

**IN THE STATE OF SOUTH CAROLINA**

**IN THE SUPREME COURT**

---

**APPEAL FROM SPARTANBURG COUNTY**

**Spartanburg County Court of Common Pleas**

**Opinion No. J. MARK HAYES, II, CIRCUIT COURT JUDGE**

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**Appellate Case No. 2013-001246**

**Opinion 2014-UP-172 (S. C. Ct. App. filed April 23, 2014)**

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**Willie A. Rogers and Vennie Rogers..... Petitioners.**

**vs.**

**Charles Carr, in his Individual and Official Capacity as the Personal  
Representative of the Estate of Thurman L. Bomar, Deceased, Katherine  
Christian and Joyce King..... Respondents.**

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**APPENDIX**

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**IN THE SUPREME COURT**

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**ROGERS VS. CARR**

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Willie A. Rogers and Vennie Rogers, Appellants,

v.

Charles Carr, in his individual and Official Capacity as  
the Personal Representative of the Estate of Thurman L.  
Bomar, Deceased, Katherine Christian, and Joyce King,  
Respondents.

Appellate Case No. 2013-001246

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Appeal From Spartanburg County  
J. Mark Hayes, II, Circuit Court Judge

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Unpublished Opinion No. 2014-UP-172  
Submitted March 1, 2014 – Filed April 23, 2014

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**AFFIRMED**

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Michanna Talley and Michael F. Talley, Sr., both of  
Greenville, for Appellants.

Charles Preston Edwards, of Charles P. Edwards,  
Attorney at Law, of Spartanburg, for Respondents.

---

**PER CURIAM:** In this will contest, Willie A. Rogers and Vennie Rogers  
(collectively the Rogerses) appeal a circuit court order affirming the probate court.

On appeal, the Rogerses argue the circuit court erred in finding (1) Thurman Bomar's (Decedent's) signature on his will was not forged; (2) Charles Carr did not commit fraud by filing a petition in the probate court that omitted the Rogerses as intestate heirs to Decedent's estate; and (3) Carr did not commit civil conspiracy by filing a petition in the probate court that omitted the Rogerses as intestate heirs to Decedent's estate. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in finding Decedent's signature on the will was not forged: *In re Estate of Cumbee*, 333 S.C. 664, 670, 511 S.E.2d 390, 393 (Ct. App. 1999) ("An action to contest a will is an action at law."); *id.* ("If the proceeding in the probate court is in the nature of an action at law, the circuit court and this [c]ourt may not disturb the probate [court]'s findings of fact unless a review of the record discloses there is no evidence to support them."); *Golini v. Bolton*, 326 S.C. 333, 342, 482 S.E.2d 784, 789 (Ct. App. 1997) ("In a law case tried without a jury, questions regarding the credibility and the weight of evidence are exclusively for the trial [court].").

2. As to whether the circuit court erred in finding Carr did not commit fraud: *In re Estate of Cumbee*, 333 S.C. at 670, 511 S.E.2d at 393 ("An action to contest a will is an action at law."); *id.* ("If the proceeding in the probate court is in the nature of an action at law, the circuit court and this [c]ourt may not disturb the probate [court]'s findings of fact unless a review of the record discloses there is no evidence to support them."); *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) ("[F]raud on the court[]' . . . requires a showing that one has acted with an intent to deceive or defraud the court." (quoting *United States v. Buck*, 281 F.3d 1336, 1342 (10th Cir. 2002))); *id.* at 78-79, 579 S.E.2d at 608-09 ("[W]hen there is no intent to deceive, the fact that misrepresentations were made to a court is not of itself sufficient basis for setting aside a judgment for fraud on the court.").

3. As to whether the circuit court erred in finding Carr did not commit civil conspiracy: *A & I, Inc. v. Gore*, 366 S.C. 233, 242, 621 S.E.2d 383, 387 (Ct. App. 2005) ("Issues not raised to or ruled upon by the [trial] court are not preserved for appellate review.").

**AFFIRMED.<sup>1</sup>**

**FEW, C.J., and SHORT and GEATHERS, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

**THE STATE OF SOUTH CAROLINA**  
**IN THE COURT OF APPEALS**  
**APPEAL FROM SPARTANBURG COUNTY**  
**HONORABLE J. MARK HAYES, II**  
**CIRCUIT COURT JUDGE**  
**OPINION NO. 2014-UP-172**

Willie A. Rogers and Vennie Rogers, )

Appellants, )

v. )

Charles Carr, in his individual and )  
Official Capacity as the Personal )  
Representative of the Estate of )  
Thurman L. Bomar, Deceased, )  
Katherine Christian and Joyce King, )

Respondents. )

**PETITION**

**FOR**

**REHEARING**

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**COME NOW** the Appellants and respectfully request that this Appellate Court reconsider its decision, entered in its Unpublished Opinion No. 2014-UP-172 and grant the above Appellants a rehearing in this within appeal. This said request will be based on the fact that the Appellate Panel erred as follows:

1. In failing to understand that the Personal Representative, Charles Carr, breached his duty to the Respondents as required by Section 62-3-705 of the South Carolina Code of Laws, 1976, as amended; and the fact that the Respondents, jointly and

individually, hid and omitted the existence of the Appellants when they were aware that **the Appellants were the only surviving nieces and nephews of the Decedent**, (R. pp. 84-87; 91-98; 107-108; 116-118) and this fact was in and of itself evidence of the Respondents' intent to deceive, mislead and defraud the Court, Section 62-1-106 of the S. C. Code of Laws, 1976 which said fraud calls for the Respondents to forfeit any benefits and inheritance received from the Estate of Thurman L. Bomar to the Appellants..

2. In failing to understand that, by violating Section 62-1-106 of the South Carolina Code of laws, 1976, by **intentionally hiding and omitting the existence of the appellants, who were the only surviving nieces and nephews of the Decedent, the Respondents forfeited any benefits and inheritance from the Estate of Thurman L. Bomar and that these benefits or inheritance from the Estate of Thurman L. Bomar should be transferred to the Appellants.**

3. In failing to rule that the Trial Court's decision below was bias and tainted against the Appellants when the Trial Court below **"interjected its own opinion of its familiarity** of so-called respected local attorneys and witnesses, the error being that the Trial Court's biasness **"tainted" its decision when there was no evidence or testimony presented below before the Trial Court to justify such bias findings.**

Although this was an action at law and a Circuit Court cannot disturb a Probate Judge's findings if there is any evidence to support it, In re Estate of Cumbee,

333 S. C. 664, 511 S. E. 2d 390 (S. C. Ct. of App. 1999), **an Appellate Court**

**may decide "questions of law," with no particular deference to the trial Court."**

Although this was an action at law below, **this case on appeal only concerns a "question of law"** as this Trial court below allowed its biasness to taint its decision in this case in favor of the Respondents.

In the trial below, the Respondents produced the testimony of an attorney, Charles Hodge, who **"purportedly" prepared the decedent Thurman Bomar's Will, but neither this attorney, (R. pp. 62-67) nor a purported witness thereto, a Mary Ann Kunah, remembered the decedent or any memory of the event (R. pp. 68-70) or recognized the decedent's picture..**

However, the Trial Court Judge below allowed his opinion of his **"so-called familiarity"** of the local attorneys and court employees whose names appeared on or connected to the Decedent Thomas Bomar's Last Will and Testament of July 27, 1988 and to various deeds (R. pp. 172-178), **without any testimony being offered under oath on the alleged competence or respectability of these so-called respected local attorneys, to cloud and taint his judgment** and caused him to form a biasness against the Appellants and their case below **in violation of the law**. It must be remembered that the expectation of a fair and impartial Tribunal is a **basic tenets of all cherished notions of due process embodied in the United States Constitution.**

(Emphasis added). Mallett v. Mallett, 473 S. E. 2d 804 (S. C. Ct. of app. 1996);

In re Murchison, 349 U. S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955), and the

and the Appellants should be afforded nothing less.

**This Appellate Court, in the case of In the Matter of Betsy Campbell et. al. vs. Campbell, 666 S. E. 2d 908, ( S. C. Ct. of App). 2008), found a clear bias on the part of the trial judge when the trial judge expressed his own opinions.**  
(Emphasis added).

**This is exactly what happened in the instant case below in the Trial court below and this case should not be treated any differently.**

**Should this decision in the Trial Court below be allowed to stand, this bias decision of the part of the trial judge below stand to undermine the integrity of our judicial system.**

**WHEREFORE**, since this Appellate Panel failed to understand that, 1) by the Respondents intentionally hiding and omitting to list the existence of the Appellants when the Respondents were aware that the appellants were the only surviving nieces and nephews of the Decedent was egregious and should not be tolerated by our Court, especially in cases in Probate Court where the Personal Representatives try to gain an unfair advantage for his own Siblings against non-Siblings who are the only living surviving heirs of the Decedent; and 2) where the trial Court judge's decision below is tainted by interjecting his own opinion of non-proven facts, these Appellants respectfully request that this court reconsider its decision and reverse the Appellate Panel's Opinion or decision and/or grant these Appellants a rehearing and/or

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Spartanburg County Court of Common Pleas  
J. MARK HAYES, II, CIRCUIT COURT JUDGE

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2012-ES-42-00162  
Case No. 2012-CP-42-3705  
Unpublished Opinion 2014-UP-72

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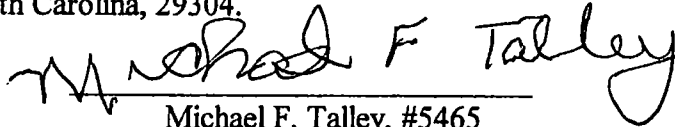
Willie A. Rogers and Vennie Rogers.....Appellants,

v.

Charles Carr, in his individual and Official Capacity as Personal Representative  
of the Estate of Thuman L. Bomar, Deceased, Katherine Christian and Joyce  
King, .....Respondents.

**PROOF OF SERVICE**

I certify that I, as the Appellants' undersigned attorney, have served a copy of the Appellants' Petition for Rehearing upon the Respondents, Charles Carr, in his Individual and Official Capacity as the Personal Representative of the Estate of Thurman L. Bomar, Deceased, Katherine Christian and Joyce King , by depositing a copy of same in the United States Mail, postage pre-paid, on May 6, 2014, addressed to the Respondents' attorney of record, Mr. Charles P. Edwards, 200 Library Street (Upstairs) P. O. Box 2552, Spartanburg, South Carolina, 29304.



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Dated: May 6, 2014

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MAY 08 2014

SC Court of Appeals

# The South Carolina Court of Appeals

Willie A. Rogers and Vennie Rogers, Appellants,

v.

Charles Carr, in his individual and Official Capacity as  
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Bomar, Deceased, Katherine Christian, and Joyce King,  
Respondents.

Appellate Case No. 2013-001246

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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

*John Cannon, Jr.*

C.J.

*Raul G. Short, Jr.*

J.

*John D. Walker*

J.

Columbia, South Carolina

cc:

Michael F. Talley, Sr., Esquire

Charles Preston Edwards, Esquire

**FILED**  
*June 25, 2014*

Michanna Talley, Esquire  
The Honorable J. Mark Hayes, II

**THE STATE OF SOUTH CAROLINA**

**IN THE COURT OF APPEALS**

---

**APPEAL FROM SPARTANBURG COUNTY**  
**Spartanburg County Court of Common Pleas**

**J. MARK HAYES, II, CIRCUIT COURT JUDGE**

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**2011-ES-42-00162**

**Case No. 2012-CP-42-3705**

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**Willie A. Rogers and Vennie Rogers .....Appellants,**

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---

**RECORD ON APPEAL**

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**THE STATE OF SOUTH CAROLINA**  
**IN THE COURT OF APPEALS**

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**APPEAL FROM SPARTANBURG COUNTY**  
**Spartanburg County Court of Common Pleas**

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**RECORD ON APPEAL**

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STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Willie A. Rogers and Vennie Rogers,

Plaintiffs/Appellants

vs.

Charles Carr, in his individual and  
Official Capacity as the Personal  
Representative of the Estate of  
Thurman L. Bomar, Deceased,  
Katherine Christian, and Joyce King

Defendants/Appellees

IN THE COURT OF COMMON PLEAS

ORDER

2012-CP-42-3705

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SPARTANBURG COUNTY  
2013 APR 23 AM 10:41  
M. HOPE BLACKLEY

This is an Appeal from the Probate Court. The Order of the Probate Court upholds and admits to formal probate a Will that was challenged by Plaintiffs/Appellants. The Will is challenged on the grounds of forgery and undue influence. The exceptions raised on Appeal are mostly related to the forgery issue.

An action to set aside a will is an action at law. In re Estate of Cumbee, 333 S.C. 664, 670, 511 S.E. 2d 390, 393, (Ct. App. 1999). "If the proceeding in the probate court is in the nature of an action at law, the circuit court...may not disturb the probate judge's findings of fact unless a review of the record discloses there is no evidence to support them." Id, "In a law case tried without a jury, questions regarding the credibility and the weight of evidence are exclusively for the trial judge." Golini v. Bolton, 326 S.C. 333, 342, 482 S.E2d 784, 789 Ct.App.1997).

Although the Will was self proving, the proponents of the Will took testimony from a witness to the Will and from the attorney who prepared the Will. The attorney who prepared the Will testified the Will cover contained the name of the firm in which he was practicing at the time the Will was drawn. He stated that the witnesses to the Will were witnesses who he regularly used during that time period to witness legal documents which he had prepared. One of the witnesses testified. She confirmed that she regularly witnessed documents prepared by the drafting attorney during that time period and she stated that the signature on the Will was her signature. Neither the attorney nor the witness specifically remembered the testator however, and did not recognize a picture of him. Appellant argues that the Court should not have accepted or given any weight to the testimony of these witnesses because they had no specific memory of the testator. I disagree. The Will was drafted over 20 years prior to being offered for probate and it is

not unexpected that these witnesses may not remember the testator personally nor recognize a picture of him. There is evidence to support the finding that the Will was properly executed and not forged.

The proponents of the Will offered into evidence several documents purportedly signed by Thurman Bomar. The documents were offered for comparison of those signatures to the signature on the Will to rebut the forgery allegation. The Probate Court found the signatures on three (3) witnessed and recorded Deeds showed similarities to the signature on the Will. Two (2) affidavits signed by the testator that had been recorded in the Probate Court in the estates of the testator's mother and father were introduced into evidence. The Court found that the signatures on these affidavits were very similar to the signature on the Will. The Probate Judge indicated that he was personally familiar with the attorneys who had witnessed the testator's signature on the Deeds and that he was familiar with the probate court personnel who had notarized the testator's signature on the affidavits and that having known these people, he believed that none of them would knowingly witness or notarize a forged document. The appellant argues that is reversible error for the Probate Court to place any weight on the judge's familiarity with these attorneys and employees. This is not reversible error. The fact that the signatures on these witnessed, notarized and recorded documents resemble the signature on the Will supports the finding of the Probate Court, standing by itself, without regard to the Probate Judge's familiarity with the attorneys and employees. If there is error, it is harmless. The identity of these attorneys and employees has no effect on this Court in its decision on this Appeal.

When the proponents of the Will presented the Will to the Probate clerk for proof and admission into Probate, one of the questions on the form petition asks for identification of intestate heirs. None were listed. The Probate Clerk had written on the Petition, "PR to try and find out additional intestate heirs before closing." Appellants maintain that they are intestate heirs of the decedent and that the proponents offering the Will were aware of that. The Personal Representative stated that although he knew the appellants were relatives of the decedent, he was not at that time certain the appellants were intestate heirs or that they were the only intestate heirs. Appellants argue that the proponents should be disqualified from inheriting from the decedent because they fraudulently omitted identifying the appellants as intestate heirs. I disagree. There is evidence to support the finding of the lower Court. The proponents of the Will are not related by blood to the decedent and it is not unreasonable that they would not be familiar with which of the decedent's relatives would fall into the line of priority as intestate heirs. It is reasonable that the Probate clerk would request that they further investigate this and report back to the Probate Court. Even if the proponents of the Will had knowingly excluded intestate heirs from the petition, while they may have been subject to other penalties, this, in and of itself, would not disqualify them from inheriting from the decedent and would not nullify the decedent's Last Will and Testament.

The Plaintiffs/Appellants alleged in their Complaint that they were heirs-at-law of the testator. The answer of the proponents denied this allegation and requested proof. The question of whether the appellants qualified as heirs at law of the decedent depends upon

whether their mother, Laura Burgan, shared the same father with the decedent. The decedent's father was not married to the mother of Laura Burgan. The Probate Court found that the appellants failed to establish this paternity and that the time for paternity to be established had expired. Appellants submit that this was in error. The Court finds it is unnecessary to address the issue of paternity of the Plaintiff's mother Laura Burgan.

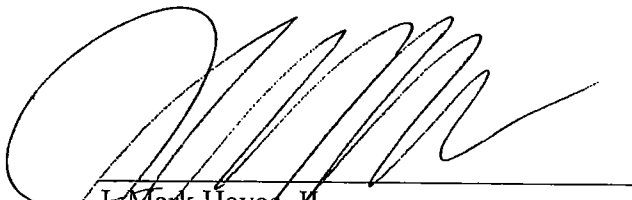
There was other substantial evidence tending to prove the validity of the Will. This being so, the issue of whether the appellants qualify as intestate heirs is not important.

The remaining exceptions raised by the appellant, and many of those discussed above, go to the credibility and weight of the evidence. Under the standard of review involved in this case, these questions are for the trial judge unless there is no evidence to support them. In this case there is evidence to support the findings of the Probate Court.

Any evidence of undue influence in the testimony is weak. None of the exceptions raised by the Appellants challenged the Probate Court's finding that the Will is free of undue influence.

After reviewing the transcript, considering the exceptions raised by the appellant, considering the arguments of counsel and applying the standard of review to the evidence, the decision of the Probate Court is affirmed.

**IT IS SO ORDERED.**

  
J. Mark Hayes, II  
Judge  
S.C. Circuit Court

4/19, 2013  
Spartanburg, SC

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2013 APR 23 AM 10:41  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

Willie A. Rogers and Vennie Rogers; )

Plaintiffs )

vs. )

Charles Carr, in his individual and )  
 Official Capacity as the Personal )  
 Representative of the Estate of )  
 Thurman L. Bomar, Deceased, )  
 Katherine Christian, and Joyce King )

Defendants )

IN THE PROBATE COURT

ORDER

2011-ES-42-00162



On March 8, 2011, the Defendant Charles Carr presented to the Probate Court a document entitled Last Will and Testament of Thurman Lawrence Bomar. A death certificate was presented for Thurman Lawrence Bomar indicating a date of death of January 21, 2011. The Will nominated Charles Edward Carr as personal representative. Mr. Carr petitioned for informal probate of the Will and informal appointment as personal representative.

Following informal appointment, this formal proceeding was commenced on June 10, 2011. In their Petition, Plaintiffs allege that the Will offered for informal probate is the product of a forgery and/or undue influence and request that the Will be declared null and void, that Charles Carr be removed as personal representative and that Willie A. Rogers, the Plaintiff, be appointed in his place. They allege that they and others are nieces and nephews of the late Thurman Bomar and are his sole heirs at law. In their Answer the Defendants deny that the Plaintiffs are interested parties and challenge their standing to present their Complaint. They interpose a general denial to the allegations of forgery and undue influence.

The Defendants filed a Motion for Summary Judgment on the ground that the Plaintiffs are not heirs of the deceased. The Defendants maintain that the Plaintiffs fail to qualify as heirs due to the operation of Section 62-2-109 S.C. Code of Laws of 1976. The Defendants maintain that the Plaintiffs cannot establish lawful paternity in one of the links through which they allege kinship to Thurman L. Bomar.

The Plaintiffs have filed a Motion for Summary Judgment on the ground that the Defendants are guilty of fraud by failing to list the Plaintiffs as heirs on their Petition for informal Probate.

DFA  
B1

Following the completion of discovery and depositions, and after due notice the matter was called for hearing on June 11, 2012 on the Motions for Summary Judgment with trial to follow immediately thereafter.

The Court heard the Motions for Summary Judgment, took them under consideration without reaching a decision, and moved forward with the trial. The parties agreed that notwithstanding the shifting burdens of proof that the Defendant would present his entire case, first proving the Will and second defending against the allegations contained in the Complaint, followed by presentation of the Plaintiff's case challenging the Will.

The Defendants, as proponents of the Will, offered testimony from Charles J. Hodge, attorney. Mr. Hodge testified that he has practiced law in Spartanburg County for more than twenty-five years. He identified a Will cover that the Defendants state was found with the Will. The Will cover was printed with the name,

Hodge & Devine  
Attorneys at Law

Attorney Hodge stated this was the firm name under which he practiced on July 27, 1988, the date on which the Will was signed and witnessed. He identified the witnesses to the Will as Mary Kunak and Gayle C. Hawkins. He testified that Mrs. Kunak was a nurse in his father's medical office. At the time the Will was executed, Mr. Hodge's law office was next to his father's medical practice. From time to time he would ask Mrs. Kunak to serve as a witness to the execution of legal documents if needed. He stated that Mrs. Hawkins worked for his law office at the time in question, and was still a resident of the Spartanburg area. He stated he used them both during that time period as witnesses and as Notary. He stated that he did not remember Thurman Bomar or Mary Bomar personally and could not recognize them from a photograph he was shown. He stated his father treated a number of Bomars as patients. He indicated that it was likely he, and not Mr. Devine, who had prepared the Will although he had no independent memory or records twenty five years after the fact to establish that. He stated that he often prepared simple Wills during that time. The Will in question is a simple Will.

The Defendants next offered Ms. Mary Kunak, one of the witnesses to the Will. She testified that she was employed for many years as a nurse by the late Dr. Joseph Hodge, father of attorney Charles Hodge. She stated that their offices were located near each other and that occasionally attorney Charles Hodge would ask her to come next door to assist in witnessing legal documents. Although she did not remember this specific event or Thurman or Mary Bomar, she identified her signature on the Will as being her hand.

Mr. Carr testified that Mary Louise Bomar, mother of Charles Carr, Katherine Christian, and Joyce Ranee King, and wife of Thurman Bomar, died testate in December of 2010 of cancer and COPD. Shortly before her death, Mrs. Bomar showed him a drawer containing the Wills of Thurman Bomar and her. Prior to that time he was

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unaware of the Wills or of the plans Thurman and Mary Bomar had for disposition of their property.

Her Will was admitted to probate in Spartanburg County Probate Court file 2011-ES-42-00161. ( A review of that file reflects that she died November 30) A copy of her Will was admitted as evidence in this matter. Her Will is a mirror image of her husband's, executed at the same time and place, before the same witnesses.

Charles Carr testified that he is the stepson of Thurman Bomar. He testified that Thurman Bomar began calling on his mother, Mary, around 1958. At that time, Charles was a young teenager living with his mother and his two sisters in Brooklyn, New York. Mr. Bomar continued to call on his mother until Mr. Carr left his mother's home. During this time Thurman Bomar would take the family on outings and took an interest in the welfare of Charles and his sisters.

Mr. Carr graduated from Howard Law School in Washington, DC and Thurman Bomar assisted him with some of the costs necessary for his graduation and attended his graduation. In 1975 Thurman Bomar and Mary were married in New York. They resided in his mother's apartment in Brooklyn until Mr. Bomar's retirement in the mid 1980's. After Mr. Bomar's retirement he and Mary Bomar moved to Spartanburg, the birthplace of Thurman Bomar. Thurman Bomar's mother and father were still living in Spartanburg County at that time. Over the years, Charles Carr, together with his children would visit with Thurman and Mary Bomar in Spartanburg County for extended periods, frequently twice a year, and took family vacations with them.

Katherine Christian testified that she was a daughter of Mary Bomar and step daughter of Thurman Bomar. She left her mother's home in the early 1960's. She stated that she was in the home for several years while Thurman Bomar called on her mother and that he took the family to picnics and beach outings. After she left her mother's home, Ms. Christian continued to live in the Brooklyn area close to her mother and called on her frequently. On many occasions when she visited her mother Mr. Bomar would be visiting as well. She stated that she attended the wedding of Thurman and Mary Bomar in New York in 1975. She testified she attended the retirement party for Thurman Bomar in the mid 1980's. After her mother and Mr. Bomar moved to Spartanburg, Katherine Christian stated she would visit them with her children in Spartanburg for extended periods most years.

Her children called Thurman Bomar "Papa" and Charles Carr's children called Thurman Bomar "Grandpa."

In 1999, Mrs. Christian and her husband moved from Brooklyn to Spartanburg at the request of her mother who stated that she was becoming lonely and wanted them near to her.

Mrs. Christian testified that around 2003 Thurman Bomar began to show signs of dementia; however, he continued to drive an automobile alone until 2008. After 2008 his

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dementia became more pronounced. Mary Louise Bomar was diagnosed with cancer and COPD in 2009. From that time forward Mrs. Christian provided in home care for Thurman and Mary Bomar, cooking for them, taking them to the doctors, doing grocery shopping, buying clothes and running errands for them. Mrs. Christian kept items of her clothing at the home of Thurman and Mary Bomar and spent many nights there. Her son would come over and relieve her a few hours per day to allow her some freedom to handle matters in her own house.

Following her mother's death she continued to care for Thurman Bomar in his home until his death seven weeks later in January of 2011. She stated she was present with Thurman Bomar when he died.

She testified that Mr. and Mrs. Bomar are buried in burial plots next to each other in Spartanburg County.

She testified that in 1988 when the Wills were drawn, neither she, her brother, nor her sister was in Spartanburg and all were living some distance away. She stated that she was unaware of the Will or of the Bomar's plans for disposition of their property until very shortly before her mother's death.

She testified that the marriage of Thurman Bomar to her mother was his only marriage, and that Thurman Bomar never had any natural children.

The Court reviewed numerous photos introduced of Charles Carr, Katherine Christian, their sister and the children of all of them interacting with Thurman Bomar over the fifty year period during which Thurman Bomar had known their mother.

Following her testimony, attorney Edwards proffered several deeds recorded in the Spartanburg County Register of Deeds office into evidence. The deeds contained signatures of Thurman Bomar. He also proffered into evidence two documents taken from the Spartanburg County Probate files of Charlie Bomar and Hattie Bomar, father and mother respectively of Thurman Bomar. He also introduced Thurman Lawrence Bomar's passport. All of these documents were purportedly signed by Thurman Bomar and were offered for signature comparison on the forgery issue.

This concluded the Defendant's case.

Thereafter, the Plaintiffs, as opponents of the Will, offered the testimony of Ms. Thelma Thompson. She is a retired teacher/librarian from Greenville County and Spartanburg County public schools. Much of her testimony was offered to establish the Plaintiffs as heirs of Thurman L. Bomar. She stated that Laura Borgan, mother of the Plaintiffs, had generally been recognized in the community as a half sister of Thurman Bomar. She testified that Laura Borgan and Thurman Bomar shared the same father, Charlie Bomar, but that they had different mothers. She testified that she had been a friend of Thurman Bomar in their youth. Interestingly, she stated that while Laura frequently visited the home of Charlie and Hattie Bomar, Laura referred to the visits as

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going to "Cousin Hattie's house". Laura's mother and Hattie were first cousins. A photograph that Thurman Bomar gave to her in the 1940's was presented into evidence. The photograph was signed "Always, Thurman". She opined that the manner of handwriting on the 1940's photo did not match the signature on the 1988 Will.

Her testimony was followed by that of the Plaintiff Willie Rogers. Mr. Rogers testified that he was a nephew to Thurman Bomar. He testified that his mother, Laura Burgan, was the illegitimate half sister to Thurman Bomar and that they shared the same father, Charlie Bomar. This information came from family lore and general community knowledge. He stated that they had different mothers. Hattie Bomar, Charlie's wife, was the mother of Thurman Bomar. Lizzie Burgan was the mother of Laura Burgan. He testified that Charlie Bomar had never married Lizzie Burgan, although the community acknowledged Laura Burgan to be his daughter. He was uncertain as to when Charlie and Hattie had wed, and had only his mother's church funeral bulletin as to her date of birth. He testified that he had visited socially with the Defendants in this action, and they had always accepted him and his siblings as cousins.

He testified that the signature on the Will was not the signature of Thurman Bomar. He offered as proof that he had received some checks from Mr. Bomar once and the signatures were different. He presented no checks. He did present several 1970 postcards to Mr. Bomar's parents on which Mr. Bomar had printed "Thurman". He also presented an undated page from a letter and an undated Christmas card presumably of Thurman's parents bearing Thurman's name or signature. These were presented to dispute the signature on the 1988 Will. He also disputed the authenticity of the signatures of Thurman Bomar on the deeds, passport and Probate Court documents offered into evidence by the Defendants.

He testified that Thurman Bomar was subject to influence by Mary Bomar and that he was afraid of her. He testified that when Mr. Bomar first returned to Spartanburg to look after his aging parents, he (Mr. Rogers) usually had dealings with Mr. Bomar. Later, he stated Mary began to take over and shielded Mr. Bomar from others. He testified that he did not notice any diminishing of Mr. Bomar's mental faculties until the later part of the 2000's. He was aware Mr. Bomar stopped driving about that time.

Plaintiff presented several obituaries or church funeral bulletins in which Laura Burgan was named as daughter of Charlie Bomar, and as sister of Thurman Bomar. He also presented one church funeral bulletin in which she was named as the daughter of Hattie Bomar, wife of Charlie Bomar,

Finally, the Plaintiffs offered testimony of Mr. Charles Turner. Mr. Turner testified that he had been a boyhood friend of Thurman Bomar and that he knew the Plaintiff's mother, Laura Burgan. He stated that Charlie Bomar treated Laura Burgan as his daughter and it was generally accepted in the community that Laura Burgan was his daughter.

This completed the Plaintiff's case.

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The Will that has been offered for Probate is self proved and the testimony of subscribing witnesses is not required under Section 62-3-406. Still, testimony from the attorney in the office where it was prepared and executed and from Mrs. Mary Kunak was relevant and helpful to the Court in considering other issues in the case.

The burden of proof in this case is on the Plaintiffs as contestants. Section 62-3-407 S.C. Code of Laws of 1976

The Court is convinced that the signature on the Will is authentic and not the result of a forgery. This Will was executed in 1988, more than twenty years prior to the testator's death. Wills executed long before the date of the testator's death would seem to be less likely the result of forgery than would Wills that are dated close to the testator's death. Generally, documents executed while the testator is younger and during good health tend to be less likely the products of undue influence more frequently seen exercised against the elderly and infirm. These generalities are not the basis for the Court's decision, however.

This Will was part of a set of simple crossover Wills prepared in the Law Offices of Hodge and Devine, witnessed and notarized by persons identified as an employee of that office, and the next door nurse who worked for attorney Hodge's physician. She identified her signature.

The Court has compared the signature on the Will with signatures on the various documents offered for comparison. The handwritten "Thurman" on the 1940's photograph offered into evidence by the Plaintiffs does not closely resemble the signature of Thurman Bomar on the 1988 Will. However, the signature on the photograph is quite old. The signatures on the deeds, the passport and Court documents offered by the Defendants are more closely related in time to the signature on the Will. These signatures bear a striking similarity to Thurman Bomar's signature on the Will. Further, four of these signatures are witnessed by respected local attorneys familiar to the Court and by trusted employees of this Court.

Items bearing signatures resembling that found on the 1988 Will, and which Plaintiff also disavowed as being Thurman Bomar's true signature, include the following:

1. Deeds executed **August 6, 1977**, recorded **August 9, 1977** in Deed Book 44-V, pages 559 and 560, RMC Office for Spartanburg County conveying a one-half undivided interest in several parcels of land from Thurman L. Bomar, a/k/a Thurmond Bomar to Mary L. Bomar.
2. Affidavit for collection of small estate filed with this Court **May 9, 1990** in the Estate of Hattie Bomar, 1990-ES-42-00531. Hattie was Thurman Bomar's mother. The affidavit is signed by Thurman Bomar and Mary Bomar, and notarized by Melinda E. Cantrell.

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3. Affidavit for collection of small estate filed with this Court **March 23, 1993** in the Estate of Charlie Bomar, 1993-ES-42- 00417. Charlie was Thurman Bomar's father. The affidavit is signed by Thurman Bomar and Mary Bomar, and notarized by Donna C. Thomas.
4. United States Passport in the name of Thurman Lawrence Bomar issued **April 26, 1994**.
5. Deed executed **September 22, 1997**, recorded **September 23, 1997** in Deed Book 66-P, page 431, RMC Office for Spartanburg County conveying a 1.5 acre parcel from Thurmon L. Bomar, a/k/a Thurman L. Bomar to Katherine L. Christian.
6. Deed executed **March 14, 2005**, recorded **March 15, 2005** in Deed Book 82-N, page 826, RMC Office for Spartanburg County by which Thurmon L. Bomar, a/k/a Thurman L. Bomar and Mary Bomar conveyed a thirty five acre tract to a developer.

The undersigned began practicing law in Spartanburg in 1978, and does not recognize the signatures of the witnesses and notary on the 1977 deeds described in Item 1 above. The Court takes notice that both deeds were witnessed, notarized and recorded of record.

Items 2 and 3 were notarized in this Court in 1990 and 1993 by longtime employees of this Court. Melinda Cantrell was an Estate Clerk who rose to Clerk Probate Court before she left to take a position in a private law firm. Ms. Cantrell witnessed and notarized the signatures of Thurman Bomar and Mary Bomar when they filed a petition in Thurman's mother's estate.

Likewise, Donna C. Thomas was an Estate Clerk before becoming Clerk of Probate Court. She witnessed and notarized the signatures of Thurman Bomar and Mary Bomar when they filed a Petition in Thurman's father's estate. Mrs. Thomas recently retired after more than twenty years of service to the Court. The undersigned personally worked with Mrs. Thomas for fifteen years, and knows first hand of her work ethic, her integrity and accuracy. Her notarization of Thurman Bomar's signature is taken as accurate without question.

Item 4, the 1994 passport, is unwitnessed. Unlike its application, a passport itself is signed after receipt. There was no protest to the picture on same as being Thurman Lawrence Bomar, only that the signature affixed thereto not being that of Mr. Bomar. No explanation was offered for the alleged discrepancy, other than perhaps in furtherance of some plan or conspiracy.

The Court does recognize and was very familiar with the witness and notary on the 1997 deed described as Item 5. Michael (Mike) Duncan, now deceased, was a contemporary of the Court. Mike learned at the knee of Claude Dunbar, an older and

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perhaps the most finicky and particular attorney one would ever come across. Some of this rubbed off on Mike. Mike was a well respected attorney and member of the Spartanburg Bar. The Court accepts Mike Duncan's witnessing and notarization of Thurman Bomar's signature on that deed as accurate.

The 2005 deed in Item 6 was for substantial consideration to a third party. The notary is attorney Joseph K. Maddox, Jr. Mr. Maddox is a respected member of the Spartanburg Bar. He practices in and serves both the Probate Court and Family Court in difficult and contentious cases as Guardian ad Litem, Guardian and Conservator. Like Mike Duncan, the Court places great stock in Joe Maddox's word represented by his notarization of Mr. Bomar's signature.

The above signatures disavowed by Plaintiff as being Mr. Bomar's signature span a period of twenty eight years. This was from eleven years before his 1988 Will, until seventeen years after its execution. They were witnessed by no fewer than five different South Carolina Notary Publics, two of which were employees of this Court and two of which were attorneys in good standing. One thing that is evident from comparing the signatures is that Mr. Bomar's signature was not perfectly static: there are some variances throughout. The earlier exemplars introduced by Plaintiff had a right leaning slant, while the printed 1970's postcards introduced by Plaintiff reflect some left leaning slant. Most of the later signatures display a pronounced left leaning slant. The 2005 deed signature begins with a left lean and converts to an upright style. However, the signature on the Will is very similar to the disputed signatures presented by Defendant. When a person's signature varies, the witnesses become very important. Here, there are no credibility problems with the many witnesses to those signatures. The Court concludes that Thurman Lawrence Bomar signed his 1988 Will before the same witnesses as did his wife Mary her crossover Will executed at the same time.

The burden of proof for undue influence is high. To prove undue influence the opponent of a Will has the burden of proving sufficient undue influence to destroy the free agency of the testator and sufficient to prevent the maker's exercise of free judgment and choice. Todd vs. Woodard 376 S.C. 2d 276, 297 S.C. 267 (1989).

The earliest mentioned onset of the testator's dementia was 2003. Plaintiff did not notice it until years later. Indeed, Mr. Bomar continued driving until 2008. Plaintiff's testimony regarding undue influence was general, conclusory, and thin to the point of transparency. There was no evidence that Thurman Bomar was anything but healthy in body and mind in 1988 and for a considerable time thereafter. If the testator was unhappy with the Will, he had ample time and opportunity to change it in the intervening years.

The evidence suggests that Mr. Bomar remained healthy for at least fifteen years after the execution date of the Will. The indications were that after her husband's dementia began to manifest itself in the mid 2000's, his wife became more protective and shielded her husband from some interactions with the public.

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From review of the deeds and the testimony offered by the Defendants it appears that the real estate of Thurman and Mary Bomar was jointly titled, their bank accounts were jointly titled, and further that their Wills were mirror images of each other, drafted at the same law office, witnessed by the same witnesses, and executed simultaneously. This is a common disposition scheme in the case of married couples.

The secondary beneficiaries under Thurman Bomar's Will are his step children. It should be noted he did not have natural children and that their mother, Mary Bomar, was his one and only wife. The relationship between a step father and step children, especially one that develops over fifty two years, which concluded with a thirty-five year marriage to their mother, can be quite strong. It appears so from the evidence presented in this case. Finally, it is not the Court's place to decide who is more deserving – the children of his wife of some thirty five years, or the children of an alleged illegitimate sister. Mr. Bomar made the decision for distribution of his estate in his Will, and that decision will be carried out by this Court.

Inasmuch as a decision on the above two issues is dispositive, the Court need not reach a decision on the Defendant's Motion for Summary Judgment which questions whether the Plaintiffs are heirs of Thurman Bomar with standing to bring this action. However, as this is a formal proceeding and to consolidate the issues for appeal, the matter will be discussed and ruled upon.

The illegitimate birth in the Plaintiff's alleged line of succession was that of their mother, Laura Burgan. They allege that she was born out of wedlock on or about 1920 to Lizzie Burgan. The putative father was Charlie Bomar, father of Thurman Bomar. Lizzie Burgan reportedly died several years later, and Charlie Bomar and his wife Hattie apparently took a role in looking after the infant. As noted elsewhere, Lizzie and Hattie were reportedly first cousins. Charlie Bomar died intestate December 5, 1992. His estate file, 1993-ES-42-00417, reflects no action to determine heirs within eight months of his passing. It is undisputed that no action was ever filed during his lifetime to determine his heirs. It is also undisputed that he and his wife Hattie were survived by one legitimate child, Thurman Bomar. The Petition filed by Defendant listed another son, Johnnie, who predeceased his parents without leaving issue.

What proof is necessary to establish an illegitimate predecessor's right to inherit from her putative father, and through that ancestor, for her children to link ancestry back to inherit as nephews and nieces of their alleged grandfather's only legitimate child? Secondly, is it even possible to do so under South Carolina law at this late date?

Section 62-2-109, S.C. Code of laws, 1976, as amended, sets forth the criteria for establishing paternity for inheritance purposes. A person is a child of the father if:

- (i) the natural parents participated in a marriage ceremony before or after the birth of the child, even if the attempted marriage is void;
- or

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- (ii) the paternity is established by an adjudication commenced before the death of the father or within the later of eight months after the death of the father or six months after the initial appointment of a personal representative of his estate and, if after his death, by clear and convincing evidence...

Here, Plaintiffs are not seeking to inherit from their father, but to establish their late mother's lineage to their putative late grandfather who died December 5, 1992, so that they might inherit from their now late alleged uncle if they are successful in setting aside his 1988 Will. The issue here is whether Section 62-2-109 applies when one seeks to establish lineage more distant than that of father and child, or whether failure to timely establish that linkage forever breaks the chain for future generations of an illegitimate child. Put another way, may distant relatives timely pursue establishment of illegitimate paternal lineage at any point into the future, no matter how many generations removed, so long as they bring the action within eight months of the target's death?

Proof on this issue submitted was a reputation of ancestry given by several older, respected members of the community that it was generally accepted that Laura Burgan was the child of Charles Bomar. Both individuals, now of advanced years, were younger than Laura. If Laura were alive today, she would be ninety three years old. Plaintiff testified it was his understanding that Thurman was his grandfather, and that he visited and treated Thurman as such. In addition, several obituaries and church funeral flyers referred to Laura as a daughter. Another church notice listed Laura as the child of her cousin Hattie Bomar, which Plaintiffs concede is false. Lizzie Burgan was Laura's mother. It was also testified to by Plaintiff that the defendants never disputed the generally held belief that the Plaintiffs were thought to be related by blood to the decedent. They had broken bread together, and had visited before when all were in town. There are admittedly some hard feelings now that they feel they were being ignored.

Earlier South Carolina law held that illegitimate children could not inherit from their putative father. That blanket prohibition was found to be invalid. In response to that ruling, the Legislature enacted Section 62-2-109. This section requires that paternity be established by adjudication within the lifetime of the father, or, if after death, within eight months of the father's death and then by clear and convincing evidence.

The disputed birth took place ninety three years ago. The putative father died nineteen years ago, without his alleged daughter ever having sought to establish paternity. The alleged daughter is now deceased.

**THE COURT FINDS** that the signature of Thurman Lawrence Bomar on the Will that has been offered for probate is authentic and is not the product of fraud or forgery.

**THE COURT FURTHER FINDS** that the Will was knowingly and willingly executed by Thurman Bomar, properly witnessed, and was not the product of undue influence.

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**THE COURT FURTHER FINDS** that the 1988 document submitted by the Defendants herein is the Last Will and Testament of Thurman Bomar, that it should be admitted to probate as such, and that Charles Carr should be appointed as Personal Representative of the Estate of the late Thurman Bomar.

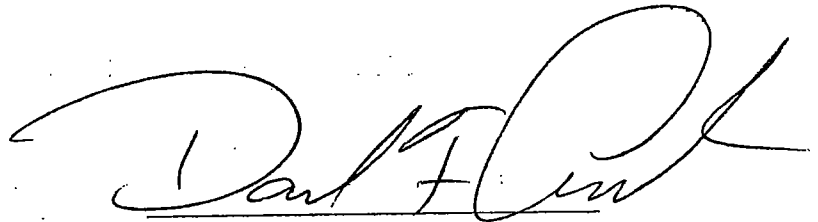
**THE COURT FURTHER FINDS** that while it is a moot point in light of the above findings, Section 62-2-109 bars the issue of an alleged illegitimate child from proving the putative father's paternity of their mother nineteen years after his death. Failing in that task, their alleged lineage to the putative grandfather is broken. Accordingly, they are not heirs to the lawful descendants of the putative grandfather.

**IT IS THEREFORE ORDERED ADJUDGED AND DECREED:**

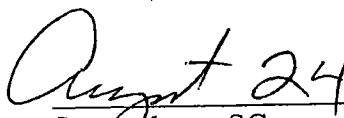
1. The Last Will and Testament of Thurman Lawrence Bomar dated July 27, 1988 that has been offered for probate by the Defendants is the valid Last Will and Testament of Thurman Lawrence Bomar, willingly signed and properly executed in self proving form, free of undue influence, and is hereby formally admitted to probate.
2. Charles Carr is formally confirmed as personal representative.
3. The Plaintiff's Motion for Summary Judgment is denied, as is that of the Defendants.
4. The Plaintiffs have failed to establish kinship by blood to Thurman Lawrence Bomar, and are therefore not his next of kin or heirs at law.

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**IT IS SO ORDERED.**



David F. Anderson  
Associate Probate Judge  
Spartanburg County Probate Court

 24, 2012  
Spartanburg, SC

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG  
PROBATE COURT

2012-CP-42-3705

JUDGMENT IN CIVIL CASE

CASE NO. 2011ES4200162

WILLIE A. ROGERS AND VENNIE ROGERS,  
PLAINTIFFS,

VS. CHARLES CARR, IN HIS  
INDIVIDUAL AND OFFICIAL CAPACITY  
AS THE PERSONAL REPRESENTATIVE  
ET AL., DEFENDANTS.

- ☐ Jury Verdict. This action came before the court for a trial by jury.  
The issues have been tried and the verdict rendered.
- ☒ Decision by court. This action came to trial or hearing before the  
court. The issues have been tried or heard and a decision rendered.
- ☐ Action Dismissed. ☐ Rule 12(b), SCRCP ☐ Rule 40(c)(3), SCRCP  
☐ Rule 41(a), SCRCP (Vol. Nonsuit) ☐ Settled  
☐ Other, Explain: \_\_\_\_\_

IT IS ORDERED AND ADJUDGED <sup>See attached Order</sup>  
☐ Statement of Judgment

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Dated at SPARTANBURG  
AUGUST, 2012.

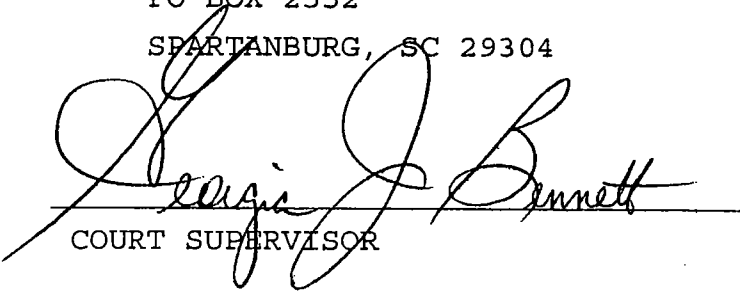
this 24TH Day of

DAVID F. ANDERSON  
Associate Probate Judge

This judgment was entered on the 24TH day of AUGUST, 2012, and a  
copy mailed first class this 24TH Day of AUGUST, 2012, to attorneys  
of record or to parties (when appearing pro se) as follows:

MICHAEL TALLEY  
ATTORNEY AT LAW  
PO BOX 10081  
GREENVILLE, SC 29603

CHARLES EDWARDS  
ATTORNEY AT LAW  
PO BOX 2552  
SPARTANBURG, SC 29304

  
COURT SUPERVISOR

11-162

STATE OF SOUTH CAROLINA

COUNTY OF: Spartanburg

IN THE MATTER OF: Thurman L. Bomar

IN THE PROBATE COURT

CASE NUMBER: 2011ES4200162

APPLICATION FOR

INFORMAL

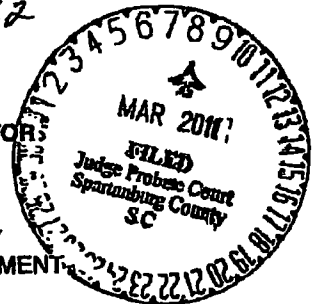
☒ PROBATE OF WILL  
☒ APPOINTMENT

(check any that apply)

PETITION FOR

FORMAL

☐ TESTACY  
☐ APPOINTMENT



Applicant/Petitioner: CHARLES E. CARR

Address: 702 Willow Brook Dr NE Wadley OH 44183

Telephone: WARREN OH 44483 716 553 0774

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.

Step-son - Named Alternate in will

2. Decedent Information

Name: THURMAN L. BOMAR

Social Security Number: 247 22 1906

Date of Birth: Jan. 18, 1922

Date of Death: Jan 21, 2011

Age at date of death: 89

Domicile at date of death: Spartanburg SC  
(county) (state)

3. Venue for this proceeding is proper in this county because:

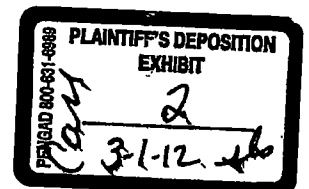
- ☒ Decedent was domiciled in this county at date of death.  
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.  
☐ Decedent has a right to take legal action in this county because:

4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

| Name                          | Date of Birth      | Address                                       | Relationship to Decedent |
|-------------------------------|--------------------|-----------------------------------------------|--------------------------|
| <u>Mary L. Bomar</u>          | <u>Predeceased</u> | <u>Spouse</u>                                 |                          |
| <u>CHARLES E. CARR</u>        | <u>Adult</u>       | <u>702 Willow Brook Dr NE Wadley OH 44183</u> | <u>Step Son</u>          |
| <u>KATHERINE L. CHRISTIAN</u> | <u>Adult</u>       | <u>306 JORDAN CREEK Rd TUMAW SC 29171</u>     | <u>Step daughter</u>     |
| <u>JOYCE R. KING</u>          | <u>Adult</u>       | <u>1807 Pearl River Dr LAUREL MS 39080</u>    | <u>Step daughter</u>     |

(use additional sheet if necessary)

AKA Katherine L. Christian  
AKA Katherine Louise White



\*  
 PR To Try + find out  
 Add'l Intestate  
 Heirs To Before Closing  
 4.b.

Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

| Name              | Date of Birth             | Address | Relationship to Decedent |
|-------------------|---------------------------|---------|--------------------------|
| ADA Charles Bomer |                           |         |                          |
| CHARLIE BOMER     | predeceased               |         | father                   |
| HATIE BOMER       | predeceased               |         | Mother                   |
| JERRY BOMER       | predeceased - no children |         | brother                  |

(use additional sheet if necessary)

no children

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)  
☒ NO ☐ YES If yes, please explain, on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?  
☒ NO ☐ YES If yes, please explain, on page 3.
7. Has a guardian or conservator ever been appointed for this person?  
☒ NO ☐ YES If yes, please explain on page 3.
8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?  
☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?  
☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.
10. Have more than ten years passed since the decedent's death?  
☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.
11. The decedent died with a personal estate of about the value of 271,428.92 and real estate of about the value of 100,000. (A full inventory and appraisal, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.
12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?  
☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

11-16-2

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- ☐ The original is attached  
☒ The original is in the Court's possession  
☐ An authenticated copy of a will probated in another jurisdiction is attached  
☐ An authenticated copy of a will not probated in another jurisdiction is attached  
☐ The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

- ☒ Yes ☐ NO If no, please explain on page 3.

3. The date of execution of the will was: 7/27/88  
codicil(s): N/A

4. Are you aware of any instrument or document amending or revoking the will?

- ☒ NO ☐ YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

- ☒ YES ☐ NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

- ☒ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.  
(If more space is required, use additional sheet.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

Charles E. Carr

2. Priority for this appointment is:

- ☐ named as Primary Personal Representative in will  
☒ named as Alternate Personal Representative in will  
☐ nominee of above Primary Personal Representative in will  
☐ nominee of above Alternate Personal Representative in will  
☐ surviving spouse of decedent who is devisee of decedent or nominee of said spouse  
☐ other devisee of decedent, (describe): \_\_\_\_\_ or nominee of said devisee  
☐ surviving spouse of decedent or nominee of said spouse  
☐ other heir of decedent (describe): \_\_\_\_\_  
☐ creditor (Forty-five days after death must have passed), or nominee of creditor  
☐ other (describe): \_\_\_\_\_

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

Mary Louise Homer - predeceased

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 24th day of

March, 20 11

[Signature]  
Notary Public for South Carolina

My Commission Expires: 8/24/2015

Signature: Charles E. Carr

Name: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

(H): \_\_\_\_\_

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☒ GRANTED ☐ DENIED informally this 24th day of March, 20 11.

Ponda A. Caldwell

, Probate Court Judge

11-162

**ORDER FOR HEARING ON FORMAL PETITION**

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

PLACE: \_\_\_\_\_

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
, Probate Court Judge

**ORDER OF FORMAL TESTACY**

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☐ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated \_\_\_\_\_, be admitted formally to probate.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
, Probate Court Judge

SEE ATTACHED ORDER

**ORDER OF APPOINTMENT**

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this 8th day of March, 20 11

Pinda A. Caldwel  
, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: Charles E. Carr

Name: CHARLES E. CARR

Address: 702 AVENUE 2000 DE ME  
WELLES OH 44483

E-mail: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

(H): 716 253 0774

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

(H): \_\_\_\_\_

Attorney: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

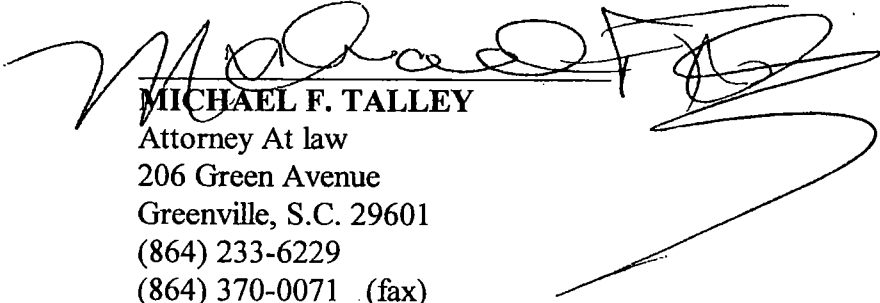
STATE OF SOUTH CAROLINA ) IN THE PROBATE COURT  
COUNTY OF SPARTANBURG )

Willie A. Rogers vs. Vennie Rogers; Gardenia )  
Goodwin; Jonathan; Rogers, Marshall Rogers ) **SUMMONS**  
and Thomas Rogers, )  
Plaintiffs, )  
vs. ) **2011-ES-42-00162**  
Charles Carr, in his Individual and Official )  
Capacity as the Purported and Alleged )  
Personal Representative of the Estate of )  
**Thurman L. Bomar, Deceased, Katherine** )  
Chastain, and Joyce King, )  
Defendants. )

**TO THE DEFENDANTS ABOVE NAMED:**

**YOU ARE HEREBY SUMMONED** and required to answer the

Complaint/Petition in this action to Contest the Authenticity of the Last Will and Testament of the late Thurman L. Bomar (the original which has been filed in the Probate Court for Spartanburg County and you are directed to serve a copy of your Answer to the said Complaint/Petition on the Subscriber(s), at his office at 206 Green Avenue, Greenville, South Carolina, 29601, within thirty (30) days after the service thereof, exclusive of the date of such service, and if you fail to answer to the Complaint within the time aforesaid, the Plaintiff (or Defendant if this is a Counterclaim) in this action will apply to the Court for the relief demanded in the Petition.

  
**MICHAEL F. TALLEY**

Attorney At law  
206 Green Avenue  
Greenville, S.C. 29601  
(864) 233-6229  
(864) 370-0071 (fax)  
**ATTORNEY FOR Plaintiffs**

Dated: May 3, 2011

IN THE MATTER OF: ESTATE OF THURMAN L. BOMAR

APPLICATION FOR  
INFORMAL

- ☐ PROBATE OF WILL  
☐ APPOINTMENT

(check any that apply)

PETITION FOR  
FORMAL

- ☐ TESTACY  
☒ APPOINTMENT  
X FORMAL APPOINTMENT

Applicant/Petitioner: WILLIE A. ROGERS  
Address: 205 LAMPOST ROAD, INMAN, SOUTH CAROLINA 29345  
Telephone: (864) 472-9435 / (864) 316-9708

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding:  
THE PETITIONER IS THE NEPHEW AND THE CLOSEST LIVING RELATIVE OF THE DECEDENT.

2. Decedent Information:

Name: THURMAN L. BOMAR  
Social Security Number: n/a  
Date of Birth: JANUARY 18, 1922  
Date of Death: JANUARY 22, 2011  
Age at date of death: 89 YEARS OLD  
Domicile at date of death: SPARTANBURG COUNTY SOUTH CAROLINA  
(county) (state)

3. Venue for this proceeding is proper in this county because:

- ☒ Decedent was domiciled in this county at date of death.  
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.  
☐ Decedent has a right to take legal action in this county because:

4a. Names and addresses of devisees in the will, including dates of birth of minors. If there are no minors, so state.

| Name                | Date of Birth | Address                                          | Relationship to Decedent |
|---------------------|---------------|--------------------------------------------------|--------------------------|
| KATHERINE CHRISTAIN | Unknown       | INMAN, SOUTH CAROLINA, 306 Jordan Creek Rd 29349 | Step-Daugh'r             |
| CHARLES CARR        | Unknown       | WARREN, OHIO, 702 Willow Brook Dr. NE 41483      | Step-Son                 |
| JOYCE KING          | Unknown       | LAUREL, MISSISSIPPI, 1807 Pearl River Dr.        | Step-Daugh'r             |

\*\*  
(use additional sheet if necessary)

\*\*

4b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

| Name           | Date of Birth | Address                | Relationship to Decedent |
|----------------|---------------|------------------------|--------------------------|
| JONATHAN BOMAR | Predeceased   | WITH NO CHILDREN       | BROTHER                  |
| CHARLIE BOMAR  | Predeceased   |                        | FATHER                   |
| HATTIE BOMAR   | Predeceased   |                        | MOTHER                   |
| MARY BOMAR     | Predeceased   | AS OF DECEMBER 4, 2010 | WIFE                     |

(use additional sheet if necessary)

\*\* The above petitioner, Mr. Willie A. Rogers, and siblings listed on the attached page, contest the authenticity of the signature of Mr. Bomar and also his Last Will and Testament. \*\*\*\*\*

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)  
☒ NO ☐ YES If yes, please explain on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?  
☒ NO ☐ YES If yes, please explain on page 3.
7. Has a guardian or conservator ever been appointed for this person?  
☒ NO ☐ YES If yes, please explain on page 3.
8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?  
☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative, on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?  
☒ NO ☐ YES If yes, please state details, including names and addresses, on page 3.
10. Have more than ten years passed since the decedent's death?  
☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.
11. The decedent died with a personal estate of about the value of \$0.00 and real estate of about the value of \$90,575.00 (A full inventory and appraisal, Form #350PC, must be filed within 90 days.) If decedent was a non-resident, please attach South Carolina Department of Revenue Form ET-101.
12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?  
☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

**II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.**

1. Regarding the decedent's will:  
☐ The original is attached  
☒ The original is in the Court's possession  
☐ An authenticated copy of a will probated in another jurisdiction is attached  
☐ An authenticated copy of a will not probated in another jurisdiction is attached  
☐ The will is lost, destroyed, or otherwise unavailable; however, a description of its contents is attached
2. Do you believe, to the best of your knowledge, the will described above was validly executed?  
☐ YES ☒ NO If no, please explain on page 3.
3. The date of execution of the will was: JULY 27, 1988  
codicil(s): \_\_\_\_\_  
memorandum(s): \_\_\_\_\_
4. Are you aware of any instrument or document amending or revoking the will?  
☒ NO ☐ YES If yes, please explain on page 3.
5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?  
☐ YES ☐ NO If no, please explain on page 3. PLEASE SEE STATEMENT ON PAGE 3.
6. Do you believe the will defined in "1" above is the decedent's last will?  
☐ YES ☒ NO If no, please explain on page 3. PLEASE SEE STATEMENT ON PAGE 3.

**COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I AND II HERE.**  
(If more space is required, use additional sheet.)

**NO. 2 OF SECTION II**

THE PETITIONER AND HIS SIBLINGS BELIEVE THAT THE SIGNATURE ON MR. BOMAR'S PURPORTED LAST WILL AND TESTAMENT IS NOT MR. BOMAR'S SIGNATURE AND THEY BELIEVE THAT, EVEN IF MR. BOMAR EXECUTED THIS WILL WHICH THE PETITIONER AND HIS SIBLINGS DO NOT BELIEVE, THEY ARE INFORMED AND BELIEVE THAT MR. THURMAN BOMAR'S EXECUTION OF THIS PURPORTED LAST WILL AND TESTAMENT WAS THE RESULT OF UNDO INFLUENCE BY HIS STEP-CHILDREN WHO ARE THE ONLY LISTED BENEFICIARIES/DEWISEES IN MR. BOMAR'S PURPORTED LAST WILL AND TESTAMENT.

**NO. 5 OF SECTION II**

REFER TO STATEMENT ABOVE.

**III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING:**

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:  
WILLIE A. ROGERS

205 LAMPOST ROAD, INMAN, SOUTH CAROLINA 29345  
(864) 472-9435 / (864) 316-9708

2. Priority for this appointment is:

- ☐ named as Primary Personal Representative in will  
☐ named as Alternate Personal Representative in will  
☐ nominee of above Primary Personal Representative in will  
☐ nominee of above Alternate Personal Representative in will  
☐ surviving spouse of decedent who is devisee of decedent or nominee of said spouse  
☐ other devisee of decedent (describe): \_\_\_\_\_ or nominee of said devisee  
☐ surviving spouse of decedent or nominee of said spouse  
☒ other heir of decedent (describe): WILLIE A. ROGERS \_\_\_\_\_ or nominee of said heir  
☐ creditor (Forty-five days after death must have passed) or nominee of creditor  
☐ other (describe): \_\_\_\_\_

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above):

VENNICE ROGERS - NIECE, P.O. BOX 186, WELLFORD, SC 29385  
MARSHALL ROGERS - NEPHEW, P.O. BOX 186, WELLFORD, SC 29385  
THOMAS ROGERS - NEPHEW, 150 VISTA DRIVE, MOORE, SC 29369  
JONATHAN ROGERS - NEPHEW, P.O. BOX 828 DUNCAN, SC 29385  
GARDENIA R. GOODWIN - NIECE, 106 NORTH STREET, WELLFORD, SC 29385

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 14 day of  
APRIL 2011

Notary Public for South Carolina

My Commission Expires: 1-17-2013

Signature: Willie A. Rogers

Name: WILLIE A. ROGERS

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will executed \_\_\_\_\_

be ☐ GRANTED ☐ DENIED informally this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

HON. DEBORA A. FAULKNER, PROBATE COURT JUDGE

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

PLACE: \_\_\_\_\_

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

HON. DEBORA A. FAULKNER, PROBATE COURT JUDGE

### ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ the decedent died testate. IT IS HEREBY ORDERED, that the Last Will and Testament of the above-named decedent dated \_\_\_\_\_ be admitted formally to probate.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

☐ SEE ATTACHED ORDER

\_\_\_\_\_  
HON. DEBORA A. FAULKNER, PROBATE COURT JUDGE

### ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
HON. DEBORA A. FAULKNER, PROBATE COURT JUDGE

### QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

(H): \_\_\_\_\_

E-Mail: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

(H): \_\_\_\_\_

E-Mail: \_\_\_\_\_

Attorney: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Willie A. Rogers  
WILLIE A. ROGERS

205 LAMPOST ROAD

INMAN, SOUTH CAROLINA 29345

(864) 472-9435 / (864) 316-9708

MICHAEL F. TALLEY

206 GREEN AVENUE

GREENVILLE, SOUTH CAROLINA 29601

(864) 233-6229

talleylaw@aol.com

**IN THE PROBATE COURT**  
**CASE NUMBER: \_\_\_\_\_**

**Additional sheet of additional heirs / devisees**

[illegible][illegible]

| Name                | Date of Birth | Address                              | Relationship to Decedent |
|---------------------|---------------|--------------------------------------|--------------------------|
| WILLIE A. ROGERS    | 04/25/1942    | 205 LAMPOST ROAD, INMAN, SC 29345    | NEPHEW                   |
| VENNICE ROGERS      | 07/31/1943    | P.O. BOX 186, WELLFORD, SC 29385     | NIECE                    |
| MARSHALL ROGERS     | 04/22/1954    | P.O. BOX 186, WELLFORD, SC 29385     | NEPHEW                   |
| THOMAS ROGERS       | 09/22/1956    | 150 VISTA DRIVE, MOORE, SC 29369     | NEPHEW                   |
| GARDENIA R. GOODWIN | 10/07/1952    | 106 NORTH STREET, WELLFORD, SC 29385 | NIECE                    |
| JONATHAN ROGERS     | 04/14/1946    | P.O. BOX 828 DUNCAN, SC 29385        | NEPHEW                   |
|                     |               |                                      |                          |
|                     |               |                                      |                          |
|                     |               |                                      |                          |
|                     |               |                                      |                          |

STATE OF SOUTH CAROLINA ) IN THE PROBATE COURT  
COUNTY OF SPARTANBURG )

Willie A. Rogers, and Vennie Rogers; ) **AMENDED**  
Plaintiffs, ) **SUMMONS**  
vs. ) **2011-ES-42-00162**  
Charles Carr, in his Individual and Official )  
Capacity as the present Personal )  
Representative of the Estate of **Thurman L.** )  
**Bomar, Deceased, Katherine Chastain,** )  
and Joyce King, )  
Defendants. )

**TO THE DEFENDANTS ABOVE NAMED:**

**YOU ARE HEREBY SUMMONED** and required to answer the  
Amended Complaint/Petition in this action to Contest the Authenticity of the Last Will  
and Testament of the late Thurman L. Bomar (the original which has been filed in the  
Probate Court for Spartanburg County and you are directed to serve a copy of your  
Answer to the said Amended Complaint/Petition on the Subscriber(s), at his office at 206  
Green Avenue, Greenville, South Carolina, 29601, within thirty (30) days after the service  
thereof, exclusive of the date of such service, and if you fail to answer to the Amended  
Complaint within the time aforesaid, the Plaintiff (or Defendant if this is a Counterclaim) in  
this action will apply to the Court for the relief demanded in the Petition.

  
**MICHAEL F. TALLEY**  
Attorney At law  
206 Green Avenue  
Greenville, S.C. 29601  
(864) 233-6229  
(864) 370-0071 (fax)  
**ATTORNEY FOR Plaintiffs**

Dated: February 16, 2012

STATE OF SOUTH CAROLINA ) IN THE PROBATE COURT  
COUNTY OF SPARTANBURG )

Willie A. Rogers and Vennie )  
Rogers, )  
Plaintiffs, ) **AMENDED**  
vs. ) **COMPLAINT/PETITION**  
 ) **TO CONTEST THE AUTHENTICITY**  
 ) **OF THE LAST WILL AND TESTAMENT**  
 ) **OF THUMAN L. BOMAR DUE TO**  
 ) **FORGERY AND UNDUE INFLUENCE**

Charles Carr, In his Individual and )  
Official Capacity as the Present )  
Personal Representative of the Estate ) **2011-ES-42-00162**  
of Thurman L. Bomar; deceased; )  
Katherine Christian and Joyce King, )  
Defendants. )

**COME NOW** the Plaintiffs Willie A. Rogers and Vennie Rogers, complaining of  
the Defendants, and respectfully allege as follows in their **Amended Complaint/Petition:**

**FOR A FIRST CAUSE OF ACTION**  
**(FORGERY)**

I.

That the Plaintiffs are citizens and residents of the County of Spartanburg, State  
of South Carolina and they are subject to the jurisdiction of this Court;

II.

That upon and belief, the Defendant Charles Carr is a citizen and resident of the  
State of Ohio; that defendant Katherine Christian is a citizen and resident of the County of  
Spartanburg, State of South Carolina and defendant Joyce King is a citizen and resident of  
the State of Mississippi and, as shown below, they are all subject to the jurisdiction of this

Court and/or the State of South Carolina;

III.

That the Plaintiffs, being either the Nephew or Niece of the late Thurman L. Bomar, are the closest surviving intestate heirs, along with their remaining siblings, under the South Carolina State Statute of Descent and Distribution of the late Thurman L. Bomar who died January 21, 2011 after having, allegedly, executed a purported Last Will and Testament on July 27, 1988 in Spartanburg, S. C.;

IV.

That the defendants are all Step Children of the late Thurman L. Bomar and they are not intestate heirs of the late Thurman L. Bomar under the South Carolina Statute of Descent and Distribution.

V.

That although there is a Last Will and Testament, dated July 27, 1988, purportedly and allegedly bearing the signature of the Late Thurman L. Bomar, the Plaintiffs are informed and believe that the alleged Signature of Thurman L. Bomar appearing on his said Last Will and testament **is not the signature of the late Thurman L. Bomar and appears to have been signed by someone else;**

VI.

That since the Plaintiffs are informed and believe that the alleged signature of Thurman L. Bomar appearing on his alleged last Will and Testament is not authentic, the Plaintiffs are informed and believes that this court should issue its Order nullifying and

rendering the purported Last and Testament **null and void** and ruling that the late Thurman L. Bomar died intestate and that the Plaintiffs herein, being his closest last surviving heirs at law, are the only beneficiaries who can inherit from his said Estate and should issue it ruling removing the defendant Charles Carr as the Personal Representative of the within Estate and appoint the Plaintiff Willie A. Rogers as the Personal Representative of the within Estate of Thurman L. Bomar;

**FOR A SECOND CAUSE OF ACTION  
(UNDUE INFLUENCE)**

**VII.**

That Paragraphs I through VI are realleged and incorporated herein and made part part of this Second Cause of Action as if set forth verbatim:

**VIII.**

That as stated above, the Plaintiffs are the citizens and residents of the County of Spartanburg, and State of South Carolina and they are the closest surviving intestate heirs at law of the late Thurman L. Bomar and, unless the late Thurman L. Bomar died testate, the Plaintiffs, along with their siblings, are the only intestate heirs or beneficiaries of the late Thurman L. Bomar who can inherit from his Estate;

**IX.**

That the Defendants are stepchildren of the late Thurman L. Bomar and, under the South Carolina Statute of Descent and Distribution, they are not intestate heirs at law or beneficiaries of the late Thurman L. Bomar and cannot inherit from his Estate under said Statute;

X.

That although the Defendants have filed an alleged and purported Last Will and Testament of July 27, 1988 bearing the alleged signature of the late Thurman L. Bomar, the Plaintiffs are informed and believe that, in addition to Thurman L. Bomar's alleged signature on his said alleged Last will and Testament **not being the authentic signature of their uncle, Thurman L. Bomar**, his said alleged Last Will and Testament is and was the product or result of **Undue Influence** because, even though the Plaintiff Willie Rogers landscaped his late uncle yard and/or property for years after his late uncle moved back to Spartanburg, S. C. from New York in the mid 1970s **and had a very close relationship with his late uncle, Thurman L. Bomar**, the defendants and their late mother always interfered with the Plaintiffs' relationship with the late Thurman L. Bomar and always made sure that the Plaintiffs, either singularly or jointly, did not speak to their late uncle, Thurman L. Bomar, without any of the defendant or their late mother always being present and/or that the Plaintiff(s) was/were not allowed to be alone with their late uncle, the late Thurman L. Bomar;

XI.

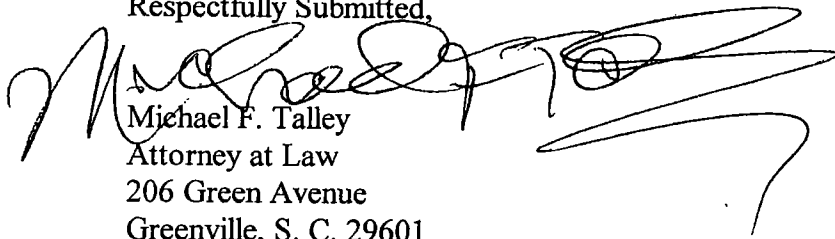
That accordingly, as a proximate result of the **undue influence** used by the Defendants upon the Plaintiff's late uncle, Thurman L. Bomar, to influence him to execute this alleged Last Will and Testament of July 27, 1988 contrary to his free will, the plaintiffs are informed and believe that their late uncle's Last Will and Testament was either the result of **Undue Influence by the defendants or their late mother and/or was**

**the result of Forgery** as set forth above in the Plaintiff's First Cause of Action and that this Court should issue its Order nullifying and rendering this alleged Last Will and Testament **null and void** and removing the present the defendant Charles Carr as the Personal Representative of the within Estate and appoint the Plaintiff Willie A. Rogers as the Personal Representative as the within Estate of Thurman L. Bomar;

WHEREFORE, the Plaintiffs, in their within Amended Complaint, respectfully pray as follows:

1. That this Court inquire into this matter and issue its Order nullifying and rendering the alleged Last Will and Testament of the late Thurman L. Bomar **null and void** due to **Forgery** on Plaintiffs' First Cause of Action or due to **Undue Influence** on Plaintiffs' Second Cause of Action;
2. That this court issues its Order removing the defendant Charles Carr as the Personal Representative of the within Estate and appoint the Plaintiff Willie A. Rogers as the Personal Representative of the within Estate of the Thurman L. Bomar;
3. Grant the Plaintiffs reasonable attorney fees and costs; and,
4. Such other and further relief as is deemed to be just and proper.

Respectfully Submitted,

  
Michael F. Talley  
Attorney at Law  
206 Green Avenue  
Greenville, S. C. 29601  
(864) 233-6229  
(864) 370-0071 (fax)

Dated: February 16, 2012  
Greenville, S. C.

STATE OF SOUTH CAROLINA )

IN THE PROBATE COURT

COUNTY OF SPARTANBURG )

Willie A. Rogers and Vennie Rogers )

Plaintiffs )

**AMENDED  
ANSWER**

vs. )

2011-ES-42-00162

Charles Carr, in his individual and )

Official Capacity as the Personal )

Representative of the Estate of )

Thurman L. Bomar, Deceased, )

Katherine Christian, and Joyce King )

Defendants )

The Defendants herein, by and through their undersigned attorney, answering the amended Complaint/Petition of the Plaintiffs, would show as follows:

**FOR A FIRST DEFENSE**

1. The jurisdictional allegations of paragraphs I and II are admitted.
2. The Defendants are without sufficient information to form a belief as to the allegations contained in paragraph III and would deny the same. Defendants request that the Court require Plaintiffs to prove their standing to bring this action by establishing that they are lawful nieces and nephews entitled under the statute of descent and distribution.
3. So much of paragraph IV as alleges the Defendants are stepchildren of the Late Thurman L. Bomar is admitted, but the remainder of the allegation is a legal conclusion and does not require a response.

4. The allegations contained in paragraph V and VI are denied.
5. The allegation contained in paragraph VII is denied.
6. The Defendants are without sufficient information to form a belief as to the truth of paragraph VIII and would deny the same.
7. The allegation contained in paragraph IX is a legal conclusion and does not require a response.
8. The allegations contained in paragraph X are denied.
9. The allegations of paragraph XI are denied.

**FOR A SECOND DEFENSE**

10. Each and all of the allegations contained in the preceding defense are incorporated into this second defense.
11. The Defendants raise the statute of limitations as a bar to the Plaintiff's claim.

**FOR A THIRD DEFENSE**

12. Each and all of the allegations contained in the preceding defenses are incorporated into this third defense.

13. The Defendants allege that the complaint fails to state a cause of action.

**WHEREFORE**, having fully answered the Amended Complaint, the Defendants pray that the same be dismissed, with reasonable attorney fees and costs, and for such other and further relief as the Court may deem to be just and proper.

Charles P. Edwards

Charles P. Edwards  
Attorney at Law  
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Spartanburg, SC 29304  
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Fax: 864-948-1947  
Email: cpeoffice@aol.com  
SC Bar No. 1840

Feb 23, 2012  
Spartanburg, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS

Willie A. Rogers and Vennie Rogers, )  
Plaintiffs-Appellant, )  
vs. )  
Charles Carr, In His Individual and )  
Official Capacity as the Personal )  
Representative, et. al., )  
Defendants-Appellees. )

**PLAINTIFFS'-APPELLANTS'**  
**GROUND OF APPEAL**  
**FROM**  
**SPARTANBURG PROBATE COURT**  
**2012-CP-42-3705**  
**2011-ES-42-00162**

**COME NOW the Plaintiffs-Appellants and, for their Appeal from the**  
**Spartanburg Probate Court, hereby submit, in accordance with Section 62-1-308(a) of**  
**the S. C. Code of Laws, 1976, as amended, their Grounds of Appeal for their Appeal**  
**from the final Order of the Honorable David F. Anderson, dated August 24, 2012,**  
**as follows:**

1. The Spartanburg Probate Court committed reversible error by accepting  
without proof that the person who purportedly signed the 1988 Last Will and Testament  
of Thurman Bomar in Attorney Hodge's office was **Thurman Bomar**, the error being  
that neither Attorney Charlie Hodge nor the nurse of Hodge's physician's father testified  
that they recognized or remembered "**Thurman Bomar**" as being the person who  
signed his purported Last Will and Testament and, in fact, they testified that they  
could not remember or recognize **Thurman Bomar** as being he person who signed  
this alleged Last Will and Testament.

2. The Spartanburg Probate Court committed reversible error by partly basing its  
finding that the Signature on the Last Will and Testament of Thurman Bomar was

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authentic on the fact that the Court was familiar with the respected local attorneys and trusted employees of the Court who allegedly witnessed Thurman Bomar's Last Will and Testament, the error being it was error for this Probate Court **"to interject its own opinion"** on its familiarity with **"the respected local attorneys and trusted employees of this court"** in finding that Bomar's Last Will and Testament was authentic and not the product of fraud or forgery by stating that four signatures on Bomar's Last Will and Testament and deeds are witnessed by **"respected local attorneys familiar to the Court and trusted employees of the Court"** although there was no testimony offered by these so-called **"respected local attorneys and trusted employees of the Court"** and it was error for this court to base its opinion on **"these alleged facts" which were not placed in evidence or proved in the trial below.**

3. The Spartanburg Probate court committed reversible error by rejecting out-of-hand testimony by the plaintiffs that the **"purported signature on Thurman Bomar's Passport was not that of Thurman Bomar, the error being that the defendants offered no credible "first hand testimony" that the purported signature of Thurman Bomar's Passport was that of Thurman Bomar and it was error for this court to rule reject the plaintiffs' unrefuted testimony on this issue.**

4. The Spartanburg Probate Court committed reversible error by basing its opinion that the purported signature of Thurman Bomar on a 1977 deed was witnessed by an attorney **"who was a contemporary of the court"** and other attorneys with whom the court was personally acquainted with, the error being that there was never any testimony

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on this point about these so-called attorneys offered in evidence and it was error for this Court to **"interject its own opinion on these facts"** about these so-called attorneys and thereby relieving the defendants of their obligations to prove their own case.

5. The Spartanburg County Probate court committed reversible error by partly basing its findings that the signature of Thurman Bomar on his alleged Last Will and Testament" was authentic and was not the product of fraud and forgery on the fact that "the various so-called signatures of Thurman Bomar on various documents contained either **"Left leaning or right leaning slants or an upright style,"** the error being that there was no testimony by any witnesses for the defendants down below about

**"there were either left leaning or right leaning slants or an upright style in Thurman Bomar's signature, and the Court's findings on this point "was based on a lack or absence of evidence"** in the trial below and should be disregarded and reversed..

6. The Spartanburg County Probate Court committed reversible error by denying the plaintiff's Motion for summary Judgment that the defendants committed fraud on this court by intentionally filing and signing a false Petition under oath hiding the existence of the plaintiffs as the only surviving heirs of the decedent Thurman Bomar and should have been disqualified from inheriting from the decedent, **Thurman Bomar, the error being that, since the defendants intentionally committed a fraud on the court by intentionally hiding the fact that the plaintiffs were the only living heirs of the decedent, Thurman Bomar, the defendants should have been disqualified from**

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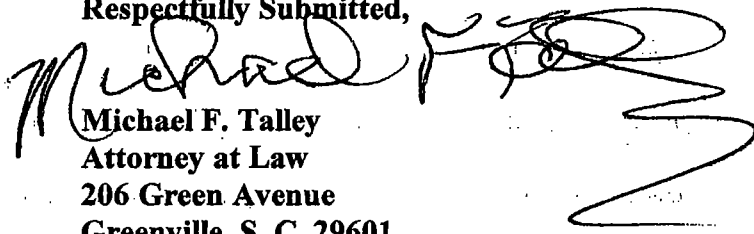
**inheriting from the decedent due to their wrongdoing.**

7. The Spartanburg Probate Court committed reversible error by rejecting out-of-hand the testimony of one of the Plaintiffs' witnesses, **Ms. Thelma Thompson**, a retired teacher and librarian, and probably one of Thurman Bomar's childhood friends, who testified that she had known Thurman Bomar since their grade school and college years and she testified that the signature of Thurman Bomar on his purported 1988 Last Will and Testament was **not the signature of Thurman Bomar**, the error being that it was a grave injustice and an abuse of discretion for the Court down below to reject the testimony of perhaps the one person who was closest to and who had known Thurman Bomar down through the years and who was very familiar with his handwriting **while readily accepting the testimony of Thurman Bomar's stepchildren, the defendants, whose testimony was not credible considering that they filed a false Petition with the Court under oath by attempting to hide the existence of the Plaintiffs and their actions were tantamount to perjury and it was an abuse of discretion for the court below not to have rejected the defendants' credibility and testimony out-right.**

8. The Spartanburg Probate Court committed reversible error by finding that the Plaintiffs' mother, Laura Burgan, had failed to establish her paternity that Thurman Bomar's father, Charlie Bomar, who died in 1992, was her father either prior to his death in 1992 or within eight months after his death in 1992 and that the plaintiffs are not heirs as the lawful descendants of their putative grandfather, Charlie Bomar, the error being that only was this issue moot and unnecessary in this court's findings that the Last Will and

Testament of Thurman Bomar was not the product of fraud or forgery but the defendants offered no evidence to disprove that the plaintiffs' grandmother, Lizzie Burgan and Charlie Bomar, the plaintiffs' grandparents, did not participate in a marriage ceremony before or after the birth of their mother, Laura Burgan, even if it was void, which would legitimize and make the plaintiffs lawful heirs of their deceased Grandfather, Charlie Bomar, which would, in accordance with Section 62-2-109(1) of the S. C. Code of Laws, 1976, as Amended; would conclusively establish that the Plaintiffs are the only lawful heirs of and are entitled to inherit from their deceased uncle, the late Thurman Bomar.

Respectfully Submitted,



**Michael F. Talley**  
**Attorney at Law**  
**206 Green Avenue**  
**Greenville, S. C. 29601**  
**(864) 233-6229**  
**(864) 370-0071 (fax)**  
**Attorney for the Plaintiffs-Appellants**

**Dated: October 2, 2012**

**FILED**  
**CLERK OF COURT**  
**SPARTANBURG COUNTY**  
**2012 OCT -4 PM 2:34**  
**MEHOPE BLACKLEY**

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE PROBATE COURT

Willie A. Rogers and Vennie Rogers,  
Plaintiffs,

vs.

TESTIMONY

Charles Carr, in his individual  
and official capacity as the  
Personal Representative of the  
Estate of Thurman L. Bomar,  
Deceased, Katherine Christian,  
and Joyce King,

Defendants.

Probate Court File No.  
2011ES4200162

Appearances: Mr. Michael Talley, Attorney for Petitioners.  
Mr. Charles E. Edwards, Attorney for Defendants.

HEARING HELD ON JUNE 11, 2012, AT 10:00 A. M.

JUDGE ANDERSON: THIS IS AN ACTION IN THE MATTER OF THURMAN  
L. BOMAR, DECEASED. I UNDERSTAND THAT BOTH COUNSEL HAVE MOTIONS  
FOR SUMMARY JUDGMENT. DO YOU WANT TO GET THOSE OUT OF THE WAY  
FIRST?

MR. EDWARDS: YES, SIR, AND I THOUGHT---

JUDGE ANDERSON: JUST ONE SECOND.

MR. TALLEY: YOUR HONOR, WE WOULD LIKE OUR WITNESSES TO BE  
SEQUESTERED. SO I DON'T KNOW IF THAT'S PROPER FOR THEM TO LEAVE  
NOW OR STAY AROUND RIGHT BEFORE THE TESTIMONY OR WHATEVER.

JUDGE ANDERSON: THAT'S FINE WITH ME. ANY OBJECTIONS?

MR. EDWARDS: I DON'T. I WILL SAY THAT BOTH OF MY MINE,  
WITNESSES HERE ARE PARTIES, AND I DON'T THINK PARTIES CAN BE  
EXCLUDED.

JUDGE ANDERSON: RIGHT.

MR. EDWARDS: MS. KUNAK?

MS. CUNACK: YES.

MR. EDWARDS: MS. KUNAK IS A WITNESS TO THE WILL SO SHE MAY  
NEED TO BE EXCUSED.

JUDGE ANDERSON: WHO'S THE WITNESS THAT AIN'T ON--THAT  
AIN'T A PARTY?

MR. EDWARDS: ON MY SIDE, JUDGE ANDERSON?

JUDGE ANDERSON: IN THE WHOLE ROOM.

MR. EDWARDS: HUM.

JUDGE ANDERSON: BESIDES MS. KUNAK.

MR. TALLEY: MS. THOMPSON IS A WITNESS.

JUDGE ANDERSON: OKAY. ALL RIGHT. I GUESS MS. THOMPSON  
AND THE OTHER THREE LADIES--GENTLEMAN AND TWO LADIES, ARE Y'ALL  
THE THREE PLAINTIFFS?

MR. TALLEY: NO, JUDGE. SHE IS MY LEGAL ASSISTANT.

JUDGE ANDERSON: OKAY.

MR. TALLEY: I JUST HAVE ONE CLIENT PRESENT.

JUDGE ANDERSON: IS HIS WIFE GOING TO TESTIFY?

MR. TALLEY: NO, SIR, SHE'S NOT GOING TO TESTIFY.

JUDGE ANDERSON: WELL I GUESS THAT NARROWS IT DOWN TO MS. KUNAK.

MR. TALLEY: AND MS. THOMPSON.

JUDGE ANDERSON: AND MS. THOMPSON, I'M SORRY. IF YOU LADIES COULD STEP OUTSIDE JUST A SECOND. ALL RIGHT.

MR. EDWARDS: YOUR HONOR, I'M CHARLES EDWARDS. I REPRESENT CHARLES CARR, PROSPECTIVE PERSONAL REPRESENTATIVE AND HIS SISTER, MS. KATHERINE CHRISTIAN. THEY ARE STEP CHILDREN OF THE LATE THURMAN BOMAR WHOSE ESTATE WE'RE HERE OVER TODAY. THEIR MOTHER WAS MARY BOMAR AND SHE WAS MARRIED TO THURMAN BOMAR FOR THIRTY-FIVE YEARS. IN 1988, BOTH MARY BOMAR AND THURMAN BOMAR PREPARED WILLS LEAVING ALL OF THEIR PROPERTY TO EACH OTHER, BUT IF THEY PASSED BEFORE THE OTHER, THE PROPERTY WOULD GO TO HER CHILDREN, WHICH ARE HIS STEP-CHILDREN. THURMAN BOMAR NEVER HAD ANY NATURAL CHILDREN AND THE ONLY TIME HE EVER MARRIED WAS TO MY CLIENTS' MOTHER, MARY BOMAR. SO UPON THE DEATH OF THURMAN BOMAR, CHARLES CARR HAD LOCATED THE WILL AND BROUGHT THE WILL FOR INFORMAL PROBATE HERE TO SPARTANBURG COUNTY PROBATE COURT. SHORTLY THEREAFTER, MR. WILLIE ROGERS THROUGH HIS ATTORNEY, MICHAEL TALLEY, FILED A PETITION FOR FORMAL PROOF AND THEY ALLEGE THAT THE WILL SHOULD BE DECLARED VOID DUE TO FORGERY AND UNDUE INFLUENCE, AND THAT THURMAN BOMAR SHOULD BE DECLARED INTESTATE AND THAT WILLIE ROGERS APPOINTED PERSONAL REPRESENTATIVE. NOW ONE OF OUR DEFENSES IS THAT THE ROGERSSES DO

NOT HAVE STANDING TO BRING THE PETITION FOR FORMAL PROOF BECAUSE THEY CAN NOT ESTABLISH UNDER THE LAW THAT THEY ARE THE HEIRS AT LAW OF THURMAN BOMAR. THEY ALLEGE IN THE COMPLAINT THAT THEY ARE NIECES AND NEPHEWS. NOW I HAVE HANDED TO MR. TALLEY, AND I'D LIKE TO HAND UP TO THE COURT AS WELL, IF I MAY APPROACH THE BENCH, JUST A LITTLE SKETCH OF FIRST--MARRIAGES AND THINGS. AND IF YOU'LL START IN THE RIGHT HAND CORNER, YOU'LL SEE WILLIE ROGERS AND VENNIE ROGERS WHO ARE THE PLAINTIFFS IN THE FORMAL PROCEEDING. NOW THEIR MOTHER WAS LAURA BURGAN AND THE MR. ROGERS. LAURA BURGAN'S MOTHER WAS LIZZIE BURGAN. LIZZIE BURGAN AND CHARLIE BOMAR NEVER MARRIED, BUT THEIR CHILD WAS LAURA BURGAN WHO THEN BORE WILLIE ROGERS AND VENNIE ROGERS AND THEIR OTHER BROTHERS AND SISTERS. MS. LIZZIE BURGAN DIED AND CHARLIE BOMAR THEREAFTER MARRIED MS. HATTIE BOMAR, AND HE AND MS. HATTIE BOMAR BORE THURMAN BOMAR AND JONATHAN BOMAR. JONATHAN IS DEAD. AND THURMAN PASSED AWAY JANUARY OF '11 LEAVING THE WILL THAT LEFT HIS PROPERTY TO MY CLIENTS. NOW UNDER 62-2-109(2) IN ORDER TO DECLARE SUCCESSION THROUGH A FATHER, WHEN A CHILD IS BORN OUT OF WEDLOCK, IT MUST BE ESTABLISHED BY CLEAR AND CONVINCING PROOF BEFORE THE DEATH OF THE FATHER OR WITHIN SOME MONTHS THEREAFTER. ALL OF THESE PEOPLE HAVE BEEN DEAD FOR MANY YEARS; CHARLIE AND LIZZIE AND MS. LAURA BURGAN AS WELL. I THINK MS. BURGAN'S BEEN DEAD FOR OVER A DECADE AND IT NEVER WAS ESTABLISHED THAT LAURA BURGAN WAS THE CHILD OUT OF WEDLOCK OF CHARLIE BOMAR. NOW WE

DID TAKE THE DEPOSITIONS OF MR. WILLIE ROGERS AND HIS SISTER, MS. VENNIE ROGERS, AND I HAVE HANDED THE ORIGINALS UP THERE FOR FILING WITH THE COURT. BUT IN WILLIE ROGERS' DEPOSITION ON PAGE SIX AT LINE TEN THROUGH LINE SIXTEEN, I'M GOING TO READ THE EXAMINATION AND MY QUESTION IS, NOW THURMAN AND YOUR MOTHER, LAURA, THOUGH HAD THE SAME MOTHER, CORRECT? ANSWER: NO.

QUESTION: THEY DID NOT? ANSWER: FATHER. QUESTION: SAME FATHER? ANSWER: SAME FATHER. AND THEN I'LL HAVE THE COURT LOOK AT PAGE EIGHT LINE TWENTY THROUGH TWENTY-FIVE WHERE MY QUESTION IS, OKAY, SO CHARLIE NEVER MARRIED THIS COUSIN THOUGH, DID HE? ANSWER: HE NEVER MARRIED MY MOTHER. QUESTION: WELL YOUR. ANSWER: MINE, I MEAN CHARLIE. LET ME GET IT STRAIGHT. CHARLIE NEVER MARRIED MY MOTHER'S MOTHER. THAT'S THE TESTIMONY OF WILLIE ROGERS AT HIS DEPOSITION, AND NOW I HAVE ALSO PRESENTED MS. VENNIE ROGERS' DEPOSITION AND BEGINNING AT PAGE FOUR ON LINE EIGHTEEN, IT READS AS FOLLOWS, AND HERE'S MY QUESTION: ALL RIGHT. NOW IF YOU WERE HERE IN THE ROOM WHEN YOUR BROTHER, WILLIE ROGERS, TESTIFIED AND YOU WERE SITTING SOME DISTANCE AWAY, BUT DID YOU HEAR THE INTERCHANGE ABOUT LAURA'S BIRTH? ANSWER: YES. QUESTION: AND YOU AGREE WITH HIS TESTIMONY THAT LIZZIE BURGAN WAS LAURA'S MOTHER? ANSWER: CORRECT. QUESTION: AND THAT CHARLIE BOMAR WAS LAURA'S FATHER? ANSWER: YES. QUESTION: BUT THEY WERE NOT MARRIED TO ONE ANOTHER? ANSWER: NO. SO FOR THAT REASON, YOUR HONOR, WE DON'T

BELIEVE THAT THE PLAINTIFFS CAN PROVE AS AN ELEMENT OF THEIR CASE KINSHIP AND THAT THEY ARE NIECES AND NEPHEWS OF THURMAN BOMAR. 62-2-109(2) SAYS, "...BY, THROUGH, OR FROM A PERSON..." AND THEY WOULD BE INHERITING THROUGH THEIR MOTHER, GRANDMOTHER, AND CHARLIE BOMAR TO GET DOWN TO THURMAN BOMAR, AND SO THAT IS THE GIST OF OUR MOTION FOR SUMMARY JUDGMENT THAT THAT ELEMENT OF THE PLAINTIFFS CASE CAN NOT BE ESTABLISHED.

JUDGE ANDERSON: MR. TALLEY.

MR. TALLEY: THANK YOU, YOUR HONOR. YOUR HONOR, WE THINK MR. EDWARDS' CLIENTS ARE BARRED. THEY DID NOT FILE THE RECORDS CONTESTING PATERNITY WITHIN THE REGULAR TIME. MR. EDWARDS' CLIENTS ARE GOING BACK TO CHARLIE BOMAR. CHARLIE BOMAR DIED IN 1992. IT IS OUR POSITION, THEY SHOULD HAVE RAISED THAT THEY HAD A WILL WITHIN THAT TIME, THE EIGHT MONTHS AFTER CHARLIE BOMAR DIED IN 1992, AND NOT WAIT UNTIL THURMAN BOMAR DIED. I THINK ALL OF THEIR ARGUMENTS IS THAT CHARLIE BOMAR WAS NOT MARRIED TO MR. ROGERS' GRANDMOTHER AND THAT'S WHY IT SHOULD FAIL. WELL IF THEY'RE USING CHARLIE BOMAR, THEY NEED TO GO BACK TO CHARLIE BOMAR'S DEATH IN 1992, AND NOT THURMAN BOMAR. UNDER NO BASIS, YOUR HONOR, UNDER THE CASE OF PARKER V. ETHEL LEE PARKER, AND WE'RE GOING TO HAND THIS UP TO THE COURT, WE THINK THAT THEY SHOULD HAVE FILED THAT--YOUR HONOR, WE'RE GOING TO HAND ONE UP TO THE COURT.

JUDGE ANDERSON: THANK YOU. IF YOU'VE YOU GOT A SPARE?

MR. TALLEY: JUDGE---

JUDGE ANDERSON: LET'S--FOR HOUSEKEEPING HOLD ON JUST A SECOND.

MR. TALLEY: JUDGE, WE'RE GOING TO GIVE THAT TO HER.

JUDGE ANDERSON: LET ME GO AHEAD AND MARK THESE DEPOSITIONS BEFORE WE LOOSE TRACK OF THEM. LET'S SEE I GUESS YOU'RE THE DEFENDANT IN THIS ACTION.

MR. TALLEY: DEFENDANT.

JUDGE ANDERSON: PLAINTIFF'S DEFENDANT--ALL RIGHT. WE'RE GOING TO MARK MS. VENNICE ROGERS AS DEFENDANT'S NUMBER ONE AND THE DEPOSITION OF THELMA THOMPSON AS DEFENDANT'S NUMBER TWO, AND WILLIE ROGERS AS DEFENDANT NUMBER THREE, AND YOURS OF CHARLES CARR AS PLAINTIFF'S NUMBER ONE.

MR. TALLEY: YES, SIR.

JUDGE ANDERSON: ALL RIGHT. GO AHEAD.

MR. TALLEY: ALL RIGHT. YOUR HONOR, AND IN THE CASE OF PARKER IT SAYS THAT EITHER SIDE--I THINK THE LANGUAGE ON THE SECOND PAGE UP TO THE TOP SAYS THAT THE CASE DOESN'T SAY WHICH SIDE CAN FILE BUT BOTH SIDES HAVE THE RIGHT TO FILE, AND WE THINK THAT THEY ARE BARRED UNDER THIS CASE OF PARKER V. PARKER.

JUDGE ANDERSON: OKAY. WHERE?

MR. TALLEY: IT'S ON THE SECOND PAGE, YOUR HONOR.

JUDGE ANDERSON: SECOND PAGE.

MR. TALLEY: UP TO THE TOP. WAIT A MINUTE, I'M WRONG.  
IT'S ON THE THIRD PAGE UP TO THE TOP, YOUR HONOR, STARTING WITH  
APPELLANTS.

JUDGE ANDERSON: HOLD ON JUST A SECOND. WELL ACTUALLY WHAT  
SHE JUST HANDED ME IS---

MR. TALLEY: PARKER.

JUDGE ANDERSON: I DON'T THINK THAT'S WHAT SHE GAVE ME.  
SHE GAVE ME SOME, LOOKS LIKE STATUTE HISTORY OR SOMETHING.

MR. TALLEY: OKAY. ALL RIGHT. WELL, YOUR HONOR, THIS IS  
THE CASE SHE SHOULD HAVE GIVEN PARKER VS--IT'S THE THIRD PAGE,  
YOUR HONOR, UP TO THE TOP.

JUDGE ANDERSON: THANK YOU. THIRD PAGE?

MR. TALLEY: YES, SIR. IT SAYS THAT SINCE IT DOESN'T  
DELINEATE WHICH SIDE MUST RAISE THE ISSUE, THE ONE WHO WEARS THE  
BURDEN MUST ESTABLISH AND PROVE HIS POSITION, YOUR HONOR. SO  
IT'S OUR POSITION THAT SINCE MR. EDWARDS' CLIENTS ARE RAISING  
THIS ISSUE, THE BURDEN IS ON THEM TO PROVE THAT THEY SHOULD BE  
DISQUALIFIED BY 62-2-109. FIRST, YOUR HONOR, WE'D LIKE TO SAY  
THAT THIS STATUTE INASMUCH AS MUCH AS IT TREATS ILLEGITIMACY AS  
DIFFERENT FROM LEGITIMACY HAS BEEN RULED TO BE UNCONSTITUTIONAL.  
THAT---

JUDGE ANDERSON: HAS THIS PARTICULAR CASE BEEN RULED TO BE  
UNCONSTITUTIONAL?

MR. TALLEY: NO, JUDGE.

JUDGE ANDERSON: THIS STATUTE?

MR. TALLEY: IT WAS PRECEDED THE STATUTE, AND THEN THE SOUTH CAROLINA SUPREME COURT ADOPTED THE RULE. JUDGE, BUT OUR READING OF THIS STATUTE IS IT'S NOT TOO MUCH DIFFERENT FROM THE OTHER STATUTE INASMUCH AS THEY WANT TO TREAT ILLEGITIMATE KIDS DIFFERENTLY.

JUDGE ANDERSON: NOW DID THE EARLIER STATUTE BAR ALL ILLEGITIMATE CHILDREN?

MR. TALLEY: I THINK THEY DID, YOUR HONOR.

JUDGE ANDERSON: NOW THIS STATUTE DOES NOT.

MR. TALLEY: NO. IT GIVES SOME CONDITIONS.

JUDGE ANDERSON: OKAY. ALL RIGHT.

MR. TALLEY: YOUR HONOR, BUT ASIDE FROM THE STATUTE WHICH SAYS THAT YOU MUST ESTABLISH BY ADJUDICATION, THERE'S A PROVISION IN THERE THAT SAYS THAT IF THE PARTIES PARTICIPATE IN A MARRIAGE CEREMONY EVEN THOUGH THE MARRIAGE CEREMONY WAS NOT VALID, THEN THIS--THEN THEY CAN INHERIT. WELL, MR. EDWARDS AND HIS CLIENTS MAKE A STATEMENT IN THEIR MOTION THAT THIS CEREMONY DID NOT TAKE PLACE. WELL, YOUR HONOR, I DON'T THINK THEY HAVE ANY FIRST HAND INFORMATION ABOUT WHETHER OR NOT A CEREMONY LIKE THAT TOOK PLACE OR NOT, AND THERE ARE A LOT OF MARRIAGE CEREMONIES WHICH ARE NOT VALID WHICH HAVE BEEN--WHICH TAKE PLACE IN THIS COUNTRY AND THROUGHOUT THE WORLD, ENGLAND, AND I THINK YOU MENTIONED ONE CALLED JUMPING THE BROOM. IT'S NOT

NECESSARILY LIVING IN THE UNITED STATES. IT EVEN TAKES PLACE IN ENGLAND. SO, YOUR HONOR, SINCE THEY HAVE THE BURDEN TO PROVE THAT A CEREMONY LIKE THAT DIDN'T TAKE PLACE, I THINK THEIR MOTION SHOULD FAIL FOR THAT.

JUDGE ANDERSON: OKAY. LET ME ASK YOU A QUESTION ON THAT POINT THOUGH. DO YOU HAVE ANY EVIDENCE THAT IT DID TAKE PLACE?

MR. TALLEY: NO, SIR. NO, I---

JUDGE ANDERSON: YOU'RE JUST SAYING THERE'S AN ABSENCE OF EVIDENCE.

MR. TALLEY: YES, AND SINCE THEY HAVE THE BURDEN---

JUDGE ANDERSON: I GOT YOU.

MR. TALLEY: I THINK THEY HAVE TO SUBSTANTIATE THAT IT DIDN'T TAKE PLACE. YOUR HONOR, NOW IN THE AFFIDAVITS OF MS. THOMPSON, THE LADY WHO JUST LEFT, AND AFFIDAVITS ATTACHED TO OUR OPPOSING MEMORANDUM, SHE SAYS THAT SHE WAS INTERGRALLY CLOSE TO THE WHOLE FAMILY, CHARLIE BOMAR AND ALSO THURMAN BOMAR, AND THAT THEY WENT TO CHURCH TOGETHER, AND THE WAY THAT I GET THE IMPRESSION FROM THE AFFIDAVIT, YOUR HONOR, THEY LOOKED UPON THE CHURCH AS A COMMUNITY, I MEAN AS A TOWN. AND TO SAY THAT IT WAS WELL-KNOWN THAT LAURA BURGAN, THEIR MOTHER, WAS FINANCIALLY AND PHYSICALLY SUPPORTED AND--BY CHARLIE BOMAR AND RECOGNIZED BY CHARLIE BOMAR, AND THAT SHE STAYED IN CHARLIE BOMAR'S HOUSE ALMOST MONTHS AT A TIME, EVERY YEAR AFTER HER MOTHER DIED. NOW WE MUST GO BACK ABOUT A YEAR--A CENTURY. 1919 TO 1923 IS WHEN

CHARLIE BOMAR AND HIS GRANDMOTHER HAD A RELATIONSHIP, BUT IN 1923, HIS GRANDMOTHER DIED, AND CHARLIE BOMAR FROM MY UNDERSTANDING, MARRIED HATTIE BOMAR. SO WE'RE TALKING ABOUT A LONG TIME AGO, YOUR HONOR. BUT THEIR MOTHER WAS A LITTLE GIRL WHEN HER MOTHER DIED, AND MR. ROGERS, I DON'T THINK HE WAS BORN UNTIL 1942. SO THIS IS HIS HISTORY THAT TOOK PLACE EVEN BEFORE HE WAS BORN. AND CHARLIE BOMAR MARRIED HATTIE BOMAR, WHO EVENTUALLY BECAME THEIR STEP-GRANDMOTHER, AND FROM WHAT I CAN UNDERSTAND, HATTIE BOMAR AND CHARLIE BOMAR TOOK CARE OF THEIR MOTHER UP UNTIL THE TIME WHEN--THEIR DEATH THAT THEY COULDN'T TAKE CARE OF HER NO MORE.

JUDGE ANDERSON: DID SHE HAVE ANY HANDICAP OR SHE JUST---

MR. TALLEY: JUDGE, I DON'T KNOW OF ANY HANDICAP. I DON'T THINK SHE DID.

JUDGE ANDERSON: WHEN YOU SAY TOOK CARE OF HER---

MR. TALLEY: I MEAN YOU KNOW---

JUDGE ANDERSON: HAD A RELATIONSHIP WITH HER?

MR. TALLEY: YES, SIR. RELATIONSHIP WITH HER, RAISED HER, HAD HER IN THEIR HOME. SHE WAS RAISED AS ONE OF THE CHILDREN IN THE HOUSEHOLD. I THINK ALTHOUGH THE HALF-SISTER TO THURMAN BOMAR AND HIS OTHER BROTHER, JONATHAN, WHO DIED--WHO HAS SINCE DIED; SHE WAS RAISED AS ONE OF THE FAMILY MEMBERS, YOUR HONOR.

JUDGE ANDERSON: UH-HUM.

MR. TALLEY: NOW I THINK THAT THAT SHOULD SATISFY  
SUBSECTION TWO OF THIS STATUTE. SO, YOUR HONOR, FOR ALL THE  
REASONS THAT WE MENTIONED, I THINK MR. EDWARDS' MOTION AND HIS  
CLIENTS' MOTION SHOULD BE DENIED BECAUSE THERE'S ALL KIND OF  
ISSUES HERE, AND ONE OF THE ISSUES IS WHETHER OR NOT HE SHOULD  
GO BACK TO THE DEATH OF CHARLIE BOMAR IN 1992 AND NOT JUST START  
WITH THURMAN BOMAR IN 2011. SO THEY SHOULD BE BARRED BY THE  
STATUTE. YOUR HONOR, AND IN THE OTHER ISSUES THAT WE ARE  
FORGETTING TO MENTION, WE PUT THEM IN OUR MEMORANDUM FOR THE  
BENEFIT OF THE COURT, AND WE HAVE SERVED MR. EDWARDS. HE HAS  
BENEFIT OF THEM. AND YOUR HONOR, AND ALSO WE WANT TO REFER TO  
THE OBITUARIES, AND I THINK WE HAVE THEM ATTACHED THERE. LAURA  
BURGAN, HIS MOTHER WAS RECOGNIZED AS A PART OF THE FAMILY IN  
BOTH OBITUARIES, AND SHE WAS THE ONLY SURVIVING DAUGHTER, AND  
THAT IS--THAT'S THE WAY SHE WAS REFERRED TO. AND YOUR HONOR, IN  
CHARLIE AND HATTIE BURGAN--BOMAR'S OBITUARIES, THE STEP-CHILDREN  
WERE NOT EVEN NAMED. THERE WAS NO SUCH THING AS STEP-CHILDREN  
BY NAME OR EVEN ANYTHING LIKE THAT. SO WE THINK THAT'S  
IMPORTANT, AND WE THINK THAT THAT'S WHY THEIR MOTION SHOULD BE  
DENIED.

JUDGE ANDERSON: OKAY. THANK YOU, SIR.

MR. EDWARDS: YOUR HONOR, IF I COULD, ON THAT PARKER CASE,  
THE WAY I UNDERSTOOD THAT WAS YOU HAD AN ILLEGITIMATE CHILD AND  
YOUR PERSONAL REPRESENTATIVE WENT TO COURT AND LISTED THAT CHILD

AS A LEGITIMATE CHILD AND THEN JUST WAITED YOU KNOW UNTIL THE EIGHT MONTHS HAD RUN, AND THE CHILD WHO WAS ACTUALLY ILLEGITIMATE, IT WOULD BE TOO LATE FOR HIM TO PROVE ANYTHING, AND THE PERSONAL REPRESENTATIVE JUST KIND OF TRICKED THAT FELLOW. LIST HIM AS A CHILD AND THEN WHEN THE EIGHT MONTHS WAS UP, HE SAID OH, I'M GOING TO HAVE TO AMEND THIS, HE'S NOT LEGITIMATE ANY MORE. AND WROTE HIM DOWN YOU KNOW TOOK HIM OFF, AND THEN WHEN THE GUY COMES TO COURT TO PROVES HE'S LEGITIMATE, SHE SAYS OH IT'S TOO LATE, YOUR EIGHT MONTHS HAS RUN, AND HE SAYS THAT'S NOT FAIR, YOU PUT ME DOWN AS A CHILD. SO THAT'S WHAT I THINK DISTINGUISHES PARKER AND THAT DIDN'T HAPPEN IN THIS CASE. MY CLIENTS DIDN'T EVEN KNOW IN 1992 WHAT THEIR MOTHER AND FATHER'S AND STEP-FATHER'S WILL SAID. THEY DIDN'T FIND THE WILL UNTIL MAYBE A COUPLE OF MONTHS BEFORE THEY PASSED ON. THEY TOLD THEM WHERE IT WAS. SO THEY DIDN'T FIRST OF ALL DIDN'T LIST ANYBODY, APPARENTLY WOULDN'T HAVE KNOWN ANYBODY TO LIST. SO PARKER IS COMPLETELY DIFFERENT, AND IT INVOLVES SOMEBODY ACTUALLY TRICKING AND TRYING TO LEAVE SOMEBODY OUT. NOW AS FAR AS THE STATUTE BEING UNCONSTITUTIONAL, THAT'S THE VERY REASON THIS STATUTE WAS WRITTEN WAS THE TREMBLE CASE MADE IT UNCONSTITUTIONAL FOR ILLEGITIMATE CHILDREN OF FATHERS, WELL THE OLD STATUTE SAID ILLEGITIMATE CHILDREN OF FATHERS COULD NOT INHERIT. TRIMBLE SAID YOU'RE GOING TO HAVE TO DO SOMETHING ABOUT THAT, THAT'S NOT FAIR, BUT YOU CAN HAVE REASONABLE METHODS

OF PROOF. AND SO OUR LEGISLATURE ADOPTED THIS NEW STATUTE AND PUT WELL, WE'LL ALLOW IT, BUT YOU'RE GOING TO HAVE TO PROVE IT, AND BEFORE A MARRIAGE OR WITHIN EIGHT MONTHS AFTER BY CLEAR AND CONVINCING EVIDENCE IF THAT'S DONE, THEN ILLEGITIMATES CAN INHERIT. NOW THEY HAVE AN AFFIDAVIT THAT IT WAS WELL-KNOWN IN THE COMMUNITY. THAT WOULDN'T BE CLEAR AND CONVINCING, BUT EVEN IF IT WAS CLEAR AND CONVINCING, IT'S AFTER EIGHT MONTHS, AND THERE ISN'T--IT'S TOO LATE TO PROVE IT BECAUSE MEMORIES ARE TOO RUSTY AND IT ONLY ALLOWS EIGHT MONTHS. AND AS FAR AS THE MARRIAGE CEREMONY AND OUR DUTY TO DISPROVE IT, HOW WOULD WE KNOW WHOSE MARRIAGE TO DISPROVE. YOU'D HAVE TO DISPROVE EVERYBODY IN THE WORLD NEVER GOT MARRIED. SO THAT IS OUR--THAT IS HOW WE ADDRESS THE ARGUMENTS THAT HE HAS MADE IS WE DON'T BELIEVE THE BURDEN OF PROOF IS ON US TO DISPROVE LEGITIMACY THAT HE MUST PROVE LEGITIMATELY.

JUDGE ANDERSON: ALL RIGHT.

MR. TALLEY: JUDGE, I JUST WANT TO MAKE ONE--YOUR HONOR, WE THINK THAT THE STATUTE WHERE IT SAYS THAT IT SHOULD BE PROVED BY CLEAR AND CONVINCING EVIDENCE, WE THINK THAT'S MR. EDWARDS BURDEN, THE BURDEN OF MR. EDWARDS AND HIS CLIENTS TO PROVE THAT BECAUSE THEY ARE THE ONES RAISING IT.

JUDGE ANDERSON: OKAY. ALL RIGHT. WELL, GENTLEMEN, I HAVE YOU KNOW PRIOR TO Y'ALL COMING IN HERE TODAY, I'VE HAD YOUR MOTIONS AND SUPPORTING AFFIDAVITS AND THE FILE, AND I HAVE

REVIEWED THE FILE IN DEPTH, AND ALSO YOUR ARGUMENTS, I PRETTY MUCH KNOW HOW I'M GOING TO RULE ON THE MOTIONS, BUT THERE'S A COUPLE OF LITTLE POINTS OF LAW THAT I WANT TO LOOK AT, AND YOU KNOW, I THINK I HAVE ENOUGH TO RULE ON IT NOW, BUT SINCE WE ARE, EVERYBODY'S HERE AND MY UNDERSTANDING IS PROBABLY WITHIN A FEW HOURS WE CAN TAKE ALL THE TESTIMONY THAT WE'RE GOING TO BE TAKING ANYWAY, AND SINCE THE LOSING PARTY MAY WISH TO APPEAL IT, I'D LIKE TO BE ABLE TO SEND EVERYTHING UP IN ONE BASKET TO CIRCUIT COURT SO THAT IT WOULDN'T BE GOING UP AND POSSIBLY COMING BACK DOWN AND GOING BACK UP AND JUST GET EVERYTHING DONE AT ONE TIME. AND WE HAVE SOMEBODY FROM OUT OF TOWN WITH US. WHAT I'M GOING TO DO AT THIS POINT IN TIME, I'M GOING TO RESERVE JUDGMENT ON RULING ON THE MOTION FOR SUMMARY JUDGMENT. I WILL RULE ON IT IN MY ORDER, BUT I WANT TO GO AHEAD AND GIVE Y'ALL THE OPPORTUNITY TO PUT UP YOUR CASES SO WE CAN PRESERVE ALL OF THAT FOR CIRCUIT COURT IF AN APPEAL TAKES PLACE. SO WE--I HAD TALKED TO COUNSEL BACK IN, I WOULD SAY CHAMBERS, BUT IT WAS ACTUALLY THE OTHER LITTLE COURTROOM A FEW MINUTES AGO, AND WE DISCUSSED THE PROCEDURE OF HOW TO DO THIS, AND NORMALLY, MR. EDWARDS WOULD JUST PRESENT THIS WILL SINCE ON ITS FACE, IT APPEARS TO BE A SELF-PROVING WILL AND THEN MR. TALLEY WOULD GO FORTH WITH HIS ATTACK ON THE WILL FOR THE REASONS HE HAS STATED, AND THEN MR. EDWARDS, IT WOULD BE LIKE A TENNIS MATCH, WOULD BE BACK IN HIS CASE TO KIND OF DISPROVE THAT, BUT I THINK COUNSEL

ARE IN AGREEMENT THAT MR. EDWARDS WILL GO AHEAD AND PUT UP THE WILL, PUT UP HIS--SOME WITNESSES, HOPEFULLY GET HIS SIDE OUT OF THE WAY, AND THEN YOU CAN CROSS-EXAMINE THEM AND PUT UP YOUR SIDE. SO WE'LL JUST KIND OF KEEP IT SIDE AND SIDE AS OPPOSED TO BOUNCING BACK AND FORTH, IF THAT'S OKAY WITH YOU GENTLEMEN.

MR. EDWARDS: IT SUITS THE DEFENDANT.

MR. TALLEY: YES, YOUR HONOR, WE HAVE A MOTION FOR SUMMARY JUDGMENT TOO, YOUR HONOR.

JUDGE ANDERSON: YES, SIR, I UNDERSTAND, BUT LIKE I SAY, I RESERVE THE SAME THING. I'M RESERVING THE RULING ON BOTH MOTIONS FOR SUMMARY JUDGMENT BUT THAT WILL BE ADDRESSED IN THE ORDER.

MR. TALLEY: YES, SIR.

JUDGE ANDERSON: SO THAT LEAVES US WITH I GUESS, ANYTHING ELSE THAT WE NEED TO TAKE UP BEFORE WE START WITH ANY EVIDENCE?

MR. EDWARDS: NO, SIR. NOT FROM US.

MR. TALLEY: NO, YOUR HONOR. WELL, I WOULD LIKE JUST ABOUT TEN MINUTES TO GET SOME WATER OR SOMETHING LIKE THAT.

JUDGE ANDERSON: YOU WANT A LITTLE BREAK. OKAY, SIR.

(The Court takes a brief recess.)

JUDGE ANDERSON: DO YOU WANT TO PROCEED?

MR. EDWARDS: PLEASE, YOUR HONOR, I'D LIKE TO CALL CHARLES J. HODGE.

CHARLES J. HODGE, AFTER HAVING FIRST BEEN DULY SWORN, TESTIFIED  
AS FOLLOWS:

Direct examination by Mr. Edwards.

Q. You are Charles J. Hodge?

A. Yes, sir.

Q. What is your profession?

A. I'm a lawyer.

Q. And licensed by what state?

A. South Carolina.

Q. How long have you been in practice?

A. Thirty-one years as of June 1st.

Q. What is the present focus of your practice?

A. Primarily trial work that involves medical malpractice,  
worker's compensation, social security disability, anything with  
a medical-legal application.

Q. Back in your earlier days, did you occasionally draw last  
wills and testaments for people?

A. Did. Think we still do. Yes, sir.

Q. Still do. All right.

A. Simple wills.

Q. All right. Now aside from your practice, Mr. Hodge, do you  
also serve on any boards or commissions?

A. I have.

Q. Or have you in the past?

A. I have certainly in the past. I was Chairman of the Board of Trustees at Coastal Carolina. I was Chairman of the Haven. I've been on the Salvation Army Advisory Council. Those types of things.

Q. All right.

A. I've been involved with the Bar in some committees.

Q. Okay. And have you occasionally participated in presenting seminars for the Bar or any other continuing legal education?

A. I have.

Q. Okay.

MR. EDWARDS: YOUR HONOR, MAY I HAVE THE COURT REPORTER TO MARK THESE EXHIBITS FOR ME? I HAVE TWO WILLS THAT I'D LIKE TO MARK AS DEFENDANTS' ONE AND TWO AND TWO COVERS THAT I'D LIKE TO MARK AS THREE AND FOUR OR WHATEVER THE COURT WILL CHOOSE.

JUDGE ANDERSON: OKAY. THESE ARE WHAT, COPIES OF THE WILLS?

MR. EDWARDS: YES, SIR. THE ORIGINALS ARE ON FILE WITH THE PROBATE COURT.

JUDGE ANDERSON: OKAY. WHOSE WILLS--THIS IS MARY LOUISE BOMAR AND THURMAN LAWRENCE BOMAR?

MR. EDWARDS: YES, SIR.

JUDGE ANDERSON: AND THE ORIGINALS OF WHICH ARE IN THEIR RESPECTIVE FILES? IS THAT WHAT YOU'RE TELLING ME?

MR. EDWARDS: YES, SIR. WITH THE PROBATE COURT.

JUDGE ANDERSON: OKAY.

MR. EDWARDS: AND THESE ARE THE COVERS. ORIGINAL COVERS,  
AND THEY WERE NOT LEFT WITH THE PROBATE COURT.

JUDGE ANDERSON: OKAY. ANY OBJECTIONS, MR. TALLEY?

MR. TALLEY: UH.

JUDGE ANDERSON: LET HIM TAKE A LOOK AT THOSE JUST A  
SECOND.

MR. TALLEY: YOUR HONOR, WE HAVE NO OBJECTION.

JUDGE ANDERSON: ALL RIGHT. WITHOUT OBJECTION, THEN, CAN I  
JUST---

MR. TALLEY: WE, YOUR HONOR, WE DON'T ADMIT THAT THEY ARE  
VALID.

JUDGE ANDERSON: RIGHT. I UNDERSTAND THAT. FOR THE SAKE  
OF SIMPLICITY, DO YOU MIND IF I JUST STAPLE THE ENVELOPE OF  
THURMAN'S TO HIS WILL AND JUST DO THAT AS ONE AND---

MR. EDWARDS: THAT WILL BE FINE.

JUDGE ANDERSON: ALL RIGHT. SO THE COPY OF THURMAN BOMAR'S  
WILL WILL BE YOUR NUMBER FOUR AND THAT OF MARY LOUISE BOMAR WILL  
BE NUMBER FIVE.

MR. EDWARDS: THANK YOU.

Q. Mr. Hodge, do you remember a man named Thurman Lawrence  
Bomar?

A. I don't believe so.

Q. Do you remember a woman named Mary Louise Bomar?

A. I don't think so.

Q. I'm going to---

A. If I saw their face, I might have a recollection. Have you got a picture?

Q. They are both deceased.

A. Oh, okay.

Q. We've got a picture at a very young age, but twenty or thirty years before you would have drawn the will. I don't believe it would be recognizable.

A. Okay.

Q. I'll ask if you'll look at Defendant's Number Four, and that purports to be the will of the late Thurman Bomar. Do you recognize any of the witnesses to the will?

A. I do.

Q. Would you please identify them and tell us who they are?

A. Mary Ann Kunak was my father's Chief Nurse, and at that time I had an office across from the hospital, and I'm not sure in '88, in '88 I think I had moved to a building that is now occupied by a credit agency across from--it's a hospital affiliated credit agency, but I think that's the building I was in. Mary Kunak was right next door, and she was a notary. So I suspect that--well maybe she wasn't a notary, but she would, we would occasionally, if we did wills, we'd have her come up and be an independent witness, and she's in the courtroom today.

Q. All right.

A. Gayle Hawkins was my secretary paralegal at the time, and I noticed that the notary was Vickie Wing; she also worked for me at that time.

Q. Okay. Now, if you will, look at the cover that is attached to the will.

A. Yes, sir.

Q. Do you have any memory of ever using real covers that resemble that?

A. I think we did. You know back in those days, you'd have that blue back cover and you'd fold it up and you'd put it in something like this. It looks familiar.

Q. Okay. Now I noticed that the writing on the back of the cover said Hodge and Devine.

A. Correct.

Q. Were you practicing under that title at that time?

A. Yeah. At that time, Mike Devine, I don't think he's practicing any more, but he was kind of an associate, but we sort of joined the names together when he was practicing at that time.

Q. Now, do you know whether you or he actually drafted the will?

A. I believe that these wills were kind of, even back then we had an Olivetti typewriter and had a memory to it, and I suspect

they were kind of in the form bank. But, yes, it would have been at our direction.

Q. All right. You don't know whether the Bomars' though would have been your clients as opposed to Mr. Devine or just firm clients I suppose?

A. Well, it was most likely mine, and that name is familiar. I know that my dad had a lot of Bomars as patients, and I don't know if these folks were his patients or not, but sometimes patients of his would come in, and we'd do wills for them.

Q. All right. Now, Mr. Hodge, these photograph's are not introduced into evidence or marked, but I'll represent that if you, or I'll ask if you recognize either the man or the woman in that photograph.

A. It looks like a pretty loving couple but no, I'm sorry, I don't recognize them.

Q. Thank you. Okay. Now, Mr. Hodge, when you execute wills, do you approach that as a solemn event and you try to make sure that the parties know what they are doing?

A. Yes, sir. We typically will--I'll have them come in and first I'll ask them does your estate exceed a certain amount. Now back in those days, it was a lot lesser amount, but you know like today, I'll say, does--is your estate, when you add up everything, is it going to exceed a million dollars, if it is, you need to go see Charles Edwards, but if it's less than that,

then I tell them that we can do a simple will, and I tell them that you know the reason you want to do, if you've got more assets, is you might want to do some estate planning, and if you hit the lottery or something, come back and see us, or if things change in your life, we can revise the will. When we do that, we also make an assessment of the person's competency and their ability to execute. I have had occasions where I did not believe the individuals who were in the office were with it, and they might have come in with a family member and the family member might have been prompting them to do something. So, yes, you're right, it's a solemn duty and we take it seriously.

Q. All right, sir. Please answer any questions Mr. Talley has.

Cross-examination by Mr. Talley.

Q. Mr. Hodge, my name is Michael Talley, and I represent the Rogers, Willie Rogers, and I'm from Greenville. And I think your testimony was that you don't remember Mr. Bomar.

A. That's correct.

Q. Okay. And do you--and I think you said that you don't even remember this process where they signed the document. Is that right?

A. I don't have an independent recollection of this specific process. No, sir.

Q. Okay.

MR. TALLEY: THAT'S ALL THE QUESTIONS I HAVE, YOUR HONOR.

JUDGE ANDERSON: OKAY.

MR. EDWARDS: YOUR HONOR, I WOULD ASK IF IT'S AGREEABLE  
THAT MR. HODGE BE EXCUSED.

JUDGE ANDERSON: ANY OBJECTION?

MR. TALLEY: NO, SIR.

JUDGE ANDERSON: YOU'RE EXCUSED.

MR. HODGE: THANK YOU, YOUR HONOR.

MR. EDWARDS: YOUR HONOR, WE'D LIKE TO CALL MS. MARY KUNAK.

MARY KUNAK, AFTER HAVING FIRST BEEN DULY SWORN, TESTIFIED AS  
FOLLOWS:

Direct examination by Mr. Edwards.

Q. Ms. Kunak, where do you live?

A. You mean my address?

Q. Yes.

A. 115 Heritage Lake Forest Drive, Spartanburg.

Q. Thank you. Are you employed, retired?

A. I am a retired nurse.

Q. And for whom were you employed?

A. Dr. Joseph Hodge for fourteen years.

Q. Fourteen years. Now I want you to go back to 1988, if you  
can recall where you were. Were you working for Dr. Joe Hodge  
at that time?

A. Yes. I worked with him from 1991 to 1995 when he passed away.

Q. Okay. And do you remember the location of Lawyer Charles Hodges's office in relation to his father's?

A. Yes. At that time, it was right next door to us.

Q. All right. And were there ever any occasions when you were called on by Charlie Hodge to witness documents for him?

A. Yes.

Q. Ms. Kunak, two wills have been marked. One is Defendant's Four, and one is Defendant's Five, and I want you to look at the signatures of the witnesses.

JUDGE ANDERSON: DO YOU JUST WANT TO LET HER LOOK AT THE ORIGINALS SINCE---

MR. EDWARDS: THE ORIGINAL WILL IS HERE.

Q. Do you see your signature anywhere on page two of Mr. Thurman Bomar's will?

A. Yes. I do.

Q. And does that appear to be the way you sign?

A. Yes.

Q. All right. You have no memory of Thurman Bomar or Mary Bomar, do you?

A. No. I don't.

Q. Do you have any memory of this particular event?

A. No. I don't.

Q. Whenever you would witness the signing of documents with Attorney Hodge, did he appear to take it seriously and observe the formalities of the situation?

A. Yes. He did.

Q. All right. Okay. Thank you. Please answer any questions Mr. Talley may have.

MR. TALLEY: YOUR HONOR, WE HAVE NO QUESTIONS.

JUDGE ANDERSON: ALL RIGHT. YOU CAN STEP DOWN.

MR. EDWARDS: YOUR HONOR, LIKEWISE, I WOULD ASK IF MS. KUNAK CAN BE EXCUSED.

JUDGE ANDERSON: CAN I HAVE THAT WILL BACK?

MS. KUNAK: THE ORIGINAL, SIR?

JUDGE ANDERSON: YES. THANK YOU, VERY MUCH. NO--WITHOUT OBJECTION, SHE'S EXCUSED.

MR. EDWARDS: YOUR HONOR, OUR NEXT WITNESS WOULD BE CHARLES CARR.

JUDGE ANDERSON: ALL RIGHT, SIR.

CHARLES CARR, AFTER HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

Direct examination by Mr. Edwards.

Q. Your name is Charles Carr?

A. Charles Edward Carr, yes.

Q. Where do you live?

A. Philadelphia, Pennsylvania. Delancey Street.

Q. All right. What is your--are you employed presently?

A. I am retired.

Q. All right. What was your profession before retirement?

A. I'm a lawyer. I practiced for some years and when I retired, I was a member of the faculty at the University of Buffalo Law School.

Q. And what subjects did you teach in law school?

A. I taught large survey courses in criminal procedure and evidence, and I would always pair that with a smaller course offering trial technique, legal writing, ethics, and criminal investigations.

Q. Okay. Now what is your relationship, if any, to the late Thurman Bomar?

A. He was my step-father.

Q. Now you petitioned to be appointed as personal representative under his will. Is that correct?

A. I did.

Q. And at the same time, did you offer the will of your late mother, Ms. Mary Bomar?

A. Yes. I did.

Q. All right. How old were you when you met Thurman Bomar?

A. I think I was eleven or twelve years old. I think it would have been 1957 or '58. Somewhere around in there.

Q. How did it come to be that you met him?

A. He and my mother started to date at around that time, and he worked in the neighborhood where we lived.

Q. Okay. And where were you living at that time?

A. On Spencer Place. 21 Spencer Place, Brooklyn, New York.

Q. Okay. And who all made up your household at that time?

A. My mother and my two sisters, Katherine and Joyce.

Q. Katherine is here sitting behind me.

A. Yes.

Q. Where is your sister, Joyce?

A. She lives in Laurel, Mississippi.

Q. Okay. Now at this time, your natural father and mother were separated. Is that correct?

A. Yes.

Q. Where did Thurman Bomar work at that time, if you know?

A. When I first met him, he worked in a real estate office on Fulton Street, which was around the corner from Spencer Place, and he later went on to work for the Department of Real Estate, City of New York.

Q. All right. And where did your mother work at that time?

A. My mother was working, and always worked at R. H. Macy's on 34th Street, in Manhattan.

Q. Okay. All right. And would Thurman Bomar visit with your mother often at that time?

A. Yes.

Q. And did he take you on any family outings with him?

A. Yes. We would go on beach outings, and he took me to baseball games and things like that.

Q. All right. I think you said he took you to the first Mets game.

A. When the Mets were still playing at the Polo Grounds in New York before Shea Stadium was ever built.

Q. All right. And did he take an interest in you and your sisters?

A. He did. He would pick us up from different outings that we might attend. If it was in the evening, he would you know drive over and get us and deliver us back home. That sort of thing.

Q. Okay. Now when did you leave your mother's home?

A. Oh, I probably lived with my folks until I went to law school, I think. It would have been--I went to law school in '74.

Q. Okay.

A. Yeah.

Q. All right. Now, but did you not have a time in the service?

A. Yes. I had two years in the service from 1966 to 1968.

Q. Okay. And of course, that took you away from home.

A. Yes.

Q. Where did you serve?

A. I served in Killeen, Texas, in San Antonio, Texas, and one year in the Republic of Vietnam.

Q. Okay. And on your return, you resumed living with your mother in Brooklyn?

A. Yes.

Q. Okay. And after that, where did you--did you go off to school after that?

A. Yeah. I went to school in '74 at Howard University, and when I would come back home for summers, for I think the first two years, then I stayed at an apartment that my step-father had in Ebbets Field.

Q. That was Thurman Bomar?

A. Yes.

Q. He would allow you to occupy his apartment when you came home in summers?

A. Yes.

Q. All right. Okay. Now, I believe you had told me that you had some problem when it came to law school graduation that you were having trouble with and Mr. Bomar helped you over a hump. Can you tell us about that?

A. Yeah. I got to my last semester and somehow I owed Howard University about eleven hundred dollars that I didn't have, and when I called home to tell my parents I would postpone graduation for a year, you know he took care of that for me.

Q. He paid the eleven hundred dollars.

A. Yes. He did, and I graduated with my class in 1977.

Q. Did Thurman Bomar go to your graduation?

A. Yes. He did.

Q. And did you take your picture standing beside of him?

A. Yes.

Q. All right.

A. He attended my graduation and my swearing in to the bar in New York.

Q. Okay. And did you observe how he related to your two sisters over the years?

A. Yes.

Q. And did he take a fatherly approach to them as well?

A. Absolutely.

Q. Okay. Now do you know when he married your mother, Mary Bomar?

A. In December of 1975.

Q. Approximately how old were they at the time?

A. Oh, I was--I was almost thirty. So they had to be I guess in their fifties, I would say.

Q. Where were you living in 1975?

A. I was living in Washington.

Q. Okay. Now after they married in '75, did they continue to live in Brooklyn for a while?

A. Yes. They did.

Q. And did they--where did they live?

A. They lived on at 1500 Carol Street in Brooklyn.

Q. All right. Did they rent this together or had this been your mother's apartment before the marriage?

A. That had been my mother's apartment before, when I said we moved from Spencer Place to Carol Street.

Q. Okay. So after the marriage, they began to live together in her apartment.

A. Yes.

Q. All right. And sometime after 1975, you took a teaching job at Buffalo in the law school.

A. That was in 1982. Yes.

Q. 1982?

A. Uh-hum. (affirmative response)

Q. And did Mr. and Mrs. Bomar ever have occasion to visit you in Buffalo?

A. Yes. They did.

Q. And did he take an interest in your work as a Law Professor?

A. Yes. He did.

Q. Can you tell us a particular occasion when he came to school?

A. Yes. After--it was after 1985, I don't know if it was the year of '85 or '86, but they came up to see me in Buffalo, and they attended my Criminal Procedure Class on that occasion.

Q. Okay. Now did there come a time when your mother and Mr. Bomar moved away from Brooklyn?

A. Yes.

Q. And about when was that?

A. I think that they moved to South Carolina in about 1987.

Q. Okay. And do you know what precipitated their move?

A. My step-dad's parents were down here, and they were getting on, and needed some help. You know their health was not what it could have been or should have been perhaps. So they moved down here with the express purpose of helping to take care of Charlie and Hattie Bomar.

Q. And was the move coincident with their retirements pretty much as well?

A. Well my mother had retired some years earlier. She was a disability retiree, and I handled that case early on, but they didn't move down here until I think it was 1987.

Q. Okay. All right. And after they moved to Spartanburg, did you continue over the years to visit with them in Spartanburg?

A. Yes.

Q. And what frequency would you say?

A. At least twice a year. I had kids at that time. So I would come around Christmas and sometimes we would spend the holidays on Hilton Head together; my parents, my children, and my sister, Katherine, and her children.

Q. Okay. How did Thurman Bomar relate to the children of you and to the children of Katherine?

A. They were his grand-children.

Q. All right. And did he keep pictures of them around his---

A. Yes. He did.

Q. Okay. Now when did, if you recall, when did Mr. Thurman Bomar begin to decline roughly?

A. I think around 2003 or so.

Q. And what was---

A. We started to see he had memory issues and you know they progressively worsened over time, but I think I'd say about 2003 when we first started to notice it.

Q. Okay. About when did your mother begin to decline?

A. Well my mother, like I said, was a disability retiree. She had had some heart issues and that would have been I believe in the late 1970's. So she had been a disability retiree since about '78 or '79.

Q. All right. But what I'm speaking of more is in her last illness that lead to her eventual death. When did she begin to decline?

A. That would have been in August of 2010.

Q. Okay. Now what did you three children do by way of taking care of your parents as they approached their older years?

A. Well we explored a lot of options for them, whether they wanted to try assisted living, but they wanted to stay in their house. So we worked it out so that my sister would look in on them and take care of them, do their meals, get them to their doctors' appointments, and so forth.

Q. And that is Katherine?

A. That's Katherine Christian.

Q. Now Katherine I believe had moved down here as well. Did she not and lived here in Spartanburg?

A. Yes.

Q. She followed them. Did she not?

A. Yes. She did.

Q. Okay. Now your mother knew after August of 2010 that she was not long for this world, didn't she?

A. Yes. She got a lung cancer diagnosis in August of 2010, and the doctor said that it was at a stage where there wasn't much that they could do for her. So they recommended hospice care.

Q. All right. And did she discuss with you any disposition plans with regard to her estate and Mr. Bomar's estate at that time?

MR. TALLEY: YOUR HONOR, WE OBJECT TO THAT. IT'S TOTALLY HEARSAY.

JUDGE ANDERSON: I AGREE WITH YOU. ALL RIGHT.

MR. EDWARDS: OKAY. MAY I SEE THE WILLS. I BELIEVE I'VE GOT THEM RIGHT HERE.

Q. I have Defendant's Number Four and Defendant's Number Five, which are the wills of Thurman Bomar and Mary Bomar. How did you find the originals of those wills?

A. They were among my parents' personal papers.

Q. All right. And approximately when did you find them?

A. Not long after my mother's diagnosis she had me go through those papers.

Q. All right. And before that time, had you ever seen these documents?

A. No, sir.

Q. And before that time, did you have any understanding of what your mother's disposition plans were?

A. No. Not specifically.

Q. And these are true and accurate copies of the originals that you located?

A. They are.

Q. And you brought the originals here to the Probate Court when---

A. Yes.

Q. ---your mother died?

A. Yes. I did.

MR. EDWARDS: YOUR HONOR, I WOULD OFFER NUMBER FOUR AND NUMBER FIVE INTO EVIDENCE.

JUDGE ANDERSON: OKAY. ANY OBJECTIONS? THAT'S THE SAME THING, I MEAN IT'S--FOR WHAT IT'S WORTH. YEAH.

MR. EDWARDS: THEY MAY HAVE ALREADY BEEN PUT INTO EVIDENCE.

JUDGE ANDERSON: I THINK THEY WERE A WHILE AGO.

Q. Okay. When did your mother die?

A. December of 2010.

Q. Okay. And what was Thurman Bomar's condition at that time?

A. He was pretty well seriously affected by Alzheimer's by that time. Sometimes I don't even know that he knew who my mother was.

Q. All right. And when did Mr. Bomar die?

A. Seven weeks after my mother. January of '11.

Q. All right. What did their estates consist of?

A. Two bank accounts and property at 2456 New Cut Road in Spartanburg.

Q. Now the bank accounts, how were they titled?

A. They were joint accounts in my step-dad and my mom's name.

Q. And the real estate, how was it titled?

A. The same way. Jointly held. I don't know if was tenants by the entirety in South Carolina, but it was a joint tenancy.

Q. Now the wills that we've offered into evidence, purport to have been drafted in 1988, where were you then living?

A. Buffalo, New York.

Q. And where was your sister, Joyce, living?

A. Laurel, Mississippi.

Q. And where was your sister, Katherine, living?

A. In Brooklyn, New York.

Q. All right. To the best of your knowledge in 1988, was Thurman Bomar in good health?

A. Yes. He was.

Q. And remained so for some time thereafter?

A. Yes. He did.

Q. Was your--was Mr. Bomar ever married, to your knowledge, before your mother?

A. No.

Q. One of the allegations of the Plaintiff's Complaint is that the will was forged, and did you bring me a document from Mr. Bomar that has his signature on it?

A. Yes. I did.

Q. And what is this that I'm showing to you?

A. It's my step-father's passport, the United States Passport.

Q. All right.

MR. EDWARDS: YOUR HONOR, I HAD MADE A COPY OF THE PASSPORT, AND WITH MR. TALLEY'S PERMISSION, I WOULD LIKE TO OFFER THE COPY IN LIEU OF THE ORIGINAL PASSPORT.

MR. TALLEY: YOUR HONOR, WE DON'T NECESSARILY OBJECT, BUT WE DON'T NECESSARILY AGREE THAT THAT IS A CORRECT SIGNATURE.

JUDGE ANDERSON: LET ME SEE THE PASSPORT. OKAY. I'LL INTRODUCE THE COPY. WE MIGHT GET A BETTER---

MR. EDWARDS: BETTER COPY?

JUDGE ANDERSON: BEFORE YOU LEAVE, YEAH. THAT LOOKS LIKE THE SETTING WASN'T QUITE RIGHT SO IT CAME OUT KIND OF DARK.

MR. CARR: HE CAN HAVE THE ORIGINAL.

MR. EDWARDS: I THINK MY CLIENT IS SAYING THAT IT'S---

JUDGE ANDERSON: WE CAN GET IT BACK TO HIM LATER.

MR. CARR: THAT'LL BE FINE.

JUDGE ANDERSON: OKAY. THIS WOULD BE NUMBER SIX.

MR. EDWARDS: YES, SIR.

JUDGE ANDERSON: AND I'M NOT GOING TO WRITE ON IT. ALL RIGHT.

Q. So, Mr. Carr, you're asking this Court to admit the will to Probate?

A. Yes.

Q. And asking the Court to appoint you as Personal Representative thereof?

A. I am.

Q. All right. Please answer any questions Mr. Talley has.

Cross-examination by Mr. Talley.

Q. Thank you. Mr. Carr, you don't--you weren't there when this will was purportedly signed by Mr. Bomar, were you?

A. No. I was not.

Q. So you don't know who were present or who were not present?

A. I have no way of knowing that.

Q. All right. Now, you started coming down in Spartanburg in the mid '80s?

A. No.

Q. When?

A. I had been down here several times before that.

Q. When did you first come to Spartanburg?

A. I would say it was before I went to law school. So I think it was in the early '70s.

Q. All right. Fine. Now you met Mr. Rogers and his brothers and sisters some time in the '70s or '80s.

A. I would say so, yes.

Q. Okay. And, correct me if I'm wrong, I think y'all went out, and I think y'all had dinners and went out---

A. Yes.

Q. to dinners and things---

A. Yes.

Q. ---of that nature.

A. Absolutely.

Q. Okay. Now were you aware that Mr. Rogers was the nephew of Mr. Thurman Bomar?

A. He certainly said he was. Yes.

Q. Now did you know whether or not he was Mr. Bomar's nephew?

A. I know that's what he said he was. I never--I had no way of knowing.

Q. Okay.

A. You know.

Q. But, okay. Now, so did you have a problem or question whether he was the nephew or not at that time?

A. I never had any reason to question it. No.

Q. Okay. But you had lunch and dinner at his house, right?

A. Yes. I did.

Q. Okay. And I think in your deposition you said you met his sister in New York---

A. I might have met---

Q. before that.

A. his sister in New York. It's very possible because I knew Thurman Bomar during the years that she was there, and our families you know knew one another. So--but I don't have an independent recollection of meeting her in New York.

Q. Okay. But you do know that Thurman Bomar had some relatives in Spartanburg, did you not when you came here?

A. Yes.

Q. Okay. And wasn't it not a fact that Mr. Rogers used to help Mr. Bomar taking care of his grass, his yard, his garden?

A. Yes.

Q. And things of that nature?

A. Yes.

Q. Okay. And would you also agree that Mr. Rogers and Mr. Bomar were pretty close?

A. I think that would have to depend how you'd define close.

Q. Okay. That they knew each other very well.

A. They knew each other. Yes.

Q. Okay. Okay. Now to your knowledge during that time, did anybody mention to you that Mr. Rogers was Mr. Bomar's nephew?

A. Mr. Rogers had.

Q. Okay. And did anybody mention to that in addition to Mr. Rogers, his sister and brothers, all of them were nieces and nephews of Mr. Bomar?

A. Well I knew--I don't know if I knew all of his sisters and brothers, but I certainly did know some of them, and yes, I knew them in the same way that I knew Mr. Rogers.

Q. Okay. Now did Mr. Bomar ever tell you that Mr. Rogers was his nephew?

A. I don't believe he ever specifically told me that. No.

Q. You don't think so?

A. I don't think we ever had the occasion to do that.

Q. Okay. Now you remember me giving you notice of deposition up a couple of months ago?

A. Yes.

Q. And you remember we asked you whether or not you knew whether or not Mr. Rogers and his brothers and sisters were nephews and nieces to Mr. Bomar?

A. I certainly knew that's how they described themselves. Yes.

Q. Okay. Now I think your testimony is that Mr.--you were close to Mr. Thurman Bomar. Is that right?

A. Yes.

Q. And your sisters also. Is that right?

A. Absolutely.

Q. Okay. Now are you aware that you were not mentioned as an heir in the obituaries of Charlie or Hattie Bomar?

A. No. I wasn't aware of that.

Q. Okay.

A. I wasn't aware of those obituaries at all in terms of who was or wasn't mentioned.

Q. Okay.

MR. TALLEY: YOUR HONOR, WE HAVE SOME OBITUARIES, AND MR. EDWARDS OBJECTS TO THEM, BUT I WANT TO SHOW THEM TO MR.---

JUDGE ANDERSON: YOU CAN SHOW THEM TO HIM.

Q. Would you look at those and tell me if those obituaries of Hattie Bomar and of Charlie Bomar, I think one is Thurman Bomar's and one is Hattie Bomar's. Is that right?

A. One is Charlie Bomar.

Q. Okay.

A. And one is Hattie Bomar.

Q. Okay.

A. Yes.

Q. And would you look at that and tell me whether or not you were listed as step-children or whether there's any mention of step-children down there in either obituary?

A. No. I don't believe so.

Q. And not to belabor the point, but would you read the surviving members of each--of Charlie Bomar into the record for me, please?

A. Survivors include one daughter, Laura Rogers of Wellford, one son, Thurman Bomar of Spartanburg, ten grandchildren, sixteen great-grandchildren, and one great-great-grandson.

Q. Thank you. And could you read the survivors in Ms. Hattie Bomar's obituary for me?

A. Fond and loving memories will be cherished by one daughter, Ms. Laura Rogers of Wellford, South Carolina, one son, Mr. Thurman Bomar of Inman, South Carolina, eleven grandchildren,

twelve great-grandchildren, and a host of other relatives and friends.

Q. All right. Thank you.

MR. TALLEY: YOUR HONOR, ALTHOUGH MR. EDWARDS OBJECTS, WE WOULD LIKE TO MOVE TO HAVE THESE ADMITTED INTO EVIDENCE.

MR. EDWARDS: YOUR HONOR, THIS IS A JUDGE TRIAL, IF THERE WERE A JURY, I WOULD PROBABLY OBJECT, BUT I KNOW THE JUDGE RECOGNIZES THESE ARE HEARSAY AND SO THEY---

JUDGE ANDERSON: WELL THEY'RE--YOU ARE RIGHT. I MEAN THEY ARE OBITUARIES AND AS WE'VE TOUCHED ON A WHILE AGO, THE DECEDENT NEVER WRITES HIS OWN OBITUARY OR RARELY DOES. SO SOMEBODY ELSE IS DOING IT, BUT IT IS THEIR OBITUARY--LOOKS LIKE A COPY OUT OF THE NEWSPAPER.

MR. TALLEY: YES, SIR.

JUDGE ANDERSON: AND THIS IS SOMETHING FROM UPPER SHADY GROVE BAPTIST CHURCH.

MR. TALLEY: IT IS AN OBITUARY, YOUR HONOR.

JUDGE ANDERSON: IS THERE A LOWER SHADY GROVE BAPTIST CHURCH?

MR. TALLEY: YES.

JUDGE ANDERSON: THERE REALLY IS?

MR. ROGERS: YES, SIR. UPPER AND LOWER SHADY GROVE.

JUDGE ANDERSON: HOW BIG IS SHADY GROVE?

MR. ROGERS: WELL, I GUESS YOU'RE LOOKING AT PROBABLY THREE HUNDRED MEMBERS, I MEAN THEY PASTOR THREE HUNDRED.

JUDGE ANDERSON: ALL RIGHT. LET'S MAKE CHARLIE BOMAR'S OBITUARY, THIS WILL BE PLAINTIFF'S NUMBER TWO, AND HATTIE'S LITTLE FLYER FROM THE CHURCH AS PLAINTIFF'S NUMBER THREE.

MR. TALLEY: ALL RIGHT.

MR. EDWARDS: YOUR HONOR, I'M NOT SURE THOSE WERE SUPPLIED TO ME IN THE DISCOVERY REQUEST. I DON'T HAVE A MEMORY OF SEEING THEM. I WONDER IF I COULD JUST LOOK AT THEM ONCE AGAIN ALTHOUGH I HAVE NO OBJECTION TO THEM GOING IN.

JUDGE ANDERSON: OKAY. THERE YOU GO.

MR. EDWARDS: THANK YOU.

JUDGE ANDERSON: YES, SIR.

Q. Now, Mr. Thurman Bomar, during when his father died in '92, was his health pretty good?

A. Who's health?

Q. Was Thurman Bomar?

A. Was his health pretty good in '92, I think so. Yes.

Q. Yes, sir. And I think in during--and so in 1990 when Hattie Bomar got disabled, he was probably pretty good then, too.

A. I would say so.

Q. Okay. So as the surviving child, other than Laura, would you know whether or not it was Thurman Bomar who prepared these obituaries for the---

A. I have no knowledge---

Q. You have no knowledge.

A. ---about the preparation of them at all.

Q. Okay. Now at some point in time, you came to the Court--the Probate Court after Thurman Bomar died, and you filed a petition. Is that right?

A. I brought both of their wills down for Probate. Yes.

Q. Okay.

MR. TALLEY: YOUR HONOR, WITHOUT OBJECTION, MR. EDWARDS HAS NO OBJECTION, I WANT TO ASK MR. CARR SOME QUESTIONS ABOUT HIS PETITION.

MR. CARR: DO YOU MIND IF I GET MY GLASSES.

MR. TALLEY: YEAH. YEAH. GO AHEAD.

MR. CARR: THANK YOU.

Q. Would you look at that petition and tell me whether or not that's the petition that you filed with the Court?

A. Yes.

Q. Okay. Now, is that petition where you filed to start Thurman Bomar's estate?

A. Yes.

Q. Okay. Now, and I think down at the bottom of that petition you listed the devisees. Did you list seven devisees at the bottom?

A. Yes.

Q. Down at the bottom?

A. Yes.

Q. And who's were those people that you listed?

A. Mary Bomar, Charles Carr, Katherine Christian, Joyce King.

Q. Okay. Now, on the second page, it asks you to list the intestate heirs. Is that right?

A. Yes.

Q. And what intestate heirs did you list?

A. There's Charlie Bomar, Hattie Bomar, Johnny Bomar.

Q. Okay. Now, that was not correct. Was it? Okay. Now you listed Hattie Bomar---

A. Charlie Bomar, Hattie Bomar, Johnny Bomar. Yes.

Q. Charlie--okay. Now, did you list Mr. Rogers, Willie Rogers?

A. No. He's not on this form.

Q. Okay. So did you--and did you list his brothers and sisters on that form?

A. No.

Q. Okay. But you were aware they were heirs of Thurman Bomar, weren't you?

A. I knew they claimed to be relatives of Thurman Bomar. Yes.

Q. Okay.

A. Yes. I knew that.

Q. But did you have any reason to disbelieve them?

A. No. But when this form was filled out, the woman asked me about that, the clerk who was helping me prepare the form; she asked me about that, I told her I did not know, and still till today do not know the full names of all of the Rogers' clan with respect to this item, and she put a notation on it, I believe, that the personal representative to try and find out additional intestate heirs before closing, and there's an asterisk there with respect to that.

Q. Okay.

MR. TALLEY: YOUR HONOR, CAN I HAVE FIVE MINUTES TO TRY TO LOOK AT THIS DEPOSITION?

JUDGE ANDERSON: SURE. TAKE YOUR TIME.

MR. TALLEY: THIS IS CHARLES BOMAR'S, I MEAN CHARLES CARR'S DEPOSITION, AND LET HIM OPEN IT AND LOOK AT PAGE SIX.

JUDGE ANDERSON: THEY SEALED THESE THINGS UP PRETTY GOOD. PAGE SIX?

MR. TALLEY: YES, SIR.

Q. Now, Mr. Carr, would you look at page six?

A. Yes.

Q. And look at question twenty-four.

A. Line twenty-four?

Q. Line twenty-four. Line twenty-four---

A. Uh-hum.

Q. And my question was, okay, were you aware that he, talking about Mr. Rogers, was the nephew of Mr. Bomar? Do you remember me asking you that?

A. Yes.

Q. And you remember your answer was what?

A. It says, yes.

Q. Okay. All right. So now your testimony is you don't know whether or not he is the nephew of Mr. Bomar?

A. No. That's not my testimony.

Q. Okay.

A. My testimony is that Mr. Rogers always identified himself as a nephew to my step-dad. My step-dad never talked to me about him being a nephew. I had no reason not to believe he was.

Q. Okay. But you will admit to me or admit that your testimony today is different than the deposition testimony a couple of months ago?

A. Not in substance, I don't think.

Q. Okay. Okay. So you say that you knew Mr. Rogers was a nephew a couple of months ago, and now you're telling you don't know it and you don't think there's a difference.

A. No, sir.

Q. Now, but in any event, you didn't mention Mr. Rogers on that petition, is that right, with the Court?

A. No, sir. I didn't. The notation on that petition--I did mention that my step-dad had nieces and nephews here, but that I did not know all their names and that I would try to find out. And later on the issue came to fruition about whether or not they would have been legal heirs. That's all.

Q. Did you tell them that you knew some of the names of the people who were relatives of your step-father?

A. Yes.

Q. But you didn't list them on that petition, did you?

A. I did not know them all at that time, and that's why she made the notation. I didn't make the notation on the petition. The clerk made the notation on the petition. It says, P. R., personal representative, I assume, to try and find out additional intestate heirs too before closing. That's exactly how it reads.

Q. Okay.

A. P. R. to try to find out additional intestate heirs too before closing.

Q. And so your testimony was that you didn't know all of them at that time.

A. No. I did not, and I do not today.

Q. Did you know any of them at the time you did that petition?

A. Yes. I did.

Q. But they're not listed there, are they?

A. No. They're not.

Q. Okay. And you signed that document, isn't that right, Mr. Carr?

A. Yes. I did.

Q. Up under oath. Isn't that right? It was notarized. Would you agree with that?

A. Yes. It is notarized.

Q. Okay. And so when it's notarized, you swore to that officer that what you put in that petition was correct. Isn't that right?

A. Yes. I did.

Q. Okay. And in fact, it was not correct, was it?

A. It has that notation on it about the requirement to find the additional intestate heirs, sir.

Q. Okay. Now you are aware that if your father died, I mean step-father died intestate, you would not inherit as a step-child. Are you aware of that?

A. No. In the sense that I never read the South Carolina statute.

Q. Okay. And I think you said that you were your own attorney and you taught law at the Buffalo School---

A. Yes. I did.

Q. ---of Law for a number of years.

A. Twenty-eight years.

Q. Okay. That's all the questions I have.

MR. EDWARDS: JUST A FEW, YOUR HONOR.

Re-direct examination by Mr. Edwards.

Q. When you--some people when they fill out the petition, they do it at home and bring it to the Probate Court. Some people fill out the petition while they are sitting there with the clerk. Which way did you do it?

A. I was sitting there with the clerk.

Q. And you were asking her questions, and she was telling you how to fill it out?

A. Yes.

Q. All right. Now there's maybe as many as six siblings of Willie Rogers, are there not?

A. Could be. I don't, I still don't know.

Q. Can you call their names right now, all six of them?

A. Full names, no.

Q. All right. And at that time, not either?

A. No.

Q. And the notation that was made there, is that the purpose of that, to give you the opportunity to do that?

A. Yes.

Q. Up until this time, have you always had a cordial relationship with Willie Rogers and his sister?

A. Yes.

Q. All right.

MR. EDWARDS: NOTHING FURTHER.

MR. TALLEY: YOUR HONOR, JUST A COUPLE OF QUESTIONS IN REBUTTAL.

Re-cross examination by Mr. Talley.

Q. Mr. Carr, you did know Willie Rogers's name, didn't you?

A. Yes.

Q. Okay. And you also knew his sister's name, Vennie Rogers, because you met her in New York. Isn't that right?

A. Yes.

Q. But you didn't put them on that form either, did you?

A. No.

Q. Okay. Thank you, sir.

MR. EDWARDS: I DON'T WANT TO KEEP GOING ON AND ON BUT I DO WANT MR. CARR TO TURN TO PAGE NINE OF HIS DEPOSITION.

Re-direct examination by Mr. Edwards.

A. Yes.

Q. And I want to go to line eighteen that begins with my--with Mr. Talley's question to you, and I'll read the questions, and I want you to read the response. Question: Okay. Now I noticed that Mr. Rogers and his siblings were not listed on there, did you forget to put them on there or why were they not listed on there?

A. Answer: I could not tell you. I prepared this along with an employee from the Court, Karen, whatever, and I don't have any idea why those names aren't there.

Q. Okay. And would you read that little notation up there in the corner on the top left-hand corner?

A. Answer: Reviewing document, there's an asterisk.

Q. Yes, sir.

A. Answer: P. R. to try and find out additional intestate heirs too before closing. That's a quotation.

Q. Right.

A. Answer: Yeah.

Q. Okay. But do you know if you mentioned Mr. Rogers and his siblings as intestate heirs to the Court--when---

A. Answer: I'm sure.

Q. ---you filled this out?

A. I think I did mention them because when I got there, there was already something in the file she tells me from Mr. Rogers and his attorney, which I believe is you, speaking of Mr. Talley.

Q. All right. Nothing further.

Re-cross examination by Mr. Talley.

Q. So are you saying, Mr. Carr, that the officer of the Court left this--left the names out, and you told her to put them there? You're not saying that?

A. No, sir. That's not what I'm saying at all.

Q. All right. So that's all.

JUDGE ANDERSON: ARE WE DONE?

MR. EDWARDS: THAT'S ALL WE HAVE.

JUDGE ANDERSON: YOU CAN STEP DOWN. THANK YOU, SIR.

MR. EDWARDS: OUR LAST WITNESS WOULD BE MS. KATHERINE  
CHRISTIAN.

JUDGE ANDERSON: ALL RIGHT.

MR. EDWARDS: AND I WOULD EXPECT HER TESTIMONY WILL LAST  
ABOUT AS LONG AS MR. CARR'S. WHATEVER YOUR THOUGHTS--WHATEVER  
THE COURT'S PLEASURE IS.

JUDGE ANDERSON: UH.

Katherine Christian, after having first been duly sworn,  
testified as follows:

Direct examination by Mr. Edwards.

Q. You're Katherine Christian?

A. Yes, sir.

Q. You're a sister to Charles Carr who just testified?

A. Yes, sir.

Q. You have one other sister.

A. Joyce.

Q. All right. And where does she live?

A. Laurel, Mississippi.

Q. All right. Who is the oldest of you three children?

A. I am.

Q. And how much older are you than Charles Carr?

A. A year.

Q. And how much older are you than Joyce?

A. About three years I think.

Q. Okay. Now, Mr. Carr testified that your mother introduced Thurman Bomar to you about 1957. Does that sound correct?

A. Yes.

Q. And about how old were you at that time?

A. I was probably fourteen or fifteen.

Q. Okay. How old were you when you left your mother's apartment?

A. I think I was around eighteen.

Q. All right. Now, before you left home, how often would see Mr. Bomar?

A. Often.

Q. Uh-hum.

A. Quite often.

Q. Did you visit him at home a good bit?

A. All the time.

Q. And did he take you on outings and things with him?

A. Yes. He did.

Q. Tell some of the highlights you remember that you spent with him in the '50s, late '50s and '60s.

A. Well he use to take us to Sunken Meadows which is a beach and I think it was Bear Mountain, and any where else we wanted to go.

Q. Traveled as a family group.

A. All the time. Yes.

Q. All right. Now, when you left home at eighteen years old, where did you go to?

A. I just was a little wild then. I just got on my own, and---

Q. All right.

A. ---got my place.

Q. Well, were you still in the Brooklyn area?

A. Yes. I was.

Q. Okay. How far did you live from your mother's apartment at that time?

A. Not very far. I was still in Brooklyn, and she was in Brooklyn too.

Q. So although you left the home at eighteen, you still called on your mother after that. Didn't you?

A. All the time.

Q. And did Thurman Bomar continue to have a relationship with your mother over the years?

A. Yes. He did.

Q. Okay. Now, do you recall when your mother married Thurman Bomar?

A. December 1975.

Q. Where did they marry?

A. In the courthouse--in the courthouse. I was there.

Q. Okay. And you attended?

A. Yes.

Q. And do you recall if you had any part in the wedding?

A. You know I don't really remember, but I think I signed the little certificate.

Q. Uh-hum.

A. I do believe.

Q. Okay. Now, to your knowledge, was this the first marriage for him?

A. Yes.

Q. All right. And to your knowledge, he never had any natural children?

A. No. He did not.

Q. Now, after they married in '75, did you continue to live in Brooklyn near to them?

A. Yes. I did.

Q. And did you continue to visit them at the apartment?

A. Yes. I did.

Q. Do you remember when Thurman Bomar retired?

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A. I think it was, hold on--in the '80s--was it '80s. I don't exactly remember the date or the year, but I was at the retirement party.

Q. Okay.

A. That he had in Brooklyn.

Q. All right. Now tell what you know about the decision of Mary and Thurman Bomar to move to Spartanburg.

A. His parents was ailing and up in age, and they were going to come and take care of them, see about them.

Q. Okay. And of course, Thurman Bomar's parents lived here in Spartanburg.

A. Yes. They did.

Q. You are married to Don Christian.

A. Yes.

Q. When did you marry Don Christian?

A. 1990.

Q. All right. And were you living in Brooklyn at the time?

A. Yes.

Q. Did Thurman Bomar attend your wedding?

A. Yes. He did.

Q. And how did they get to Brooklyn from Spartanburg?

A. They took a plane.

Q. Did Thurman Bomar play any part in your wedding?

A. He took the videos.

Q. All right. You still have the videos?

A. Yes. I do.

Q. Now, after you married, did--and even before, did you occasionally make trips to Spartanburg from Brooklyn?

A. Yes.

Q. Your brother, Charles Carr, said at Christmas and in the summers.

A. Yes.

Q. Is that about---

A. And we went on to like Hilton Head and visited.

Q. All right. And you brought your children, as well.

A. My children, his children.

Q. Was that pretty much a yearly event?

A. Yes.

Q. For many years?

A. For many years.

Q. What did your children call Thurman Bomar?

A. Papa.

Q. Now different spouses relate to each other in different ways and if you can, I wish you would just testify how your mother related to Thurman Bomar and how Thurman Bomar related to her. Don't get into what they said to one another, but just how did they appear to relate to one another?

A. They were---

Q. What was the marriage like?

A. They were inseparable. They went everywhere and did everything together.

Q. Who did the cooking?

A. My mother.

Q. Cleaning?

A. My mother.

Q. All right. Charles Carr testified that Thurman Bomar began to have memory problems in 2003. What, if anything, did your mother do to deal with that?

A. We just watched after him, and we took him around to the doctors. I always took them to the doctors, and they gave him a little pill to try to slow it down.

Q. Okay. Now before he began to have dementia, who would do most of the driving?

A. He did.

Q. He did the driving. Okay. Now did there come a time when you and your husband, Don Christian, moved to Spartanburg?

A. Yes.

Q. When was that?

A. That was 1997.

Q. Where were you all living when you moved to Spartanburg?

A. In Brooklyn.

Q. Were you renting or buying a house?

A. We had a house there.

Q. You--did you have to sell the house to move?

A. Yes. We did.

Q. Why did you move to Spartanburg?

A. Well, my mother was and Papa, too, was getting a little bit up in age, and they wanted some company, and we decided. We had talked about it a little bit.

Q. Okay. Did you get a job when you moved to Spartanburg?

A. Not right away. My husband did, and eventually I did at the YMCA.

Q. Okay. Now you have met Willie Rogers and Vennie Rogers.

A. Yes.

Q. And various of the nieces and nephews, I suppose.

A. Yes.

Q. And would they come and visit with Thurman occasionally?

A. Yes.

Q. And did you have any holiday dinners together with the nieces and nephews?

A. Well, in the--well we started going to Willie's house, I think on three occasions, on Christmas the past maybe four years ago.

Q. Toward the end of their lives?

A. Every year. Yes, toward the end, we did go to their house because his wife would cook, and I took my parents there.

Q. Okay. And you had cordially relationships to the Rogers as up until this point---

A. Yes,---

Q. ---in time.

A. ---sir.

Q. After your mother and Thurman Bomar moved to Spartanburg, did they continue to travel some?

A. Yes. A little bit. I remember going to Charleston, I think once with the church with them, and I think they went on a cruise together.

Q. Do you know if they ever went to visit your sister, Joyce, in Mississippi?

A. Yes. They did.

Q. All right. And did they--well they came back to Brooklyn to see you get married.

A. Yeah.

Q. Was that the only time they came to Brooklyn after---

A. Yeah.

Q. ---they moved?

A. Uh-hum. (affirmative response)

Q. Okay. Now the testimony was that Mr. Bomar began to decline in 2003. You agree with that?

A. Yes.

Q. But did he continue to drive a car for some time after that?

A. No. He had to stop the car.

Q. Okay. And I believe the testimony was your mother began to decline in 2009, 2010. What conditions did your mother have?

A. She had lung cancer, and they gave her six months to live.

Q. Okay. Now even prior to that time, did your mother and Thurman Bomar require any care?

A. Yes. They did.

Q. And did you help provide that care?

A. Yes. I did.

Q. When did you begin to start giving them some care?

A. 2009. I do believe around eight, the last part of eight.

Q. Okay.

A. All the way up to the end.

Q. And tell some of what you did.

A. I did everything for them. I did their laundry. I cooked for them. I took them to doctors, and I got their medications. I did their food shopping. I kept their house clean. I kept up with the appointments. I kept up with hospice. I got them hospice. I did all of that. I moved out of my house almost--my own family to stay with them because they could not stay themselves at night alone in the house because she couldn't cook or anything, and he couldn't do anything. So I did for them.

Q. All right. Now you were paid how much to do that?

A. She gave me two hundred and fifty dollars every week.

Q. Okay. Now Mr. Rogers assisted them with the mowing of the grass.

A. Yes. He did.

Q. Do you have any knowledge as to whether he was paid?

A. Yes. He was.

Q. All right. Testimony was your mother died in December of 2010. Is that correct?

A. Correct.

Q. And at what time did you learn what their disposition plans were with regard to their property?

A. Just before she--just before she died, when Charles found the wills, that's when I learned.

Q. All right.

A. I didn't know they had.

Q. Prior to that time, you didn't know what they were doing with their property.

A. No.

Q. Now, how long did Thurman live after your mother died?

A. Seven weeks.

Q. Okay. What was his condition during those last seven weeks?

A. He didn't know anything.. He couldn't even feed himself. He couldn't do anything for himself. I had to change his diapers and everything. I did all of that for him.

Q. You continued to do that after your mother died?

A. Uh, hum, he was my father.

Q. All right. Did you stay in his home some?

A. Yes. I did.

Q. And did your son play any part in it?

A. My son would come and relieve me every evening for three hours so I could go home and take care of my own family.

Q. All right. Now some time did Charles Carr assist?

A. And Charles came down at least two weeks, ten days out of each month to give me a break, a little vacation so I could go home.

Q. Okay. Now where were you when Thurman Bomar died?

A. I was at his house holding him, changing his diaper, and he died right here.

Q. All right.

A. On my arm.

Q. Okay. Now they had prearranged their funeral. Had they not?

A. Yes. They did.

Q. Not much for you all to do.

A. Not at all.

Q. Where is Thurman Bomar buried?

A. Heritage. Up on 221.

Q. And where is your mother buried?

A. The same, right next to him.

Q. Right beside him. The will we had offered into Probate was executed in 1988. Where were you living in 1988?

A. In Brooklyn, New York.

Q. All right. Don't know anything about the drafting of that will.

A. I really don't.

Q. Now, at my request, did you get some family photos of your mother and Thurman Bomar, you, Charles Carr, and your children?

A. Yes.

Q. And these are those photographs?

A. Yes. These are.

MR. EDWARDS: RATHER THAN GOING THROUGH EACH ONE OF THEM, I MAY JUST ASK IF WE CAN OFFER THIS BATCH INTO EVIDENCE FOR REVIEW BY THE COURT AND I DO HAVE PHOTOCOPIES I'D LIKE TO SUBSTITUTE WITH THEM LATER ON, IF THERE'S NO OBJECTION. OH, SORRY. YOUR HONOR, I MAY JUST HAVE HER RATHER THAN IDENTIFYING THEM ONE BY ONE, I MAY JUST ASK HER WHO THE SUBJECTS OF THESE PICTURES ARE.

Q. Who are the subjects of these pictures?

A. My mother and papa.

Q. And this photograph here?

A. Me, papa, and my son, Travis.

Q. And who are you speaking of when you say, papa?

A. Thurman Bomar.

Q. And is that what you called him?

A. Yes.

Q. And who are these?

A. Me, oh no, that's my children, and my mother and papa.

Q. All right. And this photograph here?

A. That's papa, I think with Camille, my sister's daughter.

Q. Joyce's daughter?

A. Yes.

Q. And this photograph here?

A. Papa, and my mother, and my sister's daughter.

Q. All right. And here?

A. Papa and Camille.

Q. And this photograph?

A. Papa, my mother, Charles, and his girl-friend at the time.

Q. Okay. You don't know what the occasion of that was, do you?

A. I think that's during his school something with his schooling.

Q. All right.

A. That's papa and my mother's sister, Alicia-Mae.

Q. Okay.

A. Papa, Charles, Jean, and my mother. I don't know who the other girl is.

Q. Now do you remember what occasion this was?

A. That's I think that's graduation, I'm not too sure. It was graduation or something with his schooling.

Q. With Charles' schooling?

A. Yes.

Q. All right. I don't want to go over all of the photographs, but are they meant to illustrate the family relationship?

A. Yes.

Q. And how you got along and all?

A. Yes.

MR. EDWARDS: YOUR HONOR, AT SOME POINT, I BELIEVE WE'D LIKE TO HAVE THEM BACK AT SOME POINT, BUT THE COURT MAY WANT TO CONSIDER THEM.

JUDGE ANDERSON: I DON'T KNOW WHO ANYBODY IS IN THE PICTURES.

MR. EDWARDS: ALL RIGHT.

JUDGE ANDERSON: SO I'M NOT REALLY SURE WHAT I'M LOOKING AT.

MR. EDWARDS: ALL RIGHT.

JUDGE ANDERSON: BUT---

MR. EDWARDS: WELL, I CAN---

JUDGE ANDERSON: OTHER THAN A BUNCH OF FAMILY FOLKS THAT LOOKS LIKE ONE--LOOKS LIKE THE KIND OF PICTURES I USED TO HAVE. WHO'S THAT?

A. That's papa and my mother.

JUDGE ANDERSON: WHERE WAS THAT AT?

A. That looks like right here down in Spartanburg.

JUDGE ANDERSON: OKAY. IS THAT YOUR BROTHER IN THE MIDDLE?

A. Yes, sir.

JUDGE ANDERSON: SUPER FLY LAPELS?

A. Yes.

JUDGE ANDERSON: YEAH. YOU THOUGHT THAT LOOKED GOOD BACK THEN, DIDN'T YOU? WHO IS THAT BESIDE YOU?

A. Papa.

JUDGE ANDERSON: OKAY. LOOKS LIKE A BIG BUILDING BACK THERE. LOOKS LIKE SOMEBODY'S GRADUATION OR SOMETHING.

A. Uh-hum. I think so.

JUDGE ANDERSON: THAT IS PROBABLY WHAT THAT IS. THAT WAS '78. NOW WHO IS ALICIA?

A. My mother's sister.

JUDGE ANDERSON: THAT LOOKS LIKE A GETTING SWORN IN PICTURE.

MR. CARR: YES.

JUDGE ANDERSON: IS THAT WHAT THAT IS?

MR. CARR: SECOND DEPARTMENT, NEW YORK STATE.

JUDGE ANDERSON: WHO'S CRYING IN THAT PICTURE?

A. That's papa and Camille, my sister's daughter.

JUDGE ANDERSON: OKAY. ARE WE GOING TO HAVE BATTLING PHOTOS?

MR. TALLEY: WE MAY.

MR. EDWARDS: WE DON'T NEED TO OFFER THEM, YOUR HONOR.

JUDGE ANDERSON: OKAY.

MR. EDWARDS: UNLESS THEY WOULD BE OF SOME HELP, I THINK  
THE TESTIMONY AND ALL WILL SPEAK FOR THEM.

JUDGE ANDERSON: OKAY. I KNOW YOU DON'T WANT TO LOSE  
THESE.

MR. EDWARDS: SO WE'LL WITHDRAW THOSE. THANK YOU. ALL  
RIGHT. PLEASE ANSWER ANY QUESTIONS MR. TALLEY MAY ASK.

MR. TALLEY: THANK YOU.

Cross-examination by Mr. Talley.

Q. Ms. Christian, I--you went to the Court with your brother,  
Charles Carr, when he filed that petition.

A. Uh-hum.

Q. Is that right?

A. Yes.

Q. But before we get to that, Thurman Bomar didn't adopt you  
and your brother, did he?

A. No. He did not.

Q. Now were you present when he was filling that petition out?

A. Yes. I was.

Q. Okay. Were you aware that he wasn't placing Mr. Rogers and  
his brothers and sisters on that petition?

A. Well, I was there, and I was aware. I was aware.

Q. Okay. You were aware that they were not being placed on it.

A. Yeah, because we didn't have all the--we knew Willie Rogers. I know Willie Rogers and Venice, but I can't name all his sisters and brothers, you know, their names.

Q. Yes, ma'am. But--so, but Mr. Rogers and his sister weren't placed on the petition at that time?

A. No.

Q. Okay.

MR. TALLEY: YOUR HONOR, WE WANT TO INTRODUCE THAT, I FORGOT TO DO IT THROUGH MR. CARR, THIS PETITION.

JUDGE ANDERSON: ISN'T THAT A COPY OF WHAT WE'VE GOT?

MR. TALLEY: IT'S FILED IN THE COURT. IT'S FILED IN THE COURT. THIS IS THE PETITION. THIS IS NOT THE WILL. THAT'S THE PETITION WHERE HE STARTED PROBATE OF THIS MATTER.

JUDGE ANDERSON: RIGHT. THE ORIGINAL--WELL LET ME FIND IT.

MR. TALLEY: THE ORIGINAL SHOULD BE IN THE COURT'S FILE.

JUDGE ANDERSON: YEAH. LET'S JUST MAKE SURE. IF IT IS, I'D REALLY RATHER NOT HAVE AN EXTRA COPY.

MR. TALLEY: OKAY. FINE.

JUDGE ANDERSON: LET'S SEE. ACTUALLY I KNOW IT'S IN HERE BECAUSE I WAS JUST LOOKING AT IT A MINUTE AGO. LET'S SEE IF I CAN FIND IT AGAIN.

MR. TALLEY: IT SHOULD BE IN THERE.

JUDGE ANDERSON: LIKE I SAY, I KNOW IT IS BECAUSE I LOOKED AT IT A MINUTE AGO WHEN YOU HAD THAT. HERE YOU GO. THIS IS WHAT YOU'RE TALKING ABOUT, ISN'T IT?

MR. TALLEY: YES, SIR.

JUDGE ANDERSON: OKAY.

Q. Okay. Would you look at that and see if all of your name and all of your family names are on that petition?

A. Yes. I see them down here.

Q. Okay. Okay. Now you were aware--were you aware that step-children do not inherit from step-parents if they don't have a will?

A. I am not aware---

Q. Okay.

A. ---of any of the rules.

Q. Okay. All right. And you came down, I think your testimony was you came down here in the mid '90s.

A. '97.

Q. And the will had already been executed--the will that they're putting into evidence of 1988?

A. Yes.

Q. You don't know who was present during that time, do you?

A. No. I do not.

Q. Okay. Now was Thurman Bomar live on New Cut Road?

A. Yes.

Q. And he lived over there his whole life to your knowledge?

A. Well until--when he came down here, he lived on New Cut Road. He was on Carroll Street.

Q. Okay. Now when you came down here in the mid '90s, Mr. Charlie Bomar was already dead. Is that right?

A. Yes. He was.

Q. And also his wife, Hattie?

A. Yes. She was.

Q. Had you ever met either one of them?

A. Yes. I have.

Q. Where did you meet?

A. On New Cut Road at the house.

Q. When? Do you know what year you met them?

A. A couple of times I met them because I used to come down here with them when they visited the parents.

Q. Okay. Okay. You mean you came down with Thurman Bomar?

A. And my mother. Yes.

Q. Okay. Did you ever live with Charlie Bomar?

A. No.

Q. And Hattie Bomar?

A. No. I did not.

Q. And I think basically--were you born in New York?

A. Mississippi.

Q. Mississippi.

MR. TALLEY: I THINK THAT'S ALL THE QUESTIONS I HAVE, YOUR HONOR.

MR. EDWARDS: NOTHING FURTHER.

JUDGE ANDERSON: YOU CAN STEP DOWN.

MR. EDWARDS: YOUR HONOR, I DON'T HAVE ANY OTHER WITNESSES, BUT ON THE ISSUE OF FORGERY, I HAVE COPIED SOME DOCUMENTS THAT ARE ON FILE IN THE COURTHOUSE HERE IN THE PROBATE COURT AND THE REGISTER OF DEEDS THAT DO CONTAIN THURMAN BOMAR'S SIGNATURE, AND THEY ARE COURT RECORDS, AND I WOULD LIKE TO READ INTO EVIDENCE OR READ INTO THE RECORD.

JUDGE ANDERSON: WHAT DOCUMENTS DO YOU HAVE?

MR. EDWARDS: I'VE GOT DEEDS AND I ALSO HAVE A PAGE FROM THE ESTATE FILE OF CHARLIE BOMAR THAT THURMAN BOMAR SIGNED. IT'S IN 93-417 (1993ES4200417) OF THE PROBATE COURT. I'VE GOT A PAGE FROM HATTIE BOMAR'S ESTATE THAT'S IN FILE 90 PAGE 531, 90-531 (1990ES4200531) OF THE PROBATE COURT THAT THURMAN BOMAR HAD SIGNED, AND I'VE GOT ABOUT FOUR DEEDS THAT THURMAN SIGNED.

MR. TALLEY: YOUR HONOR, WE WOULD OBJECT TO THOSE BECAUSE WE DON'T HAVE ANY KNOWLEDGE ABOUT WHO SIGNED THOSE OR ANYTHING LIKE THAT.

MR. EDWARDS: THEY'RE WITNESSED.

JUDGE ANDERSON: RIGHT.

MR. EDWARDS: AND THEY'RE NOTARIZED AND OFFICIAL COURT---

MR. TALLEY: NOW THE COURT DOCUMENTS YOU KNOW OF HATTIE BOMAR'S ESTATE AND CHARLIE BOMAR'S ESTATE, WE DON'T HAVE ANY OBJECTION TO THAT.

JUDGE ANDERSON: LET ME SEE WHAT YOU'VE GOT, MR. EDWARDS, AND THEN I CAN SAY.

MR. EDWARDS: PROBATE COURT DOCUMENTS ARE ON THE BOTTOM. THE DEEDS ARE ON THE TOP.

JUDGE ANDERSON: OKAY. WHAT YOU HANDED ME WAS WHAT I GUESS IS SUPPOSED TO BE A COPY OF DEED BOOK 44V AS IN VICTOR 559, 44V AS IN VICTOR 560, DEED BOOK 66P AS IN PAUL 431, DEED BOOK 82N AS IN NOW 826, AND THESE LAST TWO THINGS ARE--THIS LAST THING IS WHAT NOW?

MR. EDWARDS: ONE OF THEM PERTAINS TO HATTIE BOMAR'S ESTATE, AND IT'S FROM SPARTANBURG COUNTY PROBATE FILE 90-531. THE OTHER IS FROM CHARLIE BOMAR'S ESTATE, WHICH IS PROBATE COURT FILE 93-417.

JUDGE ANDERSON: OKAY. THESE ARE ALL PUBLIC RECORDS. I MEAN I'M GOING TO JUST TAKE--WE'LL INTRODUCE THEM, BUT I'M GOING TO JUST TAKE JUDICIAL NOTICE OF THE ORIGINAL DOCUMENTS THAT THESE REFLECT AS BEING DOCUMENTS THAT PURPORTEDLY YOU KNOW THAT HAVE HIS NAME ON THEM CONVEYING PROPERTY AND DEALING WITH--WITH WHOSE ESTATES?

MR. EDWARDS: THEY DEAL WITH CHARLIE BOMAR'S AND HATTIE BOMAR'S ESTATES, WHICH WAS THURMAN'S MOTHER AND FATHER.

JUDGE ANDERSON: OKAY. WE'LL JUST INCORPORATE THOSE WHOLE FILES BY REFERENCE.

MR. EDWARDS: AND THAT'S OUR CASE.

JUDGE ANDERSON: ALL RIGHT. WELL IT IS FIVE AFTER OR SIX AFTER ONE. ANYBODY OBJECT TO ME GOING AND STUFFING MY MOUTH?

MR. EDWARDS: NO OBJECTION. WE MAY DO THE SAME.

JUDGE ANDERSON: YOU CAN DO THE SAME THING.

(The Court takes a recess for lunch.)

MR. EDWARDS: YOUR HONOR, WE HAVE RESTED.

JUDGE ANDERSON: MR. TALLEY.

MR. TALLEY: YES, SIR. YOUR HONOR, AT THIS TIME, WE'D LIKE TO CALL MS. THOMPSON TO THE STAND.

JUDGE ANDERSON: OKAY.

Thelma Thompson, after first having been duly sworn, testified as follows:

Direct examination by Mr. Talley.

Q. Ms. Thompson, would you please give your name and address for the record, please?

A. Thelma Thompson, 530 Park Street, Inman, S. C.

Q. Okay. And that's in Spartanburg County?

A. Yes.

Q. Okay. And you are a life-long resident of South Carolina?

A. Yes.

Q. Spartanburg?

A. Yes.

Q. Okay. And, I think you are a retired school teacher. Is that right?

A. Teacher, Librarian.

Q. Okay. I'm sorry. Teacher, Librarian.

A. Yes.

Q. Okay. And did you retire from the public schools that are here in Spartanburg County?

A. Yes. Spartanburg County.

Q. Okay. And, now when--did you know the mother of Willie Rogers and his brothers and sisters?

A. Yes.

Q. Okay.

A. Willie Rogers' mother was my childhood friend and school friend.

Q. Okay. And her name was?

A. Laura.

Q. Laura. Okay. And I think you testified in a deposition that you and Laura used to play as girls.

A. Yes. We lived next door to where Laura stayed, and we all would meet between the houses.

Q. Now--all right, and were you familiar with Charles--Charlie Bomar?

A. Yes.

Q. Okay. And how did you know Mr. Bomar, Charlie?

A. Well when I began to realize, and I had grown up, I met him at church.

Q. Okay.

A. And he most of the time he was a chair person of committees in the church.

Q. Okay.

A. And that's how I knew him.

Q. Okay.

A. And I think Mr. Charles Bomar was a peach farmer. Is that right?

A. Yes.

Q. Okay. Did you--now did you know that Charlie Bomar was Laura's father?

A. Yes. Well, when we were playing, she would tell me that she was going over to Cousin Hattie's. Now at the time, I didn't know the connection, and, but later on I found out that Ms. Cousin Hattie and Laura's mother were first cousins.

Q. Okay. And, now did Charlie--now was Hattie married to Charlie Bomar?

A. Yes.

Q. At that time?

A. Yes.

Q. Okay. And did they live close in the community?

A. Yeah. They lived out near the church, and they would always invite Laura over to their home.

Q. Okay. And to your knowledge, did Laura stay at the home of Charlie Bomar?

A. She didn't stay there all the time, but she went over quite often.

Q. Okay. Now did you know Thurman Bomar?

A. Yes.

Q. And did you meet Thurman Bomar when y'all were growing up?

A. No, I met Thurman at church.

Q. At church. Okay. And I think that you and Thurman--did y'all continue school at the same school?

A. Yes.

Q. All throughout?

A. My mother started teaching at Upper Shady Grove Church School.

Q. Okay.

A. And Thurman and I were in the same class.

Q. Okay.

A. And sometimes it wasn't' but just two of us.

Q. Okay.

A. And so the professor asked me to just move over in a double seat and sit with Thurman.

Q. Okay. And y'all went to school together.

A. Yes.

Q. Is that right?

A. Sixth and seventh grade.

Q. Okay. And, now--was it--did it come a time when you and Thurman went to different colleges?

A. Yes. We went to different colleges. In fact, we went to different high schools after we finished sixth and seventh grade.

Q. Okay. And what--what high school did Thurman went to?

A. He went to Spartanburg Training School, and I went to Friendship Junior College in the High School Department at Rock Hill.

Q. Okay. And, now, after y'all finished high school, then you went on to college.

A. Yes.

Q. Is that right? And Mr. Bomar, Thurman, went to college, too, is that---

A. Yes.

Q. Okay. Now, did you and Mr. Thurman Bomar stay in touch with each other when y'all both went to college?

A. Yes.

Q. Okay. And could you tell the Court how you stayed in touch? Did he write?

A. Yes. I would hear from him at Christmas time, and we got to be girl-friend and boy-friend, and I remember one time my first Christmas gift was a large box of candy.

Q. Okay. Was that from Mr. Bomar?

A. Yes.

Q. Okay. Okay. Did Mr. Bomar ever happen to send you a picture or photograph of him?

A. Yes.

Q. Okay. All right. Just one second. I would show you this picture and see if you recognize it. Would you look at that picture and see if you recognize him?

A. Yes. This is Thurman.

Q. That's Thurman Bomar?

A. Yes.

Q. Okay. And that signature there, is that--look at that signature.

A. Yes.

Q. Okay. Whose signature is that?

A. Thurman's.

Q. Okay.

MR. TALLEY: YOUR HONOR, WE WOULD LIKE TO INTRODUCE THIS INTO EVIDENCE.

MR. EDWARDS: NO OBJECTION.

JUDGE ANDERSON: THIS WOULD BE PLAINTIFF'S NUMBER FOUR.

MR. TALLEY: YES.

Q. Ms.--so, did Mr. Bomar send you any other documents that you know of with his signature on it?

A. Yes. I received letters from him all the time.

Q. Okay. And, now, and then Mr. Bomar graduated, is that correct?

A. From Voorhees?

Q. Yes. From Voorhees College.

A. I don't whether he did or not because about--whether he finished--when I knew anything, he was in New York.

Q. Okay. Now, I'm going to show--I'm going to show you this document, which is designated Last Will and Testament of Thurman Bomar. See the heading up there, Ms.---

A. Yes.

Q. Okay. Would you look at that second page and tell me if you recognize that as Thurman Bomar's signature?

A. His signature?

Q. Yes, ma'am.

A. It's not on here.

Q. Yes, right here.

A. Oh, oh, no. I don't know anything about this.

Q. Okay.

MR. TALLEY: YOUR HONOR, I THINK WE ALREADY GOT IT AS A--  
THIS LAST WILL AND TESTAMENT INTO THE FILE. I DON'T KNOW IF WE  
NEED TO PUT THIS ONE IN THERE OR NOT.

JUDGE ANDERSON: I DON'T THINK SO.

Q. And how long did you stay in touch with Mr. Bomar, Ms.  
Thompson?

A. Oh, we stayed in touch with one another from the time I left  
Under-Grad and went into Grad School. We stayed in touch all  
the time; then when he would come home, he would--we would see  
one another.

Q. Okay. Now, when you say Grad-School, you mean when you went  
to Grad-School?

A. Yes.

Q. Okay. And when did you go to Grad-School?

A. I went to Indiana University.

Q. Okay. And what--

A. In Bloomington, Indiana.

Q. Okay. And you received a Master's from---

A. Yes---

Q. Indiana University?

A. ---in Librarianship.

Q. Okay.

A. From Bloomington.

Q. Okay. In what years were that?

A. Oh, that was '68.

Q. Okay. Okay. And you and Mr. Bomar stayed in touch?

A. Yes. He came over to see me a few times.

Q. Okay. Okay. Now, did--were you and Mr. Bomar raised basically in the same area of Spartanburg County?

A. Yes. I guess it was about five miles maybe between, but we would always see one another when school was out, you know at church, all the time.

Q. All right. Now, when you first met Laura, do you have an idea of what--how old was Laura at that time when you first met Laura? This was Mr. Rogers's mother.

A. Yeah. I guess she was just a few years older than I was.

Q. Okay.

A. Right.

Q. All right.

A. We went to church together, and I was a friend, and I knew her husband.

Q. Okay. Now---

A. All of the children.

Q. Yeah. Now, Mr. Charlie Bomar, he was a pretty substantial person in the church at that time, an officer of the church?

A. Yes. He had good leadership ability.

Q. Okay.

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A. And I was the first female to be elected in the church on the trustee board.

Q. Okay.

A. And we got to be pretty close.

Q. Okay. Now, did you ever see interaction between him and Laura, Mr. Rogers's mother?

A. Yeah. Because Laura, after I was put on the trustee board at the church, Laura was put on there, too, and we worked together---

Q. Yes, ma'am.

A. ---and got a lot of things done. And because Papa Charlie was the chairperson of the deacons, we got a lot done.

Q. Okay. Now when you say, Papa Charlie, is that Charlie Bomar?

A. Yes. That's what we called him.

Q. Okay. Papa--okay. And he was a member of that church---

A. Yes.

Q. ---also.

A. Yes.

Q. Okay.

MR. TALLEY: YOUR HONOR, I THINK I MIGHT BE ABOUT THROUGH.  
LET ME JUST ASK MY CLIENT.

Q. And I think that you last worked in Spartanburg County as a Librarian. Is that right?

A. Yes.

Q. Okay. And retired in '86?

A. Yes.

Q. Okay. All right. Thank you, very much.

Cross-examination by Mr. Edwards.

Q. Ms. Thompson, the photograph that was put into evidence through you, Thurman Bomar looked like a very young man in that photograph. How old would you say he was when that photograph was taken?

A. Well, let me see. I guess he was in his twenties or thirties.

Q. All right. So that would have been---

A. Hum?

Q. So that would have been in the forties, 1940's?

A. Yeah. Yes.

Q. And so that signature is a fairly old signature, isn't it?

A. Well I wouldn't say because I had several pictures of Thurman. These are just happened to be the one that I got. I had several.

Q. But it was signed about the time that picture was taken. Was it not?

A. What?

Q. It was signed by Thurman Bomar about the same time---

A. Yes.

Q. ---that picture was taken.

A. Uh-hum. (affirmative response.)

Q. And you don't have any signatures closer to 1988, do you to look at?

A. I might.

Q. All right. But---

A. I just--I just didn't look them up because I had to take time to find this.

Q. You acknowledge though a man or a woman's signature can change after thirty or forty years, do you not?

A. I know mine hasn't changed. It's got better.

Q. All right. That's all.

JUDGE ANDERSON: MA'AM, LET ME ASK YOU A QUESTION. THAT'S OBVIOUSLY A COLOR COPY OF A PICTURE. DO YOU HAVE THE ORIGINAL PICTURE AT HOME?

A. It's there.

(Discussion off the record trying to find the original picture.)

JUDGE ANDERSON: WHILE HE'S LOOKING FOR THAT, LET ME ASK YOU A QUESTION. THE--THAT PHOTOGRAPH THAT YOU GOT IN FRONT OF YOU, WHEN DID YOU GET THAT PHOTOGRAPH?

A. It was at my house.

JUDGE ANDERSON: NO, MA'AM. NOT WHERE, HOW LONG HAVE YOU HAD THAT PHOTOGRAPH--THIS PHOTOGRAPH?

A. Oh, I've had this since Grad-School. I guess I was in college.

JUDGE ANDERSON: SO, THAT WOULD HAVE BEEN THE FORTIES OR SO?

A. '46.

JUDGE ANDERSON: OKAY. SO, THAT'S A PICTURE--THAT'S A PHOTOCOPY---

A. But I have---

JUDGE ANDERSON: ---OF A PICTURE THAT YOU GOT FROM HIM?

A. I have pictures of him after he came back from New York, you know, he was living in New York and he came back to South Carolina.

JUDGE ANDERSON: UH-HUM.

A. And we still worked with the church and the trustees.

JUDGE ANDERSON: THANK YOU, SIR. OKAY. THAT'S THE ORIGINAL PHOTOGRAPH?

A. Yes.

JUDGE ANDERSON: OKAY. ALL RIGHT. THANK YOU. I'M GOING TO GIVE THAT BACK TO YOU. I DON'T WANT TO LOSE THAT FOR YOU. ANY OTHER QUESTIONS OF THIS LADY?

MR. EDWARDS: NO, SIR.

JUDGE ANDERSON: OH, I DID HAVE ONE QUESTION. YOU SAID THAT LIZZIE AND HATTIE WERE FIRST COUSINS?

A. Yes.

JUDGE ANDERSON: THAT WAS YOUR UNDERSTANDING?

A. Huh?

JUDGE ANDERSON: YOUR UNDERSTANDING WAS THAT LIZZIE AND HATTIE WERE FIRST COUSINS?

A. Yes.

JUDGE ANDERSON: OKAY. WHICH WAS OLDER? DO YOU KNOW?

A. I--let's see. Lizzie and--I didn't really get to see Lizzie. That was Laura's mother.

JUDGE ANDERSON: UH-HUM. YOU DIDN'T KNOW HER?

A. No. I didn't get to see her. I think she died at an early age, but I knew Ms. Hattie from the beginning.

JUDGE ANDERSON: RIGHT. BECAUSE SHE WAS ALWAYS--SHE WAS ALIVE BEFORE YOU WERE ALIVE AND WAS ALIVE DURING YOUR LIFE?

A. Yeah. Yes. She was in the church.

JUDGE ANDERSON: OKAY.

A. And I knew about them long before I went to school, and our parents were friends.

JUDGE ANDERSON: OKAY. AND YOU'RE ABOUT THURMAN'S AGE, YOU THINK?

A. Yeah. He was eighty-eight.

JUDGE ANDERSON: I DON'T KNOW. LET'S SEE. IT SAYS HE WAS BORN IN 1922. IS THAT ABOUT?

A. Yeah.

JUDGE ANDERSON: ABOUT THE RIGHT TIME? OKAY. ALL RIGHT.  
ANYTHING ELSE?

MR. TALLEY: YOUR HONOR, I'M SORRY. I WANT MS. THOMPSON TO  
BE EXCUSED, IF THERE'S NO OBJECTION.

JUDGE ANDERSON: ANY REASON?

MR. EDWARDS: NO, SIR.

JUDGE ANDERSON: SHE CAN GO.

MR. TALLEY: OKAY.

JUDGE ANDERSON: ALL RIGHT, SIR.

MR. TALLEY: YOUR HONOR, AT THIS TIME, WE WOULD LIKE TO  
CALL MR. ROGERS.

JUDGE ANDERSON: ALL RIGHT.

Willie Rogers, after having first been duly sworn, testified as  
follows:

Direct examination by Mr. Talley.

Q. Mr. Rogers, would you give your name and address for the  
record, please?

A. Willie Alfonso Rogers.

Q. Okay. And where do you live, Mr. Rogers?

A. 205 Lamppost Road.

Q. Okay. And where is that at?

A. It's in Inman, South Carolina.

Q. Okay. Now it's in Spartanburg County?

A. Yes.

Q. Okay. Are you a life-long resident of Spartanburg?

A. Yes.

Q. Okay. And you were--when were you born, Mr. Rogers?

A. April 25, 1942.

Q. Okay. Now, when you were born, would it be fair to say that your grandmother--your grandmother was Lizzie Borgan, right?

A. Lizzie. Yes.

Q. Okay. And she died--she was already dead when you were born?

A. Yes.

Q. Is that right? So you never knew her?

A. I never knew her.

Q. Okay. Okay. And would it be fair to say that she died at around 1923?

A. Yes.

Q. Okay. Okay. Now you went to grade school here in Spartanburg?

A. No. Wellford. The little town of Wellford, South Carolina, is where I graduated.

Q. Yeah. But I mean, you went here in Spartanburg County.

A. Spartanburg County, yes.

Q. Yes. Okay. Now, did you go in the Armed Forces later on?

A. Yes.

Q. And when did you go in the Armed Forces?

A. April 25, 1967.

Q. And where did you serve?

A. Army.

Q. Okay. And where were you stationed?

A. I was stationed in Germany.

Q. Germany?

A. Yes.

Q. And how long were you in Germany?

A. About eleven months.

Q. Okay. And how long did you stay in the Army?

A. Two years.

Q. Three?

A. Two.

Q. Two years. Okay. And then--did you get an honorable discharge when you came out?

A. Yes.

Q. Okay. And what--and what was your position when you were in the Army?

A. Actually I wound up being a mail clerk.

Q. A what?

A. A mail clerk.

Q. Okay. Now, were you familiar with Charlie Bomar?

A. Yes.

Q. And who was Charlie Bomar?

A. My grandfather.

Q. Okay. And when did you first remember Charlie Bomar? How old were you?

A. I was in the early teens. We worked on his farm, peach farm.

Q. Now your grandfather was a peach farmer?

A. Yes.

Q. Okay. And how old were you when you started working on his farm?

A. I would say early teens, maybe fourteen, something--it was the early teens when I, but I worked all my life.

Q. Okay. So about '56?

A. Yes.

Q. Okay. And did you have any other relationship with Charlie Bomar other than working on the farm?

A. Yes.

Q. Okay. And would you please tell the Court what that was?

A. Well after I got out of the service, he asked my mother would I come and cut his yard, do the garden, anything else that needed to be done around the house.

Q. Okay. Did you do that?

A. Yes. I did.

Q. Okay. And what year did you start doing that?

A. That was--at around, I think '70, 1970.

Q. Okay. And how long did you take care of his gardening and yard and other things like that?

A. I did that up until they deceased, and after that Uncle Thurman--I continued through him.

Q. And when you said Uncle Thurman, you mean Thurman Bomar?

A. Yes.

Q. Okay. And with--now your mother, Laura, was living at that time. Isn't that right?

A. Yes.

Q. Okay. And when did your mother pass?

A. I think it was in 1979.

Q. Okay.

A. Uh, '89.

Q. Okay. Now, did Laura, your mother, have a relationship with Charlie Bomar?

A. Yes.

Q. What kind of relationship did she have?

A. Well, they would visit, and---

Q. Okay. When you say they would visit, would you please say who---

A. Okay. More specific. My mother and father would go to their house, and they would also come to our house.

Q. You mean Mr. Bomar?

A. Mr. Bomar. Mr. Bomar and Hattie.

Q. His wife?

A. His wife.

Q. Okay. And how was your relationship with Hattie?

A. It was good.

Q. Okay. And, so would--now did Laura have an on-going relationship with Charlie Bomar?

A. Yes.

Q. Okay. Was there any question, did she--to your knowledge, did Charlie and your mother refer to each other as father and daughter?

A. Yes.

Q. Okay. Now, do you have--now Thurman Bomar, when did you first remember him?

A. Well, when I first started to work as a teenager, he was around, but then after that--shortly after that he was--he went to college or wherever he went, he was gone most of the time.

Q. Okay. Okay. And did--was he--did it ever come a time when he moved back?

A. Yes.

Q. And when did he move back to your knowledge?

A. 1980, it was in the '80s. I think mid '80s, I believe when he moved back.

Q. Okay. Now when he moved back, did you talk to him often?

A. Yes.

Q. Okay. And on what occasion did you talk to him?

A. Well, I would go down there at least twice a week. See, he wanted me to work with him. If he had any problems around the house, he would contact me to get somebody there that could fix it, and plus, I worked in his yard. I worked in the garden, anything that he wanted you know wanted done, they would talk to me about it first.

Q. Now, did you ever perform activities or duties for Charlie Bomar while Thurman was away?

A. Yes.

Q. And what did you do in that situation?

A. Same situation. I cut the grass. I worked the gardens and anything else. They might want me to go get some food or stuff like that.

Q. Okay. Now was Charlie Bomar in pretty good health during that time?

A. Yes.

Q. Okay. All right. Now, and how was your relationship with Thurman when he came back?

A. It was good.

Q. Okay.

A. It was good.

Q. Did y'all ever have a situation--let's say a relationship where you talked a lot or about you know farming or taking care of the yard or anything like that?

A. Yes. And we also, my wife, she got up a cruise, and we asked them to go on the cruise with us, and they went on the cruise with us.

Q. And when you say, they.

A. That was Uncle Thurman and Hattie--Mary.

Q. Okay. Okay. They went on the cruise with you?

A. Yes.

Q. Okay. Now did it come a time where your relationship kind of changed with Thurman?

A. Yes. Shortly after they moved here, he kind of got away from us, and me you know because for some reason his wife kept us apart, Mary kept us apart, and I--I was under the impression that he was afraid of her.

Q. Now--now, how was Thurman Bomar's relationship with your sister and brothers?

A. Well, it was good. At one time, he would get groceries, I mean would get vegetables out of the garden, and carry it to my sister over to my sister's house, and that was to be distributed you know down to the other brothers and sisters, but eventually that stopped.

Q. Okay.

A. And she had a part in that. Mary had a part in that too.

Q. Okay. Now did--were you able to talk to Thurman when you went over to the house?

A. Occasionally, we would talk from the beginning, but it got to the point where if we tried to talk to each other, she would always come around or call him. So we didn't get to talk too much, but we did talk some. He talked about things that happened between Katherine--he told me that Katherine--he had--

MR. EDWARDS: OBJECTION, YOUR HONOR, UNDER THE DEAD MAN'S STATUTE.

MR. TALLEY: YOU CAN'T TESTIFY TO WHAT SOMEBODY, WHAT HE TOLD YOU.

JUDGE ANDERSON: I'LL SUSTAIN THE OBJECTION.

Q. Now, are--okay now, when you were taking care of his parents and taking care of the yard and his property, did Thurman Bomar send you any checks or any checks with his signatures on it?

A. Yes.

Q. Okay. And about how long did that last, the checks with signatures on them?

A. Well, the checks lasted until after they moved here, and after they moved here, his wife started, Mary started writing the checks and then they started declining after that from the original amount that he was to give me.

Q. Okay. Now, let me show you something. Now, I'm going to show you this Last Will and Testament of Thurman Bomar. I want you to look at the second page, his signature, and tell me whether or not in your opinion, that's Thurman Bomar's signature or not.

A. No. It's not.

Q. It's not?

A. No.

Q. Okay. Are you real familiar with his signature?

A. Yes.

Q. Okay. Now, during or when Thurman Bomar passed, do you know who completed or filled out the obituary?

A. I assumed it was Charles and Kathy.

Q. Okay. Okay. Why do you say that?

A. Well, they called my sister and asked her about the nieces and nephews that they had besides Venice and myself.

Q. Okay. And that's how your names--that's how y'all names appeared on the--on the obituary?

A. Yes.

Q. Okay. Mr. Rogers, I'm going to show you a packet and see if you can go through each one of them, and tell if you recognize that document. You can take them loose.

A. Okay. Okay. This was a card that Uncle Thurman sent to his mother and father.

Q. Okay. Now---

A. This is a Christmas card.

Q. Okay. When you said mother and father, you meant---

A. Hattie and Charlie.

Q. Okay. And did he sign that?

A. Yes. He did.

Q. Do you recognize that signature?

A. I sure do.

Q. Is that his signature?

A. That's his signature.

Q. Okay. And the next is his obituary.

A. Yes.

Q. And you and your sisters appear on that.

A. Yes.

Q. Okay. And the next is a deed that has a signature on it.

Do you recognize that signature?

A. No.

Q. You don't recognize that signature?

A. No.

Q. Now, what is the name--what is the signature on here?

A. Look like Thurman L. Bomar.

Q. Do you recognize that as being his signature?

A. That's not his signature.

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Q. Okay. And I'm going to show you another deed, a deed to Katherine Christian. All right. Could you look at that second page of signatures and see if that is his signature?

A. No. That's not his signature.

Q. That's not his signature either?

A. No.

Q. Okay. All right. And some other document, what document is that right there?

A. This comes from some annuals that he gave me a few years back and that is his signature there. This is when he was at Voorhees, I believe.

Q. Voorhees College?

A. Voorhees College. And this is a card here that he sent his mom and dad, which is also in the annual, and that also is his signature.

MR. TALLEY: YOUR HONOR, WE WOULD LIKE TO INTRODUCE THESE AS A GROUP.

MR. EDWARDS: NO OBJECTION.

JUDGE ANDERSON: OKAY. THIS WOULD BE NUMBER FIVE, I BELIEVE.

MR. TALLEY: I THINK I GOT A MESS HERE, JUDGE.

JUDGE ANDERSON: YEAH, OKAY. I'M JUST GOING TO STAPLE THEM TOGETHER.

Q. Okay. Now, the first one is a card you say, Mr. Rogers?

A. Sir?

Q. The first is a card, you say that he sent his mother and father?

A. Yes.

Q. Okay. And that one you recognize?

A. Yes.

Q. Okay. Could you give us the second one? The second one is what?

A. Of his signature?

Q. No. That's an obituary and that's where you and your siblings appear on the obituary of Thurman Bomar.

A. Oh, yes. This is the obituary.

Q. And the third one?

A. I think this is pertaining to---

Q. A deed?

A. A deed.

Q. All right. And who was the deed from to? From and to?

A. Well it's from Thurman Bomar and---

Q. Who is it to?

A. Mary L. Bomar.

Q. Okay. And this signature, is that his signature--I think that's your testimony.

A. No. That's not his signature.

Q. Okay. And the next one?

A. This is a deed.

Q. Okay. This is a deed. Who is that deed to? From and to?

A. Okay. Thurman L. Bomar, Mary Bomar.

Q. And to Katherine Christian.

A. Katherine Christian.

Q. Okay. Is that Mr. Bomar's signature on the second page?

A. No.

Q. Okay. And the next document? These are--is that your testimony that's the one from Voorhees College?

A. Yes, sir.

Q. Okay. Is that his signature?

A. No. That's not his signature. Oh, that's his signature. Yes. This is his signature.

Q. Okay.

A. And this is another--that was from the same--this is his signature of the same.

Q. Okay. All right. And this card here?

A. Yeah. That's his signature.

MR. TALLEY: AND I THINK THAT'S ALREADY IN THERE WITH THAT, JUDGE. I DON'T KNOW IF WE NEED TO JUST LEAVE IT ON THE DESK.

JUDGE ANDERSON: WELL, IF YOU NEED IT SOME MORE, JUST KEEP IT.

MR. TALLEY: OKAY.

Q. Now, Charlie Bomar died when, in '92?

A. I would say yes. It's some time, I can't recall dates.

Q. Okay. Now, do you remember when you first met Mr. Charles Carr and his two sisters?

A. It was right after my uncle and Aunt Mary--Thurman Bomar and Mary Bomar moved here from Brooklyn, New York.

Q. Okay. And what was the occasion when you met them?

A. Well, I was more--I was cutting the lawn, and I went down and they was here. I was cutting his grass or doing something around the house when I first met them.

Q. Okay. Did you talk to them?

A. Yes. I talked to them.

Q. Okay. And did you introduce yourself?

A. My uncle did.

Q. Okay. And what did your uncle say?

A. He said, "This is my nephew, Willie Rogers."

Q. Now, was there any---

MR. EDWARDS: I OBJECT AGAIN TO THE HEARSAY.

MR. TALLEY: OKAY.

JUDGE ANDERSON: I SUSTAIN.

MR. TALLEY: OKAY. YOU CAN'T TESTIFY TO WHAT SOMEONE--TO WHAT MR. BOMAR TOLD YOU---

A. Well.

MR. TALLEY: WHAT THURMAN---

Q. But was there any question that Mr. Charles Carr knew you were Thurman Bomar's nephew?

A. He knew.

Q. Sir?

A. He knew that we was nieces and nephews. He knew the whole family.

Q. Okay. Now, did you ever have him and his sisters over at your house?

A. Yes. And he and my brother went out on occasions too. I mean we went to night spots. We went there a few times. I had them over for dinner and they knew.

Q. Okay. So it wasn't no secret what your relations to Thurman Bomar?

A. No. It wasn't no secret.

Q. Okay. So in 2011 when Thurman Bomar died, would you say that Charles Carr knew that you were a nephew of Thurman Bomar?

A. Yes. He knew. He and Kathy knew.

Q. Okay.

A. Kathy knew.

Q. And I think her testimony was she helped them inside the house and you did a lot of the yard work. Is that the way it was?

A. Yes. She also had a lady to come by and help clean up for a period of time, I guess some time once or twice a week.

Q. Okay. So would you say that you had a close relationship with Thurman Bomar?

A. Yes.

Q. What about Charlie and Hattie?

A. Charlie, oh yes. Yes. I did.

Q. And to your knowledge, did your mother ever live or visit or stay over at Charlie and Hattie's house on any occasion?

A. Yes.

Q. Okay. Okay. And did Charlie financially support your mother?

A. Yes.

Q. Was there any question in your mother's mind that Charlie was her father?

A. No question at all.

Q. Okay.

A. He would send her monies at times.

Q. Okay. To your knowledge, did Thurman Bomar accept your mother as his sister?

A. He sure did.

Q. Okay. Was there any kind of a relationship between Thurman Bomar and your mother?

A. That was a good relationship.

Q. Okay. Did they visit each other?

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A. Sure, they did. Well, she didn't go to New York, but when he was home--come home visiting his parents, Charlie and Hattie, he would come over and my mom would do the same.

Q. Okay. Okay. Now, you don't have any knowledge what happened between 1919 and 1923?

A. I'm afraid not.

Q. Okay. You was only born in 1942?

A. Yes.

Q. And your other sisters and brothers are younger than you, aren't they?

A. Yes. They are younger than I am.

MR. TALLEY: YOUR HONOR, THAT'S ALL THE QUESTIONS THAT I HAVE OF MR. ROGERS.

Cross-examination by Mr. Edwards.

Q. Mr. Rogers, it's been asked and answered I think, but I need to make sure we've got it on the record here. Your grandmother, Lizzie Burgan, never married Charlie Bomar, did she?

A. As far as I know, they didn't.

Q. All right. Now, on the Form 300 Petition--on the Form 300 Petition, it not only asked for the names of the intestate heirs, it asked for dates of birth. You would not expect Charles Carr to know the dates of birth of you or your brothers and sisters, would you?

A. No. But they could find out. They have called for information.

Q. And it does say on here, P. R. to try to find out.

A. Well, they didn't.

Q. All right. Now, it also has a place to list the addresses of all the heirs. He wouldn't know all of the brothers and sisters' addresses.

A. But he could have called my sister or myself. He didn't try to find out.

Q. But again, it says here, P. R. to try and find out. And now, you are one of six children of Laura, aren't you?

A. Yes. I am.

Q. And he knew you better than he knew the other brothers and sisters, didn't he?

A. Well, I would--I can't say because my sister visited them in New York. I don't know how many times or what occasions, but they knew her as well. I was probably around them on more occasions because when they come in sometimes, I would be working for my grandfather, Charlie, and Hattie--I mean not Charlie and Hattie, Uncle Thurman and Aunt Mary. So I would say I was around them a bit more than the rest of the family.

Q. Okay. Now, those signatures too that you put in of Thurman Bomar, some of those went way back to 1943 I saw them there.

Didn't they?

A. I don't know.

Q. And would you admit that a man or a woman's signature can grow different and appear different after a thirty or forty year---

A. I don't think mine has changed that much.

MR. EDWARDS: YOUR HONOR, MAY I USE THE PASSPORT A MINUTE?

JUDGE ANDERSON: YEAH.

Q. Mr. Rogers, this passport here has been offered into evidence.

A. Uh-hum.

Q. And I would ask you if that passport signature, does that look like Mr. Bomar's?

A. It doesn't to me.

Q. All right. Have you got any reason to believe that someone would have forged Mr. Bomar's signature on a passport?

A. I wouldn't doubt it.

Q. Why would someone forge his signature on a passport?

A. Well, people do all kind of things whenever they want something done. So I wouldn't doubt the fact that that somebody else did it.

Q. All right. Now, this deed here that you said this does not appear to be his signature on this deed either. Didn't you?

A. That's exactly right.

Q. All right. This witnesses name here, do you know what his name was? Can you read that?

A. I see, does that look like Michael?

Q. Michael N. Duncan.

A. Uh-hum.

Q. Do you know who Michael N. Duncan was?

A. I think that was the gentleman in here a few minutes ago, wasn't it?

Q. No. I don't believe it was, but do you know that Mr. Duncan was a lawyer here for about twenty or thirty years before he passed away?

A. I don't know Mr. Duncan.

Q. And no reason to believe that Mr. Duncan would have tolerated any forgery on a deed.

A. I don't know.

Q. All right. Now, you've heard the testimony that around 2003 Thurman Bomar began to become more senile and demented. Is that correct?

A. I didn't pick up on it at that particular time. He might have--he might have had a trace of it. I don't know.

Q. When did you think he began to become senile?

A. Well, I think it was in probably maybe about five to six years ago.

Q. And is it after that time when Mary Bomar began to answer for him and write checks for him and all?

A. No. It was before that time. She stopped everything before he--they even stopped him from driving.

Q. But it's understandable if he was beginning to have trouble doing things like that that she would step up for him being his wife. Isn't it?

A. Well, she stepped up for him before I noticed the fact that he was having problems with dementia or whatever they call it. It wasn't that long ago because he left her about four years ago, three or four years ago. He left her. He left Mary. Uncle Thurman left Mary Bomar, and he was driving at that particular time.

Q. In what sense do you mean he left her?

A. He took off in his car.

Q. Was he becoming senile at that time?

A. I think he become teed off.

Q. But at any rate though, that didn't last very long. They got back together and he was living with her when he passed away.

A. Yeah. They got back together. They got back together.

Q. At one time under the Responses to Interrogatories, it states here Mr. Willie Rogers will further testify Mr. Bomar

moved back to Spartanburg in 1975. Did you ever tell that to Mr. Talley?

A. I had said--stated before I get confused with dates.

Q. Okay.

A. Years and dates is not my thing. I can't recall but so--you know I can recall some things but I don't know what year--I only listened to what they said, and then I--you know. It seems about right from what they're saying.

Q. So this was a ten-year error here? Are you sure about the rest of your testimony though?

A. Yes. I am sure. A lot of those testimonies don't have dates to them.

MR. EDWARDS: NOTHING FURTHER.

JUDGE ANDERSON: MR. TALLEY?

MR. TALLEY: YOUR HONOR, I DON'T HAVE ANY MORE QUESTIONS FROM MR. ROGERS.

JUDGE ANDERSON: LET ME ASK A QUESTION, MR. ROGERS.

A. Yes, sir.

JUDGE ANDERSON: WHEN YOUR MOTHER PASSED AWAY, WHEN DID SHE DIE?

A. I believe it was 1987.

JUDGE ANDERSON: '87. DID Y'ALL COME DOWN AND OPEN UP AN ESTATE FOR HER DOWN HERE?

A. Uh-hum. (affirmative response.)

JUDGE ANDERSON: OKAY. AND DO YOU KNOW WHAT HER DATE OF BIRTH WAS?

A. No.

JUDGE ANDERSON: AND BY FAMILY HISTORY, WHEN WERE YOU TOLD THAT LIZZIE PASSED AWAY?

A. At a early age, my mother told me.

JUDGE ANDERSON: CAN YOU--DO YOU KNOW ABOUT I MEAN YOUR MAMMA WAS YOUNG.

A. Yes. When I--when she told me about Lizzie, I guess I was probably about, from my recall, I was probably about nine or ten.

JUDGE ANDERSON: OKAY. I MEAN DO YOU KNOW WITHIN A COUPLE OF YEARS, DATES AS TO WHEN LIZZIE SUPPOSEDLY DIED?

A. No. I don't know anything about when my grandmother died. I wasn't born, and I never did--they didn't have any records of that.

JUDGE ANDERSON: ALL RIGHT. YOU CAN STEP DOWN. HOLD ON JUST ONE SECOND. WHAT ARE YOU LOOKING FOR?

MR. TALLEY: JUDGE, I WAS JUST TRYING TO SEE IF I COULD FIND THE DOCUMENTS ON THE DATES.

JUDGE ANDERSON: OKAY.

MR. TALLEY: BUT YOUR HONOR, WE WOULD ASK FOR TEN MINUTES TO GO UPSTAIRS AND SEE IF WE CAN FIND CHARLES TURNER. HE'S A

BAILIFF IN FAMILY COURT, AND WE NEED TO TRY TO FIND HIM, AND GET HIM DOWN HERE.

JUDGE ANDERSON: OKAY. WE'LL TAKE A BREAK.

MR. TALLEY: YOUR HONOR, WE CALL MR. CHARLIE TURNER. IT'S OUR LAST WITNESS.

JUDGE ANDERSON: ALL RIGHT, SIR. MR. TURNER.

MR. TURNER: YES, SIR.

JUDGE ANDERSON: COME ON UP. I'LL GIVE YOU A CHANCE TO SIT SOMEWHERE DIFFERENT.

Charlie Turner, after having first been duly sworn, testified as follows:

Direct examination by Mr. Talley.

Q. Mr. Turner, would you please give your name and address for the record, please?

A. Charles McCauley Turner, 197 Baswin Drive, Inman, South Carolina.

Q. Okay. Is this home, Spartanburg County?

A. Born and raised here.

Q. Okay. And did you have--did you have your--did you go to school--finish grade school here?

A. I did, sir.

Q. Okay. And at some point in time, you left Spartanburg to work.

A. In 1947.

Q. And where did you go?

A. I went to Fayetteville, North Carolina, to attend the state college.

Q. Okay. And did you eventually start working for the weather station?

A. Yes. In 1959.

Q. And what did you work for them there--where did you work for the weather station?

A. Beginning in Asheville, North Carolina, and the whole history, I moved from there to Washington, D. C., from there to Alaska, from there to Kansas City, Kansas City to Philadelphia, back to Washington, and retired.

Q. Okay. And I think this is the North Oceanic Atmosphere Administration.

A. National Oceanic Atmospheric Administration.

Q. Okay. All right. And you retired back home?

A. I did.

Q. Okay. Now as--did you know Thurman Bomar coming up?

A. Born and raised right next door, and lived there for the whole--except for the time I was on the job that I just described.

Q. Okay. And y'all grew up together?

A. Absolutely. Yes, sir.

Q. Okay. And were you and Thurman Bomar in school together?

A. Grade school.

Q. Grade school.

A. Uh-hum. (affirmative response.)

Q. Okay. And were y'all in the same class?

A. No. He was about four or five years older than I am. So he was ahead of me.

Q. Okay. And, now when you came up, were ya'll friends?

A. Not only friends, relatives.

Q. Okay. And what relative were you to--what relation were you to Thurman?

A. Cousin.

Q. Okay. All right. And when did you--now when did you and Thurman Bomar go separate ways I guess after y'all came up?

A. I guess the year was '47, '47 when I finished high school.

Q. Okay. And you went to---

A. Fayetteville.

Q. Fayetteville State University College.

A. Yes.

Q. And where did Mr. Bomar go?

A. He went to Voorhees.

Q. Okay. Okay. And to your knowledge, did he graduate from Voorhees?

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A. I really don't know whether he graduated from Voorhees. I'm almost sure he did because at the time I think it was a two-year college, and I would almost say yes, he did.

Q. Okay. Now did you and Mr. Bomar stay in touch over the years?

A. We were not as much in touch after the '50s as we were before.

Q. Okay.

A. But we maintained you know a good relationship. We would see each other maybe twice a year, I would put it that way.

Q. Okay. Would y'all--now did y'all have any social activities together or dinners?

A. At family gatherings, yes.

Q. Okay. And about how many family gatherings would you go to say in a year's time?

A. Anywhere from four to five.

Q. Okay. Would you ever come back to visit Spartanburg when you were working away?

A. Did I ever come back here?

Q. Yes, sir.

A. Quite often.

Q. Okay. And when you came back to Spartanburg, did you ever see Thurman Bomar?

A. Until he moved to New York.

Q. Okay. All right. And then he was in New York how long would you think he would be up there?

A. I would say Thurman you know I really don't know.

Q. Did it come a time where you and Thurman both came back to live in South Carolina?

A. Yes.

Q. And about what year was that?

A. I want to be correct about this. You know I'm afraid to name a year. I don't want to be wrong, but I remember the times. I remember when Thurman's father and mother were growing pretty old, and they lived, as I said, next door to me up in the Inman, Shady Grove area on Farm Ground.

Q. Okay.

A. There were no public transportation near where they lived, and when he decided to go to New York, he wanted his mother and father to be near public transportation where they could get to the market, doctor, and this kind of stuff. So that's when he bought the land up on New Cut Road, and built a home for them right at the end of the bus line where they would be eligible for those services--for those services.

Q. Okay.

A. And now what year that was, I would be afraid to say.

R-164

Q. Okay. Did it come a time where you were not--you and Thurman Bomar did not have activities together or you didn't go to family gatherings?

A. Oh, no because I visited him quite often after he came home from retirement you know.

Q. Okay.

A. Yeah.

Q. And were you familiar with Laura the--Willie's mother?

A. Growing up.

Q. Okay. And what do you remember about her growing up?

A. Well, she was in and out of Cousin Hattie's, Thurman's mother, home quite often.

Q. Okay. Now, when you say Cousin Hattie---

A. That's Mr. Bomar's mother.

Q. Okay. Okay.

A. Thurman's mother.

Q. All right. And Laura was in the home a lot?

A. She was there quite often.

Q. Okay. And now--so about how long did that go on with Laura being in the home with Charlie Bomar and Hattie?

A. Until death took them out of this world.

Q. Okay. Okay. All right. I'm going to--just one more question. All right. Now, did you ever socialize with Thurman and his wife, Mary, at any time?

A. Yes. I would--I'll put it this way, when Thurman--when I moved back home, Thurman was getting up in age, and my wife and I would go by and carry meals when we'd be out eating, and say, let's take Thurman and Mary a meal you know, this kind of social acts, and we wanted them to have this meal as warm as possible. So we would say, "Okay, we brought you some food, we want you to go ahead and eat, we'll just move on and get out of the way where you can eat." And that was the kind of thing you know that happened with us. I don't ever recall them saying you know sit down and we'll eat while you're here you know, but we just moved on out of their way so they could eat. So it wasn't a whole lot of socializing. We just wanted to make sure they had food.

Q. Okay. And did you have any contact with Laura when you came back?

A. Not lately. Not lately.

Q. Okay.

MR. TALLEY: YOUR HONOR, THAT'S ALL THE QUESTIONS WE GOT.

Cross-examination by Mr. Edwards.

Q. Now, it was about '47 when--1947 or so when you and Mr. Bomar went your separate ways. Does that sound about right?

A. '47, 1947.

Q. And he was unmarried?

A. He was unmarried.

Q. And to the best of your knowledge, he never had any natural children, did he?

A. He never had what?

Q. Any natural children of his own?

A. Not to my knowledge.

Q. All right, sir. And best you knew, he had moved off to New York. Is that your memory?

A. He--repeat your question.

Q. You remember he moved off to New York City?

A. Oh, yeah.

Q. And it would be natural for a thirty-year-old man to look for a mate, would it not?

A. Well, I have to go back in history with Thurman. He was not just a guy who would go out looking for any person as a marriage. You know he was in love at once in a younger age, and he missed that marriage. So it took a good while for him to find the person that he thought would make a good mate.

Q. Uh-hum. But you can understand how it's possible he formed a family unit up there in New York that you never knew anything about.

A. That could be possible, but not likely.

Q. All right. But you didn't see him until he came back---

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A. Oh, oh, we saw each other. We saw each other. I'd see him in New York or at home or in Philadelphia or wherever. We saw each other. Yeah.

Q. So you visited with him and Mary in New York some?

A. Say again?

Q. Did you visit with he and his wife Mary in New York some?

A. I met them a couple of times. Yes. I didn't visit their home or anything, but I met them.

Q. Just met them in New York City?

A. At some gathering that my family was having in New York.

Q. Nothing further.

MR. TALLEY: YOUR HONOR, WE HAVE NO MORE QUESTIONS, YOUR HONOR.

JUDGE ANDERSON: ALL RIGHT. Y'ALL BUSY UPSTAIRS TODAY?

A. We--this is our most busiest day, Your Honor.

JUDGE ANDERSON: WELL GET ON BACK UP THERE AND TAKE CARE OF THEM.

A. I appreciate that.

JUDGE ANDERSON: THANK YOU FOR COMING DOWN.

A. Thank you.

MR. TALLEY: JUDGE THE ONLY OTHER THING IS WE WANT TO HAND UP JURY INSTRUCTIONS. WE'VE GIVEN MR. EDWARDS A COPY, AND I DON'T KNOW IF HE HAS ANY OBJECTIONS.

JUDGE ANDERSON: WELL, I AIN'T GOT NO JURY, BUT WHAT HAVE WE GOT, A STATEMENT OF LAW OR SOMETHING?

MR. TALLEY: YES.

MR. EDWARDS: A STATEMENT OF LAW. I LOOKED AT THEM AND THEY ARE A LITTLE BIT ONE SIDED. I DON'T HAVE ANY OBJECTION TO THEM, BUT I WANT THE JUDGE TO KNOW THERE'S OTHER LAW AS WELL.

JUDGE ANDERSON: OKAY.

MR. TALLEY: OKAY.

MR. EDWARDS: JUDGE, IF THAT COMPLETES THEIR CASE, WE'D LIKE TO MAKE A MOTION FOR THE RECORD.

JUDGE ANDERSON: YES, SIR.

MR. EDWARDS: YOUR HONOR, I WOULD MOVE FOR A DIRECTED VERDICT IN FAVOR OF THE DEFENDANTS ON THE GROUND THAT THE BURDEN OF PROOF IS ON THE ROGERS'S AND THAT THEY HAVE NOT PROVED HEIRSHIP. THEY ALLEGED THAT THEY ARE NIECES AND NEPHEWS AND THE EVIDENCE BEARS OUT THAT UNDER THE PROBATE LAW PATERNITY WAS NOT ESTABLISHED THROUGH CHARLIE BOMAR. THEY'RE NOT INTERESTED PARTIES, AND HAVEN'T MET THE BURDEN OF PROOF SHOWING STANDING. AND ON THE FORGERY ISSUE, I REALIZE THIS IS A JUDGE TRIAL INSTEAD OF A JURY TRIAL, BUT STILL I DON'T BELIEVE THERE'S ANY BELIEVABLE EVIDENCE OF ANY FORGERY. EVEN DOCUMENTS SUCH AS THE PASSPORT WHERE THERE WOULD BE NO MOTIVE TO FORGE ANYTHING, THE LEGAL DOCUMENTS THAT WE HAVE ARE WITNESSED BY ATTORNEYS OR ATTORNEY MICHAEL DUNCAN OF LONG-STANDING HERE IN SPARTANBURG,

AND LEGAL SECRETARIES AND THINGS. AND ON UNDUE INFLUENCE, I DON'T SEE AS THERE IS ANY EVIDENCE TO SUSTAIN ANY UNDUE INFLUENCE. I THINK THE CASES READ THAT IT MUST BE THE TYPE OF INFLUENCE THAT WOULD DOMINATE THE TESTATOR'S WILL AND DESTROY THE TESTATOR'S FREE AGENCY AND DISPLACE HIS ABILITY TO ACT ON HIS OWN. SO WE MOVE FOR DIRECTED VERDICT ON THOSE GROUNDS.

JUDGE ANDERSON: ALL RIGHT. MR. TALLEY.

MR. TALLEY: YOUR HONOR, AND OF COURSE, WE WOULD OBJECT. WE DON'T THINK THAT THEY HAVE SHOWN THAT THEY ARE ENTITLED TO DISMISS THIS CASE UNDER 62-2-109. I THINK WE HAVE ADEQUATELY--I DON'T THINK THEY CAN GET AROUND AND DISPROVE SUBSECTION ONE OF THAT SECTION, AND ALSO, YOUR HONOR, I THINK THAT THE WILL ESTABLISHED THAT LAURA BOMAR WAS NOT ONLY THE DAUGHTER OF CHARLIE BOMAR, BUT THAT SHE WAS RAISED AND FINANCIALLY SUPPORTED BY NOT ONLY CHARLIE BOMAR BUT HATTIE BOMAR, AND THAT THEY BOTH RECOGNIZED HER AS THEIR DAUGHTER. AND YOUR HONOR, WE STILL HAVE A POSITION THAT 62-2-109 IS UNCONSTITUTIONAL INASMUCH AS IT SEEKS TO TREAT ILLEGITIMATE KIDS DIFFERENT FROM LEGITIMATE KIDS. AND THE DEFENDERS DON'T HAVE ANY PROOF TO PROVE THAT A CEREMONY EVEN THOUGH IT MIGHT BE INVALID DID NOT TAKE PLACE BETWEEN LIZZIE AND CHARLIE BOMAR FROM 1919 TO 1923 WHEN LIZZIE BOMAR DIED BECAUSE IT IS OUR UNDERSTANDING HE DIDN'T MARRY HATTIE.

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JUDGE ANDERSON: WELL ACTUALLY, THERE'S NO TESTIMONY WHEN SHE DIED, AND THERE'S NOT REALLY ANY TESTIMONY ON WHEN SHE-- LAURA WAS BORN. WE DON'T HAVE ANY DATES ON THOSE ITEMS.

MR. TALLEY: WELL I THINK THERE WAS TESTIMONY THAT HATTIE-- HE MARRIED HATTIE. I THINK MR. ROGERS TESTIFIED HE WAS BORN IN '42, AND HE THOUGHT HIS MOTHER DIED IN '23, AND THAT HATTIE---

JUDGE ANDERSON: OF COURSE, THAT'S YOU KNOW.

MR. TALLEY: AND THAT HE MARRIED HATTIE AFTER LIZZIE, HIS GRANDMOTHER DIED, AND I'M TALKING ABOUT CHARLIE BOMAR---

JUDGE ANDERSON: UH-HUM.

MR. TALLEY: MARRIED HATTIE AFTER HIS GRANDMOTHER DIED. SO IT HAD TO BE AFTER '23.

JUDGE ANDERSON: UH-HUM.

MR. TALLEY: OR AROUND THAT ERA.

MR. EDWARDS: THERE IS EVIDENCE, OF COURSE, THAT CHARLIE BOMAR'S PASSED AWAY. WE HAVE PUT IN HIS DOCUMENT FROM HIS PROBATE COURT FILE.

JUDGE ANDERSON: WELL HAS ANYBODY GONE OVER AND LOOKED AT OUR RECORDS TO SEE WHEN ANYBODY DIED OR ANYBODY GOT MARRIED?

MR. EDWARDS: I DIDN'T LOOK AT MARRIAGE LICENSES. I LOOKED AT THE--THOSE TWO ESTATE FILES THAT I TOLD YOU OR THAT I PRESENTED THERE.

JUDGE ANDERSON: UH-HUM.

MR. EDWARDS: AND I THINK I CHECKED FOR A LIZZIE BOMAR, AND I DON'T THINK I FOUND ANYTHING ABOUT THAT, AND I DON'T KNOW ABOUT LAURA BURGAN, I MEAN NOT LIZZIE BOMAR, LIZZIE BURGAN. I'M NOT SURE THAT I DID LOOK HER UP ESTATE FILE.

JUDGE ANDERSON: OKAY.

MR. TALLEY: JUDGE, I THINK THAT WE HAVE---

JUDGE ANDERSON: WE'LL WAIT A SECOND TO SEE WHAT YOU GOT.

MR. TALLEY: YOUR HONOR, WE HAVE A OBITUARY HERE OF LAURA BURGAN. SHE WAS BORN FEBRUARY 11, 1920, AND SHE DIED AUGUST 16, 1997. DO YOU WANT TO SEE IT?

MR. EDWARDS: NO.

JUDGE ANDERSON: WHAT'S THAT, THE LITTLE THING FROM THE FUNERAL THE FUNERAL HOME PRINTS OUT?

MR. TALLEY: YES, SIR. THIS IS A OBITUARY PRINTED OUT BY THE FUNERAL HOME, SULLIVAN BROTHERS OUT OF GREER.

JUDGE ANDERSON: OKAY. WELL, Y'ALL HAVE GIVEN ME AN AWFUL LOT OF THINGS UP HERE, AND YOU GOT A LOT OF LEGAL ISSUES DEALING WITH YOU KNOW DIRECTED VERDICT, SUMMARY JUDGMENT, AND ALL OF THAT, AND I'LL HAVE TO FIGURE OUT SOME OF THAT, BUT I'LL GO AHEAD AND TELL YOU WHAT MY RULING IS THOUGH. BASED ON WHAT I'VE SEEN, THERE IS NOTHING THAT I HAVE HEARD THAT CONVINCES ME NOT TO ADMIT THIS WILL INTO PROBATE. IT'S A SELF-PROVING WILL. IT WAS NOTARIZED AND ONE OF THE WITNESSES--THEY DIDN'T HAVE TO HAVE

A WITNESS HERE TODAY, BUT THEY DID. SHE SAYS THAT'S HER SIGNATURE. THE FACTS OF IT MAKES ME THINK THAT IT ACTUALLY WAS DONE IN 1988 SINCE THAT'S ABOUT THE TIME THAT MR. HODGE HAD AN OFFICE NEXT TO HIS DADDY'S DOCTOR'S OFFICE. THE ISSUE OF UNDUE INFLUENCE, THERE BASICALLY ALMOST, THERE'S SOME TESTIMONY, BUT IT'S VERY WEAK. IT TAKES A LOT MORE THAN THAT TO PROVE UNDUE INFLUENCE AND IT'S A 1988 WILL. THAT THING HAS BEEN LAYING AROUND FOR, I CAN'T ADD IT UP, BUT QUITE A WHILE. SO IT'S NOT LIKE YOU KNOW SOMEBODY GOT HIM TO SIGN A WILL, AND HE DIES THE NEXT DAY. HE'S HAD DECADES TO CHANGE THAT WILL, IF HE WANTED TO CHANGE IT, AND APPARENTLY NEVER DID. THE--AS FAR AS THE SIGNATURE GOES, I UNDERSTAND THERE IS TESTIMONY AND IT IS A 1940 SIGNATURE, THAT LOOKS ONE WAY AND YOU'VE GOT A FEW OTHER THINGS, BUT YOU GOT YOU KNOW, AND FROM WHAT I CAN REMEMBER ABOUT PASSPORTS, YOU KNOW YOU SIGN THESE ONCE YOU GET THEM. SO IT'S NOT LIKE--YOU'D HAVE TO LOOK AT THE APPLICATION FOR THE PASSPORT TO SEE WHAT HIS SIGNATURE LOOKED LIKE ON THE APPLICATION BECAUSE THOSE WERE SIGNED KIND OF LIKE A FISHING LICENSE, YOU SIGN THEM AFTER YOU GET THEM. SO, I DON'T KNOW WHO ACTUALLY SIGNED IT, BUT YOU KNOW IT IS HIS PASSPORT. YOU ALSO HAVE A NUMBER OF DEEDS AND DOCUMENTS THAT HAVE BEEN NOTARIZED AND I'M NOT A SIGNATURE EXPERT AND NEITHER IS YOUR CLIENT AND NEITHER IS MS. THOMAS, BUT LOOKING AT THOSE DOCUMENTS, THERE WERE SEVERAL DEEDS. ONE WAS SIGNED BY MICHAEL DUNCAN, AND WAS NOTARIZED BY

MICHAEL DUNCAN, MEANING MICHAEL WAS SWEARING THAT MR. THURMAN BOMAR SIGNED IT IN FRONT OF HIM. I HAPPEN TO HAVE KNOWN MICHAEL DUNCAN FOR QUITE A FEW YEARS, AND HE WAS KIND OF TAUGHT AT THE LAP OF CLAUDE DUNBAR AND THERE WAS NEVER A MORE IRRITATING ATTORNEY THAN CLAUDE DUNBAR IN SPARTANBURG COUNTY, MAINLY BECAUSE CLAUDE WOULD JUST DRIVE YOU NUTS WITH HOW PICKY HE WAS AND MIKE PICKED UP AN AWFUL LOT OF THAT. AND MIKE WAS VERY PARTICULAR ABOUT HIS DOCUMENTS, AND SO HE NOTARIZED ONE OF THE SIGNATURES THAT LOOKS VERY MUCH LIKE THAT PASSPORT, AND LOOKS VERY MUCH LIKE THE WILL. JOE MADDOX ANOTHER RATHER FINICKY LAWYER WITNESSED AND NOTARIZED ANOTHER ONE OF THOSE DEEDS, AND THAT SIGNATURE LOOKS AN AWFUL LOT LIKE THAT WILL AND LIKE THE PASSPORT. DONNA THOMAS WHO WAS THE CLERK OF COURT HERE FOR I GUESS THIRTY YEARS, SHE WITNESSED ONE OF THOSE DOCUMENTS, AND NOTARIZED IT RIGHT OUTSIDE IN A ROOM RIGHT AROUND THE CORNER WHEN--BECAUSE IT'S HER NOTARY ON IT, AND ONE OF OUR OTHER EMPLOYEES WITNESSED THE OTHER SIGNATURE. SO WE'VE GOT QUITE A FEW NOTARIES AND WITNESSES OF PEOPLE, OF LAWYERS, AND OF COURT EMPLOYEES WHAT NOT OF SIGNATURES THAT LOOK JUST LIKE THAT WILL SIGNATURE. SO FRANKLY, YOU KNOW LOOKING AT ALL THE NOTARIZED STATEMENTS, LOOKING AT THE FACT THAT IT IS A SELF-PROVING WILL THAT WAS NOTARIZED BACK THEN, I DON'T HAVE ANY DOUBT IN MY MIND THAT THAT IS HIS SIGNATURE. NOW, I NOTICED HIS SIGNATURE LOOKS A LITTLE DIFFERENT ON SOME OF THOSE THINGS THAT YOU HAVE AND HE

KIND OF WENT FROM RIGHTY TO LEFTY ON SOME OF THEM. BECAUSE I NOTICED EARLY ON HE TENDED TO HAVE A FORWARD SLANT AND THEN SOME OF THE ONES THAT YOUR CLIENT IDENTIFIED AS BEING HIS SIGNATURE HAD GONE TO MORE OF AN UPRIGHT SLANT, AND THEN LATER IN LIFE, THEY'VE GONE BACK TO A LEFTY SLANT, IS WHAT IT LOOKS LIKE. BUT THERE'S SO MANY SIGNATURES ON SO MANY NOTARIZED AND WITNESSED DOCUMENTS THAT LOOK LIKE THAT WILL THAT I DON'T HAVE ANY DOUBT IN MY MIND THAT THAT IS HIS SIGNATURE AND THAT SELF-PROVING WILL IS ENTITLED TO BE ADMITTED TO PROBATE. HAVING SAID THAT, THERE'S REALLY NOT ANY REASON TO GET INTO THE FAMILY DYNAMICS OF WHO IS WHOSE CHILD. FRANKLY, OTHER THAN DOING--NO, I DON'T KNOW HOW YOU'D DO THE D.N.A. ON THIS THING, HOW YOU WOULD EVEN PROVE IT. THE FACT THAT LAURA WAS TAKEN CARE OF IN CHARLIE'S HOUSE, TO ME, SEEMS YOU COULD LOOK AT IT THE OTHER WAY AROUND, YOU KNOW, MAYBE IT'S NOT SO MUCH CHARLIE TAKING CARE OF LAURA AS IT IS HATTIE TAKING CARE OF LAURA BECAUSE WE KNOW THAT SHE'S HATTIE'S BLOOD BECAUSE SHE'S HER COUSIN. THE TESTIMONY WAS LIZZIE AND HATTIE ARE COUSINS. SO WE KNOW THERE'S BLOOD ON HATTIE'S SIDE OF THE FAMILY, WHICH MIGHT EXPLAIN THE CLOSENESS AND IF SHE DIED, IF LIZZIE DIED AT A VERY YOUNG AGE, HATTIE MAY HAVE STEPPED IN ALMOST AS A MOTHER FIGURE MORE SO THAN CHARLIE AS A FATHER FIGURE, BUT AND EVEN MS. THOMAS CALLS CHARLIE, PAPA-CHARLIE. SO I'M NOT SURE BEING PAPA, BUT YOU KNOW YOU MAY VERY WELL BE BLOOD RELATED, I MEAN I NEVER SAW PICTURES OTHER THAN

THIS ONE. I DON'T KNOW WHETHER Y'ALL ARE RELATED OR NOT RELATED. OBVIOUSLY BY KINDRED SPIRIT AND BY LIVING TOGETHER, IF YOU'RE NOT BLOOD RELATED, YOU MIGHT AS WELL BE. I MEAN Y'ALL GREW UP TOGETHER AND LOOKS LIKE HE TREATED Y'ALL AS KIDS OR GRANDKIDS, AND Y'ALL TREATED HIM AS GRANDFATHER, BUT ON THE ISSUE OF BEING ABLE TO PROVE IT AT THIS POINT, I THINK THERE IS A LEGAL PROBLEM THERE AND I THINK IT BEARS AGAINST YOU IN THAT I TEND TO AGREE WITH MR. EDWARDS'S POSITION OF FOR YOU TO TAKE, YOU HAVE TO PROVE THAT LAURA IN THE STATUTE THAT HAS BEEN INTERPOSED, WHETHER IT'S A GOOD STATUTE OR A BAD STATUTE, STATES THAT TO DO THAT YOU HAVE TO PROVE MARRIAGE CEREMONY TO HIM AND LIZZIE OR YOU HAVE TO PROVE WITHIN A CERTAIN TIME PERIOD, WHICH HAS LONG PASSED, OF YOUR RELATIONSHIP TO CHARLIE, AND YOU CAN'T DO THAT NOW, AND THERE WAS NO REASON TO HAVE DONE IT IN 1992 BECAUSE CHARLIE DIDN'T HAVE ANYTHING. SO THERE WAS REALLY NO REASON FOR YOUR MOTHER TO ASSERT RELATIONSHIP AT THAT POINT IN TIME, BUT THE DOCUMENTS THAT WERE FILED, THE ONLY REASON THEY WERE FILED DOWN HERE WAS BECAUSE CHARLIE HAD APPARENTLY AT SOME POINT IN TIME, CHARLIE HAD BEEN IN A STATE HOSPITAL AND THERE WAS A SMALL REFUND CHECK AND SINCE THURMAN AND HIS WIFE HAD PAID THE FUNERAL BILL, THEY CAME DOWN TO SIGN A COLLECTION THING TO GET THAT, AND THAT'S WHY THEIR SIGNATURES ARE DOWN HERE FOR HIS ESTATE. AND EXACTLY THE SAME THING HAPPENED WITH MARY. THERE WAS A SMALL REFUND CHECK FROM SOMEBODY AND SOMETHING ELSE. SO

THERE REALLY WASN'T MUCH OF AN ESTATE OPENED AT THAT POINT IN TIME, BUT CHARLIE'S, NOT CHARLIE, BUT THURMAN'S SIGNATURE SHOWS UP AGAIN THERE, WHICH WERE SIGNATURES DONE HERE IN THE COURT AND WITNESSED, NOTARIZED BY COURT EMPLOYEES, AND FRANKLY THOSE SIGNATURES LOOK LIKE THE SIGNATURE ON THE WILL. SO I DON'T THINK WE EVEN HAVE TO REACH THE ISSUE OF FACTUALLY WHETHER OR NOT Y'ALL ARE BLOOD RELATED. I THINK THE STATUTE WOULD BARR YOU ANYWAY, BUT NONE OF THAT REALLY MATTERS IF THE WILL STANDS, AND I'M RULING THAT THE WILL DOES STAND. SO I MEAN THAT'S A LOT OF TO DO ABOUT NOTHING REALLY UNLESS YOU CAN CONVINCE A COURT THAT FOR SOME REASON I'M WAY OFF BASE ON THE UNDUE INFLUENCE, WHICH I DON'T SEE, AND ON THE SIGNATURE, WHICH I DON'T SEE. AND IF THE WILL STANDS, ALL OF THE REST OF THAT MAY, YOU KNOW MAY BE SOME HURT FEELINGS OF HE DIDN'T PUT YOUR NAME DOWN AND THAT SORT OF THING, BUT THE WILL IS WHAT THE WILL IS. IT'S SOMEWHAT NATURAL THAT HE WOULD LEAVE IT TO HIS WIFE AND TO HIS STEP-KIDS. IT ALSO WOULD HAVE BEEN SOMEWHAT NATURAL TO HAVE TRIED TO HAVE REWARDED YOU FOR DOING THINGS FOR HIM, BUT THE FACT OF THE MATTER IS IS THAT IF I WANT TO LEAVE MY ESTATE TO MY DOG, I CAN DO IT. AND REGARDLESS OF WHAT MY KIDS MAY THINK ABOUT THAT, YOU KNOW, MY DOG JUST COMES OUT WELL. SO YOU KNOW YOU CAN DO WITH YOUR ESTATE WHAT YOU WANT TO DO IN A WILL AND FROM ALL INDICATIONS YOU KNOW THIS IS A VALID WILL AND THAT BEING THE CASE, THAT KIND OF ENDS THAT MATTER. SO I'M NOT GOING--I DON'T

SEE ANY NEED TO RULE ON ANY OF THE SUMMARY JUDGMENTS BECAUSE WE  
HEARD--I HEARD ALL OF THE TESTIMONY ALREADY AND THE REASON FOR  
SUMMARY JUDGMENT IS TO TRY TO KEEP FROM HAVING TO HEAR  
EVERYTHING, BUT I WANTED TO GO AHEAD AND MAKE SURE I WASN'T  
MISSING SOMETHING AND I DON'T THINK I AM. SO IF YOU CAN PREPARE  
ME AN ORDER, MR. EDWARDS.

MR. EDWARDS: I WILL. YES, SIR.

MR. TALLEY: YOUR HONOR.

JUDGE ANDERSON: YES, SIR.

MR. TALLEY: TO NO DISRESPECT TO THE COURT, YOUR HONOR, BUT  
WE'D LIKE THE COURT TO HOLD THE INJUNCTION IN PLACE PENDING  
POSSIBLE APPEAL.

JUDGE ANDERSON: YOU CAN APPEAL IT, I MEAN WE'RE GOING TO  
GO AHEAD AND SIGN THE ORDER, AND YOU CAN APPEAL IT UPSTAIRS.

MR. TALLEY: OKAY.

JUDGE ANDERSON: I GUESS.

MR. TALLEY: THANK YOU.

End of transcript.

COURT OF COMMON PLEAS NONJURY

2

TRANSCRIPT

OF

RECORD

2012-CP-42-3705

5

January 22<sup>nd</sup>, 2013  
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE J. MARK HAYES, II, Judge.

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

MICHAEL F. TALLEY, SR.  
ESQ.  
Attorney for the Plaintiff

CHARLES P. EDWARDS  
ESQ.  
Attorney for the Defendant

PAMELA E. GREEN  
Circuit Court Reporter  
Seventh Judicial Circuit

I N D E X

(There were no exhibits marked or testimony taken  
during this hearing.)

1 P R O C E E D I N G S

2  
3 THE COURT: All right. I believe we've got the case of  
4 Rogers versus Carr.

5 MR. EDWARDS: Yes, sir.

6 THE COURT: I believe that this is an appeal from  
7 Probate Court. I believe that this is Mr. Talley's appeal.

8 MR. TALLEY: Yes, sir.

9 THE COURT: Yes, sir, be more than happy to hear from  
10 you.

11 MR. TALLEY: All right. Your Honor, first I would like  
12 to draw the Court's attention to the return that was filed  
13 by the Probate Court. It's -- in looking at 62-308 of, of  
14 the South Carolina Court of Appeals, it does not appear that  
15 the return filed by Probate Court is in accordance with that  
16 statutory provision. That statutory provision says that the  
17 return of Probate Court must include the testimony, the  
18 proceedings, and the judgment, and I, and I -- in talking to  
19 Judge Caldwell, I think that some of her employees family  
20 members had sickness in the family, and the proper return  
21 was not filed. Plus it was suppose to be filed by November  
22 the 8<sup>th</sup>.

23 So, I don't know if, since the proper return is not  
24 been filed from Probate Court, whether or not this is ripe  
25 to be heard at this time, Your Honor.

1 MR. EDWARDS: Your Honor, I think most appeals to the  
2 Circuit Court from the lower level courts are testimony is  
3 not automatically transcribed unless one of the parties  
4 asked for it. The Appellate's appeal, on September the 4<sup>th</sup>,  
5 and the grounds for appeal were filed on October the 3<sup>rd</sup>,  
6 2<sup>nd</sup>. But at no time was any request made for the Probate  
7 Court to prepare a transcript.

8 I think the first time that Mr. Talley requested a  
9 transcript was January 12<sup>th</sup>, which was just a few days  
10 ago. But we were notified of this hearing on January the  
11 2<sup>nd</sup>.

12 My clients would like to go ahead and move this along  
13 to resolution. The decedent passed away two years ago  
14 yesterday. The house that he lived in is lying vacant, and  
15 my clients would like to move from the house they're in now  
16 and get into the house and invest money and make  
17 improvements in it, and we would like to move forward. We  
18 don't feel that a transcript is necessary, and if it was, it  
19 should of been ordered.

20 MR. TALLEY: Your Honor, the statute clearly says that  
21 the Probate Court shall, not may, shall make a return to the  
22 Appellate Court of the testimony, proceedings, and judgment.  
23 So, it's up to the Probate Court to include all of that in  
24 those documents in its return, and I, and I sympathize with  
25 the Probate Court employees being sick. But the return,

1 pursuant to this statute, was not filed.

2 THE COURT: Yes, sir.

3 MR. EDWARDS: Your Honor, in a lot of cases from the  
4 Lower Courts you don't have much of an order. You might  
5 just have a ruling. In this case you got about an 11 page  
6 order that lists practically all the testimony from  
7 practically every witness.

8 MR. TALLEY: Your Honor, that Code Section is 62-1-308,  
9 Subsection B.

10 Your Honor, do you need us to pass up this code  
11 section?

12 THE COURT: No, sir, I have copies.

13 MR. TALLEY: You have it?

14 THE COURT: Yeah.

15 MR. TALLEY: Okay. Thank you.

16 THE COURT: Well, I've reviewed the file. There seems  
17 to be an extensive or seems to be very voluminous documents  
18 in the file that were, in my file that was actually  
19 presented to the Probate Court. It does appear that the,  
20 this document that's entitled Return of Probate Judge was  
21 not filed with the Clerk of Court until January the 14<sup>th</sup>,  
22 2013. The code does provide that, within 30 days of filing  
23 the notice of appeal, that the word shall, that the Probate  
24 Court shall file the return.

25 MR. EDWARDS: I think the documents were sent up much

1 earlier, Judge Hayes, and then that return was sent later in  
2 response to Mr. Talley's letter I think.

3 THE COURT: Well, the documents---

4 MR. TALLEY: Your Honor, I think the---

5 THE COURT: The documents do appear to have been filed  
6 with the Clerk of Court prior to the actual one document,  
7 the one page document that's stamped with the Clerk of Court  
8 January 14<sup>th</sup>, 2013.

9 All right. What is it that you think that's not in  
10 here, Mr. Talley?

11 MR. TALLEY: Testimony. And, and, Judge, I don't know  
12 whether the proceedings are in there. I'm pretty sure -- or  
13 maybe it is. But I just got the one page return, and the  
14 one page return is not in accordance as required by that  
15 statutory provision.

16 MR. EDWARDS: One thing, Your Honor, about the return  
17 of the testimony. I certainly don't think the Legislature  
18 intended for every probate case to have all the testimony  
19 presented on appeal. For instance, when you're appealing  
20 from this Court to go down to Columbia, you don't always  
21 automatically prepare all the testimony. Sometimes there's  
22 just a little part of the testimony or one of the rulings  
23 you need and you isolate it and ask for a little part of the  
24 testimony to be transcribed.

25 So, I don't think this statute means, in all cases, you

1 got to prepare a transcript unless you're requested to.

2 THE COURT: What testimony is it that you wish for me  
3 to consider?

4 MR. TALLEY: Well, Your Honor, I, I just thought that  
5 this statute required that all the testimony be sent up here  
6 to the Appellate Court because it does not, it does not  
7 state in this statute that has to be piecemeal testimony  
8 sent up to the Appellate Court.

9 THE COURT: Yeah, we have -- the Circuit Court  
10 frequently, when it serves as, in its appellate capacity  
11 from Lower Courts, it sits in its appellate capacity of  
12 courts that are not courts of "record" so that frequently we  
13 do not have an actual record of the testimony that is  
14 presented.

15 MR. TALLEY: Okay.

16 THE COURT: And that's why the Judge's do the return so  
17 that it, the judge, the Lower Court Judge, then is able to  
18 advise the Circuit Court of its decision, and what it based  
19 its decision on, and so that -- I mean that's my  
20 understanding of what the purpose of the return is because  
21 those Lower Courts to which this Court sits in review of are  
22 not Courts of Record as this is a Court of Record where we  
23 actually have a court reporter, she's taking down everything  
24 that's said. Then, if you disagree with my decision, then  
25 you, in fact, get to be able to appeal my decision, but you

1 get to decide which parts of that record you want to send  
2 up.

3 I mean, Mr. Talley, I do not want you to feel that you  
4 were somehow prejudiced by the fact that the return might  
5 have been tardy, but I would like to go ahead and proceed,  
6 and, and that way I can have a, get a feeling as to whether  
7 or not there's any prejudice for the fact that the actual  
8 cover document that states that this is the return somehow  
9 is prejudicing one side or, or the other because there is a  
10 substantial record. I say substantial record, I mean the  
11 documents in the Circuit Court's file are substantial. I  
12 have not reviewed them. So, I don't know, as I sit here  
13 today, how significant these documents, as numerous as they  
14 are, might be on the issues that y'all wish for me to  
15 decide. But there is a, there is a substantial record from  
16 below for this Court to review --

17 MR. TALLEY: Okay. That's fine.

18 THE COURT: -- you know. But if you -- you know, as,  
19 as you proceed with your argument, if you want to point out  
20 how you are prejudiced, you know, then I might change my  
21 opinion on, on proceeding.

22 MR. TALLEY: Okay.

23 THE COURT: Yes, sir. Be more than happy to hear from  
24 you.

25 MR. TALLEY: Your Honor, we think the Lower Court,

1 Probate Court committed several reversible errors, and  
2 number one, there was testimony in the Probate Court offered  
3 by -- well, first, this contest was over a 1988 will of  
4 Thurman Bomar. There was testimony by Attorney Charlie  
5 Hodge and a witness, an alleged witness, a nurse of his  
6 deceased father, who was a physician, that they, that their  
7 name appeared on the will. But neither Charlie Hodge nor  
8 the nurse remembered Thurman Bomar signing this will, and  
9 they didn't even recognize or remember him.

10 In the Court's order, they referred to Charlie Hodge  
11 and the nurse, and we think that was error, error cause  
12 these two people didn't even remember Thurman Bomar signing  
13 this will and the plaintiff, Mr. Rogers, is contesting this  
14 will on the grounds that the signature of Thurman Bomar, his  
15 uncle, was a forgery.

16 Also, Your Honor, we also think the Court committed  
17 reversible error when the Court, throughout its rulings,  
18 saying that it was familiar with attorneys, they were  
19 respected attorneys, and the Court was familiar with Court  
20 personnel, and the Court was ruling that the signature was  
21 authentic. I'm not contesting that the attorneys were not  
22 respected attorneys, Your Honor, but we think it was error  
23 for the Court to base its opinion on its familiarity with  
24 attorneys and Court personnel rather than testimony offered  
25 in the evidence.

1       Also, the Court ruled that Thurman Bomar's signature on  
2 the passport was credible authentic although the plaintiff  
3 offered testimony that his signature on the passport was not  
4 Thurman Bomar. Even though the defendants offered no  
5 firsthand knowledge that the signature was Thurman Bomar,  
6 the Court rejected the plaintiff's contention that Thurman  
7 Bomar's signature on this passport was not Thurman Bomar.

8       Also, Your Honor, a lot of this order was based on the  
9 Court interjecting its own opinion on the, its familiarity  
10 with attorneys, that they knew attorneys, that the Court  
11 knew attorneys, these are fine attorneys, and these  
12 attorneys were not doing anything wrong. But there was  
13 never no testimony on the, in the record about these  
14 attorneys from the attorneys or about the attorneys.

15       Also, the Court, in its ruling, ruled that Thurman  
16 Bomar's signature on several documents either indicated a  
17 left leaning slant or a right leaning slant or an upright  
18 signature. But there was no testimony from any witnesses  
19 about any left leaning slant, right leaning slant, or  
20 upright style. So, the Court, Your Honor, was making its  
21 decision on testimony that's, that was not in the Court.

22       Also by evidence that was not in the Court, and we also  
23 raised the issue that when the defendants, who were  
24 stepchildren of Thurman Bomar, when they filed a partition  
25 to probate its estate, they intentionally omitted the

1 existence of the plaintiff and his sisters and brothers who  
2 were the only surviving blood relatives of Thurman Bomar,  
3 Thurman Bomar.

4 Your Honor, we think that that was an intentional  
5 omission was basically perjury because this partition  
6 submitted by the defendants was submitted under oath, and  
7 that basically it's obstruction of justice, and we don't  
8 think that their wrong doing should of been rewarded by  
9 dismissing the plaintiff's objections to this will.

10 Also, the only witness that was presented that had  
11 firsthand knowledge of Mr. Thurman Bomar's signature was a  
12 childhood friend by the name of Ms. Thelma Thompson. She  
13 was a retired educator from a school here in Spartanburg  
14 County. She testified that she knew Thurman Bomar when they  
15 were teenagers. They both went to college. They stayed in  
16 constant touch with each other, and she testified that  
17 Thurman Bomar's signature, as appeared on that will, was not  
18 Thurman Bomar's signature.

19 But her testimony -- the only firsthand knowledge of  
20 someone who was familiar with Thurman Bomar's signature was  
21 rejected by the Court, and then the Court, even though the  
22 Court in its order said it didn't have to rule on the point,  
23 it ruled on the point that Willie Rogers and the brother and  
24 sisters were not lawful heirs to the estate pursuant to this  
25 statute, that they did not show that they were, that their,

1 their mother had not established her paternity when Charlie  
2 Bomar, this former Bomar father, died in 1992 pursuant to  
3 the Statute 62-2-109 Subsection 1.

4 But, Your Honor, we think that in that section, that  
5 Subsection 1, well, they, they contested the plaintiff's  
6 claim under the whole statute. But in Subsection 1, it said  
7 that the heirs would be considered lawful heirs of the  
8 estate if the parents, the natural parents, which would of  
9 been Mr. Willie Rogers grandmother, Lizzie Burton, and  
10 Charlie Bomar had gone through a ceremony even though the  
11 ceremony may have been void.

12 The defendants offered no testimony, knew anything  
13 about whether or not Lizzie Burton and Charlie Bomar went  
14 through a ceremony or not. Matter of fact, these defendants  
15 didn't even know anything about Charlie Bomar, who was  
16 Thurman Bomar's father, because Thurman Bomar was only the  
17 defendant's stepfather.

18 So, Your Honor, we think that the Court needed to look  
19 at the testimony from the, in that, should of been placed in  
20 the return to rule on all of the plaintiff's objections.

21 Thank you.

22 THE COURT: Yes, sir, Mr. Edwards.

23 MR. EDWARDS: Judge, I may go into the background just  
24 a little bit before I jump into the issues if that would be  
25 okay.

1       The decedent, Thurman Bomar, was born in Spartanburg  
2 County on a farm and he left Spartanburg County as a young  
3 man and joined the service. After the service he moved to  
4 Brooklyn, New York and worked for the housing authority up  
5 there for many years. He never had any children. He didn't  
6 marry until late in life.

7       He began to call on my client's mother, who also lived  
8 in Brooklyn, about 1958. She had three children of a prior  
9 marriage who are my three clients now.

10       Mr. Bomar took an interest in these children and helped  
11 them along. They would go on family outings to the beach,  
12 picnics. When the children went to college, he went to  
13 visit them, went to their graduations, helped them in some  
14 cases financially to get through college.

15       After they were all out of the house, he married their  
16 mother in Brooklyn in 1975, and then he retired and she  
17 retired, and they moved back to Spartanburg near where the  
18 farm was that he was raised on into family property.

19       My clients continued, over the year, to visit Mr. Bomar  
20 more and their mother, and they'd bring their grandchildren  
21 to see him and her. They'd go on trips in the summertime  
22 with Mr. Bomar and their mother.

23       In 1988, Mr. and Mrs. Bomar went to Charlie Hodge's  
24 office and asked him to prepare wills for them. He drew  
25 standard type of mirror image wills where the wife leaves

1 all to husband, husband leaves all to wife, but if the  
2 spouses predeceased, then to the children.

3 In this case, they were that type of will. The only  
4 difference was these were his stepchildren instead of his  
5 natural children.

6 As they began to decline, one of my clients moved to  
7 Spartanburg and she was here in Spartanburg the last ten  
8 years of their lives and cared for both of them. Her mother  
9 died first and then she stayed on another month or two and  
10 cared for Mr. Bomar until he passed away.

11 So, what it is is a stepchildren on the one hand and  
12 nieces and nephews on the other hand, and Mr. Talley seems  
13 to argue that blood relations are always stronger and more  
14 entitled to legitimacy than stepchildren relationships, but  
15 I don't think it's unusual for a man who has raised children  
16 like that, even though they're not his own blood children,  
17 he may have a stronger bond with them than he does with  
18 nieces and nephews.

19 The complaint alleged forgery of the will, and it  
20 alleged undue influence, and those were the two main  
21 allegations. In our reply, we denied that, but we also  
22 alleged that they were not heirs at law under the statute.  
23 I think the most compelling reasons why the will should be  
24 upheld is because forgeries are not usually standard type of  
25 mirror image wills all to the wife and then to the children.

1 Another reason is it was drafted by a lawyer. Usually  
2 when you have forgeries, they're home done, and forgeries  
3 are usually nearer to death and this will was drawn in 1988.  
4 The death didn't occur until I think 2009 or 2010.

5 Now, on the exceptions that Mr. Tally raises, he speaks  
6 of, of Mr. Hodge not recognizing Mr. Bomar, and he was shown  
7 a picture and said I don't recognize the picture. But the  
8 will had been drawn in 1988, 23 or 24 years after Mr. Hodge  
9 was asked to remember the client, and I think it's  
10 unrealistic to expect a lawyer to remember his clients from  
11 23 years ago or even to recognize a picture of a client if  
12 it's a one time event like that.

13 There were other things though that made it apparent  
14 that Charlie Hodge had drawn the will, and that they had  
15 witnessed the will. For instance, there was a will cover  
16 that said Hodge and Devine on the will cover, and Mr. Hodge  
17 said that's the partnership that I was practicing in in  
18 1988. That looks like the will covers I used. He looked at  
19 his signature and said yes, that's my signature, it looks  
20 like my signature.

21 THE COURT: Mr. Hodge identified his own signature?

22 MR. EDWARDS: He did, yes, sir.

23 THE COURT: Okay.

24 MR. EDWARDS: He testified. The other witness had been  
25 a employee of Mr. Hodge's father who practiced medicine, and

1 both of their offices were located side-by-side, and  
2 Mr. Hodge said occasionally, if I lacked a witness, I'd go  
3 over to my father's office and borrow one of his employees  
4 and she'd come witness the will. And, and that is who that  
5 person is. We subpoenaed her to the Court and she testified  
6 to the same, that occasionally she did witness for Attorney  
7 Hodge, and she said that appeared to be her signature.

8 Now, on the second allegation of error, it talks about  
9 the Court talking about familiarity with lawyers. What we  
10 did, we were trying to prove that the signature on the will  
11 looked like his signature because forgery was alleged. And,  
12 so, we went to look for other documents that he had signed  
13 over the years, and we looked in the Register of Deeds  
14 Office and saw many deeds that Thurman Bomar had signed over  
15 the years. And we looked in the Probate Court in other  
16 estate files and saw some signatures that Thurman Bomar had  
17 signed, and we put them into evidence and argued to the  
18 judge that those signatures looked just like the signature  
19 on the will.

20 So, when we showed that, then the defendant argued that  
21 not only is the will forged, but all these deeds are forged  
22 too, and these documents in the Court, they're forged too,  
23 all of them are forgeries.

24 So, I think the judge looked at Joe Maddox having  
25 witnessed one of them, and Mike Duncan having witnessed one

1 of them, and one of the witnesses was a Court employee, and  
2 I think the judge concluded that they couldn't all be  
3 forgeries if, if all of those people have witnessed them and  
4 the signatures looked just alike.

5 Now, I know the Court is not suppose to take extrinsic  
6 things into consideration and go outside of the record. But  
7 the Court is also a fact finder not just ruling on the law.  
8 And if the Court knows that the lawyers and the employee are  
9 in good standing, I think he's entitled to take that into  
10 consideration.

11 Just like on the other side of the coin, if lawyers  
12 have been disbarred for forgery or condoning something,  
13 forgery, then I think he might look at it some other way.

14 THE COURT: Is there -- so, other legal documents were  
15 presented to the Lower Court to compare the signatures?

16 MR. EDWARDS: Yes, sir, they should be in that return.

17 THE COURT: Is there -- if the other signatures -- if  
18 the signatures on the other documents that were used for  
19 comparison purposes, if those were, in fact, not, not true  
20 signatures, would not that burden be on the applicant to  
21 establish they're not being true?

22 Could -- is, is not the judge allowed the ability to  
23 rely upon other legal documents as being true unless  
24 established otherwise?

25 MR. EDWARDS: I think so. I think the burden would of

1 been on the other party to have shown that they were, were  
2 not accurate, and we're talking about recorded Court  
3 documents. Not just something brought in. So, I think the  
4 burden would be on the other party.

5 THE COURT: All right. Go ahead. I'm sorry. I didn't  
6 mean to interrupt you.

7 MR. EDWARDS: All right, sir. The third exception is  
8 about the passport.

9 Now, one of the documents that we brought forward to  
10 compare with the will was the passport, and the judge found  
11 that the passport signature looked like the will signature.  
12 But the other side argued that the passport was forged too,  
13 and that we didn't have anybody to art, to show and testify  
14 that that was actually his signature.

15 THE COURT: You mean they took the position that you  
16 had to verify the signature on the passport?

17 MR. EDWARDS: Yes, sir, I think they were arguing that  
18 you had to have a live witness to say I saw him sign that or  
19 that looks like his signature, and we were just saying that  
20 the passport is pretty much self-authenticating, although I  
21 doubt that it is, but it's unlikely someone would forge a  
22 passport and we just put the passport into evidence.

23 But I think, again, it would be -- the burden would be  
24 on the other side to show that it was a forgery other than  
25 just alleging it could of been a forgery.

1 THE COURT: Okay. All right.

2 MR. EDWARDS: All right. Now, the fourth exception I  
3 think we've already basically addressed because it's very  
4 similar to the second one.

5 On the fifth one, in the order the judge is talking  
6 about comparing signatures and having left lean and right  
7 leaning slants to various of the letters. And as I  
8 understand the other side's argument, it is that we needed  
9 to have a live witness to point out that some of them are  
10 left leaning and some of them are right leaning.

11 Our position is that the judge can just look at them  
12 himself and make that conclusion when he's comparing them,  
13 and does not have to have any testimonial evidence to tell  
14 him that. He just looks at the -- it's real evidence rather  
15 than testimonial evidence. He's looking at documents and  
16 determining some are left leaning and some are right  
17 leaning.

18 Now, on the sixth exception, it's alleged that my  
19 clients committed fraud by not listing the nieces and  
20 nephews as heirs at law. But this is something that's in  
21 the return or it should be in the return.

22 When they went in to fill out their petition to be  
23 appointed as PR, they had to fill out what's called a Form  
24 300, and on that Form 300 they have to write there who are  
25 the heirs at law who would take if the will is not valid,

1 and on the Form 300 at that block there, the clerk put a  
2 star and put PR to try and find out additional intestate  
3 heirs before closing.

4 At that time my client didn't know who all the  
5 intestate heirs might be. There might could of been others.  
6 He just didn't know and she said -- and he didn't know all  
7 about them. I think he's got a list of addresses and things  
8 like that, and she just put that he would supply that later.

9 So, that's the first reason we don't see anything out  
10 of line there.

11 But the second thing is, is truly, Your Honor, they are  
12 not heirs at law and here is why. The Appellates and  
13 Thurman Bomar allegedly had the same father. But they had  
14 different mothers. Thurman Bomar's father was married to  
15 Thurman's mother, but he never married the Appellate's  
16 mother.

17 Now, under the, the---

18 THE COURT: The Appellates are nieces and nephews.

19 MR. TALLEY: Grandmother.

20 MR. EDWARDS: Of Thurman Bomar. They would be if there  
21 was legitimacy.

22 THE COURT: Nieces and nephews if the decedent had  
23 married who?

24 MR. EDWARDS: Their mother.

25 THE COURT: No.

1       who?

2       MR. TALLEY: Grandmother.

3       THE COURT: Name.

4       MR. EDWARDS: Oh, Lizzie Burton.

5       MR. TALLEY: Lizzie Burton.

6       MR. TALLEY: Your Honor, Mr.---

7       THE COURT: I just need to know a name cause  
8 Mr. Edwards is doing his argument.

9       MR. TALLEY: Oh, okay. Lizzie Burton is, was the  
10 plaintiff's grandmother.

11       THE COURT: Lizzie Burton.

12       Okay. All right. So, the -- so, it's your contention  
13 that the plaintiffs don't even have standing unless they're  
14 able to establish that there was a, a marriage between the  
15 decedent and this Ms. Burton?

16       MR. EDWARDS: No, sir, not the decedent, but his  
17 father.

18       THE COURT: His father.

19       MR. EDWARDS: Charlie Lee, Charlie Bomar was the father  
20 of Thurman Bomar, who is our decedent.

21       THE COURT: Okay.

22       MR. EDWARDS: Now, it's alleged that Charlie Bomar is  
23 also the father of the Appellate's mother whose name was  
24 Laura. However, Charlie Bomar never married Laura's mother  
25 whose name was Lizzie I believe. Excuse me.

1 THE COURT: Entertain -- let me ask you a question,  
2 Mr. Edwards.

3 Even if they were, in fact, the nieces and nephews of  
4 the decedent, the decedent would have the ability, through a  
5 will, to leave his property, property to whomever he wants.

6 MR. EDWARDS: Yes, sir.

7 THE COURT: That -- my understanding is that the only  
8 relationship that may automatically set aside a will or  
9 change a will would be that of a spouse.

10 MR. EDWARDS: That's my understanding.

11 THE COURT: So, it does not matter except -- I mean if,  
12 if, if your client established that this or that if there  
13 was no contest as to it being a fraudulent will, then it  
14 would not matter if they were nieces, nephews, or, or third  
15 parties because the decedent can leave his property to  
16 whomever he wishes.

17 Is that correct?

18 MR. EDWARDS: Yes, sir.

19 THE COURT: Okay. All right. So, so, this is -- then  
20 goes to we -- I reach this point of review only if there is  
21 validity to the Appellate's position that this is a fraud---

22 MR. EDWARDS: Yes, sir.

23 THE COURT: ---will?

24 MR. EDWARDS: Yes, sir.

25 THE COURT: Okay. All right. I think I follow you now.

1 All right. Okay.

2 MR. EDWARDS: Yes, sir.

3 THE COURT: Thank you.

4 MR. EDWARDS: This is just -- we were raising standing  
5 as an issue saying even if all this is true you don't have  
6 standing to bring this petition.

7 Now, illegitimate children can establish a right to  
8 inherit through the father's line now. However, they must  
9 bring an action to prove that he is the natural father  
10 within eight months after he has passed.

11 In this case, the Appellate's mother never did attempt  
12 to prove the line and the natural parenthood, and, thus, it  
13 was too late to have been established and they would not of  
14 had standing to bring this action in my opinion, and I think  
15 the Court so found on that.

16 Okay. Now, moving on to the next if you're prepared,  
17 you're ready for me to move on?

18 THE COURT: Yes, sir.

19 MR. EDWARDS: And the next, Ms. Thelma Thompson was a  
20 childhood friend of Thurman Bomar's, and she testified that  
21 she did not believe that that was his signature. But the  
22 Appellates say her testimony was rejected out of hand, but I  
23 think it was really a matter of the Judge weighing the  
24 evidence, and you had a small bit of evidence from Ms.  
25 Thelma Thompson that that was not his testimony. Whereas he

1 had overwhelming evidence on the other side that that was  
2 his signature on the will.

3 And, so, I don't think the Court rejected her testimony  
4 out of hand. It just weighed it on the scales and found  
5 that the other evidence outweighed her testimony.

6 And then the last exception, number eight, is similar  
7 to the other exception we just argued, number seven, six I  
8 believe. But I think that the Appellates are saying that we  
9 had the burden to disprove that even though they never were  
10 married that they might have gone through a ceremony  
11 somewhere. But this is one case where the transcript might  
12 help because the Appellates themselves testified that their  
13 mother never married or that, or that their grandmother  
14 never married Charlie Bomar, and they had the burden of  
15 showing that there was not a, that there was a marriage.

16 We alleged in the answer that they never had married,  
17 and they never tried to prove that they had married. In  
18 fact, they brought forth several witnesses that said no,  
19 they never married.

20 So, that is our response.

21 THE COURT: All right. So let me see if I understand  
22 the procedural position.

23 There was a trial below and the Judge received  
24 testimony, received evidence, and then he made a ruling  
25 concerning the matters that were in the petition. And,

1 so -- and then the Appellate, they were not successful  
2 below. So, they then filed the appeal.

3 So, the standard of review that I apply is what is,  
4 what do you contend is the standard of review that I apply?

5 MR. EDWARDS: Judge, I have not really given that a lot  
6 of thought. I think though that it would probably be on the  
7 law if the appeal would be made, and I don't know that the  
8 Court would go into facts, fact findings or not. I'm  
9 just -- I'm not certain on that.

10 THE COURT: Okay.

11 All right. Yes, sir, any reply?

12 MR. TALLEY: Yes, sir, Your Honor.

13 Your Honor, we disagree with Mr. Edwards' position  
14 statements to the Court that the Appellates objected to all  
15 the signatures on the deed. Ms. Thelma Thomas, Thompson  
16 only -- she said that several, several of the deeds did not  
17 appear to have Thurman Bomar signature. Not all of them.  
18 So, that's why we need the testimony so the Court would know  
19 what deeds that the Appellates say were not Thurman Bomar's  
20 signature.

21 Now, as far as his client, Mr. Edwards clients not  
22 placing the Appellate's name on this petition, the  
23 defendants testified that they knew that Mr. Rogers and his  
24 brother and sister were nieces and nephews of Mr. Thurman  
25 Bomar because when Mr.---

1 THE COURT: Let me ask you a question.

2 MR. TALLEY: Sure.

3 THE COURT: Let me ask you a question, Mr. Talley.

4 MR. TALLEY: Okay.

5 THE COURT: I -- well, for purposes of your argument,  
6 let me assume that you are correct that there was some  
7 devious and, and bad motive on the part of Mr. Edwards  
8 client not to list your clients on that document.

9 MR. TALLEY: Okay.

10 THE COURT: why should that change the decision that  
11 this was or was not the true signature of the decedent?

12 I mean what -- why should I allow, even though that  
13 would have been bad, and let's assume, for purposes of the  
14 argument, that they were, that they were motivated by ill  
15 will, that doesn't change whether that is or is not the  
16 signature of the deceased on the will, does it?

17 MR. TALLEY: Your Honor, it seems to indicate to me  
18 that they were attempting to mislead Probate Court in the  
19 believing that Charlie Bomar, I mean Thurman Bomar died with  
20 any, without any surviving blood relatives. So, it seems to  
21 me they should not be afforded any equity in that. Equity  
22 would seem to be against Mr. Edwards client because they did  
23 not come to Court with clean hands---

24 THE COURT: Okay.

25 MR. TALLEY: ---and they should not be rewarded in

1 that.

2 THE COURT: Okay.

3 MR. TALLEY: Your Honor, and now the deeds -- as we  
4 say, Ms., Ms. Thelma Thompson would all in one -- was the  
5 only witness presented to the Court down below who was  
6 familiar with Thurman Bomar's signature and had been  
7 familiar with his signature throughout the years. But her  
8 testimony was rejected because the Courts was familiar with  
9 local attorneys that he knew how they executed wills or  
10 prepared wills and, and he was familiar with Court  
11 employees.

12 The only thing we're saying, Your Honor, we're not  
13 saying these people were bad. We're just saying that was  
14 not in the record. That was not presented as evidence  
15 before the Court below, and was improper for the judge to  
16 interject his own opinion on those issues, and that's why we  
17 think that this ruling by the Court below is reversible and  
18 should be reversed.

19 THE COURT: Let me ask you, Mr. Talley.

20 What is -- do you have a position on what the standard  
21 of review that I would apply?

22 MR. TALLEY: Your Honor, I think the Court can look at  
23 the evidence and make his own decision as to the evidence,  
24 whether or not there was any evidence down below to support  
25 his decision and whether or not there was substantial

1 evidence to support the Court below decision.

2 THE COURT: All right. Do you believe that it's a de  
3 novo review that I'm to, I'm to do or that I'm suppose to  
4 find whether or not there is substantial evidence that  
5 supports the decision?

6 MR. TALLEY: Well, Your Honor, I really think this  
7 Court could do a de novo review.

8 THE COURT: Okay. All right. Okay.

9 All right. Well, thank you, gentlemen. I tell you  
10 what let's do.

11 I have, I have not reviewed the documents that were  
12 sent up from Probate Court. So, I appreciate the arguments.  
13 I know now what both parties desire me to examine. If  
14 either side believes that there is -- I do not -- that --  
15 I'm not personally familiar with the procedures in Probate  
16 Court. I do not know whether or not the Probate Court  
17 actually makes a recording from which a transcript can be  
18 obtained.

19 If either side believes that a actual transcript can be  
20 obtained, and you feel like that you would want me to take a  
21 look at the transcript, my suggestion would be to go to  
22 Probate Court and determine that, and if it is possible for  
23 me to have a transcript, get me the transcript. I would  
24 be -- I will hold off on making any decision pending receipt  
25 of any potential transcript, but I'm gonna need to know

1 something probably within about ten days whether or not a  
2 transcript is gonna be submitted or not.

3 MR. TALLEY: Okay.

4 THE COURT: If you -- if y'all would like to follow,  
5 follow up with a letter to the Court that then I can make  
6 part of the Court's file.

7 But thank you very much.

8 MR. TALLEY: Okay. Thank you, Your Honor.

9 MR. EDWARDS: Thank you.

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12 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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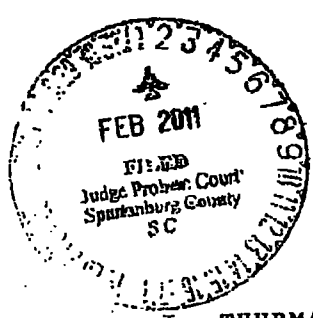
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**EXHIBITS**

**R-208**

11-162



LAST WILL AND TESTAMENT OF  
THURMAN LAWRENCE BOMAR

I, THURMAN LAWRENCE BOMAR, of Spartanburg, 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.

I

I direct that all my just debts and funeral expenses be paid out of my estate.

II

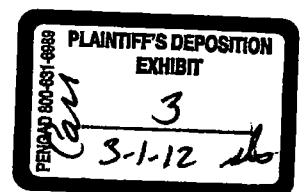
I do hereby give, devise and bequeath all of my property, both real and personal, to my wife, MARY LOUISE BOMAR, to be hers absolutely and forever. Should my wife predecease me or in the event of our simultaneous deaths in a common disaster, I give, devise and bequeath all of my property to my stepchildren KATHERINE LOUISE WHITE, CHARLES EDWARD CARR AND JOYCE RANEE KING, absolutely and forever.

III

I hereby nominate, constitute and appoint as the Personal Representative of this my LAST WILL AND TESTAMENT, my wife, MARY LOUISE BOMAR, and direct that she shall serve without bond. Should my wife be unwilling or unable to serve as Personal Representative, I do hereby nominate, constitute and appoint my stepson CHARLES EDWARD CARR, to serve as Personal Representative of this my LAST WILL AND TESTAMENT, and direct that he shall

AK

*Thurman Lawrence Bomar*



11/16/2

serve without bond.

I, THURMAN LAWRENCE BOMAR, the testator, sign my name to this instrument this 27 day of July, 1988, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

  
THURMAN LAWRENCE BOMAR

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

Mary Ann Kunak  
Witness

Gayle C. Hawkins  
Witness

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

PROBATE

Subscribed, sworn to, and acknowledged before me by THURMAN LAWRENCE BOMAR, the testator, and subscribed and sworn to before me by Mary Ann Kunak and Gayle C. Hawkins, witnesses, this 27th day of July, 1988.

Dickie D. Wang (SEAL)  
Notary Public for South Carolina  
My Commission Expires: 11/3/94

Page Two of Two Pages of the  
Last Will and Testament of  
Thurman Lawrence Bomar



R-211

**Ford**

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**Charlie Bomar**

ANDERSON -  
Charlie Bomar,  
98, of the Rich-  
ard M. Campbell  
Veterans  
Administration  
Nursing Home  
in Anderson,  
died Dec. 5,

1992, after a long illness.

A native of Spartanburg County,  
he was the widower of Hattie  
Burgan Bomar and son of the late  
George and Mandy Ballanger  
Bomar. He was a member of Upper  
Shady Grove Baptist Church where  
he had served as a former treasurer,  
trustee and member of the deacon  
board. He was also a former trustee  
of Upper Shady Grove School and a  
member of the Peach Growers  
Association of America. He was a  
retired peach farmer and was one of  
the first black farmers to ship  
peaches out of the state of South  
Carolina. He was a U.S. Army vet-  
eran of World War I.

Survivors include one daughter,  
Laura Rogers of Wellford; one son,  
Thurman Bomar of Spartanburg; 10  
grandchildren; 16 great-grand-  
children; and one great-great-  
grandson.

The family is at the home of Mr.  
and Mrs. Thurman Bomar, 2456  
New Cut Road, Spartanburg.

In lieu of flowers, memorials may  
be made to Upper Shady Grove  
Baptist Church Building Fund, P.O.  
Box 252, Wellford, S.C. 29385.

The J.W. Woodward Funeral  
Home is in charge of arrangements.

**Mamie Blackwood**

JONESVILLE - Mamie Buice  
Blackwood, 95, formerly of  
Jonesville, died Dec. 5, 1992, at  
Oakmont Nursing Home in Union  
after an extended illness.

A native of Cherokee County, she  
was the widow of George L. Black-  
wood and daughter of the late Lewis  
A. and Leatha Holden Buice. She  
was a member of Gilead Baptist

**Lillie M. Kirby**

PACOLET MILLS - Lillie Mur-  
ray Kirby, 85, of 41 Green St., died  
Dec. 5, 1992, at a local nursing  
home.

A native of Spartanburg County,  
she was the widow of Rufus Guy  
Kirby and daughter of the late Ar-  
thur and Nora Ann Brown Murray.  
She was a member of Montgomery  
Memorial United Methodist Church  
and a former member of the Pacolet  
Mills Resettles. She was retired  
from Pacolet Manufacturing Co.

Survivors include three sons,  
Ivey and Fred "Worry" Kirby both  
of Pacolet Mills and Bill Kirby of  
Grover, N.C.; one daughter, Becky  
Wall of Pacolet Mills; eight grand-  
children; and 11 great-  
grandchildren.

Visitation will be held from 7 to 9  
tonight at Floyd's Pacolet Chapel.

Services will be held at 4 p.m.  
Monday at Floyd's Pacolet Chapel  
by the Rev. Tim Fowler. Burial will  
be in Pacolet Memorial Gardens.

The family is at the home of her  
daughter, Becky Wall, 210 Poplar  
St., Pacolet Mills.

**Thomas Baker**

NAPLES, Fla. - Thomas Baker,  
70, of Naples, Fla., died Dec. 5,  
1992.

Survivors include his wife, Irene  
Baker of Golden Gate, Fla.; one son,  
Lyle Baker of Spartanburg; one  
daughter, Gail Hoppe of Naples,  
Fla.; and five grandchildren.

Beachwood Society Funeral  
Home in Naples, Fla. is in charge of  
arrangements.

**FUNERAL NOTICES**

To provide additional personal infor-  
mation, details and schedules, fu-  
neral notices in this column are  
initially placed and paid for by fu-  
neral directors on behalf of the  
families they serve.

BAILEY - Grady Sr. Services will  
be held at 3 p.m. Sunday, Dec. 6,  
1992, at Goucher Baptist Church.  
Shuford-Hatcher Funeral Home  
Gaffney

## LIFE PROFILE

MRS. HATTIE CLARA BOMAR, wife of Mr. Charlie Bomar, died Wednesday, January 3, 1990 at the Dowdy-Gardner Nursing Care Center in Rock Hill, South Carolina. She was the daughter of the late John and Ann Clark Burgan.

Mrs. Bomar was a member of the Upper Shady Grove Baptist Church where she served faithfully until her health declined. Mrs. Bomar loved her church and served unselfishly in Mission Circle #1 and the sympathy Club. Her Loyal service to Christ and the church speaks for her.

Mrs. Bomar was retired from the food service department at Wofford College.

Fond and loving memories will be cherished by: one daughter, Ms. Laura Rogers of Wellford, South Carolina; one son, Mr. Thurman Bomar of Inman, South Carolina; eleven grandchildren; twelve great-grandchildren; and a host of other relatives and friends.

*She was different she was special  
unique in a thousand ways  
She was giving, she was loving,  
And we'll miss her all our days.*

*There are some who race for power  
sure 'twill bring them joy,  
Some who long for pleasure,  
Seeing time an endless toy,  
But she was different. . .*

*Her legacy was friendship,  
She was so giving of her time,  
her bequest was her faith in God,  
her children her books of rhyme.*

## ORDER OF SERVICES

PROCESSIONAL ..... Family

HYMN ..... "Take My Hand Precious Lord" Choir

SCRIPTURE ..... Minister

PRAYER ..... Reverend Warren Sullivan

HYMN ..... "The Unclouded Day" Choir & Congregation

EULOGY ..... Pastor Harold J. Cox

RECESSIONAL

### INTERMENT

Upper Shady Grove Baptist Church Cemetery  
Wellford, South Carolina

## WITH APPRECIATION

*She was a precious flower  
Loaned from God's love  
Now He's called her home  
To be with him above.  
We thank you Lord for our family and friends  
Who have been there for us in many special  
ways.*

*The Bomar Family*

*Verse of Acknowledgement*

*Composed by: Debbie Moore*

## Life Profile

**Mr. Thurman Lawrence Bomar** was born on January 18, 1922 in Inman, South Carolina to the late Mrs. Hattie Bomar and Mr. Charlie Bomar. He attended F. F. High School and graduated in 1942. Mr. Bomar attended Voorhees College in Denmark, South Carolina. He was honorably discharged from the United States Army in 1946. Mr. Bomar married in December 1975 to his late wife, Mrs. Mary Bomar. He lived and worked in New York City, New York for twenty years for the City of New York Department of Housing Preservation and Development. Mr. Bomar retired in 1986 and moved back to Spartanburg, South Carolina in August of 1986.

He was an active member of Upper Shady Grove Baptist Church for many years.

Left to cherish fond and loving memories are: three step children, Mrs. Katherine (Don) Christian of Inman, South Carolina, Mr. Charles (Donna) Carr of Warren, Ohio and Ms. Joyce King of Laurel, Mississippi, four nephews, Mr. Willie (Linda) Rogers, Mr. Jonathan (Linda) Rogers, Mr. Marshall Rogers and Mr. Thomas (Karen) Rogers, two nieces, Ms. Vennice Rogers and Ms. Gardenia Goodwin, ten grandchildren, fourteen great grandchildren, and a host of other relatives and friends.

## Miss Me But Let Me Go

When I come to the end of the road  
And the sun has set for me,  
I want no rites in a gloom filled room,  
Why cry for a soul set free?  
Miss me a little - but not too long.  
And not with your head bowed low.  
Remember the love that we once shared.  
Miss me - but let me go.  
For this is a journey that we all must take,  
And each must go alone.  
It's all a part of the Master's plan.  
A step on the road to home.  
When you are lonely and sick of heart,  
Go to the friends we know.  
And bury your sorrows in doing good deeds.  
Miss me - but let me go.

Author Unknown

## Order of Service

Processional..... The Family

Selection..... *What a Friend We Have in Jesus*

Scriptures

Old Testament

New Testament

Prayer..... The Reverend Donna Marre

Reflections

Hymn..... Congregation

Eulogy..... The Reverend Calvin Hailstock

Recessional..... The Family

*I'm Free*

## Interment

Heritage Memorial Gardens  
Roebuck, South Carolina

DEED 44 V PAGE 559 Address of Grantee 1500 Carroll St.  
 STATE OF SOUTH CAROLINA }  
 COUNTY OF SPARTANBURG }

KNOW ALL MEN BY THESE PRESENTS, that Thurmon L. Bomar

in consideration of one dollar, love and affection - - - - - Dollars,  
 the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell  
 and release unto  
 Mary L. Bomar one-half undivided interest in and to:

All that piece, parcel or tract of land located in above County and State, containing 39½ acres, more or less and bounded by lands of David McElrath, James Snoddy, T. E. Gosnell, Mrs. Coan and others. BEGINNING on a Black Gum and running S. 36½ E. 12.90 to a lone Pine on road; thence S. 86½ W. 34.82 to stone on Bush Road; thence with said road N. 4½ E. 21.60 to stone in place of Sassafras; thence S. 46½ E. 19 to stone on bank of branch; thence up branch 12.92 to beginning corner.

This being an one-half interest in the same property as conveyed to me by Charlie Bomar by deed recorded 3-8-76 in Deed Book 43-P, Page 166, R.M.C. Office for Spartanburg County.

Also: Also that certain lot, tract or parcel of land located approximately three-quarters of a mile west of Sigbee in above County and State, on the New Cut Road and being more particularly described as follows: BEGINNING at I.P. adjacent to the north side of the New Cut Road and running thence N. 59.08 E. 300 feet to I.P.; thence S. 18.03 W. 198.1 feet to I.P. located adjacent to the north side of the New Cut Road; thence N. 80.13 W. 200 feet along the northern edge of the New Cut Road to the point of beginning.

This being an one-half interest in the same property as conveyed to me by Charles Bomar and Hattie Bomar by deed recorded 8-7-62 in Deed Book 28-H, Page 23, R.M.C. Office for Spartanburg County.

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining, to have and to hold all and singular the premises before mentioned unto the grantee(s) and the grantee(s)' heirs (or successors), executors and assigns forever. And the grantor(s) do(es) hereby bind the grantor(s) and the grantor(s)' heirs (or successors), executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee(s)' heirs (or successors) and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to restrictions and easements of record, if any.

WITNESS the grantor(s)' hand(s) and seal(s) this August 6, 1977.

SIGNED, sealed and delivered in the presence of:

*Helena K. Hallen*  
*John L. Miller*

*Thurmon L. Bomar*  
 Thurmon L. Bomar

SPARTANBURG, S.C.  
 R.M.C.  
 1977 AUG - 9 AM 10:32  
 (SEAL)  
 RECORDED  
 (SEAL)  
 (SEAL)  
 (SEAL)

STATE OF SOUTH CAROLINA  
 COUNTY OF SPARTANBURG

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor(s)' act and deed deliver the within written deed and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this August 6, 1977

*John L. Miller*  
 Notary Public for South Carolina

(SEAL)

*Helena K. Hallen*

My commission expires 10-7-80

STATE OF SOUTH CAROLINA  
 COUNTY OF SPARTANBURG

RENUNCIATION OF DOWER Grantee wife of Grantor

I, the undersigned Notary Public, do hereby certify unto all whom it may concern, that the undersigned wife (wives) of the above named grantor(s) respectively, did this day appear before me, and each, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the grantee(s) and the grantee(s)' heirs or successors and assigns, all her interest and estate, and all her right and claim of dower of, in and to all and singular the premises within mentioned and released.

GIVEN under my hand and seal this

19

(SEAL)

Notary Public for South Carolina  
 My commission expires

4 R-215

DEED 44 V 141560  
STATE OF SOUTH CAROLINA }  
COUNTY OF SPARTANBURG }

Address of Grantee: 1500 Carroll st.  
Brooklyn, N. Y. 11213

KNOW ALL MEN BY THESE PRESENTS, that  
Bomar

Thurmond Bomar (also known as Thurman L.

in consideration of one dollar, love and affection - - - - -

the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto

Mary L. Bomar an undivided one-half interest in and to:

All that lot or parcel of land approximately three-quarters of a mile west of Sigbee on the north side of the New Cut road in above mentioned County and State, containing 1 acre, more or less, bounded on the east by the Garrett land, on the north and west by the Robinsons and being delineated on a plat of H. Stribling made for Ralph Garrett, 9-1-32. BEGINNING at an iron pin on the north edge of the road and running thence N. 59-08 E. 387 feet to I.P.; thence S. 30-52 E. 70.2 feet to I.P.; thence S. 21 W. 203 feet to the New Cut road; thence with the north edge of the road N. 80-13 W. 300 feet to the beginning.

ALSO: All that lot or parcel of land a short distance off the New Cut road to the northeast, about three-quarters of a mile west of Sigbee in above County and State, containing .072 acres by survey of C. A. Seawright. BEGINNING at the northeast corner of the above described tract, and running thence N. 59-08 E. 89.8 feet to an iron pin; thence with line of the Garrett property S. 21 W. 113.5 feet to corner of the Bomar property; thence with line of the Bomar property N. 30-52 W. 70.2 feet to the beginning corner.

This being an one-half interest in the same property as conveyed to me (Thurmond Bomar) by Hazel J. Bomar, Charles Bomar and Hattie Bomar by deed recorded 12-30-70 in Deed Book 37-Q, Page 81, R.M.C. Office for Spartanburg County.

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging in, in anywise incident or appertaining, to have and to hold all and singular the premises before mentioned unto the grantee(s) and the grantee(s)' heirs (or successors) and assigns forever. And the grantor(s) do(es) hereby bind the grantor(s) and the grantor(s)' heirs (or successors), executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee(s)' heirs (or successors) and assigns against the grantor(s) and the grantor(s)' heirs (or successors) and against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to restrictions and easements of record, if any.

WITNESS the grantor(s)' hand(s) and seal(s) this August 6, 19 77

SIGNED, sealed and delivered in the presence of:

*Helen K. Hollins*  
*Louie L. Miller*

*Thurmond L. Bomar* (same as Thurmond Bomar)  
1977 AUG -9 PM 10:00  
RECORDED  
SPARTANBURG, S.C.

STATE OF SOUTH CAROLINA }  
COUNTY OF SPARTANBURG }

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor(s)' act and deed deliver the within written deed and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this August 6, 19 77

*Louie L. Miller* (SEAL)  
Notary Public for South Carolina.

My commission expires 10-7-80

STATE OF SOUTH CAROLINA }  
COUNTY OF SPARTANBURG }

RENUNCIATION OF DOWER Grantee, Grantor's wife

I, the undersigned Notary Public, do hereby certify unto all whom it may concern, that the undersigned wife (wives) of the above named grantor(s) respectively, did this day appear before me, and each, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the grantee(s) and the grantor(s)' heirs or successors and assigns, all her interest and estate, and all her right and claim of dower of, in and to all and singular the premises within mentioned and released.

GIVEN under my hand and seal this

19

Notary Public for South Carolina.  
My commission expires

3

R-216

17 SEP 1997 11 20 30  
RECEIVED  
EXEMPT

MICHAEL N. DUNCAN, Attorney at Law  
220 North Church Street, P. O. Box 1144  
Spartanburg, S. C. 29304  
864-582-4569

BLOCK MAP REFERENCE NO.

P/O 6 05-00 20.00

ADDRESS OF GRANTEE:

160 Bainbridge Street  
Brooklyn, N. Y. 11233

RECORDED  
97 SEP 23 PM 2:38  
SPARTANBURG, S.C.

STATE OF SOUTH CAROLINA

DEED

COUNTY OF SPARTANBURG

KNOW ALL MEN BY THESE PRESENTS, that THURMON L. BOMAR a/k/a THURMAN L. BOMAR and MARY L. BOMAR in consideration of One (\$1.00) Dollar, love and affection the receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto KATHERINE L. CHRISTIAN, her heirs and assigns forever the following described real property:

All that certain piece, parcel or lot of land situate, lying and being in the County of Spartanburg, State of South Carolina on Jordan Creek Road, containing 1.50 acres, more or less, and being more particularly shown and designated on a plat of survey for Thurman & Mary L. Bomar by Gramling Brothers Surveying, Inc. dated August 28, 1997 and to be recorded herewith. Reference is made to the aforementioned plat of survey and the record thereof for a more complete and accurate description.

This is the same property conveyed to Thurmon L. Bomar by Deed of Charlie Bomar recorded March 8, 1976 in Deed Book 43 P at page 166 in the Spartanburg County RMC Office. Also, see Deed of Thurmon L. Bomar to Mary L. Bomar conveying an undivided one half interest recorded August 9, 1977 in Deed Book 44 V at page 559 in the Spartanburg County RMC Office.

No mobile home, manufactured home, prefabricated home, modular home, or double wide mobile home shall be placed upon the above described real property, without the Grantors' permission. This is a covenant running with the land.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident

R-217

111RMC 251 92397#103 \$10.00 +

or appertaining; TO HAVE AND TO HOLD ALL and singular the premises before mentioned unto the grantee(s) and the grantee's(s') heirs (or successors) and assigns forever. And the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs (or successors), executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's (s') heirs (or successors) and assigns against the grantor(s) and the grantor's(s') heirs (or successors) and against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to conditions, reservations, restrictions and easements of record, if any.

WITNESS the grantor's(s') hand(s) and seal(s) this 22nd day of September 1997.

SIGNED, SEALED, AND DELIVERED  
IN THE PRESENCE OF:

Michael N. Duncan  
Witness

Thurmon L. Bomar (SEAL)  
THURMON L. BOMAR

Thurmon L. Bomar (SEAL)  
a/k/a THURMAN L. BOMAR

Mindy Westbrook  
Witness

Mary L. Bomar (SEAL)  
MARY L. BOMAR

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

ACKNOWLEDGMENT

I, Michael N. Duncan, Notary Public of the County and State aforesaid, certify that Thurmon L. Bomar a/k/a Thurman L. Bomar and Mary L. Bomar personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal this 22nd day of September 1997.

Michael N. Duncan  
Notary Public for S. C.  
My Commission expires: 11/27/2006

GRANTEE'S ADDRESS: DEED 82-N PG 826 TAX MAP I.D. NO.: 6-05-00-020.00  
380 S. Pine Street  
Spartanburg, SC 29302

DEE-2005-12655  
Recorded 2 Pages on 3/15/2005 11:14:50 AM  
Recording Fee: \$10.00 Documentary Stamps: \$677.10  
Office of Register of Deeds, Spartanburg, S.C.  
Stephen Ford, Register



STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

TITLE OF REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that we, THURMON L. BOMAR, a/k/a THURMAN L. BOMAR, and MARY L. BOMAR, in consideration of:

ONE HUNDRED EIGHTY TWO THOUSAND  
NINE HUNDRED ELEVEN AND 80/100 DOLLARS  
(\$182,911.80)

the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said:

JORDAN CREEK PARTNERS, LLC  
its successors and assigns forever,

All that piece, parcel or tract of land located in the State of South Carolina, County of Spartanburg, containing 35.40 acres, more or less, as shown on a plat prepared for Jordan Creek Partners, LLC by Gramling Brothers Surveying, Inc., dated February 1, 2005, to be recorded herewith, ROD Office for Spartanburg County, South Carolina.

DERIVATION: This is the same property conveyed to Thurmon L. Bomar by deed of Charlie Bomar recorded March 9, 1976 in Deed Book 43-P at page 166. See also deed of Thurman L. Bomar to Mary L. Bomar conveying a one-half undivided interest recorded August 9, 1977 in Deed Book 44-V at page 559.

TOGETHER with all and singular rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining,

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, its successors and assigns forever. And the Grantors dos hereby bind the Grantors, their heirs, executors and assigns to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's successors and assigns against the Grantors and the Grantors' heirs,

executors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part hereof, except as to restrictions and easements of record, if any.

WITNESS the Grantors hands and seals this 14 day of Mar, 2005.

IN THE PRESENCE OF:

[Signature]  
[Signature]  
Thurmon L. Bomar a/ka/ Thurman L. Bomar  
Mary Bomar  
Mary L. Bomar

STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

ACKNOWLEDGMENT

I, Joseph K. [Signature], a Notary Public for the State of South Carolina, do hereby certify that Thurmon L. Bomar a/ka/ Thurman L. Bomar and Mary L. Bomar personally appeared before me and acknowledged the due execution of the foregoing deed this 14 day of March, 2005.

SWORN TO before me this 14 day of March, 2005

[Signature] (SEAL)  
 Notary Public for South Carolina

My Commission expires: 03/12/14

11-162

NAME OF SUCCESSOR

ADDRESS

INTEREST

X Donna C. Thomas  
2456 NEW CUT ROAD  
SPARTANBURG, S.C. 29303

SWORN to before me this 23rd day of March 19 93

Donna C. Thomas

Notary Public for South Carolina  
My Commission Expires: 04-08-97

Signature: Mary Roman  
Name: Mary Roman  
Address: 2456 New Cut Rd  
Spartanburg, S.C. 29303  
Telephone: 803-576-2366  
(H):

This Affidavit is pursuant to Section 3-1201 of the SCPC, effective July 1, 1987.

It appears from the foregoing record of the above-captioned estate on file in the Probate Court of this county, the affiant herein is entitled to payment or delivery of the property specified ~~above~~ as follows:

fees held @ S.C. Dept. of Mental Health  
for payment of care/maintenance account \$1,065.33

Executed this 23rd day of March, 19 93.

Raymond C. Eubanks Jr.  
RAYMOND C. EUBANKS JR., Probate Court Judge

71-162

NAME OF SUCCESSOR

ADDRESS

INTEREST

SWORN to before me this 9th day of May 1990

Melinda E. Cantrell  
Notary Public for South Carolina  
My Commission Expires: 3-29-90

Mary Romar  
Signature: \_\_\_\_\_  
Name: THURMAN ROMAR  
Address: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_  
(H): \_\_\_\_\_

This Affidavit is pursuant to Section 3-1201 of the SCPC, effective July 1, 1987.

It appears from the foregoing record of the above-captioned estate on file in the Probate Court of this county, the affiant herein is entitled to payment or delivery of the property specified ~~below~~ as follows;

CHECK NUMBER 110672299 FROM SC OFFICE OF STATE TREASURER IN THE AMOUNT OF \$212.58  
CHECK NUMBER 087752 FROM STATE OF SC DEPARTMENT OF MENTAL HEALTH " " \$430.21.

Executed this 9TH day of MAY, 1990.

Raymond C. Eubanks, Jr.  
RAYMOND C. EUBANKS, JR., Probate Court Judge

LAST WILL AND TESTAMENT OF  
MARY LOUISE BOMAR

I, MARY LOUISE BOMAR, of Spartanburg, 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.

I

I direct that all my just debts and funeral expenses be paid out of my estate.

II

I do hereby give, devise and bequeath all of my property, both real and personal, to my husband THURMAN LAWRENCE BOMAR, to be his absolutely and forever. Should my husband predecease me or in the event of our simultaneous deaths in a common disaster, I give, devise and bequeath all of my property to my children KATHERINE LOUISE WHITE, CHARLES EDWARD CARR AND JOYCE RANEE KING, absolutely and forever.

III

I hereby nominate, constitute and appoint as the Personal Representative of this my LAST WILL AND TESTAMENT, my husband, THURMAN LAWRENCE BOMAR, and direct that he shall serve without bond. Should my husband be unwilling or unable to serve as Personal Representative, I do hereby nominate, constitute and appoint my son CHARLES EDWARD CARR, to serve as Personal Representative of this my LAST WILL AND TESTAMENT, and direct

*Mary Louise Bomar*

that he shall serve without bond.

I, MARY LOUISE BOMAR, the testatrix, sign my name to this instrument this 27 day of July, 1988, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Mary Louise Bomar  
MARY LOUISE BOMAR

We, Mary Ann Kunak, Gayle C. Hawkins, 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 Testament and that she signs it willingly, and that each of us, in the presence and hearing of the testatrix, hereby signs this Will as witness to the testatrix' 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.

Mary Ann Kunak  
Witness

Gayle C. Hawkins  
Witness

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

PROBATE

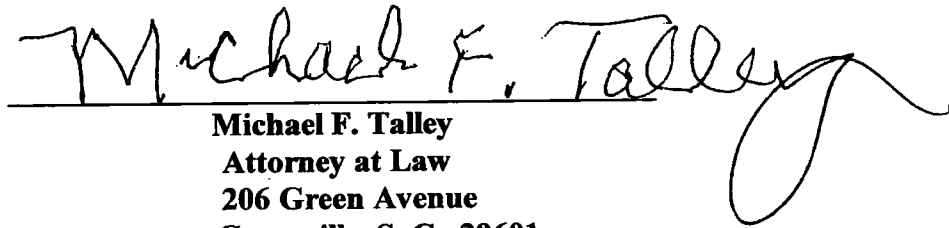
Subscribed, sworn to, and acknowledged before me by MARY LOUISE BOMAR, the testatrix, and subscribed and sworn to before me by Mary Ann Kunak and Gayle C. Hawkins, witnesses, this 27th day of July, 1988.

Thomas L. Young (SEAL)  
Notary Public for South Carolina  
My Commission Expires: 01/31/94

Page Two of Two Pages of the  
Last Will and Testament of  
Mary Louise Bomar

**CERTIFICATE OF SERVICE**

**I certify that this Record On Appeal contains all material proposed to be included by all parties and this Record On Appeal contains no matter which is irrelevant to this appeal.**

A handwritten signature in black ink, reading "Michael F. Talley", with a large, stylized flourish extending from the end of the name.

**Michael F. Talley  
Attorney at Law  
206 Green Avenue  
Greenville, S. C. 29601  
(864) 233-6229  
(864) 370-0071 (fax)  
Attorney for the Appellants**

**Dated: September 25, 2013**

**IN THE STATE OF SOUTH CAROLINA**

**IN THE COURT OF APPEALS**

---

**APPEAL FROM SPARTANBURG COUNTY**

**Spartanburg County Court of Common Pleas**

**J. MARK HAYES, II, CIRCUIT COURT JUDGE**

---

**2011-ES-42-00162**

**Case No. 2012-CP-42-3705**

---

**Willie A. Rogers and Vennie Rogers..... Appellants.**

**vs.**

**Charles Carr, in his Individual and Official Capacity as the Personal  
Representative of the Estate of Thurman L. Bomar, Deceased, Katherine  
Christian and Joyce King..... Respondents.**

---

**FINAL BRIEF OF APPELLANTS**

---

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**Attorneys For Appellants**

**IN THE STATE OF SOUTH CAROLINA**

**IN THE COURT OF APPEALS**

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Attorneys For Appellants**

**IN THE COURT OF APPEALS**

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**ROGERS VS. CARR**

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**IN THE COURT OF APPEALS**

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**STATEMENT OF ISSUES ON APPEAL**

**I.**

**DID THE TRIAL JUDGE AND APPELLATE COURT BELOW ERR IN FINDING THAT THE SIGNATURE ON THE LAST WILL AND TESTAMENT AND VARIOUS DEEDS OF THURMAN BOMAR WAS AUTHENTIC WHEN THE TRIAL COURT WAS BIAS IN "INTERJECTING ITS OPINION" IN ITS FINDINGS FOR THERE WAS NO TESTIMONY BY THESE SO-CALLED LOCAL ATTORNEYS OR WITNESSES THAT THEY "RECOGNIZED OR REMEMBERED" THURMAN BOMAR AS BEING THE PERSON WHO SIGNED HIS PUORTED LAST WILL AND TESTAMENT AND VARIOUS DEEDS?**

**II.**

**DID THE TRIAL JUDGE AND APPELLATE COURT ERR IN FINDING THAT THE RESPONDENTS DID NOT COMMIT FRAUD ON THE TRIAL COURT WHEN THE RESPONDENTS INTENTIONALLY FILED A FALSE AND FRAUDULNT PETITION UNDER OATH HIDING THE EXISTENCE OF THE APPELLANTS AS THE ONLY SURVIVING HEIRS OF THE DECEDENT THURMAN BOMAR WHICH SHOULD DISQUALIFY THE RESPONDENTS FROM INHERITING FROM THE DECEDENT?**

**III.**

**DID THE TRIAL JUDGE AND APPELLATE COURT BELOW ERR BY FAILING TO FIND THAT THE RESPONDENTS WERE GUILTY OF A CIVIL CONSPIRACY BY INTENTIONALLY FILING A FALSE AND FRAUDULENT PETITION WITH THE TRIAL COURT HIDING THE EXISTENCE OF THE APPELLANTS WHO WERE THE ONLY SURVIVING HEIRS OF THE DECEDENT WHICH SHOULD DISQUALIFY THE RESPONDENTS FROM INHERITING FROM THE DECEDENT?**

**IN THE COURT OF APPEALS**

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**ROGERS VS. CARR**

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**STATEMENT OF THE CASE**

The Respondents, who are Step-children of the Decedent, Thurman Bomar, filed a false and fraudulent Petition for the Informal Probate of the Decedent's purported Last Will and Testament of July 27, 1988 and for their Informal Appointment on March 8, 2011 with the trial court below, the Spartanburg County Probate Court. (R. pp. 18-23). (R. pp. 209-210); (R. p. 91). Thereafter, in July, 2011, the Appellants filed a Complaint To Contest the Authenticity of the Last Will and Testament of the Decedent, Thurman Bomar, Due to Forgery and Undue Influence and an Opposing Petition for Formal Appointment. (R. pp. 31-36; R. pp. 24-30). In due course, the Respondents timely served and filed an Answer. (R. pp. 37-39).

After discovery, this Action came to trial on June 11, 2012 in the Spartanburg County Probate Court. After both parties moved for Summary Judgment and the Court reserved its Ruling on both Motions, the Respondents was directed by the court to put up the Will and their witnesses. (R. p. 60).

The first witness called was Attorney Charles Hodge who had been practicing law 31 years as of June 1, 2011. Although Mr. Hodge's main focus is medical malpractice, he draws Last Wills and Testament for people. Under questioning by Attorney Edwards,

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### ROGERS VS. CARR

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attorney Hodge testified that his office used Blue Covers on Last Will and Testaments in the 1980's and like the one showed to him by Mr. Edwards of the decedent, Thurman Bomar, and his wife, and he testified that they were probably done at his direction but **"he did not remember the decedent and his wife or even recognize them from a picture showed to him by Mr. Edwards. However, he testified that one of the witnesses on the decedent's Last Will and Testament of 1988 was his father's Nurse, a Mary Ann Kunah, and he recognized names of some of his former employees on the decedent's Last Will and Testament of July 27, 1988. (R. pp. 62-66). Further, under cross-examination, Mr. Hodge testified "that he did not even remember the decedent, Mr. Bomar, or even the process where they signed the document."** ( R. p. 67). The Respondents next called Ms. Mary Ann Kunah as their next witness, and although she testified that she witnessed Wills for Mr. Hodge's Law Office from time to time **"when she worked for Mr. Hodge's father from 1991 to 1995, "she also testified that she had no memory of Thurman Bomar or Mary Bomar or any memory of the particular event." ( R. pp. 68-70).**

The Respondents next called Mr. Charles Carr as a witness and he testified that he met the decedent, Thurman Bomar, in New York in 1957 or 1958 when he was 11 or 12 years old. ( R. p. 71). He also testified that the decedent later married his mother in 1975 and that the decedent and his mother moved to South Carolina in 1987 to take

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care of his father and mother. Charles Carr further testified that he had never seen the Last and Testament of Thurman Bomar or his mother before 2010 when he discussed the disposition of his mother's Estate with her ( R. pp. 79-80).

Under Cross-Examination, Charles Carr said that he was not there when this Will was purportedly signed by Thurman Bomar and he did not know who were present. ( R. .p. 84).

This Respondent, Mr. Charles Carr, also said under Cross-Examination that he met the Appellants, Willie Rogers and his brothers and sisters, when he came to South Carolina in the 70s or 80s and that he went out to dinner and socialized with the Appellants on his visits to South Carolina as he became aware at that time that the Appellants were relatives of Thurman Bomar. ( R., pp. 84-87). He also testified that he was not aware that he was not mentioned in the Obituaries of Thurman Bomar's parents, Charles and Hattie Bomar and he read the Obituaries into evidence but the Appellants' mother, Laura Rogers, and Thurman Bomar were mentioned in Charles and Hattie Bomar's Obituaries as their daughter and son. ( R., pp. 88-90).

Also, under further Cross-Examination, the Respondent Charles Carr testified that he filed the Petition with the Spartanburg County Probate Court to admit the decedent Thurman Bomar's Last Will and Testament to probate and that he signed the Petition under oath that the information on the Petition was true but that he did not list the

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Appellants, Willie Rogers and his brothers and sisters, as intestate heirs of the decedent, Thurman Bomar. ( R., pp. 91-98).

The Respondents' next witness was Charles Carr's sister, Katherine Christian, who testified that she knew the Appellants were relatives of Thurman Bomar and even had dinners with them and went on a cruise with them too. ( R., pp. 107-108.). She further testified under Cross-Examination that she was with her brother, Charles Carr, when they filed the Petition to admit Thurman Bomar's Last Will and Testament with the Spartanburg County Probate Court and that she was aware that she and her brother did not place the names of the Appellants Willie Rogers and Vennie Rogers on the Petition and that she was not in South Carolina when the Will was executed and that she did not know who was present during that time. ( R., pp. 116-118).

The Appellants called a Ms. Thelma Thompson as their first witness. Ms. Thompson, a retired Teacher and Librarian, testified that she and Thurman Bomar were childhood friends and that they started attending school together at Upper Shady Grove Church School where her mother was a teacher. She further said that they became girlfriend and boyfriend and they exchanged many letters and photographs while they were

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were in College and Graduate Schools and that she was familiar with Thurman Bomar's handwriting. She testified that Thurman Bomar's signature on a photograph he had sent her while he was at Voorhees College was authentic ( R., pp. 122-127). However, she testified that Thurman Bomar's signature on his Last will and Testament was not Thurman Bomar's signature. ( R., p. 128). Ms. Thompson also testified that she was childhood friends with the Appellants' mother, Laura, and that she and Laura served on the Trustees Board for the Church. ( R. p. 131) but that she did not know Laura's mother, Lizzie, as Lizzie died at an early age ( R. p. 135) but she was aware that Lizzie and Hattie, Thurman Bomar's mother, were first cousins and that Laura was always at Charlie and Hattie Bomar's house. She also testified that she and Thurman Bomar always stayed in touch but that she went to Graduate School at Indiana University in Bloomington, Indiana where she received a Master's in Librarianship in 1968.

The Appellants' next witness was Willie Rogers who testified that Lizzie Burgan was his grandmother but that she had died before he was born. (R. p. 137). He also testified that he had worked for his Grandfather, Charlie Bomar, as a teenager and that his Grandfather was a peach farmer. When he received an Honorable discharge from the Army, he testified that, around 1970, he started cutting his Grandfather's yard, tending his garden and doing anything else needed to be done around the house. After his Grandfather died, he started helping his uncle, Thurman Bomar, with the same chores.

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( R., pp. 139-140 ). He testified that he had a good relationship with Thurman Bomar for some time but, when he moved back to Spartanburg with his wife, Mary, their relationship changed because his uncle's wife, Mary, started keeping them apart and he was of the impression that his uncle was afraid of her. ( R., p. 143).

The Appellant Willie Rogers testified that the signature on the second page of Thurman Bomar's Last Will and Testament was not the signature of his uncle's, Thurman Bomar. He also testified that he assumed that it was "Charles or Kathy" who filled out his uncle's Obituary because "they called his sister and asked her about the nieces and nephews that they had besides Vennie and myself." ( R., p. 145). Thereafter, he reviewed various deeds or other documents and testified whether or not the signatures of Thurman Bomar appearing thereon were his Signatures or not.

Also, the appellant Willie Rogers testified that both Charles Carr and his sister, Kathy, knew that he and his sisters and brothers were nieces and nephews of their uncle, Thurman Bomar. ( R., p. 151).

The Appellant's final witness was Charles Turner, a cousin of Thurman Bomar who testified that he was born and lived right beside Thurman Bomar growing up. He also said that, when he retired from the North Oceanic Atmosphere Administration or the National Weather Station, he moved back home to Spartanburg. He testified that,

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when he was growing up, the Appellants' mother, Laura, was always in and out of Charles and Hattie Bomar's home quite often and Laura was always in their home until Charles and Hattie Bomar died. ( R., p. 165).

Thereafter, the Trial Court, relying very heavily on **"its own opinion about all of the respected attorneys and trusted court employees whose names appeared on either Thurman Bomar's Last will and Testament or various deeds,"** ruled that Thurman Bomar's signature on his Last Will and Testament was authentic and not a forgery especially in view of the fact that, since Thurman Bomar's Last Will and Testament, was self-proving and that it was not necessary for the respondents or Mr. Edward's to produce any witnesses at all to prove that Thurman Bomar's Last Will and Testament was valid. ( R., pp. 172-178.). Also, in his ruling, the Trial Court ruled that it is not necessary for the trial court to rule on whether the Appellants' mother, Laura, was blood related and was barred by Section 62-2-109 S. C. Code of Laws, 1976, as Amended. . ( R., p. 177).

Thereafter, the Appellants timely appealed the decision of the Trial Court to Spartanburg County Circuit Court ( R., pp. 40-44 ) and timely filed their Grounds of Appeal ( R. pp. 40-44 ). After an Appeals Hearing in Spartanburg Circuit Court on January 22, 2013 before Judge J. Mark Hayes, II, in which the Appellants argued that the Trial Court committed reversible error because a lot of the Order was based on the

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court interjecting its own opinion on its familiarity with attorneys, that they knew the attorneys, that the court knew the attorneys, that these were fine attorneys and these attorneys were not doing anything wrong” but there was never any testimony in the record about these attorneys, from the attorneys or about the attorneys ( R. pp. 187-188, and that the Respondents (Step-children of the decedent) filed a Petition to probate the estate but that they intentionally omitted the existence of the Appellants who were the only surviving relatives of the decedent and that this omission was intentional and was basically perjury and an obstruction of justice and that the Respondents’ wrong-doing should not be rewarded by dismissing the Appellants’ objections to this Will, Judge Mark Hayes issued his Order on April 19, 2013 affirming the Trial Court’s decision dismissing the Appellants’ appeal. Thereafter, the Appellants timely served and filed their Notice of Appeal to the S. C. Court of Appeals and this appeal follows.

For the hereinafter stated reasons, the trial court and the Appellate Court (the Spartanburg County Circuit Court) must be reversed.

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ROGERS VS. CARR

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ARGUMENT

I.

**THE TRIAL COURT ERRED BY ALLOWING ITS OPINION OF LOCAL RESPECTED ATTORNEYS TO CAUSE IT TO "INTERJECT ITS OPINION" OF ITS FAMILIARITY OF SO-CALLED RESPECTED LOCAL ATTORNEYS IN ITS TAINTED AND BIAS FINDINGS THAT THE SIGNATURE OF THE DECEDENT ON HIS LAST WILL AND TESTAMENT WAS AUTHENTIC EVEN THOUGH THERE WAS NO TESTIMONY BY OR ABOUT THESE SO-CALLED RESPECTED OR LOCAL ATTORNEYS TO JUSTIFY SUCH FINDINGS.**

An action to set aside a Will is an action at law, In re Estate of Cumbee, 333 S. C. 664, 511 S. E. 2d 390. S. C. Ct. of App., 1999). "If the proceeding in the probate court is in the nature of an action at law, the circuit court....may not disturb the probate judge's finding of fact unless a review of the record discloses there is no evidence to support them." Also, in a law case tried without a jury, questions regarding the credibility and the weight of evidence are exclusively for the trial judge." Golini vs. Bolton, 326 S. C. 333, 482 S. E. 2d 784 (S. C. App. 1997) (S. C. Ct. of App. 1997).

However, an Appellate Court may decide "questions of law with no particular deference to the trial court," Dreher v. Dreher, 370 S. C. 75, 634 S. E. 2d 646 (2006). (Emphasis added.)

Here, in the case at bar, this case on appeal concerns only questions of law as to

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whether a Trial Court can allow its biasness to cause it to interject its own opinion on the facts in the case below in its findings when there was no testimony under oath to give rise to the court's own opinions.

In this case below, the Appellants challenged the decedent's Last Will and Testament in the Trial Court basely on the grounds that the decedent's signature was a forgery. ( R., pp. 31-36; R, pp. 24-30). In the trial below, the Respondents produced the testimony of the attorney who **"purportedly"** prepared the Decedent's Will, Mr. Charles Hodge, and a **"purported witness"** to the Decedent's Will, , a Mary Ann Kunah, in its Case-in-Chief to prove that the Decedent's signature was authentic, **" but Mr. Hodge did not remember the decedent and his wife or even recognize them from a picture showed to them by the Respondents' attorney and Mr. Hodge testified that one of the witnesses on the Decedent's Last Will and Testament of July 27, 1988 was his Physician father's Nurse, a Mary Ann Kunah. ( R., pp. 62-66). Further, under cross-examination, Mr. Hodge, the attorney, testified "that he did not even remember the decedent, Mr. Bomar , or even the process where they signed the document." ( R., p. 67 ). Also, even though the Respondents' next witness, Ms. Mary Ann Kunah testified that she witnessed Wills for Mr. Hodge's Law Office from time to time when she worked from Mr. Hodge's father from 1991 to 1995, "she testified that she had no memory of Thurman Bomar**

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---

or Mary Bomar or any memory of the particular event,” ( R. pp. 68-70 ).

However, please note that **this purported witness**, Mary Ann Kunah, who testified that she was a Nurse for Mr. Hodge’s father’s Doctor’s Office from 1991 to 1995, **could not have witnessed the decedent’s Last will and Testament on July 27, 1988 because this Mary Ann Kunah did not even work for Mr. Hodge’s father at his Doctor’s office until 1991 to 1995.**

However, the Trial Judge allowed his opinion of his familiarity of the local attorneys and/or court employees whose names appeared connected to and/or on the decedent’s Last Will and Testament of July 27, 1988 and to various deeds, (R. pp. 172-178 ). **without any testimony being offered under oath on the competence or respectability of these so-called local respected attorneys to cloud and taint his judgment** and caused him to form a biasness against the Appellants and their case down below **in violation of the law** that the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of due process embodied in the United State Constitution, Mallett vs. Mallett, 473 S. E. 2d 804 (S. C. Ct. of App., 1996); In re Murchison, 349 U. S. 133, 75 S. Ct. 623, 99 L. Ed 942 (1955).

In the case of In The Matter of Betsey Campbell et. al. vs. Campbell, 666 S. E. 2d 908 (S. C. Ct. of App. 2008), **“the Appellate court found a clear bias on the part of**

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**the trial judge when the trial judge expressed his own opinions.** The trial judge down below in this case has shown the exact same clear bias by interjecting his own opinions in his Findings. ( R., pp. 172-178).

Further, due to the trial court's aforesaid biasness, the trial judge completely over-looked the testimony by Dr. Hodge's nurse's which raised serious questions as to whether she was a witness for the Decedent Thurman Bomar's Last Will and Testament on July 27, 1988 "when, by her testimony, she served as witnesses from time to time for Mr. Charles Hodge's Law Office from 1991 to 1995 when she worked as a Nurse for the Doctor's Office of Mr. Hodge's father. ( R., pp. 68-70 ).

It would appear that this was the same biasness on the part of the Trial judge which caused him to overlook and reject the testimony of Ms. Thelma Thompson who was the only person who was familiar with and had first hand knowledge of the Decedent Thurman Bomar. Ms. Thompson was very familiar with the Decedent's handwriting as they not only grew up together but they exchanged letters and cards down through the years and she testified that the purported signature of the decedent Thurman Bomar on his Last Will and Testament "was not his signature. ( R., pp. 122-128 ).

In its attempt to refute the testimony of Ms. Thompson that "the decedent

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Thurman Bomar's signature on his Last Will and Testament was not his signature," the trial judge, in his Order, made a "speculative or outlandish Finding" that the decedent's handwriting changed over years from "a left hand slant to a right hand slant and/or vice versa" which is, in itself, is unlawful and illegal biasness against the Appellants.

Accordingly, for the foregoing reasons, the trial judge's failure to find that the Decedent's signature on his Last Will and Testament was not a forgery must and should be reversed..

## II.

**THE TRIAL COURT ERRED IN FINDING THAT THE RESPONENTS DID NOT COMMIT FRAUD ON THE TRIAL COURT BY INTENTIONALLY FILING A FALSE AND FRUDULENT PETITION UNDER OATH HIDNG THE EXISTENCE OF THE APPELLANTS AS THE ONLY SURVIVING HEIRS OF THE DECEDENT THURMAN BOMAR WHICH SHOULD HAVE DISQUALIFIED THE RESPONDENTS FROM INHERITING FROM THE DECEDENT."**

Section 62-3-705 entitled "Duty of Personal Representatives, information to heirs and devisees" states as follows:.

"Not later than thirty days after his appointment every personal representative.....shall give information of his appointment to the heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees.....The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative.....The information must include the name and address to the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed,

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and describe the court where papers relative to the estate are on file. **“The personal representative’s failure to give this information is a breach of duty to the persons concerned but does not affect the validity of his appointment, his powers, or other duties.”** (Emphasis added).

According to this above Statute, the Respondent Charles Carr’s failure to list the Appellants so he could give information to the heirs who has an interest in Thurman Bomar’s Estate was and is a breach of his duty to the person concerned, to-wit: to all persons who have an interest in Thurman Bomar’s Estate.

Here, the Respondents, Charles Carr and his sister, Katherine Christian, filed a Petition with the Spartanburg County Probate Court to probate Thurman Bomar’s purported Last Will and Testament and sought an informal appointment **but the Respondents failed to list the existence of the Appellants,** ( R., pp. 18-23 ),, apparently with the intent to mislead and perpetrate a fraud upon the court since both Respondents, Charles Carr and his sister Katherine Christian, knew that they had omitted the names and existence of the Appellants and they both knew that the Appellants were the only surviving nieces and nephews of the decedent. ( R., pp. 84-87; 91-98; 107-108; 116-118).

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On the issue of Fraud relative to an Estate or probate proceeding,  
Section 62-1-106 of the S. C. Code of Laws, 1976, as Amended, states as follows:

"Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not, but only to the extent of any benefit received. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of the commission of the fraud....."  
(Emphasis added).

Accordingly, it is clear that, under this above Statute, the Respondents have perpetrated a fraud upon the court by omitting and hiding the existence of the Appellants and, accordingly, any benefits or inheritance received by the Respondents from the Estate of Thurman Bomar should be forfeited and transferred to the Appellants, Gordon vs. Busbee, 723 S. E. 2d 822 (S. C. Ct. of App. 2011).

Therefore, for the foregoing reasons, the Trial Court's and Appellate Court's Findings down below that the Respondents did not commit a Fraud upon the Trial Court below must be reversed.

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III.

**THE TRIAL COURT AND APPELLATE COURT DOWN BELOW  
ERRED IN FAILING TO FIND THAT THE RESPONDENTS WERE GUILTY  
OF A CIVIL CONSPIRACY BY INTENTIONALLY FILING A FALSE AND  
FRAUDULENT PETITION WITH THE TRIAL COURT TO HIDE THE  
EXISTENCE OF THE APPELLANTS WHO WERE THE ONLY SURVIVING  
HEIRS OF THE DECEDENT WHICH SHOULD DISQUALIFY THE  
RESPONDENTS FROM INHERITING FROM THE DECEDENT.**

A civil conspiracy exists when there is : 1) A combination of two or more persons;  
2) joining for the purpose of injuring the plaintiff; and 3) which causes the plaintiff special  
damages, Gordon vs. Busbee, Supra, p. 826; Angus vs. Burroughs & Chapin Co.,  
358 S. C. 498, 596 S. E. 2d 67, rehearing denied ( S.C. App., 2004); McMillian vs.  
Oconee Mem'l Hosp. Inc., 367 S. C. 559, 626 S. E. 2d 884 (2006) and a civil conspiracy  
consists of three elements, (1) A combination of two or more persons, (2) for the purpose  
of injuring the plaintiff; and (3) which causes him special damages, Gordon vs. Busbee,  
supra., p. 826) Vaught vs. Waites, 300 S. C. 201, 387 S. E. 2d 91 (S. C. Ct. of App.  
1989).

Here, in the case at bar, the Respondents, Charles Carr and his sister, Katherine  
Christian, combined and agreed to file a **false** Petition to probate Thurman Bomar's Estate

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in the trial court below, the Spartanburg County Probate Court, and in filing this said false Petition, these Respondents intentionally hid the existence and names of the Appellants, Willie Rogers and his brothers and sisters, who were the only surviving heirs of the decedent, Thurman Bomar. Please note that these Respondents hid and omitted the names and existence of the Appellants **although these Respondents were aware that the Appellants, Willie Rogers and his brothers and sisters, were nieces and nephews of the decedent, Thurman Bomar, and had socialized and had social outings with them when they first came to South Carolina in the 70's and 80's, ( R., pp. 107-108).**

The Respondent Katherine Christian, sister of Respondent Charles Carr, testified that she was with her brother, Charles Carr, when they filed the Petition to Admit Thurman Bomar's Last Will and Testament with Spartanburg County Probate Court and that she was aware that she and her brother did **not** place the name of the Appellants, Willie Rogers and his Sister, Vennie Rogers, on the Petition.

Thus, it is clear that the Respondents conspired to hid the existence of the Appellants and injury them by denying them the right and/or opportunity to protect their interests in the estate of their uncle, the decedent Thurman Bomar, and the Respondents should be disqualified from inheriting from their uncle, the decedent Thurman Bomar.

Accordingly, for the foregoing reasons, the Trial court's failure to find that the Respondents were guilty of perpetrating a joint fraud on the trial court and the

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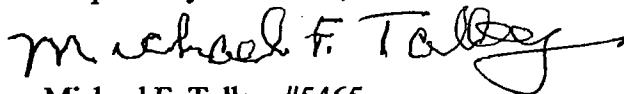
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the Appellate court's ruling below should be reversed.

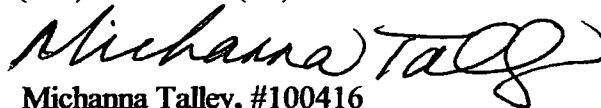
**CONCLUSION**

For the foregoing reasons, the Trial Court's findings and the Appellate Court's ruling below affirming the Trial court's Findings that the decedent Thurman Bomar's signature on his Last Will and Testament was authentic and not a forgery and that the Respondents did not perpetrate a Fraud on the Spartanburg County Probate Court should and must be reversed.

Respectfully Submitted,



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**Dated: September 25, 2013**

**IN THE STATE OF SOUTH CAROLINA**  
**IN THE COURT OF APPEALS**

---

**APPEAL FROM SPARTANBURG COUNTY**  
**Spartanburg County Court of Common Pleas**

**J. MARK HAYES, II CIRCUIT COURT JUDGE**

---

**2011-ES-42-00162**  
**Case No.: 2012-CP-42-3705**

---

**Willie A. Rogers and Vennie Rogers.....Appellants.**

**vs.**

**Charles Carr, in his Individual and Official Capacity as the Personal Representative  
of the Estate of Thurman L. Bomar, Deceased, Katherine Christian and Joyce  
King.....Respondents.**

---

**FINAL BRIEF OF RESPONDENTS**

---

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**ATTORNEY FOR RESPONDENTS**

**IN THE STATE OF SOUTH CAROLINA**  
**IN THE COURT OF APPEALS**

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**STATEMENT OF ISSUES ON APPEAL**

**I.**

**WAS THE DECISION OF THE LOWER COURT BIASED BECAUSE THE LOWER COURT COMMENTED UPON THE REPUTATION FOR VERACITY OF VARIOUS NOTARIES AND WITNESSES TO LEGAL DOCUMENTS THAT WERE INTRODUCED FOR SIGNATURE COMPARISON?**

**DID THE LOWER COURT ERR IN ADMITTING THE WILL TO PROBATE BECAUSE THE ATTORNEY WHO PREPARED THE WILL AND A WITNESS TO THE WILL DID NOT REMEMBER THE EVENT AND DID NOT RECOGNIZE A PHOTOGRAPH OF THE TESTATOR?**

**II.**

**WAS IT ERROR FOR THE LOWER COURT TO FAIL TO FIND FRAUD AND TO FAIL TO DISQUALIFY THE RESPONDENTS FROM INHERITING BECAUSE THE PERSONAL REPRESENTATIVE, AT THE TIME OF THE PERSONAL REPRESENTATIVE'S PETITION TO THE PROBATE COURT, DELAYED SUPPLYING THE NAMES OF ADDITIONAL HEIRS?**

**III.**

**WAS IT ERROR FOR THE LOWER COURT TO FAIL TO FIND CIVIL CONSPIRACY AND FAIL TO DISQUALIFY THE RESPONDENTS FROM INHERITING BECAUSE THE PERSONAL REPRESENTATIVE, AT THE TIME OF THE PERSONAL REPRESENTATIVE'S PETITION TO THE PROBATE COURT, DELAYED SUPPLYING THE NAMES OF ADDITIONAL HEIRS?**

**IV.**

**ADDITIONAL SUSTAINING GROUND**

**THE APPELLANTS DO NOT HAVE STANDING TO CHALLENGE THE COURT'S FINDINGS BECAUSE THEY ARE NOT HEIRS OF THURMAN BOMAR AND THE DECISION OF THE COURTS BELOW SHOULD BE AFFIRMED ON THAT GROUND.**

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#### **STATEMENT OF THE CASE**

On March 8, 2011, the Defendant/Respondent Charles Carr presented to the Probate Court a document entitled Last Will and Testament of Thurman Lawrence Bomar. (Thurman Bomar's Last Will and Testament) (R. pp. 209-210). The Will nominated Charles Edward Carr as personal representative. Mr. Carr petitioned for informal probate of the Will and informal appointment as personal representative. (Petition for Informal Probate and Informal Appointment) (R. pp. 18-23).

Following informal appointment, this formal proceeding was commenced on June 10, 2001. In their Complaint, Plaintiffs/Appellants alleged that they and others were nieces and nephews of the late Thurman Bomar and were his sole heirs. Appellants alleged that the Will offered for informal Probate was the product of a forgery and/or undue influence and requested that the Will be declared null and void, that Charles Carr be removed as personal representative and that Willie A. Rogers, the Plaintiff, be appointed in his place. (Appellants Complaint to Contest Authenticity of Last Will and Testament) (R. pp. 31-36). In their Answer the Respondents denied that the Appellants were interested parties and challenged their standing to present their Complaint. Respondents interposed a general denial to the allegations of forgery and undue influence. (Respondents' Answer) (R. pp. 37-39).

The Respondents filed a Motion for Summary Judgment on the ground that the Appellants were not heirs of the deceased. The Respondents maintained that the

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Appellants failed to qualify as heirs due to the operation of S.C.Code Ann. 62-2-109 (2009).

The Respondents maintained that the Appellants could not establish lawful paternity in one of the links through which they alleged kinship to Thurman L. Bomar.

The Appellants filed a Motion for Summary Judgment on the ground that the Respondents were guilty of fraud by failing to list the Plaintiffs as on their Petition for informal Probate.

Following the completion of discovery and depositions, and after due notice the matter was called for hearing on June 11, 2012.

The Court heard the Motions for Summary Judgment, took them under consideration without reaching a decision, and moved forward with the trial. (R. pp. 59-60). The parties agreed that notwithstanding the shifting burdens of proof that the Respondent would present his entire case, first proving the Will and second defending against the allegations contained in the Complaint, followed by presentation of the Appellants' case challenging the Will. (R. p. 60).

On August 24, 2012, the Probate Court ruled that the Last Will and Testament offered by the Respondents was valid, free of undue influence, and not the product of forgery, and that the Appellants failed to establish kinship by blood to Thurman Bomar and were not his heirs. (R. p. 6).

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Appellants appealed the decision of the Probate Court to the Circuit Court. The Circuit Court affirmed the decision of the Probate Court by Order dated April 19, 2013. (R. p. 3)

#### FACTS

Thurman Bomar was born in Spartanburg County, South Carolina on January 18, 1922. (Petition for Informal Probate) (R. pp. 18-23). He left Spartanburg to attend college at Voorhees. (R. p. 128 and p. 162). He went into the service. (Obituary of Thurman Bomar) (R. p. 214). He settled in Brooklyn, New York. (R. p. 164). He never had natural children. (R. p. 167, Obituary of Thurman Bomar, (R. p. 214). In 1975 at the age of 53 he married Mary Bomar, mother of Respondents. (R. pp. 18-23; R. p. 73) (Petition for Informal Probate). About 1987 he and Mary Bomar moved to Spartanburg County to assist Mr. Bomar's parents during their old age and decline. (R. p. 77). On July 27, 1988 Thurman Bomar and Mary Bomar prepared Last Wills and Testament. Both wills were mirror image type wills. (Last Will and Testament of Thurman Bomar and Mary Bomar) (R. pp. 209-210 and R. pp. 223-224).

On January 21, 2011, Thurman Bomar died. (Petition for Informal Probate) (R. pp. 18-23).

The Respondents, as proponents of the Will, offered testimony from Charles J. Hodge, attorney. (R. p. 61). He identified a Will cover that the Defendants state was found with the Will. The Will cover was printed with the name,

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Hodge & Devine

Attorneys at Law

Attorney Hodge stated this was the firm name under which he practiced on July 27, 1988, the date on which the Will was signed and witnessed. (R. p. 65). He identified the witnesses to the Will as Mary Kunak and Gayle C. Hawkins. (Last Will and Testament of Thurman Bomar) R. pp. 209-210). (R. pp. 64-65). He testified that Mrs. Kunak was a nurse in his father's medical office. (R. p. 64). At the time the Will was executed, Mr. Hodge's law office was next door to his father's medical practice. (R. p. 64). From time to time he would ask Mrs. Kunak to serve as a witness to the execution of legal documents if needed. (R. p. 64). He stated that Ms. Hawkins worked for his law office at the time in question. (R. p. 65). He stated that the Notary, Vickie Wing also worked for him at that time. (R. p. 65). He stated that he did not remember Thurman Bomar or Mary Bomar personally and could not recognize them from a photograph that he was shown. (R. p. 66). He stated his father treated a number of Bomars as patients. (R. p. 66). He indicated that it was likely he, and not his partner Mr. Devine, who had prepared the Will although he had no independent memory or records twenty five years after the fact to establish that. (R. p. 66). He stated that he often prepared simple Wills during that time. (R. p. 67). The Will in question is a simple Will. (Thurman Bomar's Last Will and Testament) (R. pp. 209-210).

The Defendants next offered Ms. Mary Kunak, one of the witnesses to the Will. She identified her signature on the Will as being from her hand. (R. p. 69).

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Charles Carr testified that he is the stepson of Thurman Bomar. (R. p. 71). He testified that Thurman Bomar began calling on his mother, Mary, around 1958. (R. pp. 71-72) At that time, Charles was a young teenager living with his mother and his two sisters in Brooklyn, New York. (R. p. 72). During this time Thurman Bomar would take the family on outings and took an interest in the welfare of Charles and his sisters. (R. p. 73).

Thurman Bomar took a paternal interest in Mr. Carr and his sisters. He assisted Mr. Carr with some of the costs necessary for his graduation and attended his graduation. (R. pp. 74-75). In 1975 Thurman Bomar and Mary were married in New York. (R. p. 75). They resided in Mary's apartment in Brooklyn until Mr. Bomar's retirement in the mid 1980's. (R. pp. 76-77). After Mr. Bomar's retirement he and Mary Bomar moved to Spartanburg, the birthplace of Thurman Bomar. Thurman Bomar's mother and father were still living in Spartanburg County at that time. (R. p. 77). Over the years, Charles Carr, together with his children, would visit with Thurman and Mary Bomar in Spartanburg County for extended periods, usually twice a year, and took family vacations with them. (R. pp. 77-78).

Mr. Carr testified that Mary Louise Bomar, his mother and wife of Thurman Bomar, died testate in December of 2010. (R. p. 81).

After Thurman Bomar's death Mr. Carr took the Will to the Probate Court and met with a clerk. He completed the Petition for Informal Probate in the presence of and with assistance of the Probate clerk. (R. pp. 97-99). He did not know the complete names

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of all of the persons claiming to be nieces, nephews, and heirs of Thurman Bomar. (R. p. 97). Instead of naming all additional heirs at the place indicated on the form for such, a notation was made on the Petition to the effect that the Personal Representative would try to find out additional intestate heirs before closing. (R. pp. 98-99). Mr. Carr did not make the notation, the clerk made the notation. (R. p. 93) Mr. Carr is sure he mentioned Mr. Rogers and his siblings as intestate heirs to the Court. (R. p. 99). He testified that when he got to the Probate Court there was already something in the file from Mr. Rogers and his attorney. (R. p. 99).

Katherine Christian testified that she was a daughter of Mary Bomar and step daughter of Thurman Bomar. She attended their wedding in New York in 1975, (R. p. 103). Attended Mr. Bomar's retirement party in the mid 1980's, (R. pp. 103-104) and would visit with them with her children in Spartanburg most years thereafter. (R. p. 105).

In 1997, Mrs. Christian and her husband moved from Brooklyn to Spartanburg at the request of her mother who stated that she was becoming lonely and wanted them near to her. (R. pp. 106-107). She cared for her mother during her mother's terminal illness in 2009 and following her mother's death she continued to care for Thurman Bomar during his terminal illness until his death, seven weeks after her mother's. (R. pp. 109-110).

She testified that she attended the meeting at the Probate Court with Charles Carr when the Petition was completed. (R. p. 116). She stated that the Appellant and his

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brothers and sisters were not placed on the Petition at that time because Charles Carr and she could not name all the brothers and sisters. (R. pp. 116-117).

Respondents presented several publicly recorded Deeds and Court documents containing the signatures of Thurman Bomar for comparison with the signature on the Will.

The Appellants presented Ms. Thelma Thompson. Ms. Thompson and Thurman Bomar were friends growing up as children and corresponded during their college years. (R. pp. 125-127). She presented a photograph that Mr. Bomar sent to her during their college years on which he signed his name. The signed photograph was offered on the forgery issue, for signature comparison purposes.

Appellant Willie Rogers testified that he was a nephew of Thurman Bomar. He testified that Charles Carr and Katherine Christian knew the names of Thurman Bomar's would- be heirs because he assumed they had prepared the obituary and had called his sister and asked her about the nieces and nephews. (R. p. 145). Mr. Rogers testified that the signature on the Will was a forgery. He testified that the signatures on the various Deeds and Court documents offered by the Respondents were also forgeries. (R. pp 145-149).

Mr. Rogers testified that Charlie Bomar, through whom he claimed consanguinity with Thurman Bomar, never married Mr. Roger's grandmother. (R. p. 153.

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#### ARGUMENT

##### I.

**WAS THE DECISION OF THE LOWER COURT BIASED BECAUSE THE LOWER COURT COMMENTED UPON THE REPUTATION FOR VERACITY OF VARIOUS NOTARIES AND WITNESSES TO LEGAL DOCUMENTS THAT WERE INTRODUCED FOR SIGNATURE COMPARISON?**

**DID THE LOWER COURT ERR IN ADMITTING THE WILL TO PROBATE BECAUSE THE ATTORNEY WHO PREPARED THE WILL AND A WITNESS TO THE WILL DID NOT REMEMBER THE EVENT AND DID NOT RECOGNIZE A PHOTOGRAPH OF THE TESTATOR?**

The determination of the standard of review by an Appellant Court of matters originating in Probate Court is controlled by whether the cause of action is at law or in equity. If the essential nature of the cause of action is legal, the action to be taken by the Appellant Court is controlled by its determination of whether or not there is any evidence to support the factual findings of the Trial Court. Dean vs. Kilgore, 313 S. C. 257, 437 S. E. 2d 154, (Ct.App. 1993). An action to set aside a Will is an action at law. In re. Estate of Cumbee, 333 S. C. 664, 511 S. E. 2d 390 (Ct.App. 1999).

The Trial Court's determination that the Will was not the product of forgery was supported by evidence. The attorney who prepared and supervised the execution of the Will testified. He identified one of the witnesses and the Notary as employees of his. He

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identified the other witness, Ms. Kunak, as an employee of his father, Dr. Joseph Hodge. He stated that his office was next door to his father's office and he occasionally called on Ms. Kunak when he needed a witness. (R. p. 64).

The Appellant argues that Ms. Kunak testified that she worked for Dr. Hodge from 1991 and 1995 and thus could not have witnessed the 1988 Will. Ms. Kunak testified that she worked for Dr. Joseph Hodge for fourteen years. (R. p. 68). She stated that she was working for Dr. Joseph Hodge at the time the Will was drawn. (R. pp. 68-69). The transcript indicates that she stated that she worked for Dr. Joseph Hodge from 1991 to 1995 when he passed away. (R. p. 69). (The writer believes this is a scrivener's error of the court reporter. The writer believes that the testimony was from 1981, rather than from 1991. That would amount to fourteen years). She corroborated that the offices of Dr. Hodge and attorney Hodge were located next door to each other and that occasionally attorney Hodge would ask her to assist in witnessing legal documents. (R. p. 69). Although she did not remember having witnessed this Will, nor did she recognize Thurman or Mary Bomar, she identified her signature on the Will as being from her hand. (R. p. 69).

Appellant argues that because the attorney and witness had no memory of the Will signing event and could not recognize photos of the Testator that their testimony should not be considered in support of the Will. Respondents would submit that the fact that the attorney and witness did not specifically remember the event and could not

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recognize a photograph of the Testator is not unusual given that preparation and execution of a Will for an attorney's client is often a one-time encounter and the attorney often has no other contact with the client. Further, in this case, twenty years had passed.

The Appellants offered signature comparisons of earlier writings of the Testator to the signature on the Last Will and Testament. The signatures offered by the Appellants were quite old and not contemporaneous with the Will. (Photograph of Thurman Bomar with signature) (R. p. 211). (R. pp. 145-149). (R. pp. 154-155). The photograph and signature introduced through the testimony of Ms. Thompson dates from sometime in the 1940's when Mr. Bomar was in his 20's or 30's. (R. p. 132). The writer would submit that one's signature may change in appearance with the passing of time and signatures that are contemporaneous are more useful for comparison.

The Respondents offered signatures for comparison to the Will that were on publicly recorded documents, witnessed by multiple different witnesses and notarized by multiple different Notaries Public on multiple different occasions. (DB 44V, Page 559, DB 44V, Page 560, DB 66P, Page 431, DB 82N, Page 826) (R. pp. 215- 219). (Document from Spartanburg County Probate file number 93-417) (R. p. 221) (Document from Spartanburg County Probate file number 90-531). (R. p. 222). The signatures on these documents closely resembled the signature on the Will. (Thurman Bomar's Last Will and Testament) (R. pp. 209-210). The Appellant argues that these signatures should not be

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acceptable for comparison because all of them are forgeries. The writer would submit that multiple forgeries are less likely than an isolated single forgery. The writer would further submit that where multiple executions are observed by different witnesses and different notaries the chance they are all forgeries grows less likely. The Appellants allegation that all of the documents are forgeries is not credible.

Abundant evidence supports the Trial Judge's decision that the Will was not forged.

The Appellant argues that the Court's stated familiarity with witnesses to the various documents for signature comparisons indicates bias. The statement by the Trial Judge of his familiarity with the Court employees and attorneys who witnessed the documents, if error, is harmless, given the abundant evidence that the Will was not forged. Where evidence is so conclusive on a point that no other rational conclusion could be reached, a decision will not be set aside. State v. Gillian, 360 S. C. 433, 602 S. E. 2d 62 (Ct.App. 2004).

However, there was no error. In a law case tried without a jury, questions regarding the credibility and weight of evidence are exclusively for the Trial Judge. Golini v. Bolton, 326 S. C. 333, 482 S. E. 2d 748 (Ct.App. 1997).

The reputation for truthfulness of a witness is something that the factfinder is entitled to and should consider. A factfinder's personal knowledge of a witness's

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reputation is something the factfinder may ground his opinion upon so long as this does not rise to the level of bias. There was no bias of the Court as factfinder in this case.

It is important that these were witnesses to documents, not testimonial witnesses. Possible bias would seem to be more likely if the witness was personally involved in the proceeding and testifying or appearing before the Court.

It is also important that the documents were witnessed long before the controversy arose that is the subject of this litigation. The witnesses themselves could not have been biased or affiliated with one or the other parties because the controversy had not yet arisen.

## II.

**WAS IT ERROR FOR THE LOWER COURT TO FAIL TO FIND FRAUD AND TO FAIL TO DISQUALIFY THE RESPONDENTS FROM INHERITING BECAUSE THE PERSONAL REPRESENTATIVE, AT THE TIME OF THE PERSONAL REPRESENTATIVE'S PETITION TO THE PROBATE COURT, DELAYED SUPPLYING THE NAMES OF ADDITIONAL HEIRS?**

Chewning v. Ford Motor Company, 354 S. C. 72, 579 S. E. 2d 605 (2003)

concerns fraud upon the Court. It cites cases from other jurisdictions that have defined fraud upon the Court. It distinguishes between intrinsic fraud and extrinsic fraud.

Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Fraud on the court requires a showing that one has acted with an intent to deceive or defraud the court, a showing of conscious wrong doing, what can properly be characterized as a deliberate scheme to defraud. When there is no intent to

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deceive, the fact that misrepresentations were made to a Court is not of itself sufficient basis for setting aside a judgment for fraud on the Court.

In the case at bar, there was evidence from which the Court could find that Mr. Carr's delay in naming heirs was not fraud. His testimony was that he did not list the Appellant or his brothers or sisters, at that time, because he did not know all of their full names. The clerk indicated on the form that "\*PR to try and find out addt'l intestate heirs to before closing". (R. p. 92-96). (Petition for Informal Probate and Informal Appointment). (R. pp. 18-23). Mr. Carr was not related by blood or marriage to the Appellants and it is not unreasonable that he would not know all of their proper names. Based on this, the Trial Court could find that fraud was not committed.

The normal remedy sought for fraud upon the Court is a request to set aside judgment. Even if fraud upon the Court had been proven in this case, this would not necessarily disqualify the Respondents as beneficiaries under the Will, nor render the Decedent intestate and entitle the Appellants to the Decedent's estate. Presumably, there would be other penalties. SC Code Ann. 62-1-106 (2009) cited by Appellants provides for appropriate relief against the perpetrator, but does not identify the appropriate relief.

Even if a fraud upon the Court had been committed, there was no damage to the Appellants. SC Code Ann. 62-1-106 (2009) provides relief to persons injured thereby. Although they were not initially listed as heirs or notified that the estate had been opened,

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their Complaint was filed shortly after Mr. Carr's Petition for Informal Probate. (Petition for Informal Probate (R. p. 18) Complaint (R. p. 25). The Appellants have certainly not been deprived of fully exhibiting and trying their case. They suffered no loss by reason of not being named as heirs.

Finally, the delay in naming the Appellants heirs was not a fraud upon the Court because the Appellants are not heirs of Thurman Bomar. The Appellants' grandmother was not married to Thurman Bomar's father and the Appellants entitlement to inherit from Thurman Bomar was not timely established under S.C.Code Ann. 62-2-109 (2009). (R. p. 153). Even if Mr. Carr believed the Appellants were heirs, was aware of their full names and intentionally omitted the Appellants from the Petition, a fraud on the Court would not have been committed because the Appellants are not heirs of Thurman Bomar.

### III.

**WAS IT ERROR FOR THE LOWER COURT TO FAIL TO FIND CIVIL CONSPIRACY AND FAIL TO DISQUALIFY THE RESPONDENTS FROM INHERITING BECAUSE THE PERSONAL REPRESENTATIVE, AT THE TIME OF THE PERSONAL REPRESENTATIVE'S PETITION TO THE PROBATE COURT, DELAYED SUPPLYING THE NAMES OF ADDITIONAL HEIRS?**

The Appellants did not plead civil conspiracy and this issue has never been brought before the Court until now. An issue not raised in the lower Court cannot be

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raised for the first time on appeal. White v. Wilbanks, 298 S.C. 225, 379 S. E. 2d 298 (Ct.App. 1989). The Court should not consider this ground of appeal for that reason.

The alleged facts cited by Appellant in support of the civil conspiracy claim in Argument III are identical to the alleged facts cited by the Appellant in support of the fraud on the Court claim in argument II. The Trial Court did not find these facts. There was evidence to support the decision of the Trial Court in its factual finding.

#### IV.

#### ADDITIONAL SUSTAINING GROUND

**THE APPELLANTS DO NOT HAVE STANDING TO CHALLENGE THE COURT'S FINDINGS BECAUSE THEY ARE NOT HEIRS OF THURMAN BOMAR AND THE DECISION OF THE COURTS BELOW SHOULD BE AFFIRMED ON THAT GROUND.**

Charlie Bomar was the father of Thurman Bomar. (R. pp. 145-146). The Appellant's mother was Laura Burgan. (R. p. 140). Laura Burgan's mother and the Appellants' grandmother was Lizzie Burgan. (R. p. 137). Although it was accepted in the community that Laura Burgan was the daughter of Charlie Bomar, her mother Lizzie Burgan, was never married to Charlie Bomar. (R. pp. 140-141). (R. pp. 152-153).

S.C.Code Ann. 62-2-109 (2009) makes provision for intestate succession by children born out-of-wedlock and those within their line. Children born out-of-wedlock and their decedents are entitled to inherit through the paternal line only if certain conditions set forth within that statute are met. The Appellants did not present any

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evidence that those conditions had been met. The time period within which to comply with the statute has expired. Thus, the Appellants are not heirs of Thurman Bomar. Generally, to have standing, a litigant must have a personal stake in the subject matter of the litigation. Michael P. v. Greenville County DSS, 385 S. C. 407, 684 S. E. 2d 211 (Ct.App 2009). Because the Appellants do not have a personal stake in the litigation, they do not have standing to challenge the Court's findings. The decisions of the Courts below should be affirmed because the Appellants do not have standing to present their claims.

### CONCLUSION

The decision of the Courts below should be affirmed because there was evidence that the Last Will and Testament had not been forged, there was no evidence of bias in the Court below, there was no evidence that a fraud had been committed on the Court, and because civil conspiracy cannot be raised for the first time on appeal.

Even if there was reversible error in the Court below, the Appellants do not have standing to present their claims because they are not heirs of Thurman Bomar.

For the above reasons the decisions of the Court below should be affirmed.

Respectfully Submitted,

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October 8, 2013

**IN THE STATE OF SOUTH CAROLINA**  
**IN THE COURT OF APPEALS**

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**APPEAL FROM SPARTANBURG COUNTY**  
**Spartanburg County Court of Common Pleas**

**J. MARK HAYES, II, CIRCUIT JUDGE**

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**2011-ES-42-00162**  
**Case No. 2012-CP-42-3705**

---

**Willie A. Rogers and Vennie Rogers.....Appellants,**

**vs.**

**Charles Carr, in his Individual and Official Capacity as the Personal  
Representative of the Estate of Thurman L. Bomar, Deceased, Katherine  
Christian and Joyce King..... Respondents.**

---

**FINAL REPLY BRIEF OF THE APPELLANTS**

---

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**IN THE STATE OF SOUTH CAROLINA**

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ARGUMENT

I.

**THE RESPONDENTS' ADDITIONAL SUSTAINING GROUND THAT THE APPELLANTS DO NOT HAVE STANDING TO CONTEST THE LAST WILL AND TESTAMENT OF THURMAN BOMAR BECAUSE THEY ARE NOT HIS HEIRS IS WITHOUT MERIT BECAUSE THIS ISSUE IS NOT BEFORE THIS APPELLATE COURT AS THE APPELLATE (CIRCUIT) COURT BELOW FOUND IT UNNECESSARY AND UNIMPORTANT TO ADDRESS THE PATERNITY OF APPELLANTS' MOTHER BUT THE RESPONDENTS DID NOT FILE A CROSS-APPEAL OF THE LOWER APPELLATE COURT'S FINDING AND THE ISSUE OF THE PATERNITY OF APPELLANTS' MOTHER WAS NOT PRESERVED FOR THIS APPEAL.**

It is well settled that an issue in a lower court must be appealed to be preserved for a higher Appellate Court to address it on an appeal. The Respondents' Additional Sustaining Ground herein that the Appellants do not have standing to challenge the Last Will and Testament because they are not his heirs **is and was not preserved for this appeal** because the Respondents did not file a Cross-appeal of the lower Appellate court's Finding that it was unnecessary to address the paternity of Appellants' mother as it was unimportant. ( R., pp. 3-5).

In the present appeal, the Appellants did **not** appeal this Finding by the lower Appellate (Circuit) Court that **"it was unnecessary to address the paternity of Appellants' mother" and/or "the issue of whether the appellants qualify as intestate**

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heirs is not important” (emphasis added)., because “the Respondents did not appeal these findings and/or issue(s).” Accordingly, the issue of the “Paternity of Appellants’ mother” and “whether the Appellants have standing to challenge the Last Will and Testament of Thurman Bomar are not issues which were preserved for this appeal.

Since the Appellants did not appeal this issue, it was up to the Respondents to appeal this issue to preserve it for appeal. Section 203 (c) of the S. C. Appellate Court Rules states as follows:

**(c). Cross-appeals.** A respondent may institute a cross-appeal by serving a notice of appeal on all adverse parties within five (5) days after receipt of appellant’s notice of appeal, or within the time prescribed by Rule 203(b), whichever period last expires.”

Here, the Respondents did not file a **Cross-Appeal** of the lower Appellate (Circuit) Court ‘s finding that “it was unnecessary to address the paternity of Appellants’ mother and/or “the issue of whether the appellants are intestate heirs is not important.”

Accordingly, the issue raised in the Respondents’ “Additional Sustaining Ground” that the Appellants do not have standing to challenge the Last Will and Testament of Thurman Bomar because the Appellants are not heirs of Thurman Bomar **is not an issue before this Appellate Court as it was not preserved for this appeal.**

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II.

**ALTHOUGH THE APPELLANTS DID NOT SPECIFICALLY USE THE WORDING "CIVIL CONSPIRACY" OR SET FORTH A SPECIFIC CAUSE OF ACTION OF A CIVIL CONSPIRACY IN THEIR PLEADINGS, ALL OF THE ELEMENTS OF CIVIL CONSPIRACY WERE ARGUED AND EVIDENCE WAS PRESENTED AT TRIAL BY THE APPELLANTS AND IT WAS ERROR FOR THE TRIAL COURT TO FAIL TO CONFORM ITS FINDINGS TO THE EVIDENCE PRESENTED AT TRIAL AS APPELLANTS HAD SATISFIED AND PROVEN ALL THE ELEMENTS OF A CIVIL CONSPIRACY AGAINST THE RESPONDENTS.**

Section 15 (b) of the SCRCP says as follows: "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to **conform to the evidence** and to raise these issues may be made upon motion of any party at any time, **even after judgment**, but failure so to amend **does not affect the result of the trial on these issues.** .....(Emphasis added).

Here, the Appellants did not raise a cause of action of a Civil Conspiracy in their pleadings ( R., pp. 31-36 ). However, the Appellants presented evidence to satisfy a Cause of Action of a Civil Conspiracy inasmuch as it was presented to the court down below that the Respondents, Charles Carr and his sister, Katherine Christian, combined and agreed to **file a false Petition to probate** Thurman Bomar's Estate and, by filing this **false Petition**, the Respondents intentionally tried to hide the existence and names of the Appellants, Willie Rogers and his brothers and sisters, who were the only surviving heirs

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of the decedent, Thurman Bomar. Please note that these **joint Respondents hid the existence of the Appellants although the Respondents were aware that the Appellants were the nephews and nieces of the decedent and had socialized and had social outings with them when they first came to South Carolina in the 70's and 80's ( R. pp. 107-108 ).**

The Appellants satisfied all the elements of a Civil Conspiracy. A Civil Conspiracy exists when there is: 1) A Combination of two or more persons; 2) joining for the purpose of injuring the plaintiff; and 3) which causes the plaintiff special damages, McMillian vs. Oconee Mem'l Hosp., Inc. 367 S. C. 559, 626 S. E. 2d 884 (2006).

In this within case, the Appellants presented sufficient information against the Respondents to satisfy all of the three (3) following elements of a Civil Conspiracy:

(1) A combination of two or more persons, (2) for the purpose of injuring the plaintiff; and (3) which causes him special damages, Vaught vs. Waites, 300 S. C. 201, 387 S. E. 2d 91 (S. C. Ct. of App., 1989.)

Since as set forth above, the court can allow the pleadings to conform to the evidence, **even after judgment**, it was error for the trial court to fail to conform the pleadings in this cause and find that the Appellants had clearly shown and established a Civil Conspiracy against the Respondents.

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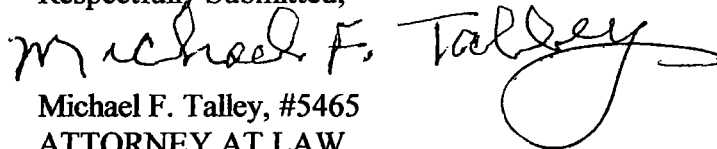
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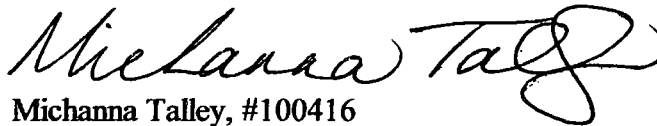
CONCLUSION

For the foregoing reasons and Appellants' Arguments set forth in their Initial Appellants' Brief, the Judgment and decision entered against the Appellants by the Spartanburg Probate Court and affirmed by the Spartanburg County Circuit Court sitting as an Appellate Court **should and must be reversed.**

Respectfully Submitted,



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