THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Ralph F. Cothran, Jr., Circuit Court Judge

Case No. 2013-CP-43-476
(Consolidated with 2013-CP-43-668)

In the Matter of the Estate of Geraldine M. Harris

Patti H. Spring, Appellant,

v.

Harry L. Harris, Jr., as Personal Representative of the Estate of Geraldine M. Harris, Respondent.

INITIAL BRIEF OF APPELLANT

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1. Appellant established the existence of a fiduciary relationship between Respondent and his mother where Respondent served as trustee and held power of attorney for his mother, thereby raising a presumption of undue influence in the creation and funding of two bank accounts titled in the names of Respondent and his mother.

2. Given the nature of the fiduciary relationships between Respondent and his mother, and given the type of transaction being scrutinized, there was no evidence which reasonably supported the probate court's finding that the account at National Bank of South Carolina was free of undue influence and thus a typical joint account with the funds remaining in the account at Mother's death automatically passing to Respondent as the surviving party.

3. Given the nature of the fiduciary relationships between Respondent and his mother, and given the type of transaction being scrutinized, there was some evidence which reasonably supported the probate court's finding that the account at Wachovia as listed on the Inventory and Appraisement was not a joint account.

STATEMENT OF THE CASE

Geraldine M. Harris (Mother) died on May 1, 2007 at age 89. Respondent Harry L. Harris, Jr. (Son) was named as personal representative in the will and was subsequently appointed by the Sumter County Probate Court. On March 23, 2009, Son filed a Petition for Settlement setting forth a Final Accounting and requesting approval of his Proposal for Distribution. (Petition p. 1). Son had previously filed an Inventory and Appraisement, which listed the following under Schedule E:

Description	Joint Owner(s)	Percentage Includible	Appraised Value of Decedent's Interest
NBSC checking account	Harry L. Harris, Jr.	100%	188,781.46
Wachovia checking acct.	Harry L. Harris, Jr.	100%	81,554.52

(Inventory p. 3). The Petition for Settlement did not list those two bank accounts.

Appellant Patti H. Spring (Daughter) filed a Petition for Equitable Distribution and Request for Hearing dated May 18, 2009 asking the probate court to "classify both joint bank accounts as Estate assets and order the Personal Representative to return the $270,335.98, plus interest at the maximum legal rate, to the Estate to be distributed in accordance with the terms of the Will." (Petition p. 2). Son filed an Answer and Counterclaim.[1] (Answer p. 1).

Unbeknownst to Daughter's counsel, a hearing was set in probate court on

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[1] Son sought to be awarded additional attorney fees to be paid from the Estate in contesting Daughter's action, even though the position being taken by Son meant that if he were successful all of the benefit from his position would flow to him personally at the expense of the Estate.

October 27, 2009. The hearing went forward even though Daughter nor her counsel appeared. Son testified and introduced documentary evidence. (Transcript pp. 1-19). The probate court rejected

Daughter's claims that the bank accounts should be included in Mother's estate and approved Son's Petition for Settlement and Proposal for Distribution. (Order 11/18/09 p. 5).

Upon learning that Daughter's counsel had not received notice of the hearing date, the probate court reversed its order and granted Daughter's request for a new hearing. (Order 7/26/10 p. 2). The new hearing took place on October 20, 2010. The trial addressed the ownership of the funds in the two bank accounts titled in the names of Mother and Son. The probate court ruled the NBSC account was a typical joint account with the right of survivorship and the funds in the account belonged to Son after Mother's death pursuant to South Carolina Code Section 62-6-104(a) (2009). As to the Wachovia account, the probate court ruled that the account was not a survivorship account "[b]ased on the lack of statement specifically stating that the Wachovia bank account (now Wells Fargo) was a survivorship account." (Order 12/17/11 p. 11).

Seeking a more specific discussion of the argument regarding the impact of Son's fiduciary relationship with Mother on the case, Daughter filed a Motion to Alter or Amend. (Motion p. 1). In the Order Denying Motion to Alter or Amend, the probate court rejected Daughter's argument that Son's fiduciary relationship with Mother should have played a pivotal role in the evaluation of the evidence. (Order 3/12/13 pp. 1-2).

Both parties appealed to the circuit court (Harris NAP p. 1; Spring NAP p. 1), and

the appeals were consolidated. (Order 6/17/13 p. 1). The circuit court affirmed the probate court's ruling as to the NBSC account, but reversed as to the Wachovia account. The circuit court ruled that both accounts were joint accounts with a right of survivorship and passed outside of Mother's estate to Son on the death of Mother. (Order 01/31/14 p. 6).

Appellant served her Notice of Appeal on February 28, 2014.

FACTS

1. Geraldine M. Harris (Mother) and Harry L. Harris, Sr. (Father) were married for over fifty years. (Transcript p. 77, lines 7-8). They had two children: Harry L. Harris, Jr. (Son) and Patti Harris Spring (Daughter). Father died testate in 1993. (Transcript p. 75, lines 5-17). Father's Will created a trust for the benefit of Mother during her lifetime, with all of the net income from the trust to be paid to Mother. Son was named as trustee. (Transcript p. 57, line 25 - p. 58, line 3; p. 75, line 25- p. 76, line 10).

2. The Harry L. Harris, Sr. Trust was established after Father's death and began producing income for Mother's benefit. Son assumed his role as trustee. (Transcript p. 6, line 24 - p. 7, line 3).

3. Son testified that for the last ten to twelve years of Mother's life he managed her affairs. (Transcript p. 61, lines 22-23). Son held Mother's power of attorney, which was executed in 1994 and recorded on January 20, 1998. (Petition Ex. A p. 1).

4. Approximately two weeks after the power of attorney was recorded, a joint

checking account was opened at The National Bank of South Carolina. Son introduced[2] the signature card associated with the opening of this account. The signature card contains the signatures of Son and Mother and has a section with a mark next to "Joint-With Survivorship (and Not as Tenants in Common)". (Exhibit C p. 1). Son testified he did not know the opening balance (Transcript p. 44, lines 14-17), but the money to fund the account through the years came from the regular income produced by the Harry L. Harris, Sr. Trust and from Mother's personal assets. (Transcript p. 52, lines 1-17). (Son never contended he contributed any funds to either bank account at issue.) Son testified he used the money in the NBSC account to pay Mother's bills. (Transcript p. 38, line 17-p. 39, line 7).

5. Son also introduced the monthly statements associated with the NBSC account. (Exhibit E pp. 1-132). However, the monthly statements were incomplete and missing an important item: the checkbook. The signature card showed the account was opened in 1998. The monthly statements covered the period from September 2002 through May 2008. When asked about the gap in the NBSC bank statements (1998 - 2002), Son testified he "guess[ed] the bank doesn't go back that far." (Transcript p. 43, lines 11-13). The following exchange then took place:

> Q. Do you remember what the beginning balance was on this account when you opened it up?
>
> A. I didn't bring the checkbook, I should have brought the checkbook, I didn't bring the checkbook. I could get it for you though.

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[2] Son introduced the signature card during the October 2009 hearing, but the parties agreed the exhibits (marked A - G) introduced by Son during the October 2009 hearing would remain in evidence and did not need to be re-marked during the October 2010 trial. (Order 12/7/11 p. 1).

Q. And is that something you have had possession of –

A. All these years.

Q. – all these years? Is there any reason why you didn't provide us the checkbook in response to the interrogatory responses?

A. You all didn't ask for the checkbook that I know of.

Q. We asked for any and all documentation backing up this account. Is there any reason why you didn't provide –

A. I can get it, I know where it is, it's in those other files.

(Transcript p. 43, line 18 - p. 44, line 11).

6. It is inferable the monthly statements relating to the NBSC account were going to Son and not to Mother based on the mailing address shown on the statements. The mailing address listed on the monthly statements is P.O. Box 4509, Pawleys Island, SC 29585. It is inferable the address shown on the statements belonged to Son for the following reason. Son was being represented during the trial by Morris Mazursky.[3] Mr. Mazursky's invoices relating to Mother's Estate were submitted as an exhibit. (Exhibit G pp. 1-7). The invoices show the following mailing address:

Mr. Harry L. Harris, Jr.
P.O. Box 4509
Pawleys Island, SC 29585

Thus, the evidence in the record supports the conclusion Son was the person receiving the monthly statements mailed to that same address. Of course, Son testified he had "all of the checks and that checkbook" and the location of the checkbook was "in my desk at home." (Transcript p. 45, lines 9-10). The evidence supports the conclusion that Son not

[3] Mr. Mazursky passed away in November 2012.

only made the deposits and wrote the checks out of the NBSC account, but also received the monthly statements associated with the account.

7. In 1999, an account was opened at Wachovia. Confusion reigned during the trial regarding the Wachovia account. (Transcript p. 14, line 16 - p. 37, line 3). Son introduced a signature card containing the signatures of Son and Mother. (Exhibit B p. 1). The signature card does not state the account comes with the right of survivorship.[4] Son introduced monthly statements covering September 2002 through October 2006 associated with a Wachovia account (Exhibit D pp. 1-159), but the last statement shows this account was closed on October 17, 2006, more than six months *before* Mother died, with a closing balance of $13,787.32. (Exhibit D p. 1). Son struggled to try to explain during the trial how the signature card (Exhibit B) and monthly statements (Exhibit D) – which appeared to have the same account number and therefore relate to the same account (Transcript p. 20, line 21 - p. 29, line 16) – could provide support for the Wachovia account listed in the Inventory and Appraisement, which listed a balance at Mother's death of $81,554.52. (Inventory p. 3). The following exchange occurred at trial between Daughter's attorney and Son:

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[4] Exhibit B includes a document entitled *Deposit Agreement and Disclosures for Personal Accounts*, which contains the following provision:

> If your account is in two or more names (without a fiduciary, beneficiary or other designation), it is a joint account and, unless State-Specific Rules are applicable to your account and are disclosed on the Signature Card or in this Agreement, we will presume it is a joint account with right of survivorship.

(Exhibit B p. 5 of 18). However, the document notes on the cover page that it became effective April 1, 2009, which was ten years *after* the account was opened and two years *after* Mother's death. (Transcript p. 23, line 4 - p. 26, line 17).

Q. All right. If you'll look quickly back at ... Schedule E on page three [of the Inventory and Appraisement], there's no indication of the checking account numbers with NBSC [or] the Wachovia account; right?

A. I guess not.

Q. Doesn't say it on there, does it?

A. I can get them.

Q. Well, let's look at the records. And this, again, we're going to refer to Petitioner's Exhibit B that was marked in the original hearing.

...

Q. This is the signature card and the deposit agreement that you --

A. -- have the numbers on it, yeah.

Q. Okay. And if you'll look up here at the top right-hand corner, this is a, this is the signature card for a Wachovia account; correct?

A. That's correct.

...

Q. [T]here's an account number here and it's 761992403. Is that account number the account that you're referring to in this inventory that you submitted to the Court?

A. I'm not sure. I have a couple of other accounts. I bought some Evergreen bonds out of one of the accounts. It's been a ten, 12 years ago. At the end I only had - - I tried to combine all the accounts, I had one account there at Wachovia and one account in National Bank which I paid all her bills out of National Bank.

Q. Okay. And my question to you, and I appreciate you clarifying that, is the Wachovia account that you're referring to under Schedule E on page three, the second account, is this the signature card for that account?

A. I don't know. I don't have the checkbook with the account number on it.

Mr. Mazursky: May I see that?

A. I assume that's one that had the 81,000 in it.

By Mr. Sumner:

Q. Well, let me ask you this, because you submitted this to the Court in support of the case with the estate, and this is the only signature card provided on a Wachovia account. Does that refresh your recollection or help you remember whether or not - -

A. It's been so many years ago, I cannot answer that truthfully.

Q. Okay. That's okay.

A. I assumed it was $81,554.52, I'm assuming that.

Q. Okay. So sitting here today under oath you can't say whether or not this signature card is the signature card for the account that you've referenced in this inventory?

A. Like I said, it's been ten or 12 years ago, you know, I can't - - I don't remember what happened yesterday sometimes.

(Transcript p. 14, line 16 - p. 17, line 8).

Later during the same examination came the following:

A. I don't know what you're talking about. I don't understand your question. As I explained before, I had a savings account and maybe two other accounts with her. I combined all those accounts and had one account down there with Wachovia. That one account, I'm not sure what number it is, I'll have to go back in my file, but that's the account.

...

Q. That [monthly statement for October 2006 in Exhibit D] says that this account was closed six months before your mother died; correct?

A. Yeah, but I just have to explain to you. I took the small accounts and put them into one account just to have one account, you know, because I didn't want all these little accounts around. I've already explained that to you. And that's what, the total of it was eighty thousand something dollars.

Q. And I appreciate that explanation, but my question to you was this account as borne out by the accounting record that you provided and marked as Exhibit D, this account was closed six months before your mother died; correct?

A. If it says closed, it's closed, yes.

Q. You don't dispute that?

A. No.

Q. Where did the $81,335.98 come from that you have listed here on this inventory?

A. I guess it came from all the accounts I closed.

Q. Sitting here today can you tell me what Wachovia account contained
$81,554.52 –

A. I can find out because that's when I went to the – I opened the estate
account, I closed that account and that's what had 81,000 in it.

(Transcript p. 28, lines 10-17; p. 34, line 15 - p. 35, line 15). Son's attorney had stipulated that the signature card introduced as Exhibit B was the signature card associated with the Wachovia account listed in the Inventory and Appraisement, (Transcript p. 21, lines 5-9), but the discrepancies relating to the Wachovia account were never explained.

8. Frankie White, Mother's neighbor in Sumter since the 1950s and close friend for over fifty years, testified Mother "could not see" (Transcript p.113, line 17), meaning not that Mother was actually blind but as an expression of how bad Mother's vision was. Ms. White testified she would read the newspaper and restaurant menus to Mother. (Transcript p. 113, line 23 - p. 114, line 2). Ms. White was shown the signature card relating to the Wachovia account and asked: "And based on your familiarity with

your friend's vision, could she have seen to read this signature page in 1999?" She answered: "She couldn't anymore read that than flying to the moon and back, no, she could not read that." (Transcript p. 114, lines 21-25). Ms. White stated the same opinion about Mother's ability to read the signature card for the NBSC account. (Transcript p. 115, lines 1-8).

Daughter also testified about Mother's vision problems. (Transcript p. 79, line 13 - p. 81, line 9). Daughter stated she did not believe Mother would have signed something she did not understand, but testified Mother "would have been relying on whoever was present to tell her what she was signing." (Transcript p. 93, lines 8-11; p. 96 lines, 7-10).

Daughter introduced records from Mother's eye doctor containing an office note from 2000 stating that Mother had been experiencing macular degeneration for ten years. (Transcript p. 81, line 23 - p. 83, line 6; Exhibit 4 p. 1).

Though Son acknowledged Mother suffered from macular degeneration (Transcript p. 53, lines 16-18), he contended Mother would have been able to read documents like the Wachovia signature card and characterized her vision as "perfect." (Transcript p. 27, lines 4-6).

9. Daughter testified Mother moved in 1999 from Sumter to the Lakes at Litchfield and remained there until she had to go to assisted living in 2006. (Transcript p. 78, lines 5-21). Because of her failing eyesight, Mother never drove again after moving from Sumter. (Transcript p. 79, line 13 - p. 80, line 11).

10. When asked whether Mother ever expressed any concern about Son managing her finances, Ms. White stated:

> A. I know she wasn't concerned except she thought that he spent a lot of money. And she would sometimes talk to me about it.

Q. And [what] would she say? What did she say?

A. Well, I think it was mostly with the second wife. And he would, evidently he did spend a lot of money because he, I know he'd been to Cancun, he went to Las Vegas, Atlantic City, some of those places. And then – he just spent a lot of money.

(Transcript p. 112, line 24 - p. 113, line 8).

11. Ms. White testified Mother "confided [in her] about a lot of things ... includ[ing] her finances." (Transcript p. 107, line 25- p. 108, line 8). Ms. White continued to visit Mother even after Mother moved to Litchfield and testified the two remained very close. (Transcript p. 109, line 72- p. 110, line 2). They discussed Mother's estate plan and Mother told her friend that "everything went to Patty, all that was left went to Patty." (Transcript p. 112, lines 3-6).

12. Ms. White testified that maintaining a large balance in a checking account would have been inconsistent with Mother's investment philosophy:

Q. Okay. And based on your familiarity with your friend, does it sound like something she would do to put over a hundred thousand dollars into a checking account?

A. No. She did not - - I don't think she would. She was too good a business person for that. And besides, she liked to draw interest on that money. She wasn't any dumb dodo ....

(Transcript p. 116, lines 6-13). Daughter testified similarly:

Q. Based on your interactions with your mom and your familiarity with her and her condition at the time, do you think your mom would have put moneys in excess of a hundred thousand dollars in a checking account that was not invested and drawing any kind of interest?

A. No, sir.

(Transcript p. 95, lines 16-22).

13. Daughter testified that there was bad blood between her and her brother

that bubbled to the surface after their father died in 1993. (Transcript p. 88, line 12- p. 89, line 3). Daughter testified Son was also the trustee of a separate trust that a relative had set up for Daughter's benefit, and Son never sent her any type of accounting relating to her benefits under that trust. (Transcript p. 89, lines 4-15).

14. Mother died in 2007. Her will – executed on September 6, 1999 – named Son as personal representative. (Petition Ex. D pp. 1-9).

ARGUMENTS

1. APPELLANT ESTABLISHED THE EXISTENCE OF A FIDUCIARY RELATIONSHIP BETWEEN RESPONDENT AND HIS MOTHER WHERE RESPONDENT SERVED AS TRUSTEE AND HELD POWER OF ATTORNEY FOR HIS MOTHER, THEREBY RAISING A PRESUMPTION OF UNDUE INFLUENCE IN THE CREATION AND FUNDING OF TWO BANK ACCOUNTS TITLED IN THE NAMES OF RESPONDENT AND HIS MOTHER.

I. Standard of Review

The circuit court decided this proceeding was legal in nature. (Order p. 3). While not free from doubt,[5] Appellant does not challenge that ruling. "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed

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[5] Daughter sought a declaration that the two bank accounts should have been included in Mother's estate and should not have passed outside the will to Son as survivor. The classification of this type of action does not fall neatly into a settled category defined as legal or equitable. The proceeding would seem most similar to an action to set aside a will for undue influence, which is an action at law. In re Estate of Anderson, 381 S.C. 568, 573, 674 S.E.2d 176, 179 (Ct. App. 2009). The proceeding also seems similar to an action to set aside a deed for undue influence, which sounds in equity. Bullard v. Crawley, 294 S.C. 276, 278, 363 S.E.2d 897, 898 (1987). Despite the different classification of those actions, the governing legal principles are the same. Dixon v Dixon, 362 S.C. 388, 398 n.7, 608 S.E.2d 849, 854 n.7 (2005) (citing Massachusetts case for the proposition that "the analysis is the same regardless of whether the underlying documents sought to be set aside on the grounds that the Plaintiff was unduly influenced is a will or a deed.").

upon appeal unless found to be without evidence which reasonably supports the judge's findings." Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976); see Ex parte Wheeler v. Estate of Green, 381 S.C. 548, 553, 673 S.E.2d 836, 839 (Ct. App. 2009) ("[I]f the proceeding in the probate court is in the nature of an action at law, 'the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them.'"). Assuming error preservation requirements have been satisfied, the appellate court is always free to correct errors of law, and the appellate court "may decide questions of law with no particular deference to the trial court." Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010); see U.S. Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009) ("Because questions of law may be decided with no particular deference to the trial court, this court may correct errors of law in both legal and equitable actions.").

The ultimate question to be decided on appeal is whether there was any evidence which reasonably supported the probate court's findings. If there was no evidence which reasonably supported the probate court's finding that the NBSC account was free of undue influence and thus a typical joint account with a right of survivorship, then the circuit court erred in affirming and should be reversed. If there was any evidence which reasonably supported the probate court's finding that the Wachovia account listed in the Inventory and Appraisement was not a typical joint account with a right of survivorship, then the circuit court erred in reversing and should be reversed.

II. Governing Legal Principles

The factual foundation for Son's defense rests on the genuineness of the signature cards; the legal foundation rests on the following provision in the Probate Code:

> Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is a writing filed with the financial institution at the time the account is created or subsequently as provided under § 62-6-105 which indicates a different intention.

S.C. Code Ann. § 62-6-104(a) (2009).[6] Son contended in the lower courts that because there was no writing filed with either NBSC or Wachovia indicating a different intention, this statutory provision dictated the outcome – and the funds in both accounts belonged to him as the survivor. According to Son, the inquiry started and ended there. (Transcript p. 120, line 16- p. 121, line 2). But what Son ignored was the well-developed body of law in South Carolina governing transactions between parties in a fiduciary relationship.

A. Presumption of Undue Influence

No South Carolina case addresses the precise circumstances at issue: an action against a fiduciary to invalidate the survivorship status of a joint bank account titled in the names of the surviving fiduciary and his deceased charge. However, South Carolina has a long history of reported decisions involving cases challenging transactions between those in a confidential/fiduciary relationship, and a clear rule developed many years ago: where a transaction is challenged on the basis that the party holding the power in the fiduciary relationship acquired from the other party some property or other type of benefit, the transaction is presumed invalid and the burden shifts to the fiduciary to prove that the

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[6] The Probate Code was substantially revised effective January 1, 2014. Throughout this brief, Appellant cites to the provisions in effect when this case was tried.

transaction was fair and free from undue influence. See Macaulay v. Wachovia Bank of S.C., N.A., 351 S.C. 287, 300, 569 S.E.2d 371, 378 (Ct. App. 2002) ("[T]he existence of a confidential relationship creates a presumption that the instrument [irrevocable life insurance trust] is invalid, and the burden then shifts to the proponent of the instrument to affirmatively show the absence of undue influence."); Eagles v. South Carolina Nat'l Bank, 301 S.C. 402, 410, 392 S.E.2d 187, 192 (Ct. App. 1990) ("Where a confidential relationship exists between parties, a gift is presumed invalid and the burden is upon the donee to establish the absence of undue influence."); see also Way v. Union Central Life Insurance Co., 61 S.C. 501, 505, 39 S.E. 742, 743 (1901) ("'While equity does not deny the possibility of valid transactions between the two parties, yet, because every fiduciary relation implied a condition of superiority held by one of the parties over the other, in every transaction between them by which the superior party obtains a possible benefit[,] equity raises a presumption against its validity, and casts upon that party the burden of proving affirmatively its compliance with equitable requisites, and of thereby overcoming the presumption.'") (quoting Pomeroy's Equity Jurisprudence).

Traditionally, the standard applicable to a fiduciary has been a rigorous one.

> It is a doctrine repeatedly announced by the courts of this nation that courts of equity will scrutinize with the most zealous vigilance transactions between parties occupying confidential relations toward each other and particularly any transaction between the parties by which the dominant party secures any profit or advantage at the expense of the person under his influence.

Lesesne v. Lesesne, 307 S.C. 67, 69, 413 S.E.2d 847, 848 (Ct. App. 1992). The fiduciary must "show the utmost good faith (uberrima fides) in the transaction in which th[e] court has been called upon to review." Way, 61 S.C. at 511, 39 S.E. at 745. The fiduciary can

overcome the presumption of invalidity by presenting "clear evidence of good faith, full knowledge, and of independent consent and action." Tindal v. Sublett, 82 S.C. 199, 206, 63 S.E. 960, 962 (1909). "The absence of full information and independent advice is always regarded [as] a strong circumstance against the validity of the transaction." In re Gadsden, 89 S.C. 352, 364, 71 S.E. 952, 957 (1911). However, the absence of independent advice is not necessarily fatal. See Bates v. Bates, 213 S.C. 26, 43, 48 S.E.2d 612, 619 (1948) (Independent advice is not a sine qua non of validity in all cases challenging transactions between parties in a fiduciary relationship, "but it is unquestionably a circumstance which, when it exists, militates for validity, and when it does not, as in this case, its absence is of importance.").

B. Probate Code Provision

A section in the Probate Code must also be considered:: "Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof." S.C. Code Ann. § 62-3-407 (2009). Relying on this provision in a will contest case, the court of appeals described the procedure to be followed at trial as follows:

> [I]f the contestants of a duly executed will provide evidence that a confidential/fiduciary relationship existed sufficient to raise a presumption, the proponents of the will must offer evidence in rebuttal. We emphasize that although the proponents of the will must present evidence in rebuttal, they do not have to affirmatively disprove the existence of undue influence. Instead, the contestants of the will still retain the ultimate burden of proof to invalidate the will.

Howard v. Nasser, 364 S.C. 279, 288, 613 S.E.2d 64, 68 (Ct. App. 2005); see Gordon v.

Busbee, 397 S.C. 119, 141, 723 S.E.2d 822, 834 (Ct. App. 2012) ("While Howard is not directly on point, it illustrates the unusual nature of the burden-shifting scheme in cases involving decedents and their fiduciaries. While the fiduciary may have the burden to offer some evidence to establish a lack of undue influence, or in this case the validity of the transfers, the ultimate burden of proof remains with the complaining party unless the fiduciary offers no evidence to rebut the relevant presumption.").[7]

III. Application of Law to Facts

Son was Mother's trustee under the Harry L. Harris, Sr. Trust; Mother was the cestui que trust (beneficiary of the trust). Son was Mother's attorney-in-fact under a power of attorney and managed Mother's affairs for the last decade of Mother's life. There can be no doubt that Son was in multiple, overlapping fiduciary relationships with Mother. See In re Estate of Cumbee, 333 S.C. 664, 672, 511 S.E.2d 390, 394 (Ct. App. 1999) (finding fiduciary relationship between son and his mother based on son having mother's power of attorney and managing all her finances, including keeping her checkbook, and affirming circuit court's affirmance of probate court's decision to set aside will leaving entire estate to son); Chapman v. C&S Nat'l Bank of South Carolina, 302 S.C. 469, 476, 395 S.E.2d 446, 450 (Ct. App. 1990) (noting trustee/cestui que trust, attorney/client, and principal/agent as examples of fiduciary relationships).

A presumption of undue influence with respect to the creation and funding of the joint bank accounts then arose, and Son was called upon to rebut the presumption. See,

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[7] This approach is consistent with the standard set out for evidentiary presumptions in general in Rule 301 of the South Carolina Rules of Evidence.

e.g., Dixon v. Dixon, 362 S.C. 388, 398, 608 S.E.2d 849, 854 (2005) ("We now turn to whether Son satisfied his burden to prove that he did not unduly influence Mother to convey him the property.").

The fiduciary relationship between Son and Mother colors every aspect of this case, but Son's trial presentation did not seem to recognize the relevance of the fiduciary relationship to the matters at issue. The probate court also rejected Daughter's argument that the fiduciary relationship played a pivotal role in the evaluation of this case, (Order Denying Motion to Alter or Amend p. 1), as did the circuit court. (Circuit Court Order pp. 3-6). In so doing, both courts

committed an error of law.

2. GIVEN THE NATURE OF THE FIDUCIARY RELATIONSHIPS BETWEEN RESPONDENT AND HIS MOTHER, AND GIVEN THE TYPE OF TRANSACTION BEING SCRUTINIZED, THERE WAS NO EVIDENCE WHICH REASONABLY SUPPORTED THE PROBATE COURT'S FINDING THAT THE ACCOUNT AT NATIONAL BANK OF SOUTH CAROLINA WAS FREE OF UNDUE INFLUENCE AND THUS A TYPICAL JOINT ACCOUNT WITH THE FUNDS REMAINING IN THE ACCOUNT AT MOTHER'S DEATH AUTOMATICALLY PASSING TO RESPONDENT AS THE SURVIVING PARTY.

The strength of the presumption of invalidity would seem logically to depend on the strength of the fiduciary relationship at issue; the strength of the evidence needed to rebut the presumption by the fiduciary would seem logically to depend on the nature of instrument/transaction being scrutinized. See Devlin v Devlin, 89 S.C. 268, 272, 71 S.E. 966, 968 (1911) ("The presumption [against the validity of the transaction assailed] will be strong or weak according to the character and situation of the parties, and the character of the relationship between them."). The stronger the fiduciary relationship and the weaker

the formalities surrounding the transaction, the less evidence of undue influence that should be needed by the contestant and the more thorough the explanation required of the fiduciary. See generally Bates v. Bates, 213 S.C. 26, 36-37, 48 S.E.2d 612, 616 (1948) (Noting there is little difference between the presumption of undue influence followed in this state and the following conclusion contained in an annotation on the subject: "'All the courts agree that if the whole transaction will be closely scrutinized, and if the evidence of fraud, coercion, or undue influence is found, the conveyance will be set aside, which will seem to indicate that, while the burden of proof is upon those attacking the validity of the transfer, *slight* circumstances indicative of fraud, coercion, or undue influence will suffice to invalidate the deed unless *full* explanation, removing the suspicion, is made by those defending the legality of the transaction.'") (emphasis added).

I. The Fiduciary Relationships at Issue

The relationship of trustee and cestui que trust is a particularly demanding fiduciary relationship. See Scottish-American Mortgage Co. v. Clowney, 70 S.C. 229, 241-412, 49 S.E. 569, 572 (1904) ("'So jealous is the law of the interest of the cestui que trust that it will not tolerate the slightest antagonism on the part of the trustee. The object of the rule is to prevent the trustee from using his information and power to the prejudice of the cestui que trust.'"); see also In re Gadsden, 89 S.C. 352, 363-64, 71 S.E. 952, 956-57 (1911) ("Judicial distrust of such transactions runs through the whole history of jurisprudence and has been expressed with emphasis in a number of cases in this State. The general rule against the validity of such transactions does not depend on a presumption that there was actual fraud or intentional wrong, but on the principle that the

trust relation places such obligations on the trustee that he should not occupy that position of opposition to his cestui que trust which trading with him denotes, and on the presumption that the trustee by reason of his superior knowledge of the trust estate occupies such a vantage ground that the parties do not deal on equal terms.").

Son was not only Mother's trustee, but also held a power of attorney and managed Mother's affairs for the last decade of her life. The multiple layers of fiduciary relationships in this case should raise a particularly strong presumption of overreaching. See Guignard v. Atkins, 282 S.C. 61, 65, 317 S.E.2d 137, 140 (Ct. App. 1984) ("Transactions between a trustee and beneficiaries may be sustained where there is clear affirmative proof [implicitly, presented by the trustee] of fair consideration, perfect candor and absence of advantage."); cf. Hembree v. Estate of Hembree, 311 S.C. 192, 196, 428 S.E.2d 3, 5 (Ct. App. 1993) ("In cases where allegations of undue influence have been successful, there has been evidence of threats, force, restricted visitation, *or* an existing fiduciary relationship at the time of or before the will's execution.") (emphasis added).

II. The Transactions at Issue

The majority of the reported decisions appear to involve challenges to wills or deeds. See, e.g., Moorer v. Bull, 212 S.C. 146, 46 S.E.2d 681 (1948) (will); Hooker v. Hooker, 115 S.C. 297, 105 S.E. 701 (1919) (deed). The law rightly requires a certain robustness in the evidence required to invalidate a will or deed. See generally In re Last Will and Testment of Smoak, 286 S.C. 419, 427, 334 S.E.2d 806, 811 (1985) ("[O]ne of the basic rights known to our civilization is the privilege of disposing of property by Will as one elects."). Like entering into marriage, the decision should not be made unadvisedly

or lightly.

However, the solemness usually associated with the execution of a will or deed – including the presence of witnesses, the administering of an oath, and (typically) the employment of an attorney – is lacking in the process for opening a joint account, the latter involving merely a visit to a bank branch to sign the signature card for the account. Most laymen would recognize the execution of a will or deed as an important occasion.[8] The opening of a bank account – "Do you want free checking with that?" – is not generally viewed as an equivalent major life event. The type of transaction being scrutinized in this case comes without the formalities designed to impress upon the layman the need to reflect on the seriousness of the transaction, which should further raise the bar for Son and simultaneously lower it for Daughter.

A final point on the impact of the type of transaction on the analysis bears mentioning. In a will contest case, the rule is "even if a contestant does establish an inference of undue influence, the unhampered opportunity of a testator to change the will after operation of the undue influence destroys this conclusion." Hembree v. Estate of Hembree, 311 S.C. 192, 196-97, 428 S.E.2d 3, 5 (Ct. App. 1993). The present case involves a converse situation, because the type of transaction being challenged involves not only the creation of the joint accounts but more importantly the ways the accounts were funded. In this case, events occurring (repeatedly) after the signing of the account opening documents – the funding of the accounts by Son over a period of years – serve not to remove the taint of undue influence but to magnify it.

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[8] People often keep a will or deed in a safety deposit box.

III. Method and Standard for Showing Undue Influence

In Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982), the supreme court stated:

> [B]y the very nature of the case, the evidence of undue influence will be mainly circumstantial. It is not usually exercised openly so that it can be directly proved. However, the circumstances must point unmistakably and convincingly to the fact that the mind of the testator was subjected to that of some other person so that the will is that of the latter and not of the former.

Id. at 530, 290 S.E.2d at 417.

IV. Illustrative Case

The discussion in In re Estate of Anderson, 381 S.C. 568, 674 S.E.2d 176 (Ct. App. 2009) illustrates how the governing legal principles should be applied to the evidence in this type of case. Petitioner sought to have her mother's will disinheriting her in favor of two nephews set aside based on undue influence. The Nephews lived with Testator and assisted her with daily living, including buying her groceries and paying her bills. Id. at 570, 674 S.E.2d at 178. In the fall of 2001, the Nephews took Testator to a local attorney (Epps) to prepare a power of attorney, which was done. In December 2001, Epps assisted Testator in preparing a new will which left all her property to the Nephews. Id. at 570-572, 674 S.E.2d at 178.

Epps "testified he did not witness any undue influence and he believed the changes to the will were [Testator's] ideas." Id. at 575, 674 S.E.2d at 180. Further, "[t]wo witnesses were present at the signing of the will and Epps testified the [Nephews] did not have any part in the discussion about the new will." Id. at 572, 674 S.E.2d at 178. Epps testified Testator had told him Petitioner "was not in the will because she did not want [Petitioner's] 'husband to get his hands on any of her property.'" Id. at 571, 674 S.E.2d

178. Epps also testified that Petitioner's husband had come to his office seeking a power of attorney for Testator asserting Testator was mentally incompetent, but was turned away when Epps told him that a mentally incompetent person could not execute a power of attorney. Id. at 570 n.2, 674 S.E.2d at 178 n.2.

An employee of the Department of Social Services testified that in the fall of 2001, an anonymous call alleging adult abuse resulted in a DSS employee going unannounced to Testator's home to investigate. The social worker testified that on her visit she found Testator was "well cared for by the [Nephews] and was mentally sharp[.]" Id. at 571, 674 S.E.2d at 178. The social worker also testified Testator told her that Testator wanted one of the Nephews to be in charge of her affairs because she trusted him and she planned to meet with her attorney to get a power of attorney for him. The social worker recounted that Testator stated Petitioner's husband was trying to force one of the Nephews to sign papers to take her out of her house." Id. at 571, 674 S.E.2d at 178.

"Additionally, Testator's life-long friend, Mary Minton, testified [Testator] told her she did not want [Petitioner's husband] to have any of her property and she wanted her [Nephews] to get it." Id. at 572-73, 674 S.E.2d at 179.

"Several witnesses testified that [Testator] was the one giving the orders and was not likely to be influenced by someone else." Id. at 575, 674 S.E.2d at 180.

By contrast, Petitioner's husband testified Testator "told him in December 2001 that the [Nephews] were trying to get her to change her will and she wanted to keep her first will." Id. at 572, 674 S.E.2d at 178. Petitioner's husband also testified he believed Testator had been incompetent for over a decade. Petitioner presented the testimony of

two treating physicians, who both opined Testator was mentally incompetent. However, Testator's sister-in-law "testified she visited with [Testator] once a week until she passed away and [Testator] was mentally alert. Other family members, friends, and neighbors also testified [Testator] was mentally competent until she passed away." Id. at 572, 674 S.E.2d at 178-79.

Petitioner's challenge to the new will was tried before the probate judge sitting without a jury. The probate court rejected Petitioner's claim, and the circuit court affirmed. Id. at 573, 674 S.E.2d at 179.

The court of appeals affirmed as well. The court stated the burden-shifting rule applicable to a transaction involving a fiduciary, and found the power of attorney executed by Testator in favor of the Nephews created a fiduciary relationship.[9] Id. at 574-75, 674 S.E.2d at 179-80. The court recited the evidence noted above and concluded: "Thus, the [Nephews] presented sufficient evidence to rebut a presumption of undue influence. Additionally, substantial evidence in the record supports the probate's court finding the will was valid and not the result of undue influence." Id. at 576, 674 S.E.2d at 180.

V. Application of Law to Facts

Comparing the evidence presented by the fiduciary in Anderson with the evidence presented by Son is instructive. Son offered no evidence regarding the *creation* of the NBSC account other than submitting the signature card. He called no bank employees, lawyers, accountants or investment advisors to explain why he put Mother's money in a

[9] This way so even though no evidence was presented the Nephews ever utilized the power of attorney. 381 S.C. at 575, 674 S.E.2d at 180.

checking account purporting to give him a right of survivorship rather than putting the money in a standard checking account in Mother's name alone. Son stated at trial that he used the account to pay Mother's bills. Of course, if the money had been deposited in a standard checking account in Mother's name alone, Son – as holder of a recorded power of attorney – had the authority to write checks and pay bills on Mother's behalf. He also could have deposited Mother's money into a multiparty account not purporting to have a right of survivorship.

Son acknowledged the *funding* of the account came entirely from the income produced by the Harry L. Harris, Sr. Trust and from Mother's personal assets. He never contended he put any of his own money in the NBSC account.

Son admitted at trial he had possession of the checkbook for the account in a file at his home where he had kept it "[a]ll these years." (Transcript p. 43, line 18-25). Not only did Son have possession of the checkbook, but – as shown earlier – it can be inferred the monthly statements were sent to him, not Mother. In Gibson v. Bank of America, 383 S.C. 399, 680 S.E.2d 778 (Ct. App. 2009), the court found the mailing of the monthly statements should have put the recipient on notice of large withdrawals from the account more than three years before suit was filed. Therefore, the claim was barred by the statute of limitations. Id. at 407-08, 680 S.E.2d at 782-83. The converse situation should also be relevant – Mother's lack of receipt of the monthly bank statements meant she would have been justifiably unaware of the mounting sums being funneled into the NBSC account by Son.

Daughter, on the other hand, called Mother's long-time friend Frankie White as a

witness.

Ms. White testified Mother "could not see" (Transcript p. 113, line 17) meaning not that Mother was actually blind but as an expression of how bad Mother's vision was. Ms. White was shown the signature card relating to the Wachovia account and asked: "And based on your familiarity with your friend's vision, could she have seen to read this signature page in 1999?" She answered: "She couldn't anymore read that than flying to the moon and back, no, she could not read that." (Transcript p. 114, lines 21-25). Ms. White stated the same opinion about Mother's ability to read the signature card for the NBSC account. (Transcript p. 115, lines 1-8).

Daughter introduced the records from Mother's eye doctor establishing Mother's lengthy experience with macular degeneration.

Daughter also testified about Mother's vision problems. Daughter stated that she did not believe Mother would have signed something she did not understand, but testified Mother "would have been relying on whoever was present to tell her what she was signing." (Transcript p. 93, lines 8-11; p. 96, lines 7-10).

Although Son acknowledged Mother suffered from macular degeneration, he contended Mother would have been able to read documents like the signature cards and characterized her vision as "perfect." (Transcript p. 53, lines 16-18; p. 27, lines 4-6).

Son argued, and the probate court found "[a]s a matter of law, a person cannot avoid a written contract on the grounds that the person signing did not know of the contents." (Order p. 7). It is especially curious that Son would rely on this principle in light of Son's repeated statements at trial that he had no idea a right of survivorship was

attached to the accounts at NBSC and Wachovia. (Transcript p. 10, lines 23-24; p. 51, lines 11-13; p. 70, lines 20-21). If he did not know about the right of survivorship and Mother could not read the terms on the signature cards, who would have explained to Mother the accounts came with a right of survivorship? If a bank employee explained that to Mother, then would not Son have heard the explanation as well? But Son – an experienced businessman who purchased, operated, and sold his father's beer distributorship – now stands on the position that while he did not know the funds in the accounts would pass automatically to the surviving party, Mother should have.

Daughter testified she and her brother had a very poor relationship since their father died in 1993.

Daughter introduced evidence supporting the conclusion that the creation and funding of joint bank accounts with large balances would have been inconsistent with Mother's investment philosophy and estate plans. Frankie White testified Mother would not have favored keeping large amounts of cash in a checking account and that Mother had told her that Mother's estate plan was for Daughter to receive everything.

The probate court completely discounted Ms. White's testimony as "parole testimony which is incompetent and inadmissable to vary the terms of the written joint accounts." (Order p. 7). But testimony by a friend of the decedent is exactly the type of evidence recognized as probative in cases involving claims of undue influence. See In re Estate of Cumbee, 333 S.C. 664, 673, 511 S.E.2d 390, 395 (Ct. App. 1999) (citing testimony in will contest case by best friend of testator regarding testator's statements concerning intentions about estate plans). The probate court's refusal to consider the

testimony of Ms. White (and of Daughter on this issue) was an error of law.

Son gained a great deal by funneling the money from the Harry L. Harris, Sr. Trust (over which he was trustee) and from Mother's personal assets (which he managed under a power of attorney) into the NBSC account. While perhaps much of the money was used for Mother's benefit, much remained at her death ($188,781.46) – all of which Son now claims as his own. If the money does not belong to Mother's estate, then Mother lost testamentary power over that money – *her* money – thwarting a portion of Mother's estate plan. See generally Brock v. Brock, 218 S.C. 174, 180, 61 S.E.2d 885, 888 (1950) ("An important element of the ownership of property is the right of the owner to convey it in any terms within its intention."). It was incumbent upon Son to come forward with some evidence to overcome the presumption of invalidity and to remove the taint stemming from the existence of the fiduciary relationship. He made no real effort to do so.

If a fiduciary could carry his burden by simply proving the genuineness of the document forming the basis for the challenged transaction and offering only his own self-serving testimony for explanation, then the fiduciary's burden would be as light as a feather. In virtually every reported South Carolina decision involving fiduciaries where a transaction was challenged, the document was facially valid. See, e.g., Tedder v. Tedder, 108 S.C. 271, 287, 94 S.E. 19, 24 (1917) (setting aside deeds from father to sons and rejecting sons' argument that the deeds spoke for themselves: "The same circumstances accompany well-nigh every unlawful transaction; and if Courts had to take the word of the written instruments and the testimony of the accused parties as conclusive of the issues, wrong would never be disclosed."). In other words, the genuineness of the signature of

the fiduciary's charge is rarely contested. Showing the genuineness of the document underlying the transaction is merely a preliminary *procedural* hurdle; such a showing does nothing to address the *substantive* issue – was the transaction fair and free from undue influence? This question lies at the heart of the dispute, and on this critical issue Son fell far short of rebutting the presumption of invalidity. See Way v. Union Central Life Insurance Co., 61 S.C. 501, 511, 39 S.E. 742, 746 (1901) (fiduciary in challenged transactions not only failed to overcome presumption of invalidity, but "failed to make any attempt to do [so], as they offered no testimony whatever as to that matter, although they had the means of explaining fully the whole transaction").

There was no *probative* evidence which *reasonably* supported the probate court's finding that the creation and funding of the NBSC account were free of undue influence. See generally In re Last Will and Testament of Smoak, 286 S.C. 419, 425, 334 S.E.2d 806, 809 (1985) (finding contestant's case rested "upon several tidbits of evidence truly having no probative value" and reversing jury verdict invalidating will based on undue influence). In light of the fiduciary relationship and the corresponding presumption of undue influence, Son could not rely exclusively on the genuineness of the account opening document and his own uncorroborated, self-serving testimony. Neither could the probate court.

The evidence introduced by Daughter, on the other hand, supports the conclusion the creation and funding of the NBSC account were tainted by Son's overreaching in securing for himself $188,781.46 of his mother's money. Considering the evidence as a whole, Daughter was entitled to judgment as a matter of law that the survivorship status of

the NBSC account was invalid.

3. GIVEN THE NATURE OF THE FIDUCIARY RELATIONSHIPS BETWEEN RESPONDENT AND HIS MOTHER, AND GIVEN THE TYPE OF TRANSACTION BEING SCRUTINIZED, THERE WAS SOME EVIDENCE WHICH REASONABLY SUPPORTED THE PROBATE COURT'S FINDING THAT THE ACCOUNT AT WACHOVIA AS LISTED ON THE INVENTORY AND APPRAISEMENT WAS NOT A JOINT ACCOUNT.

The same legal principles apply to the Wachovia account and the argument just stated with respect to the NBSC account also applies to the Wachovia account. However, there are also some materially different facts relating to the Wachovia account, and the procedural posture is obviously different given the probate court's ruling that the Wachovia account was not a joint account with a right of survivorship. The key factual difference is this - Son did not show there was in fact a joint account at Wachovia when Mother died that contained $81,554.52, the amount listed on the Inventory and Appraisement and the amount Son testified he received from Wachovia after Mother's death. (Transcript p. 35, lines 7-15).

The confusion during the trial relating to the Wachovia account can be laid squarely at Son's feet. The signature card does not state that the joint account comes with the right of survivorship.[10] The sole signature card relating to any Wachovia account that Son introduced, and the sole set of bank statements relating to any Wachovia account that Son introduced, appeared to have the same account number and thus relate to the same account. (Transcript p. 20, line 21 - p. 29, line 16). But those bank statements established

[10] Appellant acknowledges the provision in the probate code defining "an account payable on request to one or more of two or more parties" as a joint account "whether or not mention is made of any right of survivorship." S.C. Code Ann. § 62-6-101(4) (2009).

that account was closed on October 17, 2006, more than six months *before* Mother died, and had a closing balance of $13,787.32.[11] When confronted with this inconsistency at trial, Son contended there actually had been multiple joint accounts at Wachovia that he combined at some point into a single account. Other than Son's uncorroborated, self-serving testimony, Son introduced *absolutely nothing* to support the existence of multiple, smaller joint accounts and *absolutely nothing* to support the existence of a joint account with $81,554.52 when Mother died.[12]

The gaps in proof and confusion relating to whatever accounts existed at Wachovia might ordinarily work against the party asserting the claim, but not in a situation like this one involving a fiduciary relationship. The burden-shifting rule makes perfect sense because the fiduciary is in the best position to have access to the relevant information. The burden fell on Son to provide not only a full explanation of the bona fides of the transaction, but also – at a much more basic level – to show the existence of the joint account in the amount being claimed. Son failed to do so.

The issue on appeal is whether there was any evidence which reasonably supported the probate court's ruling that the Wachovia account listed on the Inventory and

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[11] Son cannot argue he was entitled to those funds in his personal capacity. See Vaughn v. Bernhardt, 339 S.C. 125, 130, 528 S.E.2d 82, 85 (Ct. App. 2000) ("Under the Probate Code, the presumption created in favor of the non-contributing survivor to a joint account only applies to those funds remaining on deposit at the death of the contributor."), aff'd, 345 S.C. 196, 547 S.E.2d 869 (2001).

[12] Son will likely make much of a list of checks written on the Wachovia account to Daughter. (Order 12/17/11 p. 13). But those checks establish only that Mother had written checks on that particular Wachovia account – which ultimately was closed prior to her death.

Appraisement was not a joint account with a right of survivorship. Because there is evidence which reasonably supports that finding, the circuit court erred in reversing the probate court.

CONCLUSION

This Court's reversal of the circuit court's decision would signal the continuing vitality of the ancient rule in South Carolina applying a rigorous standard requiring a fiduciary to explain the bona fides of transactions with his charge; this Court's affirmance of the circuit court would further erode a fiduciary's duty to give a full accounting of his actions in such situations and render the fiduciary's burden no burden at all.

For the reasons stated, this Court should reverse the circuit court's decision, which affirmed the probate court with respect to the NBSC account and reversed the probate court with respect to the Wachovia account. The money in both accounts should have been included in Mother's Estate and should be returned by Son to the Estate.

March 28, 2014

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Ralph F. Cothran, Jr., Circuit Court Judge

Case No. 2013-CP-43-476
(Consolidated with 2013-CP-43-668)

In the Matter of the Estate of Geraldine M. Harris

Patti H. Spring,.....Appellant,

v.

Harry L. Harris, Jr., as Personal Representative
of the Estate of Geraldine M. Harris,.....Respondent.

PROOF OF SERVICE OF INITIAL BRIEF OF APPELLANT

I certify that I have served the Initial Brief of Appellant on Harris L. Harris, Jr., as Personal Representative of the Estate of Geraldine M. Harris by depositing a copy of it in the United State Mail, postage prepaid, on March 28, 2014, addressed to his attorney of record, Thomas E. Player Jr., Esquire, Player & McMillan, LLC, Post Office Drawer 3690, Sumter, SC 29151 and Walter G. Newman, Esquire, Walter G. Newman Attorney at Law, LLC Post Office Box 549, Sumter, SC 2915.

March 28, 2014

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