THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

The Honorable 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 RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE EVIDENCE SUPPORT THE FINDING OF THE PROBATE COURT THAT THE CREATION OF THE JOINT ACCOUNTS IN QUESTION WAS NOT A RESULT OF UNDUE INFLUENCE?

2. DID THE PROBATE COURT FIND THAT THE WACHOVIA ACCOUNT WAS NOT A JOINT ACCOUNT?

FACTS

Patti H. Spring (Daughter) and Harry L. Harris, Jr. (Son) are sister and brother, the only children of decedent Geraldine M. Harris, (Mother) who died on May 1, 2007, and the late Harry L. Harris (Father), who predeceased his wife. Mother executed her Last Will and Testament on September 6, 1999. The National Bank of South Carolina (NBSC) and Wachovia (now Wells Fargo) accounts which are the subjects of this dispute were opened on February 2, 1998, and September 30, 1999, respectively, with each account being listed in the names of Mother and Son. Son was appointed personal representative of Mother's estate. When Son went to the banks to transfer the funds from these joint accounts to the estate account, he was informed that the proceeds of the accounts would be issued to him personally as the surviving joint account holder. Consequently, the funds from these accounts were not included in the estate assets.

ARGUMENTS

1. THE EVIDENCE SUPPORTS THE FINDING OF THE PROBATE COURT THAT THE JOINT ACCOUNTS WERE NOT THE PRODUCT OF UNDUE INFLUENCE.

The probate court found that the joint accounts were created free from any duress or compulsion on the part of Son. (Probate Ct Order Dec.7, 2011pp 9).

The sole question is whether the evidence supports the findings of fact. Appellate review of a probate court decision in a law case is limited to a determination of whether evidence in the record supports the finding of facts. The weight and credibility of the evidence is not subject to review. In re Estate of Duffy 392 S.C. 41, 707 S.E.2d 447 (S.C. App. 2011).

Daughter makes much of the presumption of undue influence arising from the fiduciary relationship. Rule 301, SCRE governs the treatment of presumptions:

> In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.

This presumption becomes irrelevant in light of the standard of review. Daughter recognizes that the success of the appeal depends upon the presence or absence of evidence in the record to support the findings of fact. The existence of such evidence necessarily satisfies the "going forward" requirement of Rule 301. The absence of such evidence ends the query, regardless of the presumption.

The evidence supports the finding that the joint accounts were not the result of undue influence. Son testified that he was not aware the funds in the joint accounts belonged to him until after Mother passed away. The relevant testimony of Son follows:

> Q. But it's important to me to establish for the record upon what you're relying in referring to these checking accounts which have been submitted to the Court under your signature. And I just need to get an

understanding to establish which accounts we're talking about.

A. When I set up the estate account I went to Wachovia to close up, I guess, I assume, this account. Okay. She got on the computer, this little computer and she said, Mr. Harris, I want to put that in the estate account. She said, it doesn't go in there, it goes to you, and she gave me a cashier's check. (Transcript Page 17, Lines 12-24).

A. I had no idea these other two accounts were mine so it didn't matter what she spent. Okay? (Transcript Page 51, Line 11-13)

Q. When you went to the bank and you found out from the bank, when you were able to ascertain, from the bank, you were ready to put it all in the estate account; is that correct?

A. Both in the estate account, and I had no idea that was to be my money. I had no idea. Okay. (Transcript Page 70, Line 16-21)

This testimony indicates an absence of any motive of Son to profit from the banking arrangement for these accounts and consequently an absence of any reason to influence the nature of the accounts.

Testimony of Daughter indicates that Mother, though she had impaired vision, was not laboring under any mental impediment:

A. What I'm implying is that mother could not read what she was signing. She was told, had to be told what she was signing.

Q. Your mother was a bright, intelligent, and like you say, unique person?

A. Very unique.

Q. And very bright.

A. Very Bright.

Q. And she would ordinarily not have signed anything you if you hadn't read it to her; right?

A. If she could read it.

Q. But if it was read—she wouldn't sign something if she didn't know what it was; is that correct?

A. No, she wouldn't have. (Transcript P92 L22-P93 L11)

Numerous checks were written by Mother to Daughter on the Wachovia account between 2003 and 2006, long after the joint accounts were created. (Exhibit to Probate Ct Order Dec.7, 2011) From this evidence, it is reasonable to infer that Mother had the ability to change the accounts after they were originally created. If she could write checks to her daughter, she could just as easily have written a check to herself for the entire account balance, thereby closing the account.

2. THE PROBATE COURT DID NOT FIND THAT THE WACHOVIA ACCOUNT WAS NOT A JOINT ACCOUNT?

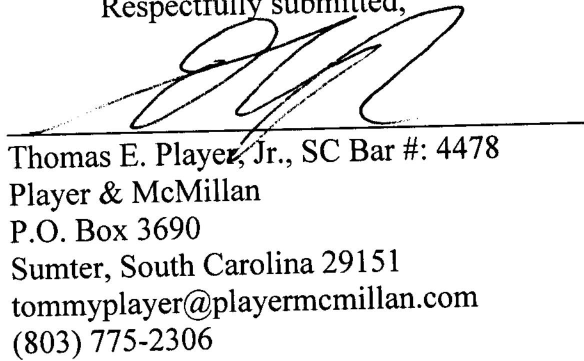
Daughter's third stated Issue on Appeal contains an erroneous predicate. The probate court did not find that the Wachovia account was not a joint account. The account is referred to throughout the judge's order as a "joint account". (Probate Ct Order Dec.7, 2011, pp3 p1, pp8 Q3, pp8, 9, 10,11). The error committed by the probate court and corrected by the Court of Common Pleas was the ruling that, although it was a joint account, absent specific survivorship language in the Wachovia account agreement, it was not a survivorship account.

In her petition challenging the treatment of the accounts, Daughter refers to them as joint accounts and as exhibits to the petition attaches copies of the joint account agreements. (Petition for Equitable Distribution)

CONCLUSION

The findings of the Probate Court were supported by the evidence and the judgment appealed from should be affirmed.

Respectfully submitted,



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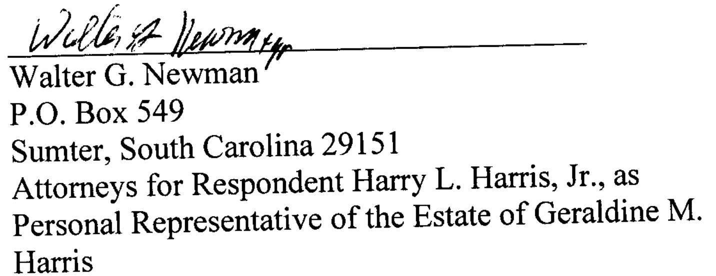

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May 28, 2014

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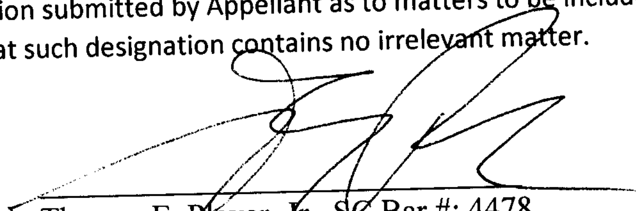
DESIGNATION OF MATTER

TO BE INCLUDED IN RECORD ON APPEAL

Respondent agrees with the designation submitted by Appellant as to matters to be included in the Record on Appeal and hereby certifies that such designation contains no irrelevant matter.



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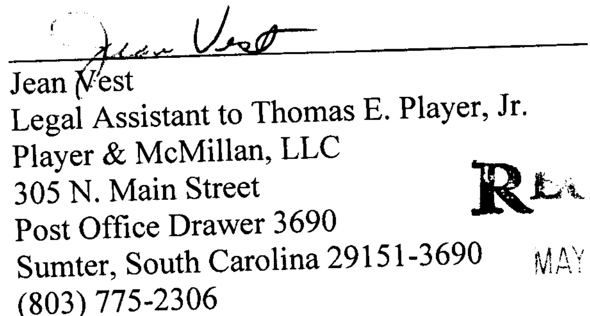
PROOF OF SERVICE

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Respondent, hereby certify that I have this 28th day of May 2014, served the Initial Brief of Respondent and Designation of Matter to be Included in Record in the above captioned matter, on Patti H. Spring by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to her attorneys of record, Stanley C. Rodgers, 101 Queen Street, Suite 200, Charleston, South Carolina 29401 and Phyllis W. Ewing, 40 Calhoun Street, Suite 300, Charleston, South Carolina 29401



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