entitled to an additional \$ 2500 in commissions for this. See S.C. Code § 62-3-715(16) and (19).

7. Offset pursuant to S.C. Code § 62-3-903 is denied, as the PR did not present sufficient evidence to grant this relief.

8. In light of my other rulings, I do not reach the

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Defendants' contention that the PR is not entitled to enhanced compensation for legal services rendered to himself. See *Hopkins v. Hopkins*, 343 S.C. 301, 540 S.E.2d 545 (2000).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

a) the PR is granted the right to retain \$ 51,300.00 in commissions;

b) the PR must refund to the Estate within thirty (30) days of this Order all other commissions he has taken. His request for further compensation is denied;

c) the previous payment of \$ 13,499.58 to Collins and Lacey is approved, and Collins and Lacey is entitled to an additional \$ 12,306.80 from the Estate;

d) the payment of \$ 5000.00 to Paul Major for an appraisal and the payment of \$ 750.00 to Wilson Forestry for consultant work by the Estate are approved;

e) the Estate shall pay John R. Ferguson the sum of \$ 19,860.00 for his attorney fee pursuant to the common fund doctrine;

f) attorney fees for Daryl Hawkins are denied, and these are the responsibility of the PR and not the Estate;

g) costs pertaining to the Petition for Settlement and the expert witness fees of Major, Wilson and Massey, must be borne by the PR and not the Estate;

h) the exhibits marked for identification are admitted into evidence;

I) the Motion for Removal of the Personal Representative is

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denied. If Mr. Sullivan is willing to finish winding up the affairs of the Estate, he shall be entitled to an additional \$ 2500 in commissions. If he is not willing to continue, then both sides shall promptly submit the name of a possible successor who is willing to serve so that the Court may select a successor; and

k) offset pursuant to S.C. Code § 62-3-903 is denied.



DONALD B. HOCKER
Associate Judge
Laurens County Probate Court

Laurens, SC

May
24, 2011

#8

EXHIBIT E

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
IN THE PROBATE COURT

JUDGMENT IN A CIVIL CASE

CASE NO.: 2007ES3000208

IN THE MATTER OF
THE ESTATE OF MARION M. KAY

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.**
- ACTION DISMISSED. (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other -
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other -
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- See attached order. (Formal order to follow)
 Statement of Judgment by the Court:

Dated at Laurens, South Carolina, this 27th day of March, 2012.

Donald B. Hocker
PRESIDING JUDGE

This judgment was entered on the 27th day of March, 2012, and a copy mailed first class this 28th day of March, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

John R. Ferguson, Esquire
P.O. Box 286
Laurens, SC 29360

Daryl G. Hawkins, Esquire
P.O. Box 11906
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Scott W. Hopper
Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE PROBATE COURT
CASE NO. 2007-ES-30-0298



IN THE MATTER OF MARION M. KAY

ORDER DISPOSING OF POST-TRIAL MOTIONS

This matter comes before me pursuant to the Personal Representative's Motion to Reopen the Record and Motion to Alter or Amend Judgment. He additionally sought attorney fees and a ruling concerning whether the PR had to provide to Mr. Ferguson a copy of a transcript he requested the Court to consider. By Return to the motions, counsel for Mary Moses and Martha Brown raised the additional issues of attorney fees since the merits hearing and the failure to rule on a five acre tract sought by Ms. Brown.

In addition to Daryl G. Hawkins, Esq., counsel for the PR, and John R. Ferguson, Esq., counsel for Ms. Moses and Ms. Brown, George R. McElveen III, Esq., attended the hearing as counsel for Bart Heard.

I have carefully considered the arguments of counsel and the exhibits presented at the hearing. I additionally allowed Mr. Hawkins to provide the PR's time records while at Collins and Lacy and a fee affidavit. No other evidence was considered.

I deny the Motion to Reopen the Record. I cannot find any compelling reason to reopen the record in this case to allow the time records and the Stomski Affidavit into evidence. There was no allegation that these documents were after-discovered evidence and

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could not have been presented at trial.

Reopening the record now would mandate a continuation of the proceedings for cross-examination and the potential admission of new evidence. This case has already been fully litigated for a significant length of time by excellent attorneys. Both sides had a full and fair opportunity to present any existing and available evidence to the Court and are not entitled to re-litigate their cases.

Although I am unclear why the Boddifer bill for tax return preparation is in the Motion to Reconsider, I do find that it is a legitimate Estate expense which the Estate should pay. The Estate is authorized to pay this invoice out of Estate assets.

As to the court reporter bills, it appears that Shorb has been paid and that Garber has been partially paid. Both sides have benefitted and will benefit from these court reporting services, so the Estate shall pay any court reporting bills which are currently unpaid. Ms. Brown and Ms. Moses are responsible for one-half of the total, and their share is to be deducted at the closing of the Estate from their distributions. Any additional court reporting charges to date shall be paid equally from each side. Mr. Hawkins will provide Mr. Ferguson with a copy of the transcript, and the copying charges will be borne by Mr. Ferguson's clients.

I deny the Motion to Alter or Amend Judgment. The Court painstakingly reviewed the entire record in making its original decision and has once again reviewed everything. I find that there is no basis to alter or amend any provisions of the May 24, 2011

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Order.

Martha Brown had requested that I award her a five acre parcel which was allegedly part of a partition/land swap. Insufficient evidence was presented to grant any relief on this issue.

I deny both sides' request for attorney fees. The PR is not entitled to attorney fees because he did not prevail and his motions were primarily for his own benefit. Ms. Moses and Ms. Brown have sought an attorney fee award as well, but I find that the Common Fund Doctrine does not apply because no extra assets were generated for the Estate.

AND IT IS SO ORDERED.



DONALD B. HOCKER
Associate Probate Judge

Laurens, SC
March 27, 2012

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IN THE MATTER OF THE ESTATE OF MARION M. KAY

LAURENS COUNTY CLERK OF COURT
 2013 AUG 21 A 11:04

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Attorney for Plaintiff Defendant Self-Represented Litigant

Disposition Type (Check One)

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

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Having fully considered the evidence, argument of counsel at the hearing of July 19, 2013, and the supplemental filings submitted to the court post-hearing, the court affirms the order of the Probate Court dated March 27, 2012. All parties shall bear their own fees and costs associated with the appeal to this court. Finally, due to the fact that sufficient legal fees have been paid to counsel during this litigation, this form order shall constitute the final order in this matter.

Order Information

This order ends does not end the case.

Additional Information for the Clerk : _____

Complete if judgment requires payment of a sum of money or affects title to real or personal property		JUDGMENT AGAINST PLAINTIFF:		JUDGMENT AGAINST DEFENDANT:	
Judgment Amount	\$ _____	Judgment Amount	\$ _____	Judgment Amount	\$ _____
Taxable Costs	\$ _____	Taxable Costs	\$ _____	Taxable Costs	\$ _____
Attorney's Fees	\$ _____	Attorney's Fees	\$ _____	Attorney's Fees	\$ _____
Interest	\$ _____	Interest	\$ _____	Interest	\$ _____
Other:	\$ _____	Other:	\$ _____	Other:	\$ _____
Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____
If applicable, describe the property, including tax map information and address, referenced in the order:					

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interests

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-30-258

IN THE MATTER OF THE ESTATE OF MARION M.
KAY

LYNN W. LANCASTER

PLAINTIFF(S)

2013 OCT - 1 P 2:30 DEFENDANT(S)

Submitted by:	Attorney for Plaintiff <input type="checkbox"/>	Attorney for Defendant <input type="checkbox"/>
	LAURENS COUNTY CLERK OF COURT	Self-Represented Litigant <input type="checkbox"/>

Disposition Type (Check One)

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

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

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

This matter comes before the court on competing motions for reconsideration of the court's order of August 20, 2013. The court received permission from counsel to decide the issue on the briefs submitted instead of oral argument. Having considered the arguments presented, the court reaffirms its prior ruling and affirms the order of the Probate Court.

On the question of whether the award against the PR for excessive fees bears post-judgment interest, the court is hesitant to even address this question because the law appears fairly clear. An award made in an action to review compensation under Section 62-3-808(d) falls within the meaning of "[a] money decree or judgment" under 34-31-20 (Supp. 2005). The underlying suit was in the way of an action for an accounting under Section 62-3-808(d). An action for an accounting sounds in equity, and Section 34-31-20(b) applies to equitable actions. *Casey v. Casey*, 311 S.C. 243, 245, 428 S.E.2d 714, 715-16 (S.C. 1993). A party need not request post-judgment interest in the complaint, nor must a party raise the issue at trial or Rule 59 motion, because the prevailing party is entitled to post-judgment interest "as a matter of course." *Calhoun v. Calhoun*, 339 S.C. 96, 102-04, 529 S.E.2d 14, 17-19 (S.C. 2000). Interest runs from the date of the original judgment even during the pendency of an appeal. *Calhoun, supra*, 339 S.C. at 104, 529 S.E.2d at 19. A judgment debtor may stop the running of interest by paying the amount of the judgment into court during the pendency of an appeal. *Horry County v. Woodward*, 291 S.C. 1, 351 S.E.2d 877 (S.C. App. 1986). To the extent further clarification is necessary, the matter should be briefed in the appeal of this court's orders affirming the trial court.

Order Information

This order ends does not end the case.

Additional Information for the Clerk :

Complete if judgment requires payment of a sum of money or affects title to real or personal property	
JUDGMENT AGAINST PLAINTIFF:	JUDGMENT AGAINST DEFENDANT:

6. The Court below erred in accepting the Collins and Lacey bills at face value when the Estate did not benefit proportionately.

7. The Court below erred in not reducing the charges for paralegal time after finding much of it to be incomprehensible and of questionable necessity.

8. The Court below erred in finding that the Personal Representative had proven an entitlement to relief by a preponderance of the evidence when evidence abounded of his sacrificing the interests of the Estate to increase his fees.

9. The Court below erred in not requiring the Personal Representative to pay all the costs associated with the hearing personally in that the hearing would not have been necessary but for his misfeasance, malfeasance and breach of fiduciary duty.

10. The Court below erred in not awarding the undersigned an increased attorney's fee for extra work caused by the Personal Representative's post-trial motions because his work saved the Estate from further depletion by him.

11. The Court below erred in requiring Defendants Moses and Brown to pay any court costs, including those for court reporting services and copies of documents filed by the Personal Representative, in that they are the prevailing parties and should not have to share in the Personal Representative's expenses.

12. The Court erred in granting equitable relief to the Personal Representative, who did not come before the Court with Clean Hands.

JR7
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13. The Court below erred in failing to require the Personal Representative to pay the Estate pre-judgment interest for the money he misappropriated.

14. The Court below erred in not requiring the Personal Representative to pay all the costs associated with the hearings, because the Personal Representative's misconduct necessitated the hearings to settle the Estate so he should bear all the expenses associated with them.

15. The Court below erred by failing to make a specific finding that the Personal Representative did not settle and distribute the Estate in accordance with the requirements of S.C. Code Section 62-3-703.

16. The Court below erred in failing to remove the PR immediately, because this increases the exposure of the Estate to his bad conduct.

17. The Court below erred in awarding total of \$ 25,806.38 to Collins and Lacey after finding that much of their work was unnecessary inasmuch as it was excessive and caused by the misconduct of the Personal Representative.

18. The Court below erred in finding that Appellants benefitted from the court reporting bills, inasmuch as the Personal Representative did not provide the heirs with a copy of the transcripts.

19. The Court below erred in failing to find wrongdoing when the Personal Representative by ex parte communication gave the judge evidence he did not supply to the undersigned, i.e., the hearing transcript.

20. The Court below erred in considering evidence supplied to it ex parte.

21. The Court below erred in finding that the Common Fund Doctrine did not apply to the request of Appellants Moses and Brown for attorney fees for the post-trial motions in that preventing the further depletion of old assets is indistinguishable from generating new assets, inasmuch as in both cases there is a net benefit for the Estate.

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COX & FERGUSON
Attorneys for Appellants Moses and Brown

By: _____

John R. Ferguson
John R. Ferguson
S.C. Bar No. 1987

107 E. Laurens St. - P.O. Box 286
Laurens, S.C. 29360
(864) 984-2126

May 15, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-CP-30-258

In The Matter of the Estate of Marion M. Kay

Edward D. Sullivan, as Personal Representative
of the Estate of Marion M. Kay, Appellant/Cross-Respondent

v.

Martha Brown and Mary Moses Respondents/Cross-Appellants.

**AFFIDAVIT OF EDWARD D. SULLIVAN IN SUPPORT OF
APPELLANT-CROSS RESPONDENT'S RETURN TO MOTION
FOR ESCROW OF FUNDS**

PERSONALLY APPEARED before me, Edward D. Sullivan, who
being duly sworn, deposes and states:

1. Marion M. Kay died testate on May 3, 2007. The will attached to the Return to Motion for Escrow of Funds was duly probated as her last will and testament. I was named as the Personal Representative in the will and appointed as Personal Representative.

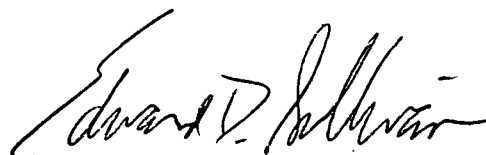
2. Ms. Kay was a close family friend. We were both members of Lisbon Presbyterian Church for many years. I represented her in various matters during her lifetime, beginning in 1997.

3. At the time of Ms. Kay's death, she owned a 1/2 undivided interest in a 330 acre tract in Mountville, South Carolina. The other 1/2 undivided interest was titled in the name of "The Heirs of W.H. Milam". The heirs of W.H. Milam consisted of Respondents/Cross-Appellants Martha M. Brown and Mary Leona M. Moses, who were each named as 1/10 residuary beneficiaries of Ms. Kay's estate.

4. I understood that it was Ms. Kay's intent for the property to be divided and sold. In fact, prior to her death, I had represented Ms. Kay when she expressed an interest for the property to be divided (See attached correspondence). Furthermore, certain beneficiaries expressed their desire for their interest in the Estate to be liquidated so that they could receive cash rather than an undivided interest in land. Despite my best efforts, I could not reach an agreement with the co-tenants to divide the land so I filed a partition/declaratory judgment action to determine the rights of the various claimants. Further complications included the claims of Respondents/Cross-Appellants to 5 acres that were included in the Estate as well as a "Right of First Refusal." In addition, the will included an option. The Respondents/Cross-Appellants filed a counterclaim against the Estate pertaining to their claim for 5 acres.

5. On the eve of the trial of the action, I negotiated an agreement to sell the Estate's interest, successfully resolved the issues and various claims surrounding the property, and the case was dismissed and the sale closed.

FURTHER AFFIANT SAYETH NOT.


Edward D. Sullivan

SWORN TO before me
This 20 day of January, 2014

Sheri M. Neely
Notary Public for South Carolina
My Commission expires: 12-11-2018

SULLIVAN LAW FIRM, PC

Also Admitted:
District of Columbia
Colorado

EDWARD D. SULLIVAN, JD, CPA

Attorney and Counselor at Law

1200 Main Street, Suite 400
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Facsimile: (803) 779-9488
edsesquire@aol.com

Telephone: (803) 748-7485

MAILING ADDRESS:
Post Office Box 11714
Columbia, South Carolina 29211

October 23, 2003

Mrs. Martha Brown
2205 Pine Knoll Circle
Conyers, GA 30208

Mrs. Mary Leona Moses
PO Box 371
Mauldin, SC 29662

Dear Martha and Mary Leona:

Marion has requested that I assist her in some of her affairs. Because of her recent move to Clinton, she needs to be able to have access to all of her assets.

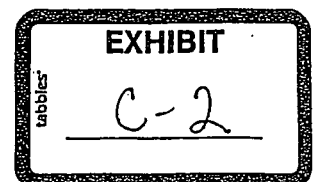
As the land is now owned jointly, she is restricted from using this asset for her benefit. We propose that the land be divided in such a manner that is acceptable to everyone, with reservation of rights to the timber. Ideally, Marion would receive the acreage closest to her home, and you would receive the acreage closest to your old home place. The cost of the survey would be shared. I will prepare the necessary deeds at no expense.

Please call me at (803) 748-7485 at your earliest convenience to discuss. Marion has asked that I take care of this for her. We would like to get this done as soon as possible.

Sincerely,



Edward D. Sullivan



SULLIVAN LAW FIRM, PC

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Colorado

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1200 Main Street, Suite 400
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January 6, 2004

MAILING ADDRESS:
Post Office Box 11714
Columbia, South Carolina 29211

Mrs. Martha Brown
2205 Pine Knoll Circle
Conyers, GA 30208

Mrs. Mary Leona Moses
PO Box 371
Mauldin, SC 29662

Dear Martha and Mary Leona:

I hope you both had a good Christmas and are off to a great New Year. As we discussed, we need to meet to determine the best and least expensive way to generate income by harvesting timber and dividing the property.

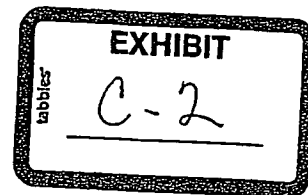
I understand Martha is coming into Laurens this weekend (January 10-11). I would like to meet with you then in Laurens or Columbia. Please call me at (803) 748-7485 at your earliest convenience to set up this meeting. I look forward to hearing from you.

Sincerely,



Edward D. Sullivan

Cc: Mrs. Marion Kay



STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS

Edward D. Sullivan, as Personal)
Representative of the Estate of)
Marion M. Kay ,)
)
Appellant-Respondent,)
)
-VS-)
)
Martha Brown and Mary Moses,)
)
Respondents-Appellants)
)

2012-CP-30-258
TRANSCRIPT OF RECORD

JULY 19, 2013
LAURENS, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR.

APPEARANCES:

ATTORNEY FOR THE PERSONAL REPRESENTATIVE:

Daryl G. Hawkins, Esquire

ATTORNEY FOR RESPONDENTS::

John R. Ferguson, Esquire

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

1 going to be five or ten minutes more --

2 MR. HAWKINS: I'll do two other quick points if I might,
3 Your Honor, and then we can kind of see where we want to go.
4 When we talk about time entries and there are 200 hours of
5 paralegal, if you stop and look at what the paralegals are
6 doing it's not just sitting around trying to do some sort of
7 inventory of the specific items in here to say what they're
8 about. If I just look at the -- when I glanced at the July
9 6, 2007 bill in what I believe is Exhibit D, maybe the
10 second page of it. The first paralegal entries I see are
11 telephone conference with the probate court. Telephone call
12 to Marla Heard. I think that's also a reference to Marla
13 Arias, who is Bart Heard's sister. By the way, the PR had
14 settled with several of these people. Brad Heard had
15 settled with the PR. Marla Heard had settled with the PR.
16 The Presbyterian Home has reached a settlement. A filing
17 has been made with the probate court to try to have all of
18 that approved and move forward.

19 As I'm looking down this list of things where
20 paralegals are calling to get the names and addresses of all
21 of the heirs of the estate. There are things going on and I
22 haven't gone through the 200 hours worth. But their time is
23 all documented as to what it is that they did. And I want
24 to remind the court that they wrote off over \$20,000 worth
25 of time, or billings. Whatever is in there when we look to

1 see what was done and what was reasonable, I believe that
2 Mr. Sullivan's time is eliminated from the billings. The
3 time of other people is reduced, and I think a good fair
4 amount of the paralegal time would absorb into the discount.

5 Quickly, on other matters just mentioned, over \$3,331
6 in attorney's fees. That was done prior to the court order
7 and has been reimbursed to the estate already. And I guess
8 to touch on -- there's these other sort of collateral issues
9 out there. When you talk about the common fund and -- we
10 only have like three cases in the case that get into it and
11 say anything about it. And they don't say a lot. But they
12 all do say this. In order for somebody to recover fees --
13 you know, we have statutorily a fee shifting thing. You
14 know, if there's a statute that gives you a recovery of
15 attorney fees that's fee shifting from this person to that
16 person.

17 The common fund doctrine is a fee spreading notion and
18 all those cases say in order to get it the person who goes
19 out has to maintain a lawsuit or action that was for the
20 benefit of all these other folks. No lawsuit had been filed
21 by Ms. Moses or Ms. Brown. There is a provision within the
22 probate code that would've allowed them to file a petition
23 and to seek whatever relief they wanted. The only thing
24 they did in this case is when Mr. Sullivan filed a petition
25 for settlement they asked for a hearing and when we asked

1 them to file something with the court and give us some
2 explanation of what you're unhappy with the only answer we
3 ever got is we think fees are too much. Period. The end.
4 We never -- nobody marshaled up some armada to come in and
5 say we think they're too much. We want to have discovery.
6 We want to see all of your stuff. We want to call some
7 witness to say that -- whatever it would be. They just
8 showed up at a hearing one day and got whatever result they
9 got. When you look at those time sheets they go back to
10 before the partition action was filed as time that's
11 included in what was part of an hourly fee award under what
12 was determined by the court to be part of that common --

13 MR. FERGUSON: If I could be very brief.

14 THE COURT: Sure.

15 MR. FERGUSON: With regard to the PR's newfound
16 tenderness for the heirs. The Cemetery fund and the Lisbon
17 Church, they are due over \$21,000 from the personal
18 representative under Judge Hocker's order because of the way
19 he did things. He had not put that money back into the
20 estate despite the fact that the order gave him 30 days. So
21 if he was so concerned about the heirs Mr. Heard has not
22 received over \$4,000 that he was supposed to have received
23 under the previous order.

24 THE COURT: While it's under appeal I can't hold that
25 against him.

1 MR. FERGUSON: The fact is that if there was going to be
2 a partition action -- again, it could've been done much more
3 quickly, simply, cheaply by the heirs and they would've had
4 all the money they needed to have a contested partition
5 action -- if one was actually necessary -- and I don't think
6 it would've been -- using the money that the PR had to
7 return to the estate. The fact of the matter is Ms. Moses
8 and Ms. Brown promptly agreed to the sale of the land when
9 the buyer appeared and there was a reasonable way to handle
10 this thing, as opposed to the PR trying to force his own
11 view of where the property line should be upon them. As far
12 as our contention that -- which said, of course, that there
13 had to be that finding for the ten percent. But with regard
14 to the factual basis, there has to be even after you give
15 deference to the lower court you have to find that there is
16 a sufficient factual basis for his conclusions or else
17 there's abuse of discretion.

18 To the extent that this is equitable then you are
19 looking at it, I believe, de novo anyway. His findings are
20 not consistent. I have set out any number of times where he
21 says I don't believe what the personal representative is
22 telling me. The judge then goes on to say that he has
23 overcharged by \$43,750 and he's looking for even more and
24 I'm not going to let him do that. And I don't find that
25 what he says is believable. But then he goes on to say that

1 I'm going to give him this big personal representative fee
2 anyway.

3 With regard to the common fund and there being no
4 lawsuit, I think what we had in effect was a lawsuit. The
5 personal representative filed with the court asking for
6 approval of all of what he had done, including his fees.
7 Therefore he has waived any kind of ground that we were
8 supposed to have gone under some separate statute. He
9 presented his fees to the court for approval and the
10 personal representative testified that he knew that one of
11 the things that was going to be dealt with was his fees.
12 There was no objection to that procedure for dealing with
13 things. So they are estopped at this point to say that
14 there should have been some different procedure for dealing
15 with this. The common fund doctrine has been sufficiently
16 complied with. There is a sufficient record on this.

17 The judge was well within his rights in the record to
18 order what he ordered for the trial, but in the post trial
19 part of things -- post trial motions and also this appeal,
20 which of course wasn't before the lower court judge -- what
21 we have done so far is to keep the personal representative
22 from getting that \$42,750 back and from getting any more.
23 This is something that has benefitted the entire estate and
24 therefore I believe that I am entitled to be paid for my
25 efforts which have brought a great benefit to the

1 beneficiaries.

2 THE COURT: Let's handle it this way. Mr. Hawkins, you
3 wanted, obviously, an opportunity to respond to Mr.
4 Ferguson's revised addendum. So I'll give you, if you
5 could, ten days. If you need more time let me know. I'll
6 give you more time. Mr. Ferguson, just so that we know what
7 we're dealing with in terms of your fees and the common fund
8 question, if you could submit an affidavit as soon as
9 possible. No particular rush. I'm not going to look at it
10 this weekend, so if you've got plans this afternoon go ahead
11 and follow those plans. Sometime next week would be nice.
12 The week after that would be fine too. Very good.
13 Gentlemen, thank y'all very much for coming. Good to see
14 you all. I hope you have a lovely weekend.

15 - - - END OF TRANSCRIPT OF RECORD - - -

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