

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

JUL 27 2015

SC Court of Appeals

J. C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2015-000330

Tracy Hines,

Respondent,

v.

Tarsha Y. Alexander, Personal
Representative of the Estate of
Clarence Ceal Alexander,

Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
CASE NO.: 2011-ES10-1300

IN RE: ESTATE OF
CLARENCE ALEXANDER

Tracy Hines,

Petitioner.

ORDER FOR INCLUSION
AS HEIR

vs.

The Estate of Clarence Alexander, by the
Personal Representative Tarsha Alexander,
Respondent.

Date of Hearing:	January 16, 2013
Presiding Judge:	Irvin G. Condon
Petitioner:	Tracy Hines
Petitioner's Attorney:	Pro Se
Respondent:	Tarsha Alexander
Respondent's Attorney:	Ira Levy, Esquire
Court Reporter:	Terri L. Brusseau

This matter comes before the Court on Petition for Inclusion as Heir filed October 19, 2012. A hearing was held January 16, 2013. Present were Petitioner, Respondent, and Respondent's Attorney, Ira Levy, Esq. Pursuant to Section 62-2-103 et. seq. of the Code of Laws of South Carolina, the Petitioner requests an Order for Inclusion as Heir of the Estate of Clarence Alexander. After considering the testimony, all relevant pleadings, public records, the LabCorp results dated November 29, 2012, and finding no appearance or filing by any person or entity other than Petitioner and Respondent, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Clarence Alexander ("Decedent") died intestate on September 2, 2011. Decedent died a

resident of Charleston County, South Carolina. Decedent was survived by a son and daughter. Prior to Decedent's death, Respondent served as Guardian for the Decedent. A court-appointed Conservator was also appointed.

Petitioner filed his Petition for Inclusion as Heir on October 19, 2012. In a letter written from Respondent to Petitioner, Respondent agreed to include the Petitioner as an heir upon being provided a conclusive DNA testing from a licensed laboratory that reflects that Petitioner is in fact the biological son of Decedent. Petitioner submitted a DNA test from LabCorp, which stated that the Petitioner has a Ninety-Nine Point Fifty-One Percent (99.51%) probability of being the nephew of John Alexander, Decedent's brother. The LabCorp Report reflects the relationship between Petitioner and Decedent's brother, John Alexander. John Alexander testified that Decedent acknowledged the Petitioner as Decedent's son during his lifetime and that John Alexander considers the Petitioner as the Decedent's son.

CONCLUSIONS OF LAW

Respondent agreed, pursuant to a Private Agreement under SCPC 62-3-912, to include the Petitioner as an heir if provided conclusive DNA evidence. This Court finds that Petitioner is the biological son of Decedent based on conclusive DNA evidence, testimony, and exhibits presented at the trial. Accordingly, the Petitioner shall be included as an heir of Decedent's Estate.

No further disbursement shall be made. Respondent shall post bond in the amount of one and one-half (1.5) times the amount of money that would have gone to Petitioner or Respondent may give to Attorney Ira Levy to be held in the Escrow Account.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Petitioner is the biological son of Clarence Alexander;

2. Petitioner shall be included as an heir of the Estate of Clarence Alexander;
3. Respondent shall either post bond in the amount of one and one-half (1.5) times the amount of money that would have gone to Petitioner or give one and one-half (1.5) times the amount of money that would have gone to Petitioner to Attorney Ira Levy to be held in the Escrow Account.

AND IT IS SO ORDERED.



Irvin G. Condon, Judge of Probate

March 27th, 2013.
Charleston, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

In the Matter of Clarence Ceal Alexander,

TRACY HINES,

Petitioner,

vs.

TARSHA Y. ALEXANDER, Personal

Representative of the Estate,

Respondent.

IN THE PROBATE COURT

CASE NO: 2011-ES10-1300

**ORDER AFFIRMING IN PART AND
DENYING IN PART RESPONDENT'S
RULE 59(a) MOTION TO
ALTER OR AMEND**

Hearing Date:	July 10, 2013
Presiding Judge:	Irvin G. Condon
Petitioner:	Tracy Hines
Petitioner's Attorney:	Ashley G. Andrews, Esquire
Respondent:	Tarsha Alexander
Respondent's Attorney:	Ira D. Levy, Esquire
Court Reporter:	Christine A. Smith

THIS MATTER comes before the Court on Respondent's Amended Rule 59(e) Motion to Alter or Amend this Court's March 27, 2013 Order. The Motion, filed on or about April 8, 2013, requested that this Court alter or amend its Order to: 1) omit the statement that Respondent was present at the January 16, 2013 hearing; 2) reflect that Respondent may place one-third (1/3) of net Estate proceeds in Attorney Levy's trust account; and 3) deny Petitioner's claim for Inclusion as Heir. The Petitioner filed a Reply to Respondent's Motion on or about May 3, 2013, consenting to the first two pleas for relief. Jurisdiction and venue being proper, a hearing on Respondent's Motion was held July 10, 2013. Present at the hearing were the Respondent, Tarsha Y. Alexander, along with her attorney, Ira D. Levy, Esquire, and the Petitioner, Tracy Hines, along with his attorney, Ashley G. Andrews, Esquire.

After considering all filed pleadings, evidence, testimony, arguments, and applicable law, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Clarence Ceal Alexander (the "Decedent") died intestate September 2, 2011. This Court appointed the Respondent, Tarsha Y. Alexander, Personal Representative of Decedent's Estate on September 8, 2011. Respondent listed only herself and Clarence A. Alexander as intestate heirs on the Application for Informal Appointment, despite the fact that she knew the Petitioner also believed himself to be the son of the Decedent, and despite listing Petitioner as a son of the Decedent in the Decedent's obituary. Petitioner was not provided notice that the Decedent's Estate was being probated. The Petitioner, Tracy Hines, later filed a Petition for Inclusion as Heir with this Court on October 9, 2012.

After Petitioner's request to be included as an heir was served on the Respondent, the Respondent sent a letter to the Petitioner via certified mail. The letter states, in part, "Clarence A. Alexander and I will gladly oblige and include Mr. Hines as an heir to the Estate of Clarence C. Alexander, upon being provided conclusive DNA testing from a licensed DNA lab showing that you, Mr. Tracy Hines, are the biological child of Clarence C. Alexander." The letter was signed by the Respondent, and the letter was delivered to the Petitioner on November 8, 2012.

Thereafter, Petitioner submitted to a DNA test at LabCorp with the Decedent's brother, John Alexander. The results of the DNA test, dated November 29, 2012, showed that there was a Ninety-Nine Point Fifty-One (99.51%) Percent probability that John Alexander was the Petitioner's uncle. Furthermore, John Alexander provided testimony at the hearing on January 16, 2013, that the Decedent acknowledged Tracy Hines as his son during the Decedent's lifetime.

This Court signed an Order on March 27, 2013, finding by clear and convincing evidence, that Tracy Hines is the biological son of the Decedent and should be included as an heir of the Estate. The Court's March 27, 2013 Order cites S.C. Code Ann. § 62-3-912 to conclude that Respondent agreed, pursuant to a Private Agreement, to include the Petitioner as an heir if provided conclusive DNA evidence. Respondent argues that to be operative, S.C. Code Ann. § 62-3-912 requires "a written contract executed by all who are affected by its provisions," and such written contract signed by all who are affected by its provisions does not exist in the case at hand. Namely, Clarence A. Alexander was not a party to the letter. Respondent also contends that, under S.C. Code Ann. § 62-2-109(2)(ii), the Petitioner's claim is clearly time-barred.

CONCLUSIONS OF LAW

A person appointed personal representative of an estate has certain duties defined by statute. For example, S.C. Code Ann. § 62-3-301 requires that a person seeking appointment provide the Court with the names and addresses of the heirs of an estate, so far as are known or ascertainable with reasonable diligence by the applicant. Once appointed, a personal representative has a duty to provide information to heirs and devisees. S.C. Code Ann. § 62-3-705 states, in relevant part (emphasis added):

Not later than thirty days after his appointment every personal representative, except any special administrator, 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 of 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, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons

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3/6

concerned but does not affect the validity of his appointment, his powers, or other duties.

Respondent had reason to believe that Petitioner was the biological son of the Decedent, but failed to give the Probate Court notice that Petitioner was a potential intestate heir. Respondent further failed to give the Petitioner notice of her appointment as Personal Representative, pursuant to S.C. Code Ann. § 62-3-705. Petitioner was given no notice that paternity was being questioned until Respondent's letter was delivered to Petitioner on or about November 8, 2012. Upon receipt of the letter, Petitioner promptly provided proof of paternity. The Court finds it would now be a gross inequity for Respondent to prevail based on a claim that Petitioner failed to timely act upon the issue of parentage when he was not made aware that it was an issue until after the time for proving such had passed.

The Court's March 27, 2013 Order indicated that the letter delivered to Petitioner on or about November 8, 2012 was a Private Agreement, pursuant to S.C. Code Ann. § 62-3-912. The successors agreed amongst themselves to distribute one-third (1/3) of the Estate to Petitioner upon conclusive DNA evidence that the Petitioner was the Decedent's son. The writing was signed by the Respondent and Personal Representative who had the authority to make an offer of settlement on behalf of the Estate. However, the letter was not signed by an heir of the Estate, Clarence A. Alexander. While the Court accepts the Respondent's argument that the letter does not fully comply with S.C. Code Ann. § 62-3-912, which requires a written contract executed by all who are affected by its provisions, the Court still finds the letter to be a valid and enforceable unilateral contract.

A unilateral contract exists when there is only one promisor and the other party accepts, not by mutual promise, but by actual performance. Sauner v. Pub. Serv. Auth. of S. Carolina, 354

S.C. 397, 405, 581 S.E.2d 161, 165-66 (2003). In the case at hand, Respondent and Clarence A. Alexander offered to include Petitioner as an heir to the Estate, regardless of the passage of time, upon being provided conclusive DNA testing from a licensed DNA lab, showing that Petitioner is the biological child of the Decedent. Respondent's obligation to include Petitioner as an heir was contingent on Petitioner providing the DNA testing. Petitioner accepted Respondent's offer when he submitted to a DNA test at LabCorp with the Decedent's brother, John Alexander, and showed that there was a Ninety-Nine Point Fifty-One (99.51%) Percent probability that John Alexander was the Petitioner's uncle. Therefore, the Court finds that Respondent is obligated to uphold the terms of contract stated in the November 8, 2012 letter.

Based upon the foregoing, it is now:

ORDERED, ADJUDGED, AND DECREED that Respondent's Amended Rule 59(e) Motion to Alter or Amend the Order for Inclusion as Heir is affirmed in part and denied in part; it is further

ORDERED, ADJUDGED, AND DECREED that this Court's March 27, 2013 Order is now amended to omit the statement that Respondent was present at the January 16, 2013 hearing; it is further

ORDERED, ADJUDGED, AND DECREED that this Court's March 27, 2013 Order is now amended to reflect that Respondent may place one-third (1/3) of net Estate proceeds in Attorney Levy's trust account; it is further

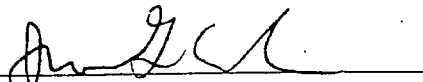
ORDERED, ADJUDGED, AND DECREED that Petitioner's claim for Inclusion as Heir is affirmed. Petitioner is the biological son of Clarence Alexander and shall be included as an heir of the Estate of Clarence Alexander; it is further

ORDERED, ADJUDGED, AND DECREED that Respondent shall disburse to

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5/16

Petitioner within fourteen (14) days of the signing of this Order, the sum of Sixty-Seven Thousand Six Hundred Sixty-One and 69/100 (\$67,661.69) Dollars as his intestate share of the Estate of Clarence Alexander.

AND IT IS SO ORDERED.



IRVING G. CONDON
Judge of Probate
Charleston County, South Carolina

This 3rd day of October, 2013
Charleston, South Carolina.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-5993

Tracey Hines
PLAINTIFF(S)

Tarsha Alexander
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

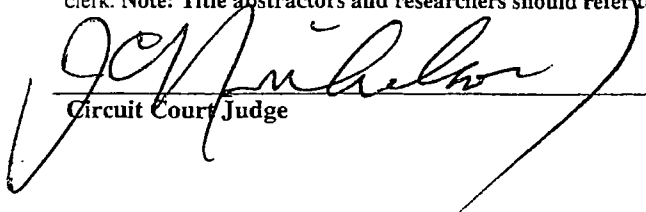
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2117
Judge Code

1/13/15
Date

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

TRACEY HINES,)

Respondent.)

vs.)

TARSHA Y. ALEXANDER, Personal)
Representative of the ESTATE OF)
CLARENCE CEAL ALEXANDER,)

Appellant,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO: 2013-CP-10-5993

ORDER

FILED
2013 JAN 16 PM 4:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Background

This matter came before this Court on appeal from a decision of the Honorable Irvin G. Condon in the Charleston County Probate Court, Case No. 2011-ES-10-1300, dated October 3, 2013. Oral Arguments were held on November 18, 2014. The Appellant was represented by Ira D. Levy, Esquire and the Respondent was represented by Ashley G. Andrews, Esquire.

Facts and Procedural History

Clarence Ceal Alexander, the decedent, died intestate on September 2, 2011. Appellant filed an informal application for appointment of a Personal Representative of the Estate of Clarence Ceal Alexander on September 8, 2011. Despite having reason to believe that Respondent was a child of the decedent, Appellant did not inform the court that he had an equal right to appointment, did not obtain a Renunciation of Right to Administration from the Respondent, and did not list the Respondent as an intestate heir of the estate. The Probate Court appointed Respondent as Personal Representative of the estate on September 8, 2011. The Probate Court administered the estate informally in accordance with S.C. Code Ann. § 63-3-301,

et seq. based on the information provided by the Appellant.

The procedural history is as follows:

1. On October 9, 2012 the Respondent filed a Summons and Petition for Inclusion as Heir.
2. An Order for Inclusion as Heir was issued by Judge Condon on March 27, 2013.
3. Appellant filed a Rule 59(e) Motion to Alter or Amend on April 8, 2013 and filed an amendment to the Motion on April 9, 2013.
4. Respondent filed a Reply to Respondent's Amended Rule 59(e) Motion to Alter or Amend on May 14, 2013.
5. An Order Affirming in Part and Denying in Part Respondent's Rule 59(e) Motion to Alter or Amend was issued by Judge Condon on October 3, 2013.

The Probate Court had before it the following evidence which was admitted without objection:

1. Funeral announcement for Clarence Ceal Alexander which listed Respondent as a child of the decedent and Respondent's children as grandchildren of the decedent. (Return, pages 281-283)
2. Undated letter from Appellant to Respondent indicating that Appellant and Clarence Alexander, the decedent's other son, would include Respondent as an heir to the estate if Respondent could provide conclusive DNA testing to show that he was a child of the decedent. (Return, page 327)
3. Laboratory Corporation of America document dated November 11, 2012 indicating that there was a 99.51% probability that John Alexander, the decedent's brother, was the paternal uncle of the Respondent. (Return, page 321)

4. Testimony of Tracy Hines. (Return, pages 280-285)
5. Testimony of John Alexander. (Return, pages 285-291)

Questions Presented

1. Did the probate court err in finding that a letter from Appellant to Respondent was “a valid and enforceable unilateral contract” that bound an estate beneficiary to its terms?
2. Did the Probate Court err in failing to dismiss respondent’s petition for inclusion as heir because that cause of action is barred by S.C. Code of Laws § 62-2-109(2)(iii) (1976, as amended)?

Standard of Review

S.C. Code Ann. § 62-1-308(a) provides that an appeal from a final order of the probate court must be to the circuit court. The standard of review in the circuit court will be determined by the nature of the action, that is, whether the action is at law or in equity. *Dean v. Kilgore*, 313 S.C. 257, S.E.2d 154 (Ct. App. 1993). When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court’s findings of fact unless a review of the record discloses there is no evidence to support them. See *Neely v. Thomasson*, 365 S.C. 345, 618 S.E.2d 884 (S.C. 2005). If the action is at law, then the circuit Court must determine whether there is any evidence in the record to support the factual findings of the probate court. If the action is in equity, the circuit Court is free to find facts in accordance with its own view of the preponderance of the evidence. See *Golini v. Bolton*, 326 S.C. 333, 338-339, 482 S.E.2d, 794 (Ct. App. 1997).

The Court finds that while the questions presented by Appellant are questions of law, that this case is controlled by equity.

Discussion

The Appellant has raised the issue of whether or not S.C. Code of Laws § 62-2-109(2)(iii), and the time limits contained therein, is a bar to Respondent’s Petition for Inclusion

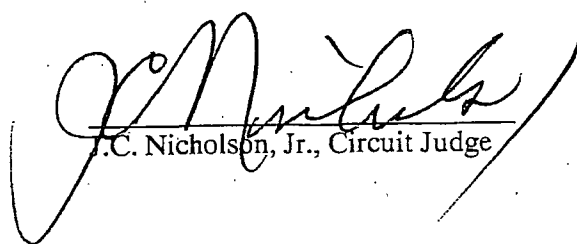
as Heir. Based on a review of the record before this Court, I find that there is substantial evidence to support the ruling of the Probate Court. The Probate Court found, and this Court agrees, that Appellant had reason to believe that Respondent was the biological child of the decedent and failed to give notice to the Probate Court or to the Respondent that the Respondent was an intestate heir to the estate. Accordingly, the Probate Court properly applied the laws of equity which bar the Appellant from prevailing on a claim that Petitioner failed to timely act upon the issue of parentage when he was not made aware that his paternity was at issue until after the time for proving such had passed.

I find that there is sufficient evidence to support the Probate Court's finding that Respondent is the biological son of the decedent and should be included as an heir to the estate of Clarence Ceal Alexander.

I find that it is not necessary to address the issue of whether or not a unilateral contract existed, because even in the absence of a unilateral contract, Respondent still has a right to inherit from the estate.

THEREFORE, IT IS ORDERED, ADJUDGED, and DECREED that the Appellant's Appeal is dismissed, and the Order of the Probate Court for Charleston County dated October 3, 2013 is hereby AFFIRMED.

AND IT IS SO ORDERED!


J.C. Nicholson, Jr., Circuit Judge

Charleston, South Carolina
January 13, 2015

STATE OF SOUTH CAROLINA

COUNTY OF: CHARLESTON

IN THE MATTER OF:

Clarence Ceal Alexander

THE PROBATE COURT

CASE NUMBER:

FILED

11 SEP -8 AM 11:55

APPLICATION FOR

INFORMAL

(check any that apply)

☐ PROBATE OF WILL
☒ APPOINTMENT

PETITION FOR PROBATE COURT
CHARLESTON COUNTY

FORMAL

☐ TESTACY
☐ APPOINTMENT

Applicant/Petitioner:

Address:

Telephone:

Tarsha Y Alexander PO Box 80851, Chris. 29416
1454 N. Sherwood Drive, Chad, SC 29407
843 766-5267 / 843-813-5577

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

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

Daughter/Health Guardian

2. Decedent Information

Name: Clarence Ceal Alexander
Last Four Digits of Social Security Number: xxx-xx-5521
Date of Birth: 11/29/1950
Date of Death: 9/02/2011
Age at date of death: 60
Domicile at date of death: Charleston 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

(use additional sheet if necessary)

- 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
Tarsha Alexander	6/2/71	1454 N. Sherwood Dr. Chap	Daughter
Clarence A. Alexander	3/20/75	2046 Campus Drive #4, Medford	Son

(use additional sheet if necessary)

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 \$180,000 and real estate of about the value of 0. (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.

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: _____
codicil(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.

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.)

6. VA vet was on Psych ward at VA

7. Guardian (Health) - appointed due to mental state
Conservator - appointed by court due to mental state

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:
Tarsha Alexander, 1454 W Sherwood Drive, Chap, SC 29409
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): daughter
☐ 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).
Clarence A. Alexander

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 8th day of September, 20 11

[Signature]
Notary Public for South Carolina

My Commission Expires: August 24, 2021

Signature: [Signature]

Name: Tarsha Alexander

Address: 1454 W. Sherwood Dr.

Charleston, SC

E-mail: _____

Telephone (O): 843-297-6159

(H): 843-71665267

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☐ GRANTED ☐ DENIED informally
this _____ day of _____, 20 ____.

_____, 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____

_____, 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

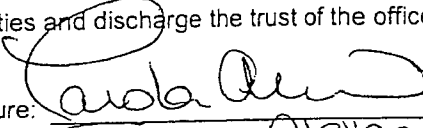
IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this _____ day of _____, 20____

_____, 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: Tarsa Alexander
Address: 1484 N. Sherwood Dr.
Charleston, SC
E-mail: _____
Telephone (O): 843-2976159
(H): 843-7665267

Signature: _____
Name: _____
Address: _____

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

Attorney: _____
Address: _____

E-mail: _____
Telephone (O): _____

STATE OF SOUTH CAROLINA,)
)
COUNTY OF CHARLESTON)
)
TRACY HINES)
)
Petitioner,)
)
vs.)
)
TAISHA Y. ALEXANDER)
Respondent(s).)

IN THE PROBATE COURT

SUMMONS

CASE NO. 2011-ES-10-0130

FILE
2012 OCT -9 AM 10:19
PROBATE COURT
CHARLESTON COUNTY

TO THE RESPONDENT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

CHARLESTON, South Carolina

Dated: October 8, 2012

Address: 929 West Luke Ave.,
Summerville, SC 29483

Tracy Hines
Petitioner/Attorney for Petitioner

SCCA 401PC (9/11)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
_____)
)

IN THE PROBATE COURT
CASE NO.: 2011-ES-10-01300

IN THE MATTER OF:

CLARENCE C. ALEXANDER

PETITION FOR INCLUSION AS HEIR

Petitioner, TRACY HINES

v.

Respondent, TAISHA Y. ALEXANDER

TO THE CHARLESTON COUNTY PROBATE COURT:

THE PETITIONER HEREIN, Tracy Hines Petitions this Court to be included as heir in this case and in support thereof would hereby allege as follows:

1. That Petitioner herein is the biological son and heir of the decedent.
2. That DNA evidence available to the Court will prove the biological relationship between the decedent and the Petitioner herein.
3. That the attached affidavit of the decedent's brother supports the allegation that Petitioner Herein is the biological son of the decedent herein.
4. That Petitioner herein has not been served with required Notices by the Personal Representative in this case.

WHEREFORE, Petitioner prays for an Order as follows:

1. That Petitioner herein be included as a putative heir of the Decedent and that he be given an opportunity to prove his biological relationship to the decedent and that he receive all proper notice from the Personal Representative in this case.

FILE
2012 OCT 19 AM 10:20
PROBATE COURT
CHARLESTON COUNTY

2. For such additional relief as the Court deems appropriate and just under the law.

Respectfully Submitted,

Tracy Hines
Tracy Hines
926 West Luke Ave.
Summerville, SC 29483
843-534-3656

Date: Oct 8, 2012 A.H

Verification

I swear that the above Petition is true to the best of my knowledge and belief.

Tracy Hines
Tracy Hines

October 8, 2012

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



Special Operations Department
100 Broad Street
Charleston, SC 29401-2206

Attorney or Party Without Attorney: HINES, TRACY 929 WEST LUKE AVENUE SUMMERVILLE, SC 29483 Att For: HINES, TRACY		Telephone No. 843-735-2411	Court Use Only FILE 2012 NOV 19 PM 1:34 PROBATE COURT CHARLESTON COUNTY
Name and Address of Court: CHARLESTON COUNTY PROBATE COURT		SHERIFF NO. CIOT-12011388-001	
Plaintiff: TRACY HINES Defendant: TAISHA Y. ALEXANDER			
PROOF OF SERVICE (CIVIL OTHER)	Hearing Date 07/00/00	Time	
			Case Number 2011ES1001300

I, J. AL CANNON, JR., ESQ., SHERIFF in and for said County and State, do hereby certify that I have received the annexed:

SUMMONS; PETITION FOR INCLUSION AS HEIR

on the 9th day of OCTOBER, 2012, and that I served the same on the 16th day of OCTOBER, 2012, at the hour of 7:05 AM within the County of CHARLESTON, State of SOUTH CAROLINA, as follows on:

PARTY TO SERVE: ALEXANDER, TARSHA Y.
PERSON SERVED: ALEXANDER, TAISHA Y.

BY DELIVERING TO THE DEFENDANT(S) OR PERSON(S) NAMED ABOVE, A COPY.

Address Served: 1454 N SHERWOOD DRIVE
CHARLESTON, SC 29407

Service By AGOSTA, DEPUTY WILLIAM

SHERIFF'S FEES	Charges
-----	-----
SERVICE FEE	15.00
-----	-----
** TOTALS **	15.00

I am a SOUTH CAROLINA SHERIFF,
and I certify that the foregoing
is true and correct.

ATTEST OF CERTIFIED TRUE COPY

Jessica Burdick

NOTARY PUBLIC SOUTH CAROLINA

MY COMMISSION EXPIRES: 2/9/2022

J. AL CANNON, JR., ESQ., SHERIFF
COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

DATE: 11/19/12

BY _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

FILE

2013 APR -9 AM 10:40

IN THE PROBATE COURT
CASE NO. 2011-ES-10-1300

In re Estate of Clarence Ceal Alexander)
PROBATE COURT)
CHARLESTON COUNTY)

TRACY HINES,)

Petitioner,)

v.)

TARSHA Y. ALEXANDER, Personal)
Representative of the Estate,)

Respondent.)
_____)

RESPONDENT'S RULE 59(e)
MOTION TO ALTER OR AMEND;
MEMORANDUM IN SUPPORT
OF MOTION TO ALTER OR
AMEND

AMENDED

Respondent Tarsha Y. Alexander, Personal Representative of the Estate of Clarence Ceal Alexander, respectfully requests that this Court alter or amend its March 27, 2013, Order in this matter.

I. INTRODUCTION

Clarence Ceal Alexander ("Decedent") died September 2, 2011. This Court appointed Decedent's daughter, Tarsha Y. Alexander ("P.R."), Personal Representative of Decedent's Estate on September 8, 2011. P.R. filed closing documents with this Court September 14, 2012. The Petitioner, Tracy Hines, filed a Petition for Inclusion as Heir with this Court on October 9, 2012. A Hearing was held on Mr. Hines' Petition on January 16, 2013. This Court signed an Order on March 27, 2013, as a result of the January 16, 2013, Hearing.

II. ARGUMENT

A. The Order incorrectly states that Respondent was present at the Hearing.

In fact, the Respondent was absent from the Hearing. Tr. at 2, January 16, 2013. (The Transcript from the January 16, 2013, Probate Court Hearing is attached hereto and incorporated herein as Exhibit A.)

B. The Order incorrectly states that Respondent shall, as an alternate to posting bond, "give one and one-half (1.5) times the amount of money that would have gone to Petitioner to Ira Levy to be held in the Escrow Account."

In fact, the Court ruled, "Take a third of whatever is in the estate and if you can hold that in your escrow account, if not, she'll need to post a bond equal to one and a half times the one-third." Tr. at 32, lines 20-23.

C. During trial, attorney for Respondent cited § 62-2-109 barred Mr. Hines' Petition for Inclusion as Heir; the Court acknowledged the statute, stated that it would take the issue under advisement to do further research, and issue an opinion upon concluding that research; but the Court made no ruling on that issue.

S.C. Code of Laws § 62-2-109(2)(ii) (1976, as amended), in pertinent part, states that

[i]f, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person, . . . a person born out of wedlock is a child of the mother. That person is also a child of the father if . . . 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.

Based on § 62-2-109(2)(ii), attorney for the Respondent asked the Court to dismiss the Petition (Tr. at 27, lines 9-11) and stated that "the claim is clearly barred," citing § 62-2-109 (Tr. at 29, lines 13-15).

In response, the Court stated that it would take the issue of the statute raised by Respondent's attorney under advisement (Tr. at 29, lines 20-21); the Court stated, "The issue we have is we've got a statute that requires you to bring your action within a period of time" (Tr. at 30, lines 2-4); and the Court stated that it would research the issue and issue an opinion. Tr. at 30, lines 24-25.

1. **§ 62-2-109 is not a statute of limitation. Therefore, it is not an affirmative defense that Respondent must raise or waive.**

The issue that the Court indicated at trial that it would conduct further research on was whether § 62-2-109 was a statute of limitation. If the statute was a statute of limitation, the Court reasoned, then the Respondent needed to raise the statute as a defense in her Answer, or the defense would be waived.

In Professor S. Alan Medlin's legislative update in 1990, he wrote that

[t]he amendment to Section 62-2-109 expands the time limit for an illegitimate child to initiate a judicial proceeding to determine paternity for inheritance purposes. The amendment requires the adjudication to be commenced by the later of eight months after the father's death or six months after the probate of his estate. If the adjudication is not commenced in time, the illegitimate child cannot inherit under intestacy. The amendment to this section attempts to lessen the severity of a possible trap: unlike the former law, the SCPC does not permit inheritance by an illegitimate who was acknowledged by the father but for whom paternity has not been adjudicated.

Medlin, Alan S. Recent Amendments to the South Carolina Probate Code, S.C. Lawyer, 40, 1990, Vol. 2, No. 3, 37.

In a case heard and decided after 1997, the final year our Legislature amended § 62-2-109, our Court of Appeals wrote that the probate code does not provide a statute of limitations for determining paternity. Smith v. Doe, 592 S.E.2d 322, 325 n.3 (S.C.App. 2003).

For further support, our Supreme Court stated rather unequivocally that if paternity is questioned, then such action must be brought within the statutory time frame. Parker v. Parker, 443 S.E.2d 388, 390 (S.C. 1994). Finally, our Supreme Court cited the United States Supreme Court when it remarked that “certain children will not be able to inherit from their biological fathers even though their paternity is not disputed. While this may be unfortunate, the United States Supreme Court found the strict paternity requirement was necessary, as a matter of public policy, to prevent spurious claims.” Pinckney v. Warren, 544 S.E.2d 620, 626 (S.C. 2001).

2. Since § 62-2-109 is not a statute of limitation, it is a statute of repose.

A statute of repose . . . limits the time within which an action may be brought and is not related to the accrual of any cause of action; the injury need not have occurred, much less have been discovered. Unlike an ordinary statute of limitations, which begins running upon accrual of the claim, the period contained in a statute of repose begins when a specific event occurs, regardless of whether a cause of action has accrued or whether any injury has resulted.

Black’s Law Dictionary 1451 (8th ed. 2004) (citing 54 C.J.S. *Limitations of Actions* § 4, at 20-21 (1987).)

One of the most recognizable statutes of repose are probate courts’ nonclaim statutes that concern creditor claims. Quoting Indiana’s Supreme Court, our Court of Appeals explained the difference between a nonclaim statute and a statute of limitations.

[A] nonclaim statute ... grants to every person having a claim of any kind or character against a decedent's estate, the right to file the same in the court having jurisdiction thereof and have the same adjudicated, provided such claim is filed within the time specified in the statute. Unless such claim is filed within the time so allowed by the statute, it is forever barred. The time element is a built-in condition of the said statute and is of the essence of the right of action. Unless the claim is

filed within the prescribed time set out in the statute, no enforceable right of action is created.

While such statutes limit the time in which a claim may be filed or an action brought, they have nothing in common with and are not to be confused with general statutes of limitation. The former creates a right of action if commenced within the time prescribed by the statute, whereas the latter creates a defense to an action brought after the expiration of the time allowed by law for the bringing of such an action.

Phillips v. Quick, 731 S.E.2d 327, 329 (S.C.App. 2012). Our Court of Appeals continued quoting the Indiana Supreme Court with approval. “While equitable principles may extend the time for commencing an action under statutes of limitation, nonclaim statutes impose a condition precedent to the enforcement of a right of action and are not subject to equitable exceptions.” Id. Finally, the Phillips Court cited the Washington Supreme Court: “The nonclaim statute is mandatory and not subject to enlargement by interpretation; and it cannot be waived.” Id.

All jurisdictions in the United States have strong public policy that favors the expeditious administration of decedents’ estates, and South Carolina Courts are no exception. S.C. Code of Laws § 62-1-102(b)(3) (1976, as amended).

- D. The Court’s Order cites SCPC 62-3-912 to conclude that Respondent agreed to include the Petitioner as an heir if provided conclusive DNA evidence; however, to be operative, S.C. Code of Laws § 62-3-912 (1976, as amended) requires “a written contract executed by all who are affected by its provisions,” and such written contract signed by all who are affected by its provisions does not exist in the case at hand.

III. CONCLUSION

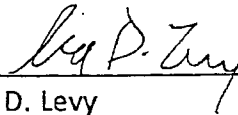
It is undisputed that the Decedent died September 2, 2011; that a Personal Representative for his Estate was appointed on September 8, 2011; and that the Petitioner

filed his Petition for Inclusion as Heir with this Court on October 9, 2012. Since Petitioner failed to meet his statutory obligation to commence adjudication of paternity within the later of eight months after the Decedent's death or six months after appointment of a Personal Representative, his claim is barred. As our Supreme Court stated, despite unfortunate results, paternity actions must be brought within the statutory time frame, as a matter of public policy.

For the foregoing reasons, Respondent respectfully requests that the Court alter or amend its March 27, 2013, Order in this matter to:

- (1) omit the statement that Respondent was present at the hearing;
- (2) reflect that Respondent may place 1/3 of net Estate proceeds in Attorney Levy's trust account; and
- (3) deny Petitioner's claim for Inclusion as Heir, since it was brought outside of the statutory time frame.

IRA D. LEVY, LLC



Ira D. Levy

Post Office Box 31304

Charleston, SC 29417

Telephone: (843) 571-5000

Facsimile: (843) 852-9860

ATTORNEY FOR RESPONDENT

this 8th day of April, 2013,
Charleston, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

In the Matter of Clarence Ceal Alexander,

TRACY HINES,

Petitioner,

vs.

TARSHA Y. ALEXANDER, Personal
Representative for the Estate,

Respondent.

IN THE PROBATE COURT

CASE NO: 2011ES104990

PETITIONER'S REPLY TO
RESPONDENT'S AMENDED
RULE 59(e) MOTION TO
ALTER OR AMEND;
MEMORANDUM IN SUPPORT OF
MOTION TO ALTER OR AMEND

THE PETITIONER, as his response to the Amended Rule 59(e) Motion to Alter or Amend;
Memorandum in Support of Motion to Alter or Amend ("Motion") which was filed on behalf of the
Respondent, states the following:

Petitioner has no objections to the following modifications of the Order for Inclusion as Heir:

- 1) Omitting the statement that Respondent was present at the hearing; and
- 2) Reflecting that Respondent may place one-third (1/3) of the net Estate into
Attorney Levy's trust account.

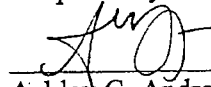
Petitioner objects to the request that Petitioner's claim for Inclusion as Heir be denied. In
the event that the Court finds that the findings of fact and conclusions of law are incomplete or
insufficient, Petitioner requests that the findings of fact and conclusions of law be supplemented so
long as the same are not inconsistent with the determination that Petitioner be included as an heir
to the Estate of Clarence Ceal Alexander.

Petitioner also wishes to bring it to the Court's attention that Paragraph 4 of the Petition for
Inclusion as Heir was not ruled on at the hearing held on January 16, 2013. Petitioner requests that

the fact that the Respondent failed to send him notice that the estate had been open pursuant to S.C. Code § 62-3-705 be taken into consideration. If necessary, Petitioner requests a hearing to determine whether or not Petitioner was entitled to notice.

A memorandum in support of this response is being filed simultaneously herewith.

Respectfully Submitted,



Ashley G. Andrews
544 Savannah Highway
Charleston, SC 29407
843-762-3554
843-377-0111
Attorney for the Petitioner

This 3rd day of May, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

In the Matter of Clarence Ceal Alexander,

TRACY HINES,

Petitioner,

vs.

TARSHA Y. ALEXANDER, Personal
Representative for the Estate,

Respondent.

IN THE PROBATE COURT

CASE NO: 2011ES10-1200

PETITIONER'S MEMORANDUM IN
SUPPORT OF PETITIONER'S
REPLY TO
RESPONDENT'S AMENDED
RULE 59(e) MOTION
TO ALTER OR AMEND;
MEMORANDUM IN SUPPORT OF
MOTION TO ALTER OR AMEND

The Petitioner, in support of his Reply to Respondent's Amended Rule 59(e) Motion to Alter or Amend; Memorandum in Support of Motion to Alter or Amend ("Motion") which was filed on behalf of the Respondent, submits the following memorandum of law.

INTRODUCTION

Petitioner's putative father, Clarence Ceal Alexander ("Decedent"), died on September 2, 2011. The Decedent regularly acknowledged that Petitioner was his son to family members and the community at large. Petitioner was present with the Decedent at family functions, including holiday celebrations and family reunions, from the time he was sixteen or seventeen years old. Respondent, Decedent's adopted daughter, filed an Application for Informal Appointment on September 8, 2011 ("Application"). Respondent was appointed personal representative of the estate on September 8, 2011. Although Respondent included Petitioner in funeral preparations and listed Petitioner as the Decedent's son and Petitioner's children as Decedent's grandchildren in Decedent's obituary, Respondent did not list Petitioner as an intestate heir on the Application and signed the Verification, under oath, that the facts provided in the Application were true to the best of her knowledge, information, and belief. Additionally, Respondent did not provide notice to the Petitioner that an

estate file had been opened for the Decedent in the Charleston County Probate Court and no Proof of Delivery to Petitioner is filed therein. In fact, Respondent did not raise the issue of Petitioner's parentage until on or about November 8, 2012.

ARGUMENT

- I. RESPONDENT FAILED TO GIVE PETITIONER NOTICE AS A POTENTIAL HEIR OF THE ESTATE OF THE DECEDENT EVEN THOUGH RESPONDENT HAD KNOWLEDGE, INFORMATION, AND/OR BELIEF THAT THE PETITIONER WAS A POTENTIAL INTESTATE HEIR OF THE DECEDENT. FURTHER, IT WOULD BE INEQUITABLE TO ALLOW RESPONDENT TO PREVAIL IN DENYING PETITIONER'S REQUEST TO BE INCLUDED AS AN HEIR OF THE ESTATE.

Respondent breached her duty as Personal Representative to the heirs of the estate, namely the Petitioner, by not providing Petitioner with notice that the estate had been opened.

Heir is defined in S.C. Code Ann. § 62-1-201(17) as follows:

"Heir" means those persons, including the surviving spouse, who are entitled under the statute of intestate succession to the property of the decedent.

A person appointed to be personal representative of an estate has certain duties defined by statute. One of those duties is to provide information to heirs and devisees. S.C. Code Ann. § 62-3-705 states, in relevant part (emphasis added):

Not later than thirty days after his appointment every personal representative, except any special administrator, 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 of 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, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers, other duties.

Respondent acknowledged that Petitioner's daughter was the granddaughter of the Decedent

(Hrg. Transcr. 22:15-21 (Jan. 16, 2013)). Respondent and Clarence A. "Alex" Alexander gave no indication that Petitioner was not the son of the Decedent during preparations for the funeral. Id. at 22-23:22-14. Petitioner was listed as a child of the Decedent in the Decedent's obituary. Id. at 8-9:11-14. Petitioner testified that he called Respondent for six (6) months following decedent's death to request pictures and personal items belonging to the Decedent. Id. at 20:21-24. Respondent provided no evidence at the January 16, 2013 hearing for why she did not send notice to the Petitioner, a potential heir to the estate, to inform him that the estate was being probated.

It is clear that the intent of S.C. Code Ann § 62-3-705 is to notice all potential intestate heirs, even for decedents who have executed a Last Will and Testament. Respondent is now requesting that this Court essentially reward her for breaching her duty to the Petitioner by allowing her to retain one-half of Petitioner's share of the Decedent's estate.

S.C. Code Ann § 62-1-103 states in full:

Unless displaced by the particular provisions of this Code, the principals of law and equity supplement its provisions.

"Equitable estoppel occurs where a party is denied the right to plead or prove an otherwise important fact because of something which he has done or failed to do." Parker v. Parker, 313 S.C. 482, 443 S.E.2d 388, 391 (S.C. 1994). As to the estopped party, the essential elements of equitable estoppel are 1) conduct amounting to a false representation or concealment of material facts, or conduct calculated to convey the impression that the facts are otherwise than, or inconsistent with, the party's subsequent actions, 2) intention or expectation that such conduct be acted upon by the other party; and 3) actual or constructive knowledge of the real facts. The elements required of the party claiming estoppel are 1) lack of knowledge or the means of acquiring, with reasonable diligence, knowledge of the true facts; 2) reasonable reliance on the other party's conduct; and 3)

a prejudicial change in position. See Provident Life and Accident Insurance Company v. Driver, 317 S.C. 417, 451 S.E.2d 924 (S.C.App. 1994). In Parker, the South Carolina Supreme Court found that the inaction of the Appellants gave Virginia Ann Parker, the illegitimate heir, “absolutely no notice and lulled her into a position where she could no longer defend her parentage under § 62-2-109. The prejudice to Virginia Ann Martin is apparent and is more than sufficient to establish her defense of equitable estoppel.” Id. at 391.

Analogous to Parker, Respondent lulled Petitioner into inaction. The actions of Respondent in and around the time of Decedent’s funeral were strong indications that she believed him to be the son of the Decedent. Despite this, she failed to provide him with notice of her appointment as personal representative and failed to list Petitioner as a potential intestate heir of the estate. In fact, Petitioner was given no notice that paternity was being questioned until Respondent’s letter was delivered to Petitioner on or about November 8, 2012. Upon receipt of this November 8, 2012 letter, Petitioner promptly provided proof of paternity. It would now be a gross inequity for Respondent to prevail based on a claim that he failed to timely act upon the issue of parentage when he was not made aware that it was an issue until after the time for proving such had passed.

II. RESPONDENT’S MOTION THAT PETITIONER’S CLAIM FOR INCLUSION AS HEIR BE DENIED IS BARRED BY S.C. Code Ann § 62-2-109.

In its opinion issued in Parker, the Supreme Court of South Carolina noted that the circuit court relied on the preamble to S.C. Code Ann § 62-2-109 and the use of the word “if” to interpret the statute as non-mandatory. The South Carolina Supreme Court went on to agree with the circuit court, “The circuit court reasoned, and we agree, that if paternity is questioned by either the personal representative or other interested party ... then such action must be brought within the statutory time frame of six months after the death of the father.” Id. at 390. The Petitioner was included in family

gatherings. (Hrg. Transcr. 15:22-25 (January 16, 2013)), the Decedent acknowledged that Petitioner was the Decedent's son. Id. at 15:17-21. Petitioner was listed as a child of the Decedent in the obituary. Id. at 8-9:11-14. "The plain meaning of the statute does not delineate which party must raise parentage as an issue; however, obviously the burden must rest with any party with an actual dispute about the parentage." Parker at 390.

In the instant case, it is Respondent who is questioning paternity, therefore it was her burden to raise the issue and the issue was not raised within the statutory time limits. The first notice Petitioner received that Respondent questioned whether or not he was the son of the Decedent was the letter received on or about November 8, 2012, more than a year after decedent's death.

III. S.C. Code Ann § 62-2-109 NOT A STATUTE OF REPOSE.

Respondent provides no legal basis, other than mere conjecture, that S.C. Code § 62-2-109 is a statute of repose. As mentioned above, the opinion in Parker noted that S.C. Code Ann § 62-2-109 is non-mandatory. It does not seek to set a time limit for asserting a claim, but, rather, a time limit for raising the issue of parentage. Since it is not a mandatory statute, it can not be a statute of repose. Since it is not a statute of repose, Respondent should have plead the failure to comply with the time limits of S.C. Code Ann § 62-2-109 as a defense. Respondent did not.

CONCLUSION

Respondent had reason to believe that Petitioner was the biological son of the Decedent. Respondent failed to give the Petitioner notice of her appointment as personal representative pursuant to S.C. Code Ann § 62-3-705. Respondent failed to give the Probate Court notice that Petitioner was a potential intestate heir. Respondent did not raise the question of paternity until on or about November 8, 2012. Respondent's actions were inequitable. The Order For Inclusion as Heir dated March 27, 2013 was properly decided for the foregoing reasons.

This 3rd day of May, 2013
Charleston, South Carolina

Respectfully Submitted,



Ashley G. Andrews
544 Savannah Highway
Charleston, SC 29407
843-762-3554
843-377-0111
Attorney for the Petitioner

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas, Ninth Judicial Circuit
Charleston County

FILED
13 OCT 11 PM 2:29
PROBATE COURT
CHARLESTON COUNTY

APPEAL FROM CHARLESTON COUNTY
Probate Court

Irvin G. Condon, Probate Court Judge

Case No. 2011-ES-10-1300

Tracy Hines,

Respondent,

v.

Tarsha Y. Alexander, Personal
Representative of the Estate of
Clarence Ceal Alexander,

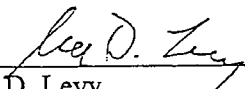
Appellant.

NOTICE OF APPEAL

Tarsha Y. Alexander, Personal Representative of the Estate of Clarence Ceal Alexander, appeals the Order of the Honorable Irvin G. Condon dated October 3, 2013. Appellant received written notice of entry of this Order on October 7, 2013.

this 11th day of October, 2013,
Charleston, South Carolina.

IRA D. LEVY, LLC


Ira D. Levy

Post Office Box 31304

Charleston, SC 29417

Telephone: (843) 571-5000

Facsimile: (843) 852-9860

ATTORNEY FOR APPELLANT

Other Counsel of Record:

Ashley G. Andrews

Catherine E. LaFond, P.A.

544 Savannah Highway

Charleston, SC 29407

ATTORNEY FOR RESPONDENT

(843) 762-3554

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Tracy Hines

Plaintiff(s)
Respondent

2013-CP-10-5993

vs.
Tarsha Y. Alexander, Personal Representative
of the Estate of Clarence Ceal Alexander

Defendant(s)

Submitted By: Ira D. Levy

Address: 764 St. Andrews Blvd. (29407)
PO Box 31304
Charleston, SC 29417

SC Bar #: 78314

Telephone #: (843) 571-5000

Fax #: (843) 852-9860

Other:

E-mail: ira@levylawsc.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order-850
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☒ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Ira D. Levy

Date:

Oct. 11, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

2013-CP-10-5993

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas, Ninth Judicial Circuit
Charleston County

APPEAL FROM CHARLESTON COUNTY
Probate Court

Irvin G. Condon, Probate Court Judge

Case No. 2011-ES-10-1300

Tracy Hines,

Respondent,

v.

Tarsha Y. Alexander, Personal
Representative of the Estate of
Clarence Ceal Alexander,

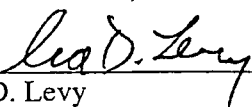
Appellant.

NOTICE OF APPEAL

Tarsha Y. Alexander, Personal Representative of the Estate of Clarence Ceal Alexander, appeals the Order of the Honorable Irvin G. Condon dated October 3, 2013. Appellant received written notice of entry of this Order on October 7, 2013.

this 11th day of October, 2013,
Charleston, South Carolina.

IRA D. LEVY, LLC


Ira D. Levy
Post Office Box 31304
Charleston, SC 29417
Telephone: (843) 571-5000
Facsimile: (843) 852-9860
ATTORNEY FOR APPELLANT

Other Counsel of Record:
Ashley G. Andrews
Catherine E. LaFond, P.A.
544 Savannah Highway
Charleston, SC 29407
ATTORNEY FOR RESPONDENT
(843) 762-3554

2013-CP-10-5993

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas, Ninth Judicial Circuit
Charleston County

APPEAL FROM CHARLESTON COUNTY
Probate Court

Irvin G. Condon, Probate Court Judge

Case No. 2011-ES-10-1300

Tracy Hines,

Respondent,

v.

Tarsha Y. Alexander, Personal
Representative of the Estate of
Clarence Ceal Alexander,

Appellant.

FILED
2013 OCT 11 PM 3:34
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Tracy Hines by depositing a copy of it in the United States Mail, postage prepaid, on October 11, 2013, addressed to his attorney of record, Ashley G. Andrews, Catherine E. LaFond, P.A., 544 Savannah Highway, Charleston, SC 29407.

this 11th day of October, 2013,
Charleston, South Carolina.

IRA D. LEVY, LLC

Ira D. Levy
Ira D. Levy

Post Office Box 31304

Charleston, SC 29417

Telephone: (843) 571-5000

Facsimile: (843) 852-9860

ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas, Ninth Judicial Circuit
Charleston County

APPEAL FROM CHARLESTON COUNTY
Probate Court

Irvin G. Condon, Probate Court Judge

Case No. 2013-CP-10-5993

Probate Court Case No. 2011-ES-10-1300

FILE
2013 NOV 21 PM 2:28
PROBATE COURT
CHARLESTON COUNTY

Tracy Hines,

Respondent,

v.

Tarsha Y. Alexander, Personal
Representative of the Estate of
Clarence Ceal Alexander,

Appellant.

BRIEF OF APPELLANT

Ira D. Levy
Post Office Box 31304
Charleston, SC 29417
Telephone: (843) 571-5000
Facsimile: (843) 852-9860
ATTORNEY FOR APPELLANT

STATEMENT OF ISSUES ON APPEAL

- I. DID THE PROBATE COURT ERR IN FINDING THAT A LETTER FROM APPELLANT TO RESPONDENT WAS "A VALID AND ENFORCEABLE UNILATERAL CONTRACT" THAT BOUND AN ESTATE BENEFICIARY TO ITS TERMS?
- II. DID THE PROBATE COURT ERR IN FAILING TO DISMISS RESPONDENT'S PETITION FOR INCLUSION AS HEIR BECAUSE THAT CAUSE OF ACTION IS BARRED BY S.C. CODE OF LAWS § 62-2-109(2)(ii) (1976, as amended)?

PROCEDURAL HISTORY

Clarence Ceal Alexander ("Decedent") died September 2, 2011. The Charleston County Probate Court appointed Decedent's daughter, Tarsha Y. Alexander (herein "Appellant"), Personal Representative of Decedent's Estate on September 8, 2011. Appellant filed closing documents with the Probate Court September 14, 2012. Tracy Hines (herein "Respondent") filed a Petition for Inclusion as Heir with this Court on October 9, 2012. A hearing was held on Respondent's Petition on January 16, 2013, resulting in a March 27, 2013, Probate Court Order (attached hereto and incorporated herein as Exhibit B).

On April 8, 2013, in the Probate Court, Appellant filed an Amended Rule 59(e) Motion to Alter or Amend the Probate Court's March 27, 2013, Order. A hearing was held in the Probate Court on July 10, 2013, resulting in an October 3, 2013, Order. On October 11, 2013, Appellant served the Notice of Appeal of the Probate Court's October 3, 2013, Order on Respondent.

STANDARD OF REVIEW

"An issue regarding statutory interpretation is a question of law." Univ. of S. Cal. v. Moran, 617 S.E.2d 135, 137 (Ct.App. 2005). "Questions of law . . . may be decided with no particular deference to the lower court." Neely v. Thomasson, 618 S.E.2d 884, 886 (2005).

ARGUMENT

I. BECAUSE CLARENCE A. ALEXANDER WAS NOT A PARTY TO ANY CONTRACT WITH RESPONDENT, THE PROBATE COURT ERRED IN ITS FINDING THAT A VALID CONTRACT BINDING MR. ALEXANDER TO ITS TERMS EXISTED.

The Probate Court ruled *sua sponte* in its March 27, 2013, Order that “the letter delivered to Petitioner on or about November 8, 2012, was a Private Agreement, pursuant to S.C. Code Ann. § 62-3-912.” Order, October 3, 2013, p. 4. The Court then states that it “accepts the Respondent’s argument that the letter does not fully comply with” the statute. *Id.* But again *sua sponte*, the Court then goes on to rule that it “still finds the letter to be a valid and enforceable unilateral contract.” *Id.*

Most alarming, the sentence in the Court’s Order, “In the case at hand, Respondent and Clarence A. Alexander offered to include Petitioner as an heir to the Estate,” (*Id.* at p. 5) is factually incorrect. There is no evidence that Clarence A. Alexander made any such offer. Moreover, there is no statute or other law in South Carolina that grants a Personal Representative the authority to bind an estate beneficiary to a contract with a third party.

II. BECAUSE RESPONDENT’S PATERNITY WAS NOT ESTABLISHED BY AN ADJUDICATION COMMENCED BEFORE DECEDENT’S DEATH OR WITHIN THE LATER OF EIGHT MONTHS AFTER DECEDENT’S DEATH OR SIX MONTHS AFTER THE APPOINTMENT OF A PERSONAL REPRESENTATIVE OF DECEDENT’S ESTATE, RESPONDENT IS BARRED FROM INHERITING FROM DECEDENT’S ESTATE.

A. PRELIMINARY MATTERS

Subsequent to Decedent’s death but prior to Appellant’s opening Decedent’s Estate and her appointment as Personal Representative, Respondent was listed in Decedent’s obituary as a child of Decedent’s. However, argument was proffered without objection at hearing on January 16, 2013, that Appellant “was not interested . . . in disagreement at that time in the funeral home

when they were coming up with that.” Tr. at 29, lines 4-6, January 16, 2013. (The Transcript from the January 16, 2013, Probate Court hearing is attached hereto and incorporated herein as Exhibit A.)

Furthermore, John Alexander, Decedent’s brother, provided testimony at hearing on January 16, 2013, that Decedent acknowledged Respondent as his son during his lifetime. Appellant’s attorney reminded the Court at the July 10, 2013, hearing that Decedent was incapacitated for at least the last thirty-five years of his life (Tr. at 18, lines 13-14, July 10, 2013), and Decedent referred to other people as his child who were not actually his child. Tr. at 18, lines 14-16, July 10, 2013. (The Transcript from the July 10, 2013, Probate Court hearing is attached hereto and incorporated herein as Exhibit C.) Additionally, addressing the DNA evidence that states a probability that John Alexander is the uncle of the child, Appellant’s attorney reminded the Court at the January hearing “that the Decedent had seven or eight siblings.” Tr. at 28, lines 24-25, January 16, 2013.

B. LAW

S.C. Code of Laws § 62-2-109(2)(ii) (1976, as amended), in pertinent part, states that

[i]f, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person, . . . a person born out of wedlock is . . . a child of the father if . . . 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.

Since Respondent filed his Petition for Inclusion as Heir on October 9, 2012, over thirteen months after Decedent’s death, attorney for the Appellant at the January 16, 2013, hearing cited § 62-2-109(2)(ii), moved the Court to dismiss the Petition (Tr. at 27, lines 9-11, January 16, 2013), and stated that “the claim is clearly barred.” Tr. at 29, lines 13-15, Jan. 16.

In response, the Probate Court stated that it would take the issue of the statute raised by Appellant's attorney under advisement. Tr. at 29, lines 20-21, Jan. 16. The Court stated, "The issue we have is we've got a statute that requires you to bring your action within a period of time." Tr. at 30, lines 2-4, Jan. 16. Finally, the Court stated that it would research the issue and issue an opinion. Tr. at 30, lines 24-25, Jan. 16.

The issue that the Probate Court indicated at trial that it would conduct further research on was whether § 62-2-109 was a statute of limitation. If the statute was a statute of limitation, the Court reasoned, then Appellant needed to raise the statute as a defense in an Answer, or the defense would be waived. However, the Probate Court made no ruling based upon § 62-2-109 in neither its March 27, 2013, Order, nor in its October 3, 2013, Order.

Regarding the Probate Court's query, whether § 62-2-109 might be a statute of limitation that Appellant had to raise in an Answer, else waive, South Carolina's courts have spoken clearly. "South Carolina's Probate Code does not provide a statute of limitations for determining paternity." Smith v. Doe, 592 S.E.2d 322, 325 n.3 (S.C.App. 2003). "[W]e affirm the court of appeals, but hold that there is no statute of limitations that is applicable for an action to determine paternity." Smith v. Doe, 623 S.E.2d 370, 372 (S.C. 2005). Therefore, § 62-2-109 is a mandatory statute that cannot be waived. The statute's time requirements must be strictly complied with.

Regarding whether Appellant should have provided any notice to Respondent upon her appointment as Personal Representative, Respondent cites S.C. Code of Laws § 62-1-103 (1976, as amended) for its proposition that "the principles of law and equity supplement" the Probate Code. Pet.'s Memo. in Support of Pet.'s Reply, p.3. (Pet.'s Memo. in Support of Pet.'s Reply is attached hereto and incorporated herein as Exhibit D.) In response, Appellant cited Phillips v.

Quick, 731 S.E.2d 327, 329 (S.C.App. 2012) for its proposition that “[w]hile equitable principles may extend the time for commencing an action under statutes of limitation, [the Probate Code’s] nonclaim statutes . . . are not subject to equitable exceptions.” Tr. at 19, lines 23-25, at 20, line 1, July 10, 2013 (referring to the Amended Rule 59(e) Motion to Alter or Amend filed April 8, 2013). Stated differently, there are statutes in the Probate Code that are not subject to equitable exceptions.

Moreover, based upon § 62-2-109, there is no other remedy available for the Respondent based upon the facts and applicable law in this case. To inherit, the statute’s provisions must be strictly adhered to. There are no equitable remedies available. If equitable remedies were available to Respondent, then equitable defenses would be available to the Appellant, and Appellant raised them at the July 10, 2013, Motion hearing, namely that equity aids the vigilant and the diligent. Tr. at 22, lines 5-6, July 10, 2013. Appellant further remarked at the July 10, 2013, hearing that “[h]ere the Petition[er] was not lulled into inaction.” Tr. at 21, lines 1-2, July 10, 2013. “[H]e telephoned . . . the Personal Representative for six or eight months, and she would never call him back. He didn’t want to bother and stopped bothering her. [One] would think that would set off alarm bells and set a fire under him to act. There’s a statute that controls [when] you can petition the court to be included as an heir.” Id. at lines 4-14. The applicable statute requires that an adjudication of paternity must be filed no later than eight months after the Decedent’s death, and, in the case at bar, Respondent’s Petition for Inclusion as Heir was filed October 9, 2012, over one year after Decedent’s death.

Professor Alan S. Medlin from the University of South Carolina School of Law, a recognized authority on probate law, states that § 62-2-109 “requires the adjudication to be commenced by the later of eight months after the father’s death or six months after the probate of

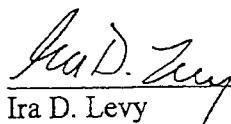
his estate. *If the adjudication is not commenced in time, the illegitimate child cannot inherit under intestacy.*” Medlin, Alan S. Recent Amendments to the South Carolina Probate Code, S.C. Lawyer, 40, 1990, Vol. 2, No. 3, 37. (Emphasis provided.) In fact, Professor Medlin goes on to state that even when an illegitimate child is acknowledged by the father, South Carolina’s Probate Code does not permit inheritance by an illegitimate child for whom paternity has not been adjudicated. Id.

South Carolina’s Supreme Court has remarked that “certain children will not be able to inherit from their biological fathers even [when] paternity is not disputed.” Pinckney v. Warren, 544 S.E.2d 620, 626 (S.C. 2001). “While this may be unfortunate, the United States Supreme Court found the strict paternity requirement was necessary, as a matter of public policy.” Id.

CONCLUSION

For the reasons stated, the Circuit Court should reverse the judgment of the Probate Court affirming Respondent/Petitioner’s claim for Inclusion as Heir, since it was brought outside of the statutory time frame.

Respectfully submitted,
IRA D. LEVY, LLC



Ira D. Levy
Post Office Box 31304
Charleston, SC 29417
Telephone: (843) 571-5000
Facsimile: (843) 852-9860
ATTORNEY FOR APPELLANT

this 21st day of November, 2013,
Charleston, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas, Ninth Judicial Circuit
Charleston County

APPEAL FROM CHARLESTON COUNTY
Probate Court

Irvin G. Condon, Probate Court Judge

Case No. 2013-CP-10-5993

Probate Court Case No. 2011-ES-10-1300

Tracy Hines,

Respondent,

v.

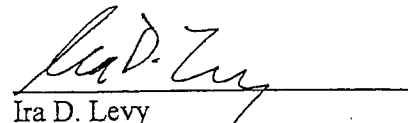
Tarsha Y. Alexander, Personal
Representative of the Estate of
Clarence Ceal Alexander,

Appellant.

PROOF OF SERVICE

I certify that I have served the BRIEF OF APPELLANT on Tracy Hines by personal delivery, on November 21, 2013, addressed to his attorney of record, Ashley G. Andrews, Catherine E. LaFond, P.A., 544 Savannah Highway, Charleston, SC 29407, by depositing same with the receptionist at Catherine E. LaFond, P.A., 544 Savannah Highway, Charleston, SC 29407.

IRA D. LEVY, LLC



Ira D. Levy

Post Office Box 31304

Charleston, SC 29417

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Facsimile: (843) 852-9860

ATTORNEY FOR APPELLANT

this 21st day of November, 2013,
Charleston, South Carolina.

FILE
2013 NOV 21 PM 2:27
PROBATE COURT
CHARLESTON COUNTY

IN THE PROBATE COURT

CASE NO.: 2011-ES-10-1300

**In the Estate of
CLARENCE ALEXANDER . . .**

CIRCUIT COURT CASE
CASE NO.: 2013-CP-10-5993

RETURN

FILED
2014 SEP -5 AM 10:46
JULIE L ARMSTRONG
CLERK OF COURT
BY CASE
EP-10-5993

Pursuant to Section 62-1-308(b) of the Code of Laws of South Carolina and Rule 75 of the South Carolina Rules of Civil Procedure, the following documents are hereby certified and forwarded to the Circuit Court of the Ninth Judicial Circuit:

1. The contents of Probate Court file numbered 2011-ES-10-1300.
2. All transcripts and evidence presented at all prior hearings regarding these matters.

IT IS SO ORDERED.



Alison Atwood
Clerk of Court
Charleston County Probate Court

**Charleston, South Carolina
September 4, 2014.**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
In the Matter of Clarence Ceal Alexander,
TRACY HINES,
Respondent,
vs.
TARSHA Y. ALEXANDER, Personal
Representative fo the Estate,
Appellant.

COURT OF COMMON PLEAS
CASE NO: 2013-CP-10-5993

BRIEF OF RESPONDENT

FILED
2014 NOV 14 PM 5:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATEMENT OF THE CASE

1. Clarence Ceal Alexander (the "Decedent") died on September 2, 2011. (Return, page 368)
2. The Appellant filed an Application for Informal Appointment In the Matter of: Clarence Ceal Alexander on September 8, 2011 in the Probate Court for Charleston County as Case No. 2011-ES-10-1300 ("Application"). (Return, pages 362-367)
3. At a hearing held on January 16, 2012, a copy of Decedent's obituary was admitted into evidence. The obituary, which was written by the Appellant, lists the Respondent, Tracy Hines, as a child of the Decedent. (Return, page 192)
4. The Appellant did not list Respondent as an intestate heir on the Application which was signed under oath by the Appellant. (Return, pages 262-367)
5. Respondent filed a Petition for Inclusion as Heir on October 9, 2012 ("Petition"). (Return, page 329)
6. Appellant never filed an Answer to the Petition, however, Appellant sent Respondent a letter which was filed in the Charleston County Probate Court on November 5, 2012. The letter

stated, in part, "Clarence A. Alexander and I will gladly oblige and include Mr. Hines as an heir to the Estate of Clarence Ceal Alexander, upon being provided conclusive DNA testing from a licensed DNA lab showing that you, Mr. Tracy Hines, are the biological child of Clarence C. Alexander." (Return, page 327)

7. On November 19, 2012 Respondent and John Alexander, brother of the Decedent, underwent DNA testing with LabCorp. The results of said testing was that there was a 99.51% probability that John Alexander was the paternal uncle of the Respondent. (Return, page 321).

8. A hearing on the Petition was held on January 16, 2013. (Return, page 374)

9. At the hearing the court found that Respondent was the biological son of the Decedent and that Respondent should be included as an heir of the Decedent's estate. (Return, pages 315-316)

10. Thereafter Appellant filed a Rule 59(e) Motion to Alter or Amend; Memorandum in Support of Motion to Alter or Amend Amended on April 10, 2013. (Return, page 135)

11. Respondent's Reply to the motion and Memorandum were filed on May 14, 2013. (Return, pages 120 & 126)

12. A hearing on the Rule 59(e) Motion was held on July 10, 2013 which resulted in the Order Affirming in Part and Denying in Part Respondent's Rule 59(e) Motion to Alter or Amend (the "Order"). The Order was signed by the Honorable Irvin G. Condon on October 3, 2013. (Return, page 314-316)

13. The Probate Court found that Appellant did not list Respondent as an intestate heir of the decedent "despite the fact that she knew the Petitioner also believed himself to be the son of the Decedent, and despite listing Petitioner as a son of the Decedent in the Decedent's obituary. (Return page 110)

STANDARD OF REVIEW

S.C. Code Ann. § 62-1-308(a) provides that an appeal from a final order of the probate court must be to the circuit court. The standard of review in the circuit court will be determined by the nature of the action, that is, whether the action is at law or in equity. *Dean v. Kilgore*, 313 S.C. 257, S.E.2d 154 (Ct. App. 1993). When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them. See *Neely v. Thomasson*, 365 S.C. 345, 618 S.E.2d 884 (S.C. 2005). If the action is at law, then the circuit Court must determine whether there is any evidence in the record to support the factual findings of the probate court. If the action is in equity, the circuit Court is free to find facts in accordance with its own view of the preponderance of the evidence. See *Golini v. Bolton*, 326 S.C. 333, 338-339, 482 S.E.2d, 794 (Ct. App. 1997).

ARGUMENT

The Appellant provided no testimony or evidence in the Probate Court to support the arguments in her Brief. In fact, Appellant's Brief merely contains arguments by Appellant's counsel which were taken under advisement and ruled upon by the Probate Court.

The Appellant's Brief does not address the Conclusion of Law from the Order from the Rule 59(e) motion hearing which stated that S.C. Code Ann. § 62-3-301 requires that a person seeking to be appointed as personal representative of an estate must provide the probate court with the names and addresses of the heirs of an estate, so far as known or ascertainable, with reasonable diligence by the applicant. The Probate Court further found that Appellant had reason to believe that Respondent was the biological son of the Decedent, however failed to give the Probate Court notice that Respondent was a potential intestate heir and further failed to give Respondent notice of her appointment as Personal Representative pursuant to S.C. Code Ann. § 62-3-705.

I. Unilateral Contract.

The Personal Representative had the authority to make an offer of settlement on behalf of the estate pursuant to S.C. Code Ann. § 62-3-715(8).

The Probate Court's finding that there was a unilateral contract was not *sue sponte* as the Appellant's own 59(e) motion and memorandum in support of the motion brought the contractual issue before the court. (Return, page 139)

A unilateral contract occurs when there is only one promisor and the other party accepts, not by mutual promise, but by actual performance. *See International Shoe Co. v. Herndon*, 135 S.C. 138, 133 S.E.2d 202 (1926).

The Probate Court correctly found the existence of a valid and enforceable unilateral contract.

II. Paternity of Respondent.

The Appellant failed to give the Respondent notice of her appointment as Personal Representative of the Decedent's estate as provided in S.C. Code Ann. § 62-3-705 and the Probate Court correctly concluded that the Appellant had reason to believe that Respondent was the biological son of the Decedent. The Appellant also failed to give notice to the Probate Court that the Respondent was a potential intestate heir. (Return, page 112)

Further, Respondent was given no notice that his paternity was being questioned until he received Appellant's letter on or about November 8, 2012. The Probate Court correctly reasoned that it would "be a gross inequity for Appellant to prevail based on a claim that Respondent failed to timely act upon the issue of parentage when he was not made aware that it was an issue until after the time for providing such had passed." (Return, page 112)

In the case of Parker v. Parker, 313 S.C. 482, 443 S.E.2d 388 (S.C. 1994) the Supreme Court

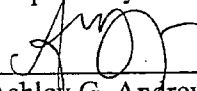
of South Carolina noted that, on appeal, the circuit court relied on the preamble to the statute and concluded that “an adjudication of paternity under S.C. Code Ann. § 62-2-109 was necessary only in those cases where paternity was questioned.” The Supreme Court of South Carolina went on to state, “The circuit court reasoned, and we agree, that if paternity is questioned by either the personal representative or other interested party ... then such action must be brought within the statutory time frame of six months after the death of the father.” *Id.* at 390. Further, the Court found, “The plain meaning of the statute does not delineate which party must raise parentage as an issue; however, obviously that burden must rest with any party with an actual dispute about the parentage.” *Id.* In the instant case, Respondent never questioned his parentage and was unaware that Appellant questioned his parentage. He was only made aware that the Appellant questioned his parentage on or about November 8, 2012 at which time he promptly provided proof that he was the Decedent’s son.

Further, if Appellant’s argument that S.C. Code Ann. § 62-2-109(2)(ii) is a statute of limitations, then by her own argument, Appellant was time barred from raising the question of parentage in November of 2012.

CONCLUSION

The Appellant’s appeal should be dismissed and the Order affirmed.

Respectfully Submitted,



Ashley G. Andrews
Catherine E. LaFond, PA
544 Savannah Highway
Charleston, SC 29407
843-762-3554
843-377-0111
Attorneys for the Petitioner

November 14, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

TRACY HINES,)

Respondent,)

vs.)

TARSHA Y. ALEXANDER, Personal
Representative of the Estate of Clarence Ceal
Alexander,)

Appellant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2013 -CP-10-5993

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Respondent's Attorney:

Ashley G. Andrews, Bar No. _____

Address: 544 Savannah Hwy., Charleston, SC 29407

Phone: (843) 762-3554 Fax: (843) 377-0111

E-mail: andrews@lafondlaw.com Other: _____

Appellant's Attorney:

Ira D. Levy, Bar No. 78314

Address: P.O. Box 31304, Charleston, SC 29417

Phone: (843) 571-5000 Fax: (843) 852-9860

E-mail: ira@levylawsc.com Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: To Strike Respondent's Brief

Estimated Time Needed: _____

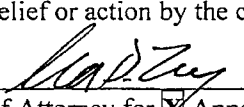
Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Appellant / ☐ Respondent

November 18, 2014
~~August 18, 2014~~
Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: 25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-5993

TRACY HINES,)
)
Respondent,)
)
v.)
)
TARSHA Y. ALEXANDER, Personal)
Representative of the Estate,)
)
Appellant.)
_____)

APPELLANT'S RULE 12(f)
MOTION TO STRIKE BRIEF
OF RESPONDENT;
MEMORANDUM IN SUPPORT

2014 NOV 18 PM 1:54
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Appellant Tarsha Y. Alexander, Personal Representative of the Estate of Clarence
Ceal Alexander, respectfully requests that this Court strike the entire pleading, BRIEF OF
RESPONDENT, filed November 14, 2014, and received November 17, 2014, one day
before the scheduled hearing on this Appeal.

Appellant's Brief was filed November 21, 2013, and served upon Respondent's
Counsel the same day.

Rule 208(a)(2) of the South Carolina Appellate Court Rules states "**Brief of
Respondent.** Within thirty (30) days after service of appellant's brief, respondent shall
serve one copy of his brief on all parties to the appeal . . ."

For the foregoing reason, Appellant respectfully requests that this Court strike the entire pleading, BRIEF OF RESPONDENT.

IRA D. LEVY, LLC



Ira D. Levy

Post Office Box 31304
Charleston, SC 29417
Telephone: (843) 571-5000
Facsimile: (843) 852-9860
ATTORNEY FOR APPELLANT

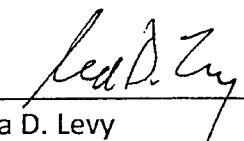
this 18th day of November, 2014,
Charleston, South Carolina.

CERTIFICATE OF SERVICE

Undersigned hereby certifies that a true copy of the foregoing pleading has been served upon

TRACY HINES
c/o MS. ASHLEY G. ANDREWS, ESQUIRE
CATHERINE E. LAFOND, PA
544 SAVANNAH HIGHWAY
CHARLESTON, SC 29407

by personal delivery this 18th day of November, 2014.



Ira D. Levy

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas, Ninth Judicial Circuit
Charleston County

APPEAL FROM CHARLESTON COUNTY
Probate Court

Irvin G. Condon, Probate Court Judge

Case No. 2013-CP-10-5993

Probate Court Case No. 2011-ES-10-1300

FILED
2014 DEC -4 PM 2:18
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Tracy Hines,

Respondent,

v.

Tarsha Y. Alexander, Personal
Representative of the Estate of
Clarence Ceal Alexander,

Appellant.

FINAL REPLY BRIEF OF APPELLANT

Ira D. Levy
Post Office Box 31304
Charleston, SC 29417
Telephone: (843) 571-5000
Facsimile: (843) 852-9860
ATTORNEY FOR APPELLANT

STATEMENT OF ISSUES ON APPEAL

From Brief of Appellant filed November 21, 2013, and served on Respondent the same day:

- I. DID THE PROBATE COURT ERR IN FINDING THAT A LETTER FROM APPELLANT TO RESPONDENT WAS "A VALID AND ENFORCEABLE UNILATERAL CONTRACT" THAT BOUND AN ESTATE BENEFICIARY TO ITS TERMS?
- II. DID THE PROBATE COURT ERR IN FAILING TO DISMISS RESPONDENT'S PETITION FOR INCLUSION AS HEIR BECAUSE THAT CAUSE OF ACTION IS BARRED BY S.C. CODE OF LAWS § 62-2-109(2)(ii) (1976, as amended)?

ARGUMENT IN REPLY

Without restating preliminary matters, this case's procedural history, or making redundant arguments which have been thoroughly set forth in its opening brief, Appellant presents the following points of clarification and rebuttal to arguments raised by Respondent's brief received by Appellant on November 17, 2014.

I.

In its awkward effort to push a round peg into a square hole, the Probate Court did in fact raise and rule on its own accord in its March 27, 2013, Order that "the letter delivered to Petitioner on or about November 8, 2012, was a Private Agreement, pursuant to S.C. Code Ann. § 62-3-912," (Order, October 3, 2013, p. 4), and the Probate Court acknowledged its error when it "accept[ed] the [Appellant]'s argument that the letter does not fully comply with" the statute. Id. Nevertheless, as Appellant's November 21, 2013, Brief set forth, the Probate Court again raises and rules on its own accord that it "still finds the letter to be a valid and enforceable unilateral contract." Id.

Therefore, it is a gross mischaracterization for Respondent's November 14, 2014, Brief to state that the Probate Court did not raise the "contractual" issue *sua sponte*.

Brief of Appellant filed November 21, 2013, states:

Most alarming, the sentence in the Court's [appealed-from] Order, "In the case at hand, Respondent and Clarence A. Alexander offered to include Petitioner as an heir to the Estate," (Order, October 3, 2013, p. 5) is factually incorrect. There is no evidence that Clarence A. Alexander made any such offer. Moreover, there is

no statute or other law in South Carolina that grants a Personal Representative the authority to bind an estate beneficiary to a contract with a third party.

Respondent's November 14, 2014, Brief states that "[t]he Personal Representative had the authority to make an offer of settlement on behalf of the estate," and cites S.C. Code of Laws § 62-3-715(8) (1976, as amended) for that authority. Respondent is misinterpreting the law.

In fact, § 62-3-715(8) states, verbatim, that "a personal representative, acting reasonably for the benefit of the interested persons, may properly . . . satisfy and settle claims and distribute the estate as provided in this Code." In probate parlance, "claims" refers to creditors claims. Furthermore, Respondent's proposition that § 62-3-715(8) somehow "grants a Personal Representative the authority to bind an estate beneficiary to a contract with a third party" is patently incorrect. No statute or other law in South Carolina grants a Personal Representative the authority to do this.

The Probate Court incorrectly found the existence of a valid and enforceable unilateral contract because Clarence A. Alexander was not a party and made no offer.

II.

At the center of this Appeal is a statute, S.C. Code of Laws § 62-2-109(2)(ii) (1976, as amended), that is directly on point; Appellant properly raised it at the January 16, 2013, hearing on Respondent's Petition for Inclusion as Heir; however, the Probate Court has refused to rule on the matter.

Pages 3-7 of Appellant's Brief filed November 21, 2013, thoroughly sets forth Appellant's argument on this matter and addresses many points raised by Respondent's November 14, 2014, Brief.

However, Respondent's November 14, 2014, Brief again makes gross mischaracterizations and, in fact, misstates important points. For instance, Respondent states that "if Appellant's argument that S.C. Code Ann. § 62-2-109(2)(ii) is a statute of limitations, then by her own argument, Appellant was time barred from raising the question of parentage in November of 2012."

Brief of Appellant filed November 21, 2013, states:

Since Respondent filed his Petition for Inclusion as Heir on October 9, 2012, over thirteen months after Decedent's death, attorney for the Appellant at the January 16, 2013, hearing cited § 62-2-109(2)(ii), moved the Court to dismiss the Petition

(Tr. at 27, lines 9-11, January 16, 2013), and stated that “the claim is clearly barred.” Tr. at 29, lines 13-15, Jan. 16.

In response, the Probate Court stated that it would take the issue of the statute raised by Appellant’s attorney under advisement. Tr. at 29, lines 20-21, Jan. 16. The Court stated, “The issue we have is we’ve got a statute that requires you to bring your action within a period of time.” Tr. at 30, lines 2-4, Jan. 16. Finally, the Court stated that it would research the issue and issue an opinion. Tr. at 30, lines 24-25, Jan. 16.

The issue that the Probate Court indicated at trial that it would conduct further research on was whether § 62-2-109 was a statute of limitation. If the statute was a statute of limitation, the Court reasoned, then Appellant needed to raise the statute as a defense in an Answer, or the defense would be waived. However, the Probate Court made no ruling based upon § 62-2-109 in neither its March 27, 2013, Order, nor in its October 3, 2013, Order.

Regarding the Probate Court’s query, whether § 62-2-109 might be a statute of limitation that Appellant had to raise in an Answer, else waive, South Carolina’s courts have spoken clearly. “South Carolina’s Probate Code does not provide a statute of limitations for determining paternity.” Smith v. Doe, 592 S.E.2d 322, 325 n.3 (S.C.App. 2003). “[W]e affirm the court of appeals, but hold that there is no statute of limitations that is applicable for an action to determine paternity.” Smith v. Doe, 623 S.E.2d 370, 372 (S.C. 2005).

The relevant portion of the statute states that “If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person, . . . a person born out of wedlock is . . . a child of the father if . . . 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.”

Since the S.C. Supreme Court has held that there is no statute of limitations that is applicable for an action to determine paternity, then § 62-2-109 is a mandatory statute that cannot be waived. The statute’s time requirements must be strictly complied with.

Regarding Parker v. Parker, 443 S.E.2d 388 (S.C. 1994), at oral argument on November 18, 2014, Appellant’s attorney stated, “I submit that this case should be decided exactly as Parker. In Parker, a petition to exclude an heir was filed outside of the statutory time frame, so the petition was disallowed. In the case before us, a petition for inclusion as heir was filed outside of the statutory time frame, and so should also be disallowed.”

Parker, at p. 390, distinguishes itself on its unique facts. In Parker, the child born out of wedlock was actually listed as an heir on the application to open probate; she participated in the probate process for almost four years; and then the other heirs banded together to have her excluded as an heir. The S.C. Supreme Court goes on to state that “Commonly, the illegitimate heir must raise the issue to be included in the intestate succession of the father, but in the present instance, there was no need since the estate, through the personal representative, acknowledged at the outset Virginia Ann Martin's parentage.” Id.

Prior to opening probate, in the case before us, regarding Respondent's name being listed in an obituary, Brief of Appellant filed November 21, 2013, stated that “argument was proffered without objection at hearing on January 16, 2013, that Appellant “was not interested . . . in disagreement at that time in the funeral home when they were coming up with that.” Tr. at 29, lines 4-6, January 16, 2013.” In this case, Respondent was not listed as an heir on the application to open probate, and the Personal Representative/Appellant did not acknowledge him during the entire probate of the estate. If he had simply filed his petition for inclusion as heir “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,” then his claim might not be barred.

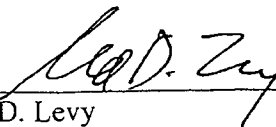
If the adjudication is not commenced in time, the illegitimate child cannot inherit under intestacy.” Medlin, Alan S. Recent Amendments to the South Carolina Probate Code, S.C. Lawyer, 40, 1990, Vol. 2, No. 3, 37. (Emphasis provided.) In fact, Professor Medlin, University of South Carolina School of Law, a recognized authority on probate law, goes on to state that even when an illegitimate child is acknowledged by the father, South Carolina's Probate Code does not permit inheritance by an illegitimate child for whom paternity has not been adjudicated. Id.

CONCLUSION

For the reasons stated, the Circuit Court should reverse the judgment of the Probate Court affirming Respondent/Petitioner's claim for Inclusion as Heir, since it was brought outside of the statutory time frame.

Respectfully submitted,

IRA D. LEVY, LLC



Ira D. Levy

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Charleston, SC 29417

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Facsimile: (843) 852-9860

ira@levylawsc.com

ATTORNEY FOR APPELLANT

this 4th day of December, 2014,
Charleston, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas, Ninth Judicial Circuit
Charleston County

APPEAL FROM CHARLESTON COUNTY
Probate Court

Irvin G. Condon, Probate Court Judge

Case No. 2013-CP-10-5993

Probate Court Case No. 2011-ES-10-1300

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2014 DEC -4 PM 2:18

FILED

Tracy Hines,

Respondent,

v.

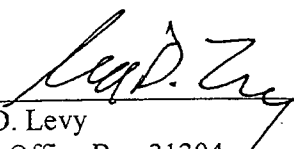
Tarsha Y. Alexander, Personal
Representative of the Estate of
Clarence Ceal Alexander,

Appellant.

PROOF OF SERVICE

I certify that I have served the FINAL REPLY BRIEF OF APPELLANT on Tracy Hines by personal delivery, on December 4, 2014, addressed to his attorney of record, Ashley G. Andrews, Catherine E. LaFond, P.A., 544 Savannah Highway, Charleston, SC 29407, by depositing same with the receptionist at Catherine E. LaFond, P.A., 544 Savannah Highway, Charleston, SC 29407.

IRA D. LEVY, LLC


Ira D. Levy

Post Office Box 31304

Charleston, SC 29417

Telephone: (843) 571-5000

Facsimile: (843) 852-9860

ATTORNEY FOR APPELLANT

this 4th day of Decembert, 2014,
Charleston, South Carolina.

STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF CHARLESTON

IN RE: THE ESTATE OF
CLARENCE CEAL ALEXANDER

CASE NO: 2011-ES10-1300

PROBATE HEARING HELD BEFORE
THE HONORABLE IRVING G. CONDON

DATE: January 16, 2013
TIME: 9:10 AM

LOCATION: Charleston County Probate Court
84 Broad Street, 2nd Floor
Charleston, SC

REPORTED BY: TERRI L. BRUSSEAU, RPR,
CERTIFIED REALTIME REPORTER

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 APPEARANCES:

2 PETITIONER:

3 TRACY HINES

929 West Luke Avenue

4 Summerville, SC 29483

5 ATTORNEY FOR THE ESTATE:

6 IRA D. LEVY

764 St. Andrews Boulevard

7 Charleston, SC 29417

(843) 571-5000

8 ira@levylawsc.com

9 ALSO PRESENT:

10 Austin Atkinson, Law Clerk

John Alexander

11 Demetria June

12 (INDEX AT REAR OF TRANSCRIPT)

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1 THE COURT: Good morning. My name is
2 Irvin Condon, Probate Judge for Charleston County
3 along with our law clerk, Austin Atkinson. This is
4 the matter of Clarence Ceal Alexander, Charleston
5 County Probate Case Number 2011-ES10-1300. We're
6 here concerning a petition by the individual being
7 included as an heir. Are you all ready to proceed?

8 MR. ALEXANDER: Yes, sir.

9 MR. LEVY: Yes, Your Honor.

10 THE COURT: I'm not sure if you've all
11 had a chance to talk to resolve any of the issues
12 or if you want time to talk. Mr. Levy, I know your
13 client indicated that she's out on vacation or on a
14 cruise.

15 MR. LEVY: Yes, sir. I was just
16 retained and I left a few messages for Mr. Hines
17 yesterday and didn't hear back but if he'd like to
18 talk, I mean, I'm willing to, of course.

19 THE COURT: Okay. I guess you just
20 want to be included as an heir?

21 MR. HINES: Yes, sir.

22 THE COURT: Okay. Is your client
23 willing to do that or you need to talk to your
24 client I guess if you haven't been in contact with
25 her since she's I believe on a cruise.

1 MR. LEVY: Not at this time, she's not
2 prepared, no, Your Honor.

3 THE COURT: Okay. I think there's a
4 letter in the court file she indicated I guess she
5 just wanted some type of proof and I think
6 Petitioner provided some proof. Is that not enough
7 proof or?

8 MR. LEVY: He provided proof that there
9 was a 99.5 percent chance that the brother of the
10 decedent was his uncle.

11 THE COURT: Okay.

12 MR. LEVY: That's what I believe that
13 said.

14 THE COURT: Okay. Is there a way to do
15 a test to see if I guess -- is there any other DNA
16 available to test him with the decedent?

17 MR. LEVY: I was retained this last
18 afternoon, Your Honor, I'm not as prepared as I
19 would like to be. That's not lack of respect for
20 the Petitioner or the Court. That's one of the
21 things I would have looked into, all the
22 different -- the best way to test him against the
23 decedent.

24 THE COURT: Okay.

25 MR. LEVY: That's one of a dozen things

1 I would like to have had more time to look into and
2 investigate.

3 THE COURT: Okay. Do you all want to
4 have time to talk and see if you can resolve the
5 issue?

6 MR. HINES: I would just like to have
7 my name added to the inheritance rightfully, what's
8 rightfully mine. If you want to talk, we can talk.

9 THE COURT: Okay. We've got a separate
10 little library or conference room back here if you
11 all want to sit and talk for a few minutes and then
12 let us know if you resolved anything or decide how
13 you're going to decide it or --

14 MR. LEVY: I don't see, Your Honor, how
15 additional testing or the additional people I would
16 need to speak to to establish more than we've seen.
17 I don't have a lot more to add than what's in the
18 file.

19 MR. HINES: Then we shall proceed.

20 THE COURT: You want to proceed?

21 MR. HINES: Yes, sir.

22 THE COURT: Okay. Tracy Hines?

23 MR. HINES: Yes, sir.

24 THE COURT: And you're not represented
25 by a lawyer here today?

1 MR. HINES: No, sir.

2 THE COURT: You're representing
3 yourself?

4 MR. HINES: Yes, sir.

5 THE COURT: Okay. And then you filed a
6 petition for -- to be included as an heir?

7 MR. HINES: Yes, sir.

8 THE COURT: Okay. Mr. Levy, you are
9 ready to go forward then?

10 MR. LEVY: As best I can, Your Honor,
11 yes, sir.

12 THE COURT: Okay. What proof do you
13 have, Mr. Hines, do you want to come forward and
14 testify?

15 MR. HINES: I can pretty much give you
16 the history of my family, relationship with my
17 father, even Tarsha acknowledged herself --

18 THE COURT: Let me stop you there
19 because what you're stating, you have to also come
20 forward and testify so instead of doing it twice,
21 come forward and take the stand here. And before
22 you sit down, place your left hand on the Bible
23 there and raise your right hand.

24 TRACY R. HINES,
25 being first duly sworn, testified as follows:

1 THE COURT: Thank you. If you could
2 state your full name for the record.

3 THE WITNESS: Tracy Renaldo Hines.

4 THE COURT: All right. Please be
5 seated, Mr. Hines. And you've come forward today
6 to petition this court to be included as an heir of
7 Clarence Alexander?

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay. What proof do you
10 have?

11 THE WITNESS: I have the DNA testing
12 from -- that I took from my father's oldest brother
13 I have DNA tested and that came back 99 percent
14 proof. I also have my father's obituary where --
15 that Tarsha herself made the obituary for the
16 funeral and acknowledged me herself as his son. I
17 also have a letter from Tarsha stating that she
18 will -- once I've done the DNA testing as much as
19 possible, that she would come and add my name to
20 the inheritance, her and my brother, that they
21 would automatically come just add my name that
22 we would -- so we wouldn't have to go through this
23 but I guess it didn't turn out that way. And I
24 have the file that the document that I was told she
25 should have sent me when she first signed the paper

1 for the inheritance.

2 THE COURT: Okay. Let's do this.
3 Let's mark each of those as an exhibit. Let's show
4 this to counsel, Mr. Levy. Have you seen that?

5 MR. LEVY: Thank you. I have.

6 THE COURT: We'll mark that as
7 Petitioner's Exhibit Number 1.

8 (PTR. EXH. 1, Funeral announcement for
9 Clarence Ceal Alexander, was marked for
10 identification.)

11 THE COURT: And you're indicating on
12 this obituary which is Petitioner's Exhibit Number
13 1?

14 THE WITNESS: Right, she acknowledged
15 me as his son and acknowledged my three sons as his
16 grandchildren and would be on there for that.

17 THE COURT: Okay. He has three
18 children, Tarsha Alexander, Clarence Alexander and
19 Tracy Renaldo Hines?

20 THE WITNESS: That's me.

21 THE COURT: That's you, okay. And then
22 further is listed eight grandchildren and I see
23 there's Demetrius.

24 THE WITNESS: That's my son.

25 THE COURT: Travae?

1 THE WITNESS: Travae, that's my son.

2 THE COURT: Travae, apologize. And --

3 THE WITNESS: Ranoy.

4 THE COURT: And Lisa, okay.

5 THE WITNESS: Okay, that's her child.

6 THE COURT: Okay. And Ranoy, okay, I
7 see the other Hines there. So there's three of
8 your children?

9 THE WITNESS: Yes, sir.

10 THE COURT: And you're listed there
11 also?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. And that's on
14 Petitioner's Exhibit Number 1. Okay. You've got
15 some other documentation?

16 THE WITNESS: I have a letter, a
17 statement from her claiming that once I've done any
18 proof of any DNA testing that she would come and
19 add -- her and Alex would be glad to add my name to
20 the inheritance.

21 THE COURT: Okay. And Mr. Levy, have
22 you seen this document?

23 MR. LEVY: I have, Your Honor. One
24 minute, please, I'm sorry. Yes, I have.

25 THE COURT: Mr. Levy, I didn't ask you,

1 on Petitioner's Exhibit Number 1 do you have any
2 objection to that document?

3 MR. LEVY: I don't, Your Honor.

4 THE COURT: Okay. Exhibit Number 1
5 without objection.

6 (PTR. EXH. 1, admitted into evidence.)

7 (PTR. EXH. 2, Letter to Tracy Hines
8 from Tarsha Alexander, was marked for
9 identification.)

10 THE COURT: And that's a letter
11 indicating from Tarsha Alexander, not a date on it
12 that I see, but basically says Clarence Alexander,
13 I will gladly oblige and include as heir to the
14 estate of Clarence Alexander upon being provided
15 conclusive DNA testing from a licensed DNA lab
16 showing that you, Mr. Tracy, I'm sorry, biological
17 child of Clarence Alexander. It goes on, if you
18 have any questions, call me. Okay.

19 Any objection to Exhibit Number 2?

20 MR. LEVY: Your Honor, I would also
21 point out that she sent that certified mail and I
22 do have a return receipt that Mr. Hines received it
23 on 11/8.

24 THE COURT: Okay.

25 MR. LEVY: I'm sorry I didn't make

1 copies. I should have thought to do that.

2 THE COURT: But no objection to
3 Petitioner's Exhibit Number 2?

4 THE WITNESS: No, Your Honor.

5 THE COURT: Admitted without objection.
6 (PTR. EXH. 2, admitted into evidence.)

7 THE COURT: Mr. Hines.

8 THE WITNESS: I also have a copy of the
9 DNA testing that I sent. I sent her a copy, sent
10 the Probate Court a copy. Everything I have I sent
11 her a copy of and sent Probate a copy.

12 THE COURT: Okay. And Mr. Levy, you've
13 seen a copy of that?

14 MR. LEVY: I have, Your Honor.

15 THE COURT: Okay.

16 (PTR. EXH. 3, Lab Corp. Document dated
17 11/29/12, was marked for identification.)

18 THE COURT: Any objection to
19 Petitioner's Exhibit Number 3?

20 MR. LEVY: No, Your Honor.

21 THE COURT: Petitioner's Exhibit Number
22 3 admitted without objection.

23 (PTR. EXH. 3, admitted into evidence.)

24 THE COURT: Petitioner's Exhibit Number
25 3 shows John Alexander is the biological father or

1 could be of Tracy Hines?

2 THE WITNESS: Right.

3 THE COURT: Or there's a paternal uncle
4 of Tracy Hines, okay. What else do you have?

5 THE WITNESS: And I also brought my
6 uncle, John Alexander, here to testify to my case
7 and he has a picture, a family picture of me, my
8 dad, him and some of the other family members.

9 THE COURT: Okay. All right. Let
10 me -- is there anything else you want to state
11 before we have Mr. Alexander come testify?
12 Mr. Levy would have a chance to ask you questions
13 also.

14 THE WITNESS: No problem.

15 THE COURT: Do you have anything else?

16 THE WITNESS: No.

17 THE COURT: Okay. Mr. Levy, any
18 questions for Mr. Hines?

19 EXAMINATION

20 BY MR. LEVY:

21 Q. The letter that Tarsha sent you in
22 early November states -- is it true that it states
23 upon being provided conclusive DNA testing showing
24 that you are the biological child of Clarence
25 Alexander, she will include you as an heir?

1 A. Yes.

2 Q. Is that what the letter states?

3 Regarding the DNA testing results, is it true that
4 that document states that the probability of the
5 alleged paternal uncle is the uncle of the child --
6 is 99.5 percent chance that he's your uncle?

7 A. Um-hum.

8 Q. Is that true? That's what the DNA
9 testing states, is that correct?

10 A. Yes.

11 Q. Is it true that the decedent had at
12 least seven siblings?

13 A. Brothers and sisters?

14 Q. Yes, sir.

15 A. Yes.

16 MR. LEVY: Okay. That's all at this
17 time, Your Honor.

18 THE COURT: Okay. Thank you.

19 Mr. Hines, anything else that you want to state
20 based on the questions Mr. Levy asked you, anything
21 else?

22 THE WITNESS: I'll just state like when
23 he come to the part where he asked if my uncle
24 could have proof that that's my uncle, that my
25 uncle do the DNA testing, if he's trying to get

1 through that, that that's my uncle, the reason why
2 my uncle had to take the DNA test is because I
3 wasn't going to exhume my father's body and if I
4 did do that it wouldn't have mattered because he's
5 had three or four blood transfusions so that would
6 eliminate me even having a blood test through him
7 anyway so that would eliminate that and that's all
8 I would have to say.

9 THE COURT: Okay. Thank you.
10 Mr. Levy, any other questions for Mr. Hines?

11 MR. LEVY: No, Your Honor.

12 THE COURT: Thank you, you may step
13 down. Mr. Hines, have you got another witness
14 you'd like to call?

15 MR. HINES: Yes, my Uncle John.

16 THE COURT: Mr. Alexander, good
17 morning.

18 MR. ALEXANDER: Morning.

19 THE COURT: Before you sit down, place
20 your left hand on the Bible here.

21 JOHN ALEXANDER,
22 being first duly sworn, testified as follows:

23 THE COURT: And if you could state your
24 full name for the record.

25 THE WITNESS: John Alexander.

1 THE COURT: And if you could answer
2 questions for Mr. Hines.

3 MR. HINES: Do you want me to stand?

4 THE COURT: Whatever you feel more
5 comfortable with. You can sit if you feel better
6 doing that.

7 EXAMINATION

8 BY MR. HINES:

9 Q. Uncle John.

10 A. Yes.

11 Q. Is it not so that you have known about
12 my mother's pregnancy to my father before I was
13 born?

14 A. Before you were born?

15 Q. Yeah, when my mother got pregnant.

16 A. I don't know exactly when.

17 Q. Is it not so that most of the majority
18 of my life that I've been coming downtown and been
19 known as Tracy Hines, Clarence Alexander number one
20 son?

21 A. Yes, that's my nephew, yes.

22 Q. Is it not so that every Christmas and
23 every holiday that I'm spending with my father and
24 with the Alexander family?

25 A. Every Christmas.

1 Q. Is it not so when we had family
2 reunions that my father and I are not there at our
3 family reunions?

4 MR. HINES: I'm sorry, Your Honor, this
5 is hard for me because I missed my last family
6 reunion because --

7 THE COURT: Okay.

8 THE WITNESS: Yes, you attend.

9 MR. HINES: Excuse me, sir.

10 THE COURT: Take your time. Let me try
11 to help you. Mr. Alexander, do you see Tracy Hines
12 as the son of Clarence Alexander?

13 THE WITNESS: Yes.

14 THE COURT: You believe he is the son?

15 THE WITNESS: To me I know he is.

16 THE COURT: You know he is?

17 THE WITNESS: I know he is.

18 THE COURT: And how do you know that he
19 is?

20 THE WITNESS: His mannerism, the way he
21 acts, the things he's doing, just caring about him.
22 He care for his father. He was there with him
23 until he died so...

24 MR. HINES: Nobody else was.

25 THE COURT: Okay.

1 THE WITNESS: He's a caring son.

2 THE COURT: Okay. All right. Let me
3 see if Mr. Levy has any questions for
4 Mr. Alexander. Anything else, Mr. Hines, that you
5 want to ask?

6 MR. HINES: Nothing.

7 THE COURT: Okay.

8 MR. LEVY: Thank you, Your Honor. I
9 just have one question.

10 EXAMINATION

11 BY MR. LEVY:

12 Q. Mr. Alexander, in your affidavit filed
13 with the court, I'm not sure -- I think it was part
14 of the petition that was filed October 9th, it
15 states that Tracy Hines has been a part of his
16 father's life for all of his life. Excuse me,
17 Tracy Hines has been a part of his father Clarence
18 Alexander's life all his life.

19 Is it true that Mr. Hines stood at his
20 father's funeral and stated that he only learned
21 that Mr. Alexander might be -- Clarence Ceal
22 Alexander might be his father in his late twenties?

23 A. Repeat the question.

24 Q. I'm sorry. Is it true that during the
25 funeral for Mr. Alexander, Tracy stood up and said

1 that he just learned in his twenties that Clarence
2 Ceal Alexander was his father?

3 A. I didn't recollect that.

4 Q. That's all.

5 A. I didn't recollect. I know so many
6 things happened in that funeral but I didn't
7 recollect his saying.

8 Q. I understand. Thank you.

9 THE COURT: Mr. Levy, any other
10 questions for Mr. Alexander?

11 MR. LEVY: No, Your Honor.

12 THE COURT: Mr. Hines, anything else,
13 sir, for Mr. Alexander?

14 MR. HINES: No, sir. Does she want to
15 take that picture, the family picture that he's
16 had?

17 THE COURT: Okay.

18 (PTR. EXH. 4, Photograph, was marked
19 for identification.)

20 THE WITNESS: That's a picture of me
21 and my son, my brother Eddie, Tracy and Clarence.

22 THE COURT: Okay. What's the date on
23 that picture?

24 THE WITNESS: It don't have a date.
25 It's about 20 years ago.

1 THE COURT: 20 years ago?

2 THE WITNESS: Yeah.

3 THE COURT: Where was it taken?

4 THE WITNESS: Party Lounge.

5 THE COURT: Party Lounge? Where is
6 that located?

7 THE WITNESS: It's in Goose Creek.

8 THE COURT: Goose Creek. Okay. And do
9 you recall who took the picture?

10 THE WITNESS: No, this was a picture we
11 took, just happy things so...

12 THE COURT: Okay. All right. Let Mr.
13 Levy see that. Mr. Alexander, just a second. He
14 may have questions for you about the picture.

15 MR. LEVY: Thank you. No objection to
16 that being admitted.

17 THE COURT: Okay.

18 (PTR. EXH. 4, admitted into evidence.)

19 THE COURT: Mr. Hines, anything else
20 that you have for Mr. Alexander?

21 MR. HINES: No, sir.

22 THE COURT: Okay. You may step down.
23 Thank you. Mr. Hines, anything else that you want
24 to present at this time?

25 MR. HINES: I would just like to say --

1 THE COURT: You can have an argument
2 but do you have any other evidence or any other
3 testimony that you want?

4 MR. HINES: Just that I feel we
5 shouldn't be here, that I feel if my daddy was
6 here, he's probably turning in his grave right now.

7 THE COURT: Okay. That's okay. We're
8 just looking for any other testimony. That's fine.
9 Let me ask Mr. Levy, anything else that you want to
10 present at this time? Sorry, Mr. Hines?

11 MR. HINES: I have my fiancée here who
12 was also at the funeral when we were doing the
13 setting up and things like that and when she was
14 there, she was there with us also acknowledging him
15 as -- acknowledging me and my brother Alex
16 Alexander, acknowledged me as his brother. And if
17 I still had my cell phone, I could pull up text
18 messages. I've been calling them for over a year
19 just trying to get pictures from Tarsha Alexander,
20 pictures and clothes that she had of my daddy.
21 When he first died I was calling her like six
22 months to where I was calling her and seem like I'm
23 harassing her so I stopped calling her just to get
24 the pictures.

25 THE COURT: Okay. That's fine. Let

1 me -- we may call your fiancée but right now see
2 what Mr. Levy has to offer and we'll go from there.
3 Anything else that you want to present at this
4 time?

5 MR. LEVY: No, Your Honor. I would --
6 I would like to, you know, summarize the evidence
7 presented and the -- and that happened, the
8 inclusion. I don't have really a case to put
9 forward. I don't have any additional evidence or
10 anything.

11 THE COURT: Okay. I guess are you
12 still challenging whether Tracy Hines is an heir of
13 the decedent?

14 THE WITNESS: Yes, Your Honor. The DNA
15 testing --

16 THE COURT: Before you start there, let
17 me have Mr. Hines, go ahead and call your fiancée,
18 let's get all your evidence. Good morning.

19 MS. JUNE: Good morning.

20 THE COURT: Before you sit down, I'll
21 have you place your left hand on the Bible there
22 and raise your right hand.

23 DEMETRIA JUNE,
24 being first duly sworn, testified as follows:

25 THE COURT: If you could state your

1 full name for the record.

2 THE WITNESS: Demetria June.

3 THE COURT: Okay. How do you spell
4 your last name?

5 THE WITNESS: June like the month.

6 THE COURT: Like June, okay. All
7 right, Miss June. If you could answer any
8 questions Mr. Hines has for you.

9 EXAMINATION

10 BY MR. HINES:

11 Q. Demetria, is it not so when we were to
12 the church downtown here in Charleston planning my
13 father's funeral, did you meet Tarsha Alexander?

14 A. Yes.

15 Q. Was it not so when you met Tarsha, was
16 my daughter Destiny there with you?

17 A. Yes.

18 Q. Was it so that Tarsha even acknowledged
19 Destiny at the time as Clarence Alexander's
20 granddaughter?

21 A. Yes.

22 Q. Did she at any time in front of you
23 give you any idea or indication that I was not my
24 dad's son?

25 A. No.

1 Q. At any time she asked you any questions
2 about the obituary or how to spell my name or
3 anything that she made any indication that I was
4 not my dad's son?

5 A. No.

6 Q. And is it not so that you just met
7 Tarsha during this proceeding of my dad's funeral?

8 A. Yes.

9 Q. Did you also not meet my brother
10 Alexander, Alex Alexander?

11 A. Yes.

12 Q. Did he give any indication that I was
13 not his brother?

14 A. No.

15 MR. HINES: Thank you. That's all.

16 THE COURT: Thank you. Mr. Levy, any
17 questions for Mrs. June?

18 MR. LEVY: No, thank you, Your Honor.

19 THE COURT: You may step down. Thank
20 you.

21 Mr. Hines, anything else that you want
22 to present at this time?

23 MR. HINES: That's it, sir.

24 THE COURT: Okay. Thank you. Mr.
25 Levy, anything that you want to present?

1 MR. LEVY: No, Your Honor, ready for
2 closing statements you might say.

3 THE COURT: That's fine.

4 MR. LEVY: Whenever you're ready.

5 THE COURT: Okay. Any closing
6 statement? I guess you believe that you're the --
7 Mr. Alexander was your father, Clarence Alexander?

8 MR. HINES: Yes. First I would like to
9 apologize for even being here and wasting the
10 Court's time, Your Honor. My closing statement
11 would be I think I've proven and given enough
12 evidence which I shouldn't have had to that he is
13 my father and I don't feel that -- I'm not here
14 trying to hurt anyone or take anything from
15 anybody, I'm just asking that they be fair. And to
16 me that's an indication that I know that I'm my
17 dad's son because I know if my dad was here, he
18 would have said let's just split it and go on with
19 our lives.

20 To me right now I feel I'm dealing with
21 greed and envy and a whole bunch of other stuff
22 that I shouldn't be dealing with and I don't think
23 it's right. I mean, I really don't know what to
24 say or how this is going to turn out but I don't
25 think I should really be here going through this,

1 you know. I've dealt with this watching my aunts
2 going through this and they died in the process of
3 all this. I shouldn't have to go through this over
4 something that's supposed to be rightfully mine. I
5 mean --

6 THE COURT: I understand. Anything
7 else you want to state at this time?

8 MR. HINES: No, sir.

9 THE COURT: Okay. Mr. Levy.

10 MR. LEVY: Actually, Your Honor,
11 prior -- before even summarizing the testimony
12 first, I believe there is a clear limitation period
13 that controls the decision in this case, Section
14 622109 of the South Carolina Probate Code states,
15 I'll read the relevant portion in its entirety, if
16 for the purposes of in testate succession the
17 relationship of parent and child must be
18 established to determine the succession by, through
19 or from a person. In cases not covered by Number
20 1, skipping down to Number 2 now. I'll wait for
21 you to get there, Your Honor.

22 THE COURT: Okay.

23 MR. LEVY: 622109.

24 THE COURT: Okay.

25 MR. LEVY: This pretty much controls

1 the determination of paternity in the probate court
2 of the estate. I'll start over from the beginning.
3 If for purposes of in testate succession the
4 relationship of parent and child must be
5 established to determine succession, then we come
6 down to Number 2 because Number 1 pretty much
7 concerns adoptions.

8 In cases not covered by Number 1, a
9 person born out of wedlock is a child of the
10 mother. That person is also a child of the father
11 if, and I'll come down to Number -- Double I,
12 paternity is established by adjudication before the
13 death of the father or within the layer of eight
14 months after the death of the father or six months
15 after the initial appointment of personal
16 representative after his death by clear and
17 convincing proof and that's pretty much the
18 relevant portions, Your Honor.

19 I believe Mr. Alexander passed away
20 September 2nd, 2011. Tarsha was appointed personal
21 representative six days later. That might be the
22 quickest I've ever heard. And then the Petitioner
23 filed roughly a year after both of those dates. If
24 I might read the coroner's comments that clarify a
25 little further. They state that Section 622109 --

1 excuse me, Your Honor, such small writing. Section
2 62210922 allows an illegitimate child to inherit
3 from and through his father if paternity is
4 established by adjudication convinced before the
5 father's death or within six months thereafter. A
6 standard of higher than usual clear and convincing
7 proof is required to be met when adjudication
8 commences after, not adjudication before the
9 father's death. So I would ask based on that
10 statute, Your Honor, which is pretty clear, that
11 the petition be dismissed.

12 THE COURT: Mr. Hines, anything else?

13 MR. HINES: He made a statement about
14 that was the quickest. Then that tells me a whole
15 lot more. You know, that tells me that there was
16 automatically -- she was automatically planning on
17 doing wrong. When I went down to the Probate Court
18 here, sir, to file the papers because I received a
19 phone call that I was supposed to receive some
20 papers when she went down there six days being that
21 she knowed she was supposed to have sent me a
22 document or notify me, she had my phone number, she
23 had my address and she talked to me just about
24 every other day during this because my dad was
25 still in the hospital. And her house was filled,

1 all in the hospital together.

2 Now, I was told when I was at the
3 Probate Court that she should have sent me a
4 document of those papers for me to sign, okay? I
5 received a phone call from my dad's caregiver when
6 she was there, Miss Lackton, and that's who pretty
7 much informed me on what was going on. Then I took
8 action. I called Tarsha for six, seven, maybe
9 eight months just to try to receive pictures and
10 clothing from my dad. Alex moved to or gone so
11 there's any other problems about me having a DNA
12 test about being my father, Judge, I can have it
13 court ordered if you would that me and Alex take a
14 DNA test that he be my brother.

15 THE COURT: No, I don't see that as the
16 issue. Do you have anything else?

17 MR. HINES: Thank you.

18 MR. LEVY: Your Honor, even if the
19 claims are not barred by 622109, I don't think the
20 evidence presented today rose to a level of clear
21 and convincing regarding the DNA test. Again it
22 establishes that -- it only establishes that there
23 is a 99.5 percent probability that John Alexander
24 is his uncle and I remind the court that the
25 decedent had seven or eight siblings.

1 As far as his name being included in
2 the obituary, I really can't testify to what my
3 client shared with me about that except to say that
4 she was not -- she was not interested in having her
5 father in disagreement at that time in the funeral
6 home when they were coming up with that. And the
7 letter from Tarsha is also pretty clear that
8 Mr. Hines received on November 8th, simply states
9 that her brother and I will gladly oblige and
10 include Mr. Hines on being provided conclusive DNA
11 testing showing that he is the biological child of
12 the parent of Alexander and that's not what the DNA
13 test states, Your Honor, but again I believe the
14 claim is clearly barred, Section 622109 of the
15 South Carolina Probate Code. Thank you, Your
16 Honor.

17 THE COURT: Okay. Thank you.
18 Mr. Hines, anything else?

19 MR. HINES: No, sir.

20 THE COURT: Okay. What I'd like to do
21 is take this one under advisement. I'll tell you
22 the way I see it. I think, Mr. Hines, you have
23 proved by clear and convincing evidence that you
24 are the son of Clarence Alexander. I think the
25 evidence shows that.

1 MR. HINES: Thank you.

2 THE COURT: The issue we have is we've
3 got a statute that requires you to bring your
4 action within a period of time, looks like you
5 brought it after that time but in your favor you
6 did send a summons and petition to Respondent. The
7 personal representative is required to answer that.
8 I'm not sure if they answered it in time. I guess
9 this letter back is almost like an answer. She did
10 not raise that defense as far as the time bar. I'm
11 not sure if that's an affirmative defense that has
12 to be raised at that time so I need to look at the
13 research on that but clearly I think you've
14 indicated today or proven today that Clarence
15 Alexander was your father so just a matter of
16 whether you met the statute of limitations of
17 filing your action on time.

18 I don't think you've done that but by
19 filing your petition and by her answer, I'm not
20 sure if she raised the proper defense at the right
21 time so you may prevail in that regard, okay, so
22 let me just take a look at it and, you know, you
23 all can still talk and maybe resolve it but if not,
24 let me do some research and then I'll issue an
25 opinion as quickly as we finish that research,

1 okay? We are a trial court and we're bound by
2 certain -- by the case law and by the statutes but
3 we also report of equity, I think clearly you've
4 shown or proven that Clarence Alexander was your
5 father, just hopefully we can just look at the time
6 limits there, okay?

7 So I'll take it under advisement and
8 then we'll issue an order hopefully as quickly as
9 possible, maybe -- it may be 25, 30 days but give
10 me some time to do some research, okay? And we
11 won't close this estate and Mr. Levy, don't file
12 any disbursements until the Court issues its order,
13 okay?

14 MR. LEVY: I will tell Tarsha no
15 further disbursements.

16 THE COURT: Okay. I'm not sure what
17 disbursements she's made. If she has made
18 disbursements, then we would require the books be
19 bond equal to one and a half times the value of the
20 device that would go to Mr. Tracy Hines. She would
21 need to post a bond if she doesn't -- if you can't
22 I guess hold that money in your escrow account
23 under an agreement until an order, the Court's
24 ordered position.

25 MR. LEVY: You're saying that will be

1 an acceptable alternative to a bond?

2 THE COURT: Yes, if you hold the money
3 in your trust account. I think he's entitled to
4 one-third if there's three children.

5 MR. LEVY: I know regarding the timing
6 of this petition, I'm pretty sure it was filed
7 after -- I don't have the date in front of me from
8 the closing documents but it was filed by the time
9 period after she even filed the closing documents,
10 he didn't file a petition at all.

11 THE COURT: Okay.

12 MR. LEVY: But what I've heard, this
13 will be hearsay, but I'll state that to my
14 knowledge not a penny has been spent.

15 THE COURT: Okay.

16 MR. LEVY: So I can certainly, you
17 know, calculate a third and ask them to both post
18 half of that amount for me to hold until the
19 court's made a ruling.

20 THE COURT: Yeah. Take a third of
21 whatever is in the estate and if you can hold that
22 in your escrow account, if not, she'll need to post
23 a bond equal to one and a half times the one-third.

24 MR. LEVY: Of course. I understand,
25 Your Honor, thank you.

1 THE COURT: And we'll take a look at
2 it. I know closing documents were sent at some
3 point in time but they all were not sent to
4 Mr. Hines so he wasn't aware of that.

5 MR. HINES: May I make a statement?

6 THE COURT: Yes.

7 MR. HINES: The reason why I didn't
8 file any papers or anything, because I didn't know
9 anything. I figured she was going to notify me in
10 the proper time because we were like, we talked, I
11 didn't figure anything was wrong.

12 THE COURT: Right.

13 THE WITNESS: So I figured she was --
14 while we were in the hospital, I figured she would
15 have notified me and let me know what was going on
16 so I didn't think that it would be this sneaky
17 stuff and all this going on. That's where the
18 problem is really coming in at because me being
19 trustworthy thinking she would notify me in time
20 whatever needs to be done, that's what I was
21 thinking, then I started feeling it when she was
22 giving me the runaround.

23 THE COURT: All right.

24 MR. HINES: That's what caused me to
25 this state.

1 THE COURT: Okay. Anything else? The
2 family picture, we will hold that for a period of
3 time but we will get that back to you once the case
4 is resolved, okay?

5 MR. LEVY: I would just like to finally
6 state that I apologize on behalf of my client, the
7 personal representative, she's not here today, but
8 she made every effort she could, I think the notes
9 in the file would indicate that and also
10 communicate with Mr. Hines. We just wanted this
11 matter continued. I would prefer us to come to the
12 court with an agreement so you wouldn't have to
13 make that ruling.

14 THE COURT: Okay.

15 MR. LEVY: Thank you, Your Honor.

16 THE COURT: Thank you. Anything else
17 for today?

18 MR. HINES: When he just made a
19 statement about she sending a letter to go on that
20 trip, when I sent her that paper, it was almost
21 three, four months ago. I just received a letter
22 from her last week on a Friday. I called her that
23 night.

24 THE COURT: Okay.

25 MR. HINES: So she had way enough time

1 knowing that this court date was going to be today
2 so that's -- apology is not accepted, sir, because
3 I notified her two or three months ago that we had
4 this court date.

5 THE COURT: Okay. Let's leave it at
6 that and we'll take it under advisement, okay?
7 Thank you.

8 (WHEREUPON, the proceedings concluded
9 at 9:48 AM.)

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1 CERTIFICATE OF REPORTER.

2 I, Terri L. Brusseau, Registered
3 Professional Reporter and Notary Public for the
4 State of South Carolina at Large, do hereby certify
5 that the foregoing transcript is a true, accurate,
6 and complete record.

7 I further certify that I am neither
8 related to nor counsel for any party to the cause
9 pending or interested in the events thereof.

10 Witness my hand, I have hereunto
11 affixed my official seal this 2nd day of April,
12 2013 at Charleston, Charleston County, South
13 Carolina.

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Terri L. Brusseau, RPR, CRR

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My Commission expires

March 24, 2016.

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1 Document dated 11/29/12

2 PTR. EXH. 4 (admitted) 19 18

3 PTR. EXH. 4, Photograph 18 18

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(All exhibits were retained.)

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1 STATE OF SOUTH CAROLINA
2 PROBATE COURT
3 COUNTY OF CHARLESTON

4 IN RE THE ESTATE OF
5 CLARENCE CEAL ALEXANDER,

6 CASE NO. 2011-GC-10-1300
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8
9

10 TRANSCRIPT OF PROCEEDINGS, taken
11 before the Honorable Irvin Condon, Esq., held on
12 July 10, 2013, commencing at 10:10 a.m., at the
13 Charleston County Judicial Building, 84 Broad
14 Street, 2nd Floor, Charleston, South Carolina.
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TRANSCRIPT OF PROCEEDINGS

THE COURT: Good morning. My name is Irvin Condon, Probate Judge for Charleston County. This is the Matter of Clarence Ceal Alexander, Charleston County Probate Case No. 2011 -- ES-10-1300. We're here on a motion for reconsideration. Counsel, ready to proceed?

MR. LEVY: Yes, sir.

MS. ANDREWS: Yes, sir.

THE COURT: I guess there's a couple of things that both sides and the Court, I guess, can agree upon. I guess we had listed, Mr. Levy, your client as being present, and my understanding is she was not present at the last hearing.

MR. LEVY: Yes, sir.

THE COURT: If we can correct that? And then I think there was an issue as far as holding the funds, whether there would be a

1 bond or not.

2 MR. LEVY: Yes, sir.

3 THE COURT: Can both sides
4 agreed to that?

5 MR. LEVY: Yes, Your Honor.
6 You just took care of my first page
7 of notes.

8 THE COURT: Ms. Andrews, do you
9 agree with that?

10 MS. ANDREWS: Yes, sir.

11 THE COURT: No issues. Okay.
12 And then the other issue is -- I
13 guess we can hear argument on that,
14 and then we have proposed orders
15 and can take that under
16 consideration. Okay?

17 I'm not sure that there's any
18 new testimony that needs to be
19 heard today or --

20 MR. LEVY: I was not planning
21 on calling her for testimony.

22 THE COURT: Okay. All right.
23 Mr. Levy, I believe this is your
24 motion if you want to proceed.

25 MR. LEVY: Thank you. If it

1 please the Court. Sometimes I need
2 to see a picture to help me
3 understand things a little bit
4 better. I drew up a timeline of
5 important dates regarding this
6 estate. May I approach?

7 THE COURT: You may. Do you
8 have a copy for Ms. Andrews?

9 MR. LEVY: I do.

10 I'll just briefly -- it won't
11 take one second to go over this
12 unless Ms. Andrews has an issue
13 with it?

14 MS. ANDREWS: I don't have any
15 objections.

16 THE COURT: Okay. Thank you.
17 We'll mark it as Exhibit A.

18 (PET. EXH. #A, Timeline, was
19 marked for identification.)

20 MR. LEVY: Just to review,
21 September 2, 2009, is when
22 Mr. Alexander passed away.
23 September 8th, 2011, the estate was
24 opened and Tarsha Alexander was
25 appointed personal representative.

1 March 8, 2012, was six months after
2 appointment.

3 May 2, 2012, was eight months
4 after Mr. Alexander passed away.
5 September 14, 2012, the closing
6 documents were filed with the
7 estate. October 9, 2012, a
8 petition for conclusion was filed.

9 I would also at this time like
10 to address the Court's conclusion
11 of law. I'll read that. March 27,
12 2013, that respondent agreed
13 pursuit to a private agreement
14 under South Carolina Probate Code
15 62-3-912 concluded Petitioner as an
16 heir and provided conclusive DNA
17 evidence.

18 This court finds that the
19 petitioner was the biological son
20 of Decedent based on conclusive DNA
21 evidence according to the
22 Petitioner should be included as an
23 heir to the Decedent's estate.

24 Your Honor, 62-3-912 states
25 that comprehensive successors may

1 agree among themselves to alter the
2 amounts to which they're entitled
3 and a written contract executed by
4 all who are affected by its
5 provisions.

6 Decedent's son, Clarence
7 Alexander, did not sign and has
8 been certainly affected by its
9 provisions. Therefore the
10 conclusion reached from that
11 analysis would be erroneous.

12 Finally, Your Honor, at trial I
13 cited 62-2-109 and asked the Court
14 to dismiss the Petition based on
15 this provision because the statute
16 clearly marked Petitioner's claim.

17 THE COURT: Mr. Levy, if I can
18 just back up. I guess your
19 argument on that is that he did
20 not -- one of the heirs did not
21 sign? I guess the letter
22 indicates -- Mr. Alexander sent a
23 letter on -- it was filed in this
24 Court on November 5, 2012, and
25 indicates Clarence A. Alexander and

1 I will gladly oblige to include
2 Mr. Hines as an heir if he provides
3 conclusive DNA testing from a
4 licensed DNA lab and goes on
5 further to include -- I'll just say
6 as a biological child.

7 I guess my understanding --
8 you're challenging because --

9 MR. LEVY: The statute is
10 inoperative to the facts before us.

11 THE COURT: But you're not
12 challenging that the evidence that
13 he presented that he's the child
14 based on DNA, you're not
15 challenging that part of the
16 ruling, are you?

17 MR. LEVY: It was not an
18 oversight when I filed my motion to
19 not challenge the Court's ruling
20 that he was the child of the
21 Decedent.

22 THE COURT: Okay. I
23 understand. Now to get back to
24 your other argument on I guess,
25 62-2-109 where in your memorandum

1 you're arguing that the result may
2 not be in equity proper, but if you
3 don't bring your action within that
4 period time then you're barred?

5 MR. LEVY: Absolutely, Your
6 Honor.

7 THE COURT: I guess what I'm
8 driving at, you don't dispute that
9 he's the biological son of Clarence
10 Alexander?

11 MR. LEVY: That's correct.

12 THE COURT: Okay.

13 MR. LEVY: Again, Your Honor,
14 I've cited 62-2-109 and ask the
15 Court to dismiss the petition in
16 this division because the statute
17 clearly bars the petitioner's claim
18 that he be included as an heir.

19 Your Honor, there's some key
20 authority on this page that we can
21 all follow pretty clearly. May I
22 approach to give you Exhibit B?

23 THE COURT: You may.

24 (PET. EXH. #B, Document, was
25 marked for identification.)

1 MR. LEVY: 62-2-109 states that
2 if, for purposes of intestate
3 succession, a relationship of a
4 parent and child must be
5 established to determined
6 succession by, through, or from a
7 person -- a person born out of
8 wedlock is a child from the mother.
9 That person is also a child of the
10 father if paternity is established
11 by an adjudication commenced before
12 death of the father or the later of
13 eight months after the death of the
14 father or six months after the
15 initial appointment of a personal
16 representative.

17 With that, Professor Alan
18 Medlin (phonetic) states that
19 62-2-109 requires the adjudication
20 be commenced by the latter of eight
21 months after the father that's
22 death or six months after the
23 probate of the estate. If the
24 adjudication is not commenced in
25 time the illegitimate child cannot

1 inherit under intestacy. The South
2 Carolina Probate Code does not
3 permit inheritance by an
4 illegitimate -- who was even
5 acknowledged by the father
6 Professor Medlin states, for whom
7 paternity has not been adjudicated.

8 South Carolina's Probate Code
9 does not provide a Statute of
10 Limitations for determining
11 paternity. Thus far everything
12 that I've gone over was in my
13 motion.

14 I don't have the luxury of
15 Westlaw so I went and visited a
16 friend yesterday that did Westlaw
17 just to double check the law and
18 make sure it was still good law and
19 noticed that -- I found that the
20 South Carolina Probate Code does
21 not provide a statute of
22 limitations, I found that that was
23 actually accepted for Certiori by
24 the Supreme Court.

25 They went on a little further

1 and stated that we affirm with the
2 Court of Appeals and hold that
3 there is no Statute of Limitations
4 that is applicable for actions in
5 trying to determine.

6 Therefore, Your Honor, 62-2-109
7 is not -- it must be pled and an
8 answer waived. Finally -- not
9 finally but next, from Parker v.
10 Parker, South Carolina Supreme
11 Court stated that if paternity is
12 in question, then such action must
13 be brought within the statutory
14 time frame.

15 Now, Parker is the most cited
16 case in the Petitioner's reply to
17 the motion the Estate filed. I'll
18 brief it very, very briefly so that
19 everyone can see how
20 distinguishable it is from the
21 facts before us today.

22 In Parker v. Parker, the
23 Decedent died in July of '87. The
24 Estate was opened very shortly
25 thereafter. When the Estate was

1 opened, the personal representative
2 listed one Virginia Martin as a
3 child of the Decedent, listed on
4 the application for Probate.

5 This case, Parker v. Parker --
6 this case, the more I read it,
7 actually strengthens the Estate's
8 position since it again clearly
9 states at the time of the question
10 when an action must be brought in
11 the statutory timeframe.

12 The case goes on -- I would
13 like to read the entire case into
14 the record. Obviously, I wouldn't
15 read but a couple of sentences.
16 The application -- the Court states
17 in Parker -- the application for
18 Probate standing alone is
19 compelling evidence that the
20 personal representative did not
21 dispute Virginia Ann Martin's
22 parenting, and therefore that
23 Virginia Ann Martin -- I left out
24 an important fact.

25 Four years after -- on the

1 Application for Probate, the
2 personal representative listed
3 Ms. Virginia Martin as a child of
4 the Decedent. She also listed
5 several other children. Four years
6 after the estate was opened the
7 other children filed a petition to
8 exclude Virginia Martin as heir of
9 the Estate. The facts couldn't be
10 more different than the case before
11 us today.

12 The Court went on to state that
13 commonly the illegitimate heir must
14 raise the issue included in the
15 intestate secession. In the case
16 at hand there was no need to since
17 the Estate is -- the personal
18 representative acknowledged at the
19 outset Virginia Ann Martin's
20 parentage.

21 THE COURT: I guess, Mr. Levy,
22 you saw Ms. Andrews' memorandum
23 where she's going to argue that the
24 information, the heirs and debesees
25 was not provided to her client,

1 that he may have had some interest
2 that there was an obituary and
3 maybe a funeral program where he
4 was listed, but when it came to the
5 information in heirs an debesees he
6 was not provided that form by your
7 client?

8 MR. LEVY: Your Honor, the
9 Statute says if a person is
10 intestate succession the
11 relationship of parent and child
12 must be established to determine
13 succession by approval from the
14 person. That person is also the
15 child of the father if the an
16 adjudication is commenced before
17 the death of the father or within
18 the later of eight months.

19 Again, we're not disputing the
20 Court's finding. We don't agree
21 with it. You do not list on the
22 Application for Probate because the
23 personal representative does not
24 believe. I mentioned at the
25 hearing, so this is not a fact -- I

1 mentioned I didn't like testifying
2 but we were pretty liberal in
3 allowing hearsay from both sides.
4 I offered as little as possible but
5 I stated it was tertia to avoid an
6 argument at the funeral home. Let
7 his name go in the obituary.

8 The statute is clear, Your
9 Honor. I don't mean to be
10 hardheaded, but I'll keep referring
11 to that. As Professor Medlin said,
12 the South Carolina Probate Code
13 does not permit inheritance --
14 even an illegitimate who is
15 acknowledged by the father for whom
16 paternity has not been adjudicated.

17 THE COURT: I guess what the
18 other side is arguing is that your
19 personal representative had a duty
20 to provide him with notice under
21 the information to heirs and
22 debesees, and that not providing
23 him notice is breach of her duty
24 and that by allowing him to be in
25 the obituary or wherever else in

1 the funeral program kind of led him
2 on to believe that he was included
3 in the Estate and then when you get
4 to the end he's not included.

5 MR. LEVY: Again --

6 THE COURT: I know you're
7 referring to the statutes if
8 they're arguing equity here.

9 MR. LEVY: I understand, but
10 it's my position that equity also
11 states, and I don't think the
12 statute is subject to equitable
13 exception, but if you look at the
14 equity I would say that it begs to
15 be vigilant and not be diligent.
16 Equity does not aid those seek with
17 their likes. This is obviously the
18 basis for that Will, but I don't
19 think it's necessary in this case.

20 I'm not interested in picking
21 the reply apart piece-by-piece.
22 I'll reiterate that it's based
23 primarily on a case that was
24 completely distinguishable before
25 us. Your Honor, there are some

1 statements in there, but statement
2 the respondent acknowledged that
3 petitioner's daughter was a
4 granddaughter of the decedent. It
5 cites the transcript of -- I think
6 it would have been less misleading
7 if the statement was attributed to
8 the person who said it, even though
9 the Respondent was not at the
10 hearing.

11 Now is probably as good a time
12 as any to remind everyone that
13 Decedent was incapacitated for the
14 last 35 years of his life. I
15 learned that he actually called
16 Portia's daughter his own daughter.
17 She's not petitioning the Court to
18 be admitted as an heir.

19 The reply also states -- it
20 cites the statute that lists the
21 particular visions of this code,
22 the principals of law and equity
23 supplement and divisions. In the
24 part of my motion where I called
25 the Statute at issue a Statute of

1 Repose, I'll withdrawal that. I
2 think I found -- I think I
3 logically concluded that it was --
4 it's definitely not a Statute of
5 Limitations, and I tried to fit it
6 into a hole. It's
7 still instructive that one of the
8 cases that I discussed was while
9 equitable principals mixed in the
10 time with the action under the
11 Statute of Limitations nonclaimed
12 statutes, such as the Creditor's
13 Claim Statute, imposed a condition
14 precedent to the enforcement of a
15 right of action are not subject to
16 equitable statutes so I would
17 believe that the Petitioner is
18 disputing that.

19 So clearly the statute she
20 cites and lists is replaced by a
21 particular business code and
22 principals of law. That's not
23 always true, Your Honor. There are
24 statutes that are in the Probate
25 Code that the Law of Equity may not

1 supplement.

2 In the reply there's quite a
3 bit about equitable estoppel and
4 waiver. Again, the facts are so --
5 in Parker, the fact that a
6 case that she's most -- the
7 Petitioner, excuse me, is most
8 relying on, the facts are so
9 different.

10 Four years after the heir was
11 listed on the Application for
12 Probate some other heirs come
13 forward and say she should be
14 excluded. The Supreme Court with
15 Parker discussed waiver and
16 estoppel. I think they also called
17 it dictum.

18 They start off by arguing and
19 saying, assuming and goes
20 into little analysis knowing the
21 dispute and finding that four years
22 later you can't dispute the facts
23 somebody lists on the application.
24 It's just so inapplicable to the
25 case before us.

1 Here the petition was not
2 lulled into inaction. I believe he
3 stated at the hearing in January
4 that he telephoned Ms. Alexander,
5 the Personal Representative, for
6 six or eight months, and she would
7 never called him back. He didn't
8 want to bother and stopped
9 bothering her. I would think that
10 would set off alarm bells and set a
11 fire under him to act. There's a
12 statute that controls -- where you
13 can petition the court to be
14 included as an heir.

15 That's what the statute says.
16 It doesn't -- the Petitioner listed
17 another statement and a reply. The
18 Petitioner was given no notice that
19 paternity was being questioned.
20 until Respondent's letter was
21 delivered to Petitioner on or about
22 November 8, 2012.

23 I will submit that when the
24 Petitioner -- when his petition was
25 filed a month earlier he knew then

1 and he should have known a lot
2 earlier.

3 Again, and equitable principal,
4 assuming it needed to be applied
5 here, is also that equity aids the
6 vigilant and not the diligent. In
7 other words, in layman's terms you
8 can't sit on your here.

9 There's one last thing from
10 parker that the Petitioner mentions
11 in their reply that I would like to
12 touch on. There's a section
13 where -- it's not exactly where --
14 the Statute at issue is the Statute
15 of Repose that states that pure
16 conjecture -- I'm withdrawing that
17 statement. If somebody can define
18 what that statute is, though, I
19 would like to know exactly what it
20 is. It's not a Statute of
21 Limitations. It's one that must be
22 strictly complied with.

23 Let's see. In the reply it
24 states that the statute at issue is
25 not mandatory, but it has to be

1 read in the context of Parker.

2 It's non mandatory because she was
3 listed -- the heir was listed on
4 the Application for Probate.

5 There's no conclusion in Parker
6 that states it's a non mandatory
7 statute.

8 They're talking about -- the
9 circuit court said -- and in the
10 facts of that case it was non
11 mandatory. There was no need. She
12 was already listed. Forgive me for
13 not giving a better explanation.

14 If Parker is read closely they're
15 not stating that -- the Supreme
16 Court is not stating that it's a
17 non mandatory statute based on the
18 facts of Parker. It wasn't
19 necessary because she was listed
20 from day one. Four years later
21 other heirs tried to exclude her,
22 not include as we're talking about.

23 As the statute states for
24 purposes of intestate succession a
25 relationship of parent and child

1 must be established to determine
2 the succession. It's talking about
3 inheritance. It's a mandatory
4 statute. It must be followed.

5 Again, Professor Medlin states,
6 the South Carolina Probate Court
7 does permit inheritance by an
8 illegitimate who was even
9 acknowledged by the father.

10 Finally, Your Honor, the last
11 from my motion -- the last
12 statement I would like to read is
13 South Carolina Supreme Court cited
14 the United States Supreme Court
15 when it remarked that certain
16 children would not be able to
17 inherit from their biological
18 fathers even though their paternity
19 is not disputed. While this may be
20 unfortunate the United States
21 Supreme Court found the strict
22 paternity requirement was necessary
23 as a matter of public policy.

24 It says, Petitioner failed to
25 meet his statutory obligation hence

1 adjudication of paternity within
2 the statute's time frame, and this
3 claim is barred, and I would ask
4 this court to deny Petitioner's
5 claim as a legitimate heir. Thank
6 you.

7 THE COURT: Thank you,
8 Mr. Levy. Ms. Andrews?

9 MS. ANDREWS: Yes, Your Honor.
10 May it please the Court. A lot of
11 discussion we've gone into has been
12 with Parker versus Parker. I do
13 think there's one distinguishable
14 fact between that case and my
15 client's situation. In that case
16 the heir that was born out of
17 wedlock was included on the
18 application or petition. I don't
19 know -- I show it was filed and one
20 is given notice of the person, and
21 I think that's what distinguishes
22 that case from our case here that
23 Mr. Hines offered testimony in the
24 hearing in January that he was
25 present in the hospital when his

1 father was sick, that he was
2 present when funeral arrangements
3 were being made, that he was listed
4 in the obituary. He did not ask to
5 be put in the obituary. He was
6 listed by Ms. Alexander in the
7 obituary, that he attended family
8 reunions, that he was present at
9 holiday functions, at Christmas,
10 that his uncle testified that yes,
11 his father acknowledged him as his
12 son and that the family considered
13 Mr. Hines to be Mr. Alexander's
14 son.

15 So in this will instance,
16 there's really been no explanation
17 given for why he wasn't given
18 notice. That has never been
19 addressed by the Respondent as to
20 why she didn't think it was
21 necessary to include him, not only
22 in the application as a potential
23 heir but also when she was named as
24 the personal representative of the
25 estate, why he did not -- why he

1 was not asked to sign a waiver as
2 he was standing to serve as the
3 personal representative.

4 You know, I think she knew or
5 she had reason to know that he was
6 the son of the Decedent, and she
7 just, for whatever reason chose not
8 to give notice that the Estate had
9 opened. If she had done so he
10 would have had the opportunity
11 to -- if he was aware that she was
12 fighting the paternity -- I don't
13 think he had any reason to question
14 that she thought he was
15 Mr. Alexander's son. He could have
16 definitely been able to assert that
17 claim within the statutory time
18 period.

19 In this instance I believe that
20 her duty as a personal
21 representative was to notice him.
22 In addition, Mr. Hines called her
23 multiple times and she didn't
24 respond to his calls. He was
25 asking for pictures. He was asking

1 for some clothing. Arguably that's
2 notice to her that he intended to
3 inherit from the Estate. Once
4 again -- once he found out that she
5 was questioning his paternity, her
6 not answering phone calls I don't
7 think is noticing that she's
8 questioning paternity.

9 I do think it would be
10 inequitable for her to prevail on
11 this claim that she -- as to
12 whether or not the statutory is
13 mandatory, I call the Court's
14 attention to the first word, if,
15 for the purpose of intestate
16 secession. A relationship of
17 parent and child must be
18 established. That's only if
19 someone's questioning it. Like I
20 said before, I don't believe that
21 anyone questioned his paternity in
22 the months following
23 Mr. Alexander's passing. He had no
24 reason to believe that anyone in
25 the family was questioning his

1 paternity.

2 Like in the Parker case, no one
3 questioned paternity, and it is the
4 burden of the person who is
5 questioning the paternity to bring
6 it to the Court's attention. So my
7 comment there is that if
8 Ms. Alexander is questioning the
9 paternity that she should have
10 brought it within that statutory
11 time frame. Once again, the
12 argument being that my client had
13 no knowledge that anyone would
14 question her, and he had no reason
15 to know that they needed to prove
16 his paternity, but he didn't need
17 to prove it. He was able to
18 provide conclusively that he was
19 the Decedent's son.

20 As to the Supreme Court cases
21 as well, the short history of
22 that -- the United States Supreme
23 Court found in 1977 that it was
24 unconstitutional for states to not
25 allow illegitimate children to

1 inherit from their parents. I
2 believe that that statement was
3 made actually -- a statement about
4 sometimes the children not being
5 able to inherit was actually --
6 a case was tried retroactively,
7 including an illegitimate heir,
8 that the Supreme Court made that
9 ruling. If you give me just a
10 minute I will find what case that
11 was.

12 I think it was Trammell, and
13 then there was a case in 1978, the
14 Mitchell case. That was where the
15 court found that if they were going
16 to apply that Trammell case --
17 people before 1977 would have to
18 meet certain factors. I think that
19 is when the Court said that
20 unfortunately those factors weren't
21 met. That is when the heirs would
22 not be able to inherit from their
23 fathers. I have nothing further,
24 Your Honor.

25 THE COURT: Mr. Levy, anything

1 further?

2 MR. LEVY: Excuse me, Your
3 Honor. I can't testify for the
4 personal representative, obviously,
5 and go into detail why she strongly
6 feels Mr. Hines -- there was not a
7 requirement to list him. It would
8 require testimony, and she tried to
9 get the hearing continued. She ran
10 into about a month of delays before
11 she was able to speak with someone
12 who told her she had to speak with
13 Mr. Hines and it was a week before
14 the hearing and they couldn't agree
15 to continue it.

16 I have nothing further, Your
17 Honor. Thank you.

18 THE COURT: Ms. Andrews,
19 anything further?

20 MS. ANDREWS: No, Your Honor.

21 THE COURT: I will have you
22 submit proposed orders, and then
23 I'll take it under advisement. I
24 will still -- Ms. Andrews, that is
25 addressed in the family settlement

1 agreement in your order. I believe
2 you can also -- 62-3-912 talks
3 about a private agreement among
4 successors. You might want to put
5 that one that's court approved
6 under 62-3-1102, you know, it's
7 questionable whether the same
8 requirements as far as -- I know.
9 Mr. Levy argued that one of the
10 heirs didn't sign it.

11 It does appear that
12 Ms. Alexander was acting on his
13 behalf by submitting that -- he and
14 I agreed to this method of setting
15 up the DNA.

16 MR. LEVY: I'm not going to
17 argue the fact that Mr. Hines
18 didn't sign it. Strictly reading
19 the Statute he should have signed
20 it as well, but I won't argue that
21 that invalidated it. Certainly all
22 the heirs need to, and he did not.
23 I believe the statute is
24 inoperative.

25 THE COURT: Okay. Well, I

1 think we're getting into contract
2 law and whether that's a contact.
3 I guess I'm just saying I'm
4 contrasting it to the one that's
5 court approved when the argument is
6 that the requirements are more
7 stringent. Here it looks like
8 there is an agreement, and that's
9 what the court based its earlier
10 ruling on. I'm just telling both
11 of you to address that in your
12 proposed orders and in any other
13 areas.

14 MS. ANDREWS: Your Honor, how
15 early do we need to submit those
16 orders?

17 THE COURT: If you can do them
18 electronically -- our law clerk
19 here can give you her email
20 address.

21 MS. ANDREWS: Is there a
22 certain day you would like those
23 by?

24 THE COURT: Whatever you-all
25 want to agree upon. If you can

1 agree and want to try to settle the
2 case before the Court issues its
3 order you can do that, also, either
4 by the family settlement agreement
5 or a compromise under 1102. I
6 don't know what your summer plans
7 are, whether you need 30 days or 60
8 days, whatever suits counsel.

9 MS. ANDREWS: Your Honor, I
10 would ask that we do it in less
11 than 30 days if possible.

12 MR. LEVY: Three weeks?

13 THE COURT: All right. We'll
14 look for it in three weeks, and
15 then we'll try to issue an order
16 shortly thereafter. The Court is
17 sympathetic to Mr. Hines. I think
18 there's no dispute, Mr. Levy, that
19 you believe that he's -- or you
20 don't contest that he's a
21 biological child, just whether he
22 followed the procedures to protect
23 his interest in the Estate.

24 MR. LEVY: Absolutely, Your
25 Honor. Absolutely.

1 THE COURT: Okay. Anything
2 else for today? Anyone here not
3 represented by counsel that has any
4 questions?

5 This Court will issue an order.
6 Either side has the right to an
7 appeal. You need to file an appeal
8 within ten days of the issuance or
9 the receipt of our order. The
10 appeal is either to the Circuit
11 Court acting as the Appellate Court
12 or if the parties agree it can go
13 directly to the Supreme Court in
14 Columbia. As I indicated earlier
15 if you can agree among yourselves
16 to resolve the case that's another
17 way to handle it.

18 Anything else for today? Any
19 questions? Hearing none that
20 concludes our case for today.

21 (The proceedings were concluded
22 at 10:45 a.m.)

CERTIFICATE OF REPORTER

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 1st day of November, 2013 at Charleston, Charleston County, South Carolina.

Christine A. Smith
Court Reporter
My Commission expires
May 12, 2021

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STATE OF SOUTH CAROLINA	)	
	)	Court of Common Pleas
COUNTY OF CHARLESTON	)	Case No. 2013-CP-10-5993
TRACY HINES,	)	
Plaintiff,	)	
vs.	)	Transcript of Record
TARSHA Y. ALEXANDER, personal	)	
representative of the Estate	)	
of Clarence Ceal Alexander,	)	
Defendant.	)	Date November 18, 2014

B E F O R E:

The Honorable J.C. Nicholson, Jr.

A P P E A R A N C E:

Ashley G. Andrews
Attorney for the Appellant

Ira D. Levy
Attorney for the Defendant

Karen V. Andersen, RMR, CRR, CSR
Circuit Court Reporter

1 THE COURT: What have we got? Hines vs. Alexander;
2 is that correct? Who is here for who?

3 MR. LEVY: Ira Levy for Tarsha Alexander.

4 MS. ANDREWS: Ashley Andrews for Tracy Hines.

5 THE COURT: My schedule says a motion for scheduling
6 purpose on a probate appeal. What is it?

7 MS. ANDREWS: Your Honor, we were here last month
8 and we thought the same thing, but we were told when we were
9 here in September that is just for the -- when it says for
10 scheduling purposes only, they don't have a designation.

11 THE COURT: Computer can't do otherwise, is what you
12 are saying?

13 MS. ANDREWS: So we were supposed to have our appeal
14 last month. Neither one of us understood that. We thought
15 it was a scheduling order. So we are prepared today to move
16 forward.

17 THE COURT: Prepared to go forward on the probate
18 appeal?

19 MS. ANDREWS: Yes, Your Honor.

20 MR. LEVY: Actually, there's one preliminary matter,
21 Your Honor. I filed a motion this afternoon asking this
22 Court to strike respondent's brief that I only received
23 yesterday.

24 THE COURT: Strike what?

25 MR. LEVY: The brief that I received yesterday to

1 appellant's brief that I filed a year ago. If the Court does
2 not have a copy, may I approach?

3 THE COURT: Let me make sure I understand what you
4 are telling me. Who is the appellant?

5 MR. LEVY: Alexander, Your Honor.

6 THE COURT: Alexander is the appellant?

7 MR. LEVY: Yes, Your Honor.

8 THE COURT: And the respondent filed a brief today
9 or yesterday?

10 MR. LEVY: With this court on Friday, but I just
11 received yesterday, the brief in response to Alexander.

12 THE COURT: So what's the problem?

13 MR. LEVY: Well, it's an appeal, Your Honor. I
14 would appreciate more than one day to prepare and respond
15 when I provided my brief one year ago.

16 THE COURT: Oh, you gave your brief a year ago and
17 her response came yesterday?

18 MR. LEVY: Yes, sir.

19 THE COURT: I will give you time to do a reply
20 brief. How much time do you need?

21 MR. LEVY: One month, Your Honor. We scheduled the
22 appeal. I don't know that I need to reply to the brief. I
23 will be prepared to argue the points she raised.

24 THE COURT: I will let you today argue your -- you,
25 as appellant, I will let you make your argument and she can

1 make her argument. But I'm not going to throw out her brief.
2 I'm going to receive it. Okay?

3 Now, if you want to do a reply brief in writing to
4 that, I will be happy to give you time to do that after you
5 make your oral arguments on the -- as the appellant; is that
6 correct?

7 MR. LEVY: Yes, Your Honor.

8 THE COURT: As far as your motion to deny her
9 memorandum, that's denied. Okay? But I will give you time
10 to respond to it, however much time you think you need.
11 Okay?

12 MR. LEVY: Thank you, Your Honor.

13 THE COURT: Today I would like to hear why you
14 think -- you are the appellant, right?

15 MR. LEVY: Yes, Your Honor.

16 THE COURT: Glad to hear you on the appeal.

17 MR. LEVY: Thank you, Your Honor.

18 May it please the Court. At the center of this
19 appeal is a statute that's directly on point. However, the
20 lower court, for reasons unbeknownst to me, has refused to
21 make a ruling on the statute. There are two issues on
22 appeal.

23 THE COURT: What's the statute?

24 MR. LEVY: Statute is 62-2-109.

25 THE COURT: 62-109?

1 MR. LEVY: 62-2-109. The first issue on appeal is,
2 did the probate court err in finding that a letter from
3 appellant to respondent was a valid and enforceable
4 unilateral contract that bound an estate beneficiary to its
5 terms. Before I read two lines directly from the appeal
6 from --

7 THE COURT: Was the letter a valid what contract you
8 said?

9 MR. LEVY: The first issue was: Did the probate
10 court err in finding that a letter from appellant to
11 respondent was a valid and enforceable unilateral contract
12 that bound an estate beneficiary to its terms?

13 THE COURT: Okay.

14 MR. LEVY: Before I read two lines directly from the
15 appeal and order from the probate court that cites the
16 statute, I would like to read the relevant portion of the
17 statute for the Court. Would you like a copy?

18 THE COURT: If you've got a copy, yes, sir.

19 MR. LEVY: May I approach?

20 THE COURT: Yes, sir. Thank you, sir.

21 Okay. Now, back up just a little bit. Give me some
22 background on what's going on in the probate court. Give me
23 a little general background before you get into the
24 arguments, if you don't mind.

25 MR. LEVY: Of course, Your Honor. I will read

1 straight from the brief, if that's all right.

2 Clarence Ceal Alexander is the decedent. And he
3 died September 2nd, 2011. The Charleston County Probate
4 Court appointed decedent's daughter, Tarsha Alexander, herein
5 the appellant, personal representative of the decedent's
6 estate on September 8th, 2011. Appellant filed closing
7 documents with the probate court September 14th, 2012.

8 Tracy Hines, herein the respondent, filed a petition
9 for inclusion as heir with this court on October 9th, 2012.
10 Hearing was held on respondent's petition on January 16th,
11 2013, resulting in a March 27th, 2013, probate court order,
12 which was attached to the brief and incorporated herein.

13 On April 8th, 2013, in the probate court, appellant
14 filed an amended Rule 59(e) motion to alter or amend the
15 probate court's March 27th order.

16 Hearing was held in the probate court on July 10th,
17 2013, resulting in an October 3rd, 2013 order, which is the
18 one being appealed here today, Your Honor.

19 THE COURT: What were y'all arguing about in probate
20 court? What's the issues?

21 MS. ANDREWS: Your Honor, if I may, couple operative
22 facts were left out. My client was named in the obituary of
23 the decedent as the son of the decedent. He was present
24 during the decedent's lifetime and during his final illness.
25 There was testimony provided at the first hearing, which was

1 January 16th, 2013, by his father's brother, the paternal
2 uncle, brother of the decedent, that Mr. Hines had always
3 been present at family functions. However, Mr. Hines was
4 never provided with notice that he was -- that the estate had
5 been opened. Probate court was not provided with notice that
6 he was a potential intestate heir. So he had no knowledge
7 that the estate had been opened.

8 And so probate court found -- and this is in the
9 order from the Rule 59(e) motion hearing -- that the personal
10 representative and the appellant had reason to believe he was
11 the son of the decedent, failed to notify the probate court
12 that he was an intestate heir, and failed to notify Mr. Hines
13 that he was an intestate heir.

14 THE COURT: The issue is whether he was to be an
15 heir in the estate or not?

16 MS. ANDREWS: Correct. But he had no knowledge that
17 the estate was open. In my opinion, if you are signing
18 verifications under oath, such as an application for informal
19 probate, that you have given the court the knowledge, to the
20 best of your knowledge, the correct information that
21 Mr. Hines should have been included on that petition.

22 And I believe, and the court found, that the
23 petitioner had reason to believe that he was the biological
24 son of the decedent.

25 THE COURT: All right. So you think the probate

1 court was wrong when they said he was a -- reason to believe
2 biological father -- son of the deceased, is that correct?

3 MR. LEVY: There is a controlling statute, which
4 brings me to the second --

5 THE COURT: Which statute are you referring to?

6 MR. LEVY: I'm sorry?

7 THE COURT: Which statute?

8 MR. LEVY: This is a different statute, Your Honor,
9 62-2-109.

10 THE COURT: Do you got a copy of that?

11 MR. LEVY: I do, Your Honor.

12 THE COURT: You handed up 62-3-912.

13 MR. LEVY: That was relevant to the first issue on
14 appeal. There are two issues on appeal.

15 THE COURT: What's the second issue?

16 MR. LEVY: Did the probate court err in failing to
17 dismiss respondent's petition for inclusion as heir because
18 that cause of action is barred by 62-2-109.

19 THE COURT: First issue's 62-3-912, right? Is that
20 correct?

21 MR. LEVY: First issue is that probate court erred
22 in finding that a letter from appellant to respondent was a
23 valid and enforceable unilateral contract that bound an
24 estate beneficiary to its terms.

25 That statute 62-3-912 states: Competent successors

1 may agree upon themselves to alter interest shares and
2 amounts to which they are entitled in any way that they
3 provide in a written contract executed by all who are
4 affected by its provisions.

5 The probate court stated in its order that while the
6 court accepts appellant's argument that the letter does not
7 fully comply with that statute which requires a written
8 contract executed by all who are affected by its provisions,
9 the court still finds the letter to be a valid and
10 enforceable unilateral contract.

11 The probate court's order went on to state: In the
12 case at hand, respondent and Clarence A. Alexander offered to
13 include petitioner as an heir to the estate regardless of
14 passage of time upon being provided conclusive DNA testing
15 from a licensed DNA lab showing that he is biological child
16 of the decedent.

17 However, there is no evidence in the record
18 whatsoever that Clarence A. Alexander offered to include
19 Mr. Hines as an heir to the estate. Therefore, Your Honor,
20 I'm not sure why the probate court entertained the discussion
21 of unilateral contracts in its order. It's clear that the
22 court was trying to put a square peg into a circle. While in
23 isolation, a unilateral contract might have been created,
24 here it is unenforceable since the necessary party to the
25 contract was not actually a party at all.

1 As I stated in my brief, there's no statute or other
2 law in South Carolina that grants a personal representative
3 the authority to bind an estate beneficiary to a contract --
4 to a contract's terms with a third-party.

5 A personal representative has a lot of power. For
6 example, they can negotiate the sale of the decedent's
7 personal property without consulting beneficiaries, but they
8 cannot unilaterally agree to a contract that effectively cuts
9 the beneficiaries' distribution from the estate without their
10 consent.

11 THE COURT: So you are saying the executor is the
12 one that agreed to include him in as an heir; is that
13 correct?

14 MR. LEVY: I'm sorry, Your Honor?

15 THE COURT: The executor is the one -- administrator
16 of the estate is the one that said he was the heir and that
17 violates the statute?

18 MR. LEVY: Your Honor, there are two heirs reported
19 when the estate was open. There's a son and a daughter of
20 the decedent that were reported. Over one year after
21 decedent passed away, the respondent here today filed a
22 petition to be determined as an heir. And the executor
23 responded --

24 THE COURT: Was it executor or administrator? Was a
25 will involved?

1 MR. LEVY: No, sir.

2 THE COURT: So it was administrator, not executor.

3 MR. LEVY: Personal representative, yes, sir. It is
4 not a will. It was an intestate estate, Your Honor.

5 THE COURT: Okay.

6 MR. LEVY: But the personal representative wrote a
7 letter stating -- I don't have it in front of me.

8 Do you have it?

9 MS. ANDREWS: I have it somewhere.

10 THE COURT: So what you are saying is, the personal
11 representative doesn't have the authority under 62-3-912 to
12 bind the other heirs to the estate?

13 MR. LEVY: Absolutely, Your Honor, absolutely. And
14 the court agreed with that on the one hand. And then -- but,
15 nevertheless, they still found the letter to be a valid and
16 enforceable unilateral contract. And then they stated that
17 in the case at hand, respondent and Clarence Alexander
18 offered to include --

19 THE COURT: What letter are you referring to?
20 There's a letter the PR wrote, personal representative wrote,
21 or what?

22 MS. ANDREWS: Yes, Your Honor. It was filed with
23 the probate court on November 5th, if I remember right,
24 2012.

25 THE COURT: Personal representative wrote the

1 letter?

2 MS. ANDREWS: Wrote the letter. And it should be in
3 the return from the probate court. I'm looking to see if I
4 have in my notes what page of the return that can be found.

5 THE COURT: Letter is dated what?

6 MS. ANDREWS: It was filed -- I don't believe
7 there's a date on the letter, but it was filed by the probate
8 court on November 5th, 2012. And my notes reflect that it is
9 in the return on page 327.

10 THE COURT: 327 on the return?

11 MS. ANDREWS: Yes, Your Honor.

12 THE COURT: Okay.

13 So you think the statute bars the probate court from
14 saying factually that he's the son of the deceased and
15 including him in the estate?

16 MR. LEVY: Well, the probate court actually agreed
17 with the argument that the letter does not comply with that
18 statute which requires a written contract.

19 THE COURT: You are saying the probate court can't
20 say, hey, he's the son of the deceased and he's to be
21 included in the estate? I mean, is that what you are saying?

22 MR. LEVY: I'm saying that the court still found
23 that letter to be a valid and enforceable unilateral contract
24 between the executor and --

25 THE COURT: But that's not my question to you. My

1 question to you, are you telling me that the probate court
2 doesn't have the authority to hear an issue where the
3 respondent says, hey, I'm the son of the deceased, I want to
4 be included in the estate? Probate judge doesn't have the
5 right to rule on that, irregardless of a letter or contract
6 or anything; is that what you are telling me?

7 MR. LEVY: They, of course, have the right to rule
8 on that, Your Honor.

9 THE COURT: Right.

10 MR. LEVY: But there is another statute we haven't
11 gotten to yet that barred the claim one year after --

12 THE COURT: That's a statute of limitations issue.
13 But I mean, I don't follow your argument in that you've got a
14 statute where the parties can say -- all the heirs can say,
15 hey, we agree John Smith should be included, and they sign
16 that agreement. Probate judge says yes. But you are now
17 telling me he violated that statute because he found the son
18 to be -- did he find him to be a son factually or did he find
19 the agreement between the parties or the letter was a reason
20 he said he's the son; which was it? I haven't read the
21 transcript.

22 In other words, I think it's important that the
23 probate judge say, hey, factually, he's the son, or, he's the
24 son because of this letter.

25 MR. LEVY: It was not because of the letter that

1 they determined that they believed that he was the son,
2 biological son.

3 THE COURT: I don't see how that statute would bar
4 the probate judge from making that factual determination.
5 And if he made that factual determination, how can this court
6 reverse it on appeal?

7 MR. LEVY: It doesn't, Your Honor. I mean -- one of
8 the issues that's being appealed is the court found that
9 letter to be a valid and enforceable unilateral contract.

10 THE COURT: Well, I just asked you the question, did
11 he find out he was the son because of the contract or did he
12 he find out he was the son because factually he was the son?

13 MR. LEVY: Factually he was the son, Your Honor.

14 THE COURT: So what does the letter have to do with
15 it?

16 MR. LEVY: It was a point of law.

17 THE COURT: Pardon?

18 MR. LEVY: It was an incorrect point of law in the
19 probate court's order. There were a lot of problems with it.
20 I just chose two issues.

21 THE COURT: I don't mean to be trite with you, but
22 so what? If a judge says, hey, factually, he's the son,
23 irrespective of the letter, I don't understand why you are
24 saying the statute prevents him from doing that or that's an
25 error of law if he made a factual finding.

1 MR. LEVY: We can move beyond the first issue, Your
2 Honor.

3 THE COURT: Well, I just want to make sure I
4 understand what you are telling me. Tell me if I'm wrong or
5 I'm right in my interpretation of what you are telling me.

6 MR. LEVY: You are right. But the first issue is
7 insignificant in the grand scheme here. There is a
8 statute -- the second issue concerned the statute that I
9 believe is an absolute bar.

10 THE COURT: So that's 62-2-109?

11 MR. LEVY: Yes, Your Honor.

12 THE COURT: I've got 62-2-109. What section are you
13 referring to?

14 MR. LEVY: (2)(ii).

15 THE COURT: (2)(ii)?

16 MR. LEVY: Yes, Your Honor.

17 THE COURT: In cases not covered by (1), a person
18 born out of wedlock is a child of the mother, that person is
19 also a child of the father if -- (ii), right?

20 MR. LEVY: Yes, Your Honor.

21 THE COURT: So I assume the death of the father.
22 When was the appointment of the personal representative;
23 what's the date?

24 MR. LEVY: 9/8/11.

25 THE COURT: 9/8/11?

1 MR. LEVY: Yes, Your Honor.

2 THE COURT: And when did he come forward? Says six
3 months.

4 MR. LEVY: 10/9/12, Your Honor.

5 THE COURT: 10/9/12?

6 MR. LEVY: Yes, Your Honor.

7 THE COURT: So he came in a year, almost 13 months
8 afterwards. And this statute says he's got to do it within
9 what?

10 MR. LEVY: Eight months from date of death.

11 THE COURT: Six months after initial appointment of
12 the personal representative of the estate or eight months
13 after death; eight months after death, six months after
14 appointment?

15 MR. LEVY: Yes, Your Honor.

16 THE COURT: So he came in 13 months after the
17 appointment. So I assume it was outside eight months and
18 outside six months, right?

19 MR. LEVY: Yes, Your Honor. And at the January
20 16th, 2013, hearing, appellant herein moved the Court to
21 dismiss the petition and stated that the claim was clearly
22 barred. In response, the probate court stated it would take
23 the issue of the statute raised by appellant's attorney under
24 advisement. The Court stated the issue we have is we've got
25 a statute that requires you to bring your action within a

1 period of time.

2 Finally, the Court stated that it would research the
3 matter and issue an opinion. The issue that the probate
4 court stated at trial that it would conduct further research
5 on was whether 62-2-109 was a statute of limitations. If the
6 statute was a statute of limitations, the court reasoned that
7 appellant needed to raise the statute as a defense in an
8 answer or the defense would be waived. However, as stated
9 here today, the probate court refused to make any ruling on
10 62-2-109.

11 THE COURT: How did you raise the issue of the
12 statute? Did you raise it at trial? How did you raise it?

13 MR. LEVY: At trial.

14 THE COURT: So you made it at trial?

15 MR. LEVY: Yes, Your Honor.

16 Thankfully, whether or not 62-2-109 or the statute
17 of limitations is a settled issue in South Carolina --

18 THE COURT: I'm sorry?

19 MR. LEVY: It is a settled issue in South Carolina,
20 whether the statute was a statute of limitations or not, our
21 Supreme Court has spoken clearly. And in a 2005 case, the
22 Supreme Court held unequivocally that there is no statute of
23 limitations that is applicable for an action to determine
24 paternity.

25 THE COURT: There's no statute of limitations?

1 MR. LEVY: Right, Your Honor. Therefore, it's a
2 mandatory statute that cannot be waived. To inherit the
3 statute's time requirement must be strictly complied with.

4 THE COURT: You've got a copy of that case?

5 MR. LEVY: No, Your Honor. There is a cite in my
6 brief.

7 THE COURT: What's the cite?

8 MR. LEVY: 623 S.E. 2nd 370. And it's on page
9 372.

10 THE COURT: What's the name of it?

11 MR. LEVY: Smith v. Doe.

12 THE COURT: And it says that this 62-219 is a
13 statute of limitations?

14 MR. LEVY: No. It states there is no statute of
15 limitations that is applicable for an action to determine
16 paternity.

17 THE COURT: Okay. All right.

18 MR. LEVY: Therefore, Your Honor, 62-219 is a
19 mandatory statute that cannot be waived. To inherit, the
20 statute's time requirements must be strictly complied with.
21 In fact, Professor Allen Medlin from the University of South
22 Carolina School of Law, who is a recognized authority on
23 probate law here in the state, states that 62-2-109 requires
24 adjudication to be commenced by the later of eight months
25 after the father's death or six months after the probate of

1 his estate.

2 If the adjudication is not commenced in time, the
3 illegitimate child cannot inherit under intestacy. In fact,
4 Professor Medlin goes on to state that even when an
5 illegitimate child is acknowledged by the father, South
6 Carolina's probate code does not permit inheritance by an
7 illegitimate child for whom paternity has not been
8 adjudicated.

9 South Carolina Supreme Court has remarked that
10 certain children will not be able to inherit from their
11 biological fathers even when paternity is not disputed.
12 While this may be unfortunate, the United States Supreme
13 Court found strict paternity requirements necessary as a
14 matter of public policy.

15 For the reasons stated, the circuit court should
16 reverse the judgment of the probate court affirming
17 respondent petitioner's claim for inclusion of heir since it
18 was brought outside of the --

19 THE COURT: What did the probate judge say about
20 62-2-109?

21 MR. LEVY: He has never ruled on it. It's been
22 brought to the court's attention twice and they never -- I
23 don't think the statute has been decided in either court.

24 MS. ANDREWS: Your Honor, I will address this. The
25 statute --

1 THE COURT: Let him finish. I will listen to you
2 when he's finished. Okay? You tell me anything you want to
3 tell me.

4 MS. ANDREWS: Sure.

5 THE COURT: The probate court has not ruled?

6 MR. LEVY: They've ruled twice. There was an error
7 -- there was an order issued from the January 2013 hearing.
8 And I filed a Rule 59 (a) motion to alter or amend. We have
9 another hearing on the matter. And the statute was
10 brought -- 62-2-109 was cited and brought up both times, Your
11 Honor. It's the centerpiece of my argument, if you will.
12 And the probate court has not ruled on it either time.

13 THE COURT: So there's nothing in any of the orders
14 addressing that issue about this eight months or the six
15 months filing dates mandatory?

16 MR. LEVY: That's correct, Your Honor.

17 THE COURT: You asked the probate judge to rule, and
18 they haven't ruled; or what's the transcript going to show?

19 MR. LEVY: The transcript will show that it was
20 raised at the first hearing in January 2013. And the
21 transcript will also show I filed a motion -- I'm sorry, Your
22 Honor. I filed a motion to alter or amend that order from
23 the January 2013 hearing. And it was the centerpiece of the
24 motion which you will find in the return.

25 THE COURT: What does the transcript say? Did they

1 alter or amend or didn't alter, or what was the ruling on the
2 motion to alter or amend, I guess Rule 50?

3 MR. LEVY: The Court ruled that the petitioner's
4 claims for inclusion as heir was affirmed without mention of
5 that statute whatsoever.

6 THE COURT: So the original order was affirmed?

7 MR. LEVY: Yes..

8 THE COURT: Listing the respondent as a child?

9 MR. LEVY: Including him as an heir. It's two
10 separate issues, yes, Your Honor. The amended -- the Rule
11 59(e) motion to alter or amend was affirmed in part and
12 denied in part, but on the major issue, it was denied.

13 THE COURT: Okay. Anything else?

14 MR. LEVY: Not at this time, Your Honor.

15 THE COURT: Okay.

16 MR. LEVY: Thank you, Your Honor.

17 THE COURT: Ms. Andrews, glad to hear you now.

18 MS. ANDREWS: Your Honor, I believe the Court did
19 make a ruling. It did not specifically cite Statute
20 62-2-109, but the Court did find in its findings of facts on
21 the motion to reconsider that the respondent -- I mean,
22 excuse me, the appellate -- and she was the respondent to
23 probate court, had reason to believe that Mr. Hines was the
24 biological son of the decedent, but failed to give the
25 probate court notice that petitioner was a potential

1 intestate heir.

2 She failed to give the petitioner notice of her
3 appointment as personal representative pursuant to South
4 Carolina Code annotated 62-3-705. Petitioner was given no
5 notice that paternity was being questioned -- petitioner
6 being Mr. Hines -- until respondent's letter was delivered to
7 petitioner on or about November 8th, 2012.

8 Upon receipt of the letter, petitioner promptly
9 provided proof of paternity. The court finds it would now be
10 a gross inequity for respondent to prevail based on a claim
11 that petitioner failed to timely act upon the issue of
12 heritage when he was not aware that it was an issue until
13 after the time for proving such had passed. And that is from
14 the findings of fact.

15 THE COURT: So what you are saying is, I guess the
16 judge put an equitable estoppel or equitable toll, to toll
17 that filing because of conduct of the --

18 MS. ANDREWS: Of the personal representative.

19 THE COURT: -- of the personal representative, heirs
20 or whoever?

21 MS. ANDREWS: Yes, Your Honor.

22 THE COURT: Personal representative, the heirs or
23 who?

24 MS. ANDREWS: Well, the personal representative
25 failed to notify Mr. Hines as an heir, failed to notify the

1 court that he was --

2 THE COURT: Did they show to the judge they knew
3 about him being an illegitimate child?

4 MS. ANDREWS: Yes, Your Honor. Well, I was not
5 present at that hearing. Mr. Hines was representing himself
6 at the hearing on January 16th, 2013. He presented the
7 obituary that was mentioned listing him as a child and his
8 three children as grandchildren to the decedent. He had his
9 paternal uncle and the brother of the decedent testify that
10 Mr. Hines --

11 THE COURT: They knew of his existence and he was
12 notified?

13 MS. ANDREWS: Yes, Your Honor. The personal
14 representative and the other heirs to the estate were aware
15 that he believed himself to be the son --

16 THE COURT: How did he find out about the death of
17 his father?

18 MS. ANDREWS: He was present in the hospital. I
19 believe the record will reflect that he was present at the
20 time his father passed away. And he was with the family when
21 the funeral arrangements were being made as well.

22 THE COURT: Okay. All right. So go ahead. What's
23 your argument?

24 MS. ANDREWS: My argument, number one, is that he
25 should have been noticed. And that by not noticing him, the

1 personal representative is seeking to, you know, cut him out
2 of his estate, when she knew where to find him, knew how to
3 contact him, and she knew that he believed himself to be the
4 son of the decedent.

5 Also, there is a case that's Parker vs. Parker.
6 That is 443 S.E. 2nd 388. That's a South Carolina Supreme
7 Court case from 1994. It was an appeal from the probate
8 court to the circuit court. And the circuit court found that
9 this statute 62-2-109 was necessarily only in cases where
10 paternity was being questioned. And the Supreme Court went
11 on to state the circuit court reason.

12 And we agree if paternity is agreed by either the
13 personal representative or other interested party, then such
14 action must be brought in a statutory time frame of six
15 months after the date of the father (sic). But the court
16 went on to say, the plain meaning of the statute does not
17 delineate which party must raise parentage as an issue.
18 However, obviously that burden must rest with the party with
19 an actual dispute about parentage.

20 And in this case, my client never had a dispute
21 about who his father was. And if the -- if this is a bar to
22 time, then the appellant is barred from bringing up his
23 paternity past the time limits.

24 And also, the court did find that the statute starts
25 with the word "if". And that by using that word, it's saying

1 it's not a requirement. It doesn't make it a requirement in
2 order for the --

3 THE COURT: Says what now?

4 MS. ANDREWS: "If" is the first word in that
5 62-2-109. Says: If, for purposes of intestate succession, a
6 relationship of parent and child must be established.

7 So they found it to not be a mandatory statute.
8 That it was only in cases when paternity was being
9 questioned.

10 THE COURT: Okay.

11 MS. ANDREWS: Let me go through my notes really
12 quickly. Basically, I just wanted to point out to the Court
13 that, you know, as far as relying on the evidence presented
14 at trial, I don't believe that the appellant produced any
15 evidence as to that she ever even questioned his paternity
16 until after he filed a petition.

17 And I also want to point out that Smith vs. Doe case
18 is a family court case. It's not a case about paternity in
19 the --

20 THE COURT: What's that case say from your
21 perspective?

22 MS. ANDREWS: In our perspective, it states that in
23 the family court, that there's no time limit on determining
24 when paternity --

25 THE COURT: Is that a family court case?

1 MS. ANDREWS: It's a family court case, yes, sir.

2 THE COURT: Basically, court said there's no statute
3 of limitations to prove paternity as far as custody or child
4 support is concerned?

5 MS. ANDREWS: I would have to review the case again,
6 but I did note in my notes it's a family court case. And I
7 believe it was --

8 THE COURT: How did the probate statute get involved
9 in the family court?

10 MS. ANDREWS: I don't know. I will have to ask
11 Mr. Levy or review my notes. I don't believe it was a
12 probate court case.

13 THE COURT: Okay.

14 MS. ANDREWS: And I believe that's all I have, Your
15 Honor.

16 THE COURT: All right. Mr. Levy, I will be glad to
17 hear anything in reply.

18 MR. LEVY: Thank you, Your Honor.

19 Parker vs. Parker could not be more
20 indistinguishable from the facts --

21 THE COURT: Do you have a copy of Parker vs. Parker
22 by any chance?

23 MR. LEVY: 313 SC 482.

24 THE COURT: We will get it later.

25 MR. LEVY: In Parker vs. Parker, an illegitimate

1 child is listed on the application for probate in addition to
2 two or three other children. After three or four years go
3 by, the three or four other -- I suppose they might have been
4 legitimate children -- banded together to cite the statute as
5 to prevent him from being an heir, to prevent -- well,
6 Virginia Parker, actually, it was a young woman. So it
7 couldn't be more indistinguishable. Four years later, three
8 of the heirs banded together to try to fish the other one
9 out. And you can't do that. She was listed. There was no
10 question regarding paternity.

11 I submit that this case before us today should be
12 decided exactly as Parker was. In Parker, the petition to
13 exclude heirs was filed outside the statutory time frame, so
14 the petition was disallowed.

15 THE COURT: In your case, the child was not listed.
16 But in the Parker case, he was listed.

17 MR. LEVY: Right. Yes, Your Honor.

18 THE COURT: That's a huge important difference.

19 MR. LEVY: That's a huge important difference, yes,
20 Your Honor.

21 THE COURT: That's a huge important difference from
22 my standpoint, what I view.

23 MR. LEVY: Well, in Parker, the decision to exclude
24 the heir was filed outside the statutory time frame, so the
25 petition was disallowed.

1 THE COURT: I understand that. But in this case,
2 your people didn't list them and they didn't give him any
3 notice he was going to be excluded after he was listed in the
4 obituary and involved in the funeral and everything else. I
5 mean, I don't understand why Parker vs. Parker helps you so
6 much.

7 MR. LEVY: I think they were both filed outside the
8 statutory time frame.

9 THE COURT: Yeah, but they were filed from an
10 equitable standpoint. Your people are the ones that did the
11 wrong, i.e., by not listing him when they knew he was the
12 son, a child.

13 MR. LEVY: They did not --

14 THE COURT: In the Parker case, they filed it, but
15 then four years later, they decided they wanted to change
16 their mind and kick him out. It's a huge difference.

17 MR. LEVY: And in both cases, the one before us and
18 Parker was filed outside the time frame. So I submit that
19 they should be decided the same way. And I know Ms. Andrews
20 mentioned --

21 THE COURT: Well, do you think the statute cannot be
22 equitably untolled. Apparently, that's what the probate
23 judge did, he made an equitable tolling on that statute for
24 paternity. Do you think probate judge doesn't have the
25 authority to do that?

1 MR. LEVY: If His Honor had -- Judge Condon had
2 mentioned the statute one time or mentioned what he just
3 said, that would be a whole different -- the appeal would be
4 a whole different matter, whether we would be here or not.
5 He has not ruled on that statute at all, Your Honor.

6 THE COURT: Let me ask you all this. And I will
7 have to look at the statute. Is this a de novo type hearing
8 or limited to the findings of facts?

9 MR. LEVY: This is an appeal, so --

10 THE COURT: I know it's an appeal, but what's the
11 standard on the appeal? Is it a de novo hearing, or am I
12 limited to his findings of facts and have to rule on errors
13 of law, or can I change those findings? I don't know the
14 answer.

15 MR. LEVY: In my brief, Your Honor, an issue
16 regarding statutory interpretation is a question of law. And
17 questions of law may be decided with no particular deference
18 to the lower court.

19 THE COURT: Ms. Andrews, do you have a comment on
20 the standard?

21 MS. ANDREWS: Yes, Your Honor, that the standard on
22 review in a circuit court is determined by the nature of the
23 action, whether it is in law or court of equity. If the
24 action is at law, then the circuit court must determine
25 whether there is any evidence in the record to support the

1 factual findings of the probate court.

2 If the action is in equity, the circuit court is
3 free to find in accordance with its own view of a
4 preponderance of the evidence.

5 THE COURT: Are we dealing in equity here or are we
6 dealing in law? He says we are dealing in law. You say we
7 are dealing in equity.

8 MS. ANDREWS: I believe that the judge ruled -- I
9 mean, there are basically three points, you know, three
10 points that the judge makes in the order. The one regarding,
11 you know, the time bar, he cites equity. And it would be
12 inequitable not to allow my client because he was not noted
13 and because, I believe, that he found that he should have
14 been noticed, that the personal representative had knowledge
15 that, you know, he should have been listed as an intestate
16 heir on the petition or on the application in this case
17 because it was an informal probate. And so I believe he
18 found that to deny my client to inherit because she did
19 something wrong would be inequitable.

20 And that once he did make his claim, he immediately
21 had the DNA test done. And immediately, within two months of
22 filing the petition, had provided that proof to her that he
23 was the biological son.

24 THE COURT: Okay. Thank you very much.

25 Yes, sir.

1 MR. LEVY: My brief addressed all the concerns that
2 she brought up. One of the things that's been mentioned
3 several times is the paternity was -- that he never realized
4 his paternity was questioned until a letter from the personal
5 representative that he received on or about November 5th,
6 2012. Then why did he file his petition a month before then,
7 I would ask the Court.

8 My client was not able to be present at the original
9 hearing. But I still commented at the original hearing that
10 she wasn't -- she didn't want to have an argument at the
11 funeral home, and that's how the name got in the obituary.
12 And that statement was made, and it was not objected to.

13 I mean, if there are equity remedies available to
14 the respondent, then equity expenses would be available to
15 the appellant. And appellant raised them at the July 10th
16 motion hearing. Appellant further remarked at the July 10th
17 hearing that here the petitioner was not lulled into
18 inaction. He telephoned the personal representative for six
19 or eight months and she would never call him back. He didn't
20 want to be bothered, so he stopped.

21 And then over a year later, he filed this petition
22 to be determined as an heir of the estate. For the reasons
23 stated, the circuit court should reverse the judgment of the
24 probate court.

25 THE COURT: Thank you very much. You said she

1 filed -- Ms. Andrews, where is your brief? It's not in the
2 file, the one you filed today. Do you want to hand it up?

3 MS. ANDREWS: I have an extra copy if you would like
4 it, Your Honor.

5 THE COURT: Do you want to hand it up?

6 MS. ANDREWS: Sure. May I approach?

7 THE COURT: Do you want some time to reply to this
8 brief? Because if I'm going to take this under advisement.
9 I've got to read the transcript and the appeal and what
10 actually transpired.

11 MR. LEVY: I would like --

12 THE COURT: How much time do you need to respond to
13 the brief filed on behalf of, I guess, the respondent, Ms.
14 Andrews, on November 14th, 2013?

15 MR. LEVY: Three weeks, Your Honor.

16 THE COURT: Three weeks?

17 MR. LEVY: Yes, sir.

18 THE COURT: It's not but five pages, for Christ
19 sake.

20 MR. LEVY: How about ten days, Your Honor?

21 THE COURT: How about by December the 4th?

22 THE CLERK: That's kind of our deadline --

23 THE COURT: How about December the 4th?

24 MR. LEVY: Absolutely, that's fine.

25 THE COURT: Will that give you enough time?

1 MR. LEVY: Yes, sir.

2 THE COURT: E-mail it to my law clerk. Okay?

3 MR. LEVY: Yes, Your Honor.

4 THE COURT: Anything else?

5 MR. LEVY: Not at this time, Your Honor.

6 THE COURT: Thank you all so very much.

7 MS. ANDREWS: Thank you, Your Honor.

8 (Proceedings are concluded.)

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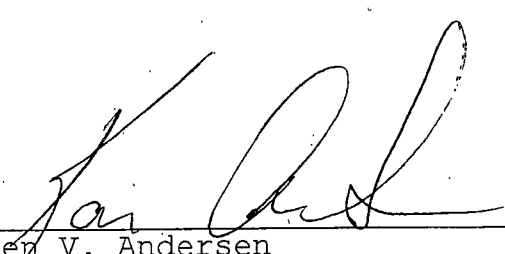
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 31st day of March, 2015, at Charleston, Charleston
County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

Tracy Hines
926 West Luke Avenue
Summerville, SC 29483

FILE
2012 NOV -5 AM 11:43

PROBATE COURT
CHARLESTON COUNTY

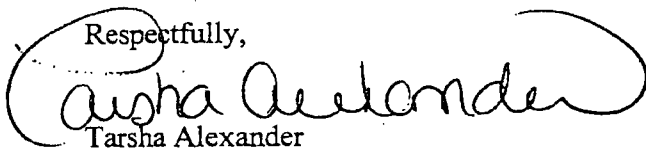
RE: 2011-ES-10-01300
Matter of the Estate of Clarence C. Alexander

CERTIFIED MAIL- 70120470000108684156

Dear Sir,

Clarence A. Alexander and I will gladly oblige and include Mr. Hines as an heir to the Estate of Clarence C. Alexander, upon being provided conclusive DNA testing from a licensed DNA lab showing that you, Mr. Tracy Hines, are the biological child of Clarence C. Alexander. Should you have any questions please don't hesitate to reach me at PO Box 80851, Charleston, SC 29416 or by phone at 843-766-5267.

Respectfully,


Tarsha Alexander

Cc County of Charleston Probate Court
Clarence A. Alexander

January 7, 2013

Tracy Hines, Petitioner
929 West Luke Avenue
Summerville, SC 29483

FILE

2013 JAN 14 PM 12:59

Cert-7010 2780 0003 1458 9306

RE: Notice of Hearing - The Estate of Clarence Ceal Alexander Case No: 2011-ES-10-1300

PROBATE COURT
CHARLESTON COUNTY

Tracy,

I would like to request a different date for the hearing, as I will be out of town on my annual vacation with my family. This vacation has been planned and paid for since June of 2012, and I am unable to change it. I contacted Probate court the week of Christmas in reference to this and was forwarded to a couple of different people to later find out the only person that could assist with scheduling, Allison Attwood, was on vacation and due to return after the new year. I spoke with A. Attwood on 1/4/2013, who informed me that I would need to contact the petitioner, Tracy Hines, to see if you were agreeable to a different date. If you are willing to accommodate this request please send me written correspondence stating so, to PO Box 80851, Charleston, SC 29416.

Your time and consideration with this is greatly appreciated.

Respectfully,



Tarsha Alexander

Cc: Probate Court-Estate Clerk



Laboratory Corporation of America

P.O. Box 2230 Burlington, NC 27216 Telephone: (336) 584-1771 Relationship Report



FILE

Account Information

Account Number: 39490005
SC Private Paternity Account
Acct Ref 1:
Acct Ref 2:
Acct Ref 3:
Columbia, SC 29223

LabCorp Case # C0P-099938

Relationship

Child
Paternal Uncle 1

Party

HINES, TRACY
ALEXANDER, JOHN

Race

2BK-1535-0
2BK-1536-0 Black

Date(s) Drawn

11/19/2012
11/19/2012

PROBATE COURT
CHARLESTON COUNTY

DNA Analysis

	D3S1358	D7S820	vWA	D12S391	FGA	D8S1179	D21S11	D18S51	D5S818	D13S317
C	14, 17	8, 11	16	15, 19	22, 23	14, 15	29, 31.2	16, 19	13	12
PUT	16, 17	10, 11	16	19	19, 22	8, 14	30	17, 19	12, 13	12
PI	1.10	1.10	2.53		1.19	0.88	0.50	1.91	1.53	1.67

DNA Analysis

	D16S539	TH	TPOX	CSF1PO	D2S1338	D19S433	Penta D	F13A01	F13B	LPL
C	12, 13	7, 8	8	11, 12	19, 21	13, 16.2	3.2, 11	4, 7	6	12, 13
PUT	9, 13	6, 8	9	10, 11	17, 19	11, 15	8, 14	5, 7	6	7, 12
PI	1.43	1.07	0.50	1.04	1.38	0.50	0.50	1.14	1.80	0.96

DNA Analysis

	Penta E	FESFPS	Penta C	D22S1045	D2S441	D10S1248	D1S1656
C	5, 11	8, 11	11, 12	17	11, 13	11, 14	11, 17.3
PUT	11, 14	9, 11	11, 12	11, 17	11, 13	11, 13	15, 16
PI	2.39		1.48	1.71	4.33	3.71	0.50

Conclusion:

Avuncular Index: 205 to 1 Probability of the Relationship: 99.51% (Prior Probability = 0.5)

This study was undertaken to provide evidence that a brother of the alleged paternal uncle, JOHN ALEXANDER, could be the biological father of the child, TRACY HINES. Using the genetic markers found in the testing of the alleged uncle, the combined avuncular index is 205 to 1. The probability the alleged paternal uncle, JOHN ALEXANDER, is the uncle of the child is 99.51%, as compared to an untested, unrelated man. These measures support the assertion that a brother of the alleged paternal uncle, JOHN ALEXANDER, could be the biological father of the child, TRACY HINES.

I, the undersigned Director, upon being duly sworn on oath, do depose and state that I read the foregoing report on the analysis of specimens from the above named individuals, signed by myself, and under penalties for perjury it is my belief that the facts and results therein are true and correct.

Michael W Schmiederer, Ph.D., MT, Director

State of North Carolina
County of Alamance

I, Richard R. Long, certify that Michael W Schmiederer, Ph.D., MT personally came before me this day and acknowledged that he (or she) is an employee of Laboratory Corporation of America Holdings, a corporation, and that as an employee being authorized to do so, executed the foregoing on behalf of the corporation.

Subscribed and sworn to [or affirmed] before me this NOV 29 2012 at Burlington, NC.

Notary Public

RICHARD R. LONG
Notary Public, North Carolina
Alamance County
My Commission Expires
February 23, 2015

Laboratory Corporation of America is accredited by the AABB

2013 JAN 16 PM 4:32
PROBATE CLERK
CHARLESTON COUNTY

VACATION SUMMARY

Reservation #24119.

Here's a quick glimpse at the basic details of your voyage.
There sure is a lot of magic going on!

SAILING DETAILS:

Disney Fantasy – January 12, 2013 Sailing
Stateroom 6610 – Category 04D on Deck 6
Embarkation Port: Port Canaveral

GUESTS ON YOUR RESERVATION:

TARSHA YVETTE ALEXANDER – Gold Castaway
BRENDA B RANDOLPH – Silver Castaway
TAYLOR MARIE ANDERSON – Gold Castaway

TRAVEL DATES:

Travel Start Date: January 12, 2013
Travel End Date: January 19, 2013

FLIGHT INFORMATION:

If you have provided your flight information to us, please review the details in the "Flight Information" section. If you have ground transfers included in your cruise vacation, your flight information is required by us to prepare for your arrival and transportation needs. It's easy to add – just visit disneycruise.com/plan, click on My Online Check-In or call 1-866-DCL-6685 (325-6685) or (407) 566-7797.

GROUND TRANSPORTATION:

Leave the driving to us! For more information about adding Ground Transfers or to request accommodations for Guest with disabilities, go to the Planning Center at disneycruise.com/plan or call 1-866-DCL-6685 (325-6685) or (407) 566-7797.

VACATION PROTECTION PLAN:

Travel insurance has not been included in your reservation.

My Last Gathering

When you come to my last gathering,
Don't come with faces long;
But come with memories that are pleasant,

In your heart, let there be a song.

The place will be full of flowers
And I will be dressed grand.

The only thing I will be sorry for

I will not be able to shake your hand.

When you come to my last gathering,

I don't know yet how soon it will be.

The daily papers will print the invitations

That everyone might see.

I am going to hold it in a church.

There is where I will be.

At the place where I hold my gathering.

We won't play games;

But there will be a register,

Where you sign in your name.

As you stand there and sing my praises.

In voices so silently;

There will be plenty to eat and drink,

While you enjoy and think;

Of what good things you know about me.

When you come to my last gathering,

My Lord will be your host;

Because 'tis He 'mongst all my friends,

Who really loves me most.

He bore my cross today,

And when you say that I look natural;

That is as it should be.

Because at my last gathering,

Who should look more natural than me.

I did my best that I knew how,

It's up to God to take care of me now;

So to my family, don't mourn for long,

Because, God's judging is never wrong.

Hallbearers

Dwight Alexander
John Alexander, Jr.
Gerrod Graham

Al Graham
Rodney Jenkins
Derrick Alexander

Honorary Hallbearer

Johnny Johnson

Floral Bearers

Old Bethel United Methodist Church Ushers

Acknowledgement

The family of the late

~ *Clarence "Mink" Alexander* ~

wishes to express our heartfelt gratitude and
appreciation for all expressions of kindness and
comfort shown to us during this time of bereavement.

May God continue to keep
and bless each and every one of you.

PROFESSIONAL SERVICES ENTRUSTED TO:

DICKERSON MORTUARY, LLC

4700 Rivers Avenue

N. Charleston, South Carolina 29405

MR. DARRYL DICKERSON, SR., OWNER/MANAGER

Phone (843) 718-0144 Fax (843) 718-0139

Email: Dickersonmortuary@gmail.com

Website: dickersonmortuary.net

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Our mission is to provide service to families, continually exhibiting
the utmost courtesy and compassion. It is our commitment to preserve the
dignity and integrity of your loved ones while in our care. We are further
committed to assisting families throughout the burial process and beyond.

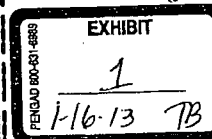
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Home-Going Service For Clarence Beal Alexander

Nov. 29, 1950 "Mink" Sept. 2, 2011



Saturday, September 10, 2011
1:00 P.M.

OLD BETHEL U.M. CHURCH
222 Calhoun Street
Charleston, South Carolina

Reverend Dr. Timothy Bowman, Pastor

~Interment~

Live Oak Memorial Gardens
Charleston, South Carolina

Life Reflections

A TIME TO BE BORN...

On November 29, 1950, God presented earth with one of his angels, Clarence Ceal Alexander. Clarence was the 9th child born to Henderson and Mary Alexander at #5 Clifford Alley (known today as Jacob's Alley) in Charleston, South Carolina.

A TIME TO GROW...

Clarence quickly earned the name of "Mink" at an early age, due to him being so "smooth". Clarence became the first African American student to desegregate Charleston High School on September 3, 1963. While attending Charleston High, Clarence was a member of the Basketball, Track and Wrestling teams. Clarence's love of singing resulted in his being an active member of the school's Glee Club, which he became President of his senior year. Clarence graduated from Charleston High in June of 1970. His dedication to education and basketball lead him to Montreat Junior College in Montreat, North Carolina in the fall of 1970. On September 22, 1971, Clarence decided to serve his country and entered the United States Air Force at Fort Jackson, South Carolina. On February 17, 1973, Clarence married Brenda Bellinger.

A TIME TO WORSHIP...

Clarence attended Greater St. Luke A.M.E. Church in downtown Charleston from a small child to adulthood, where he became a member of the gospel choir. Clarence later attended the Church of Christ on James Island. Clarence has always loved the Lord and was always willing to share his love of the Lord with anyone that would listen.

A TIME TO LIVE...

Mink's love for his children, family and friends was evident to all that knew him. If there was ever anything within his power to do to help, he did. Mink loved music and dancing, and didn't hesitate to show you a move or two. He was always the life of any gathering, as he never met a stranger. Mink was known for displaying his love for martial arts to all that was interested in hearing and/or observing it. His extensive collection of martial arts films challenged that of any video store, especially if "Bruce Lee" starred in it. Clarence also loved to dress. During his service time over seas, he made it his mission to have suits tailor made with the matching hats, so upon his return to the states all could observe his "smoothness".

A TIME TO DIE...

On September 2, 2011, peace and tranquility filled his room as Heaven's Gate opened wide to let in His angel, He loaned to us. Clarence looked toward heaven and closed his eyes as he was welcomed in.

"To be absent from the body is to be present with the Lord."

Clarence was preceded in death by: his parents, Henderson and Mary Alexander; three sisters, Rev. Helen Frasier, Mrs. Mary Louise Graham, and Ms. Cassandra Alexander; and three brothers, Nathaniel "Skeet", Samuel "Asad", and Edward "Eddie" Alexander.

A TIME TO CELEBRATE CLARENCE...

Clarence will live on in the hearts of: his three children, Tarsha Yvette Alexander, Clarence Atchu Alexander, and Tracy Renaldo Hines; eight grandchildren, Taylor Marie Anderson, Haley Danielle Alexander, Caitlyn Lauren Alexander, Ranoy Hines, Demetrius Hines, Travae Hines, Eli'sha Hines, Destiny June; siblings, Carrie Simms and Henderson Alexander Jr. of Omaha, NE; John Alexander (Bertha) of Charleston, SC; one aunt, Gladys Smoot of Virginia, as well as, one special niece, Nyasha Alexander; a host of nieces, nephews and other family members and his residential family at Ladson Residential Care.

God knew you would be a beautiful, fragile rose,
So a perfect spot in His garden for you, He chose.
We knew you were sick, but we did all we could do,
God knew what was best when, He picked you!



God saw you were getting tired,
and a cure was not to be,
So He put His arms around you;
and whispered, "Come to Me".
With tearful eyes we watched you,
And saw you pass away;
Although we loved you dearly,
We could not make you stay.
A golden heart stopped beating,
Hardworking hands at rest;
God broke our hearts to prove to us,
He only takes the best.



Order of Service

Reverend Dr. Timothy J. Bowman, Presiding



PROCESSIONAL

HYMN OF PRAISE #368..... "MY HOPE IS BUILT"

PRAYER

SCRIPTURE READINGS:

OLD TESTAMENT Psalm 121.....Rev. Terri Alexander

NEW TESTAMENT I Thess. 4: 13-18.....Rev. Lorenzo T. Baker

AFFIRMATION OF FAITH #881

SOLO.....Mr. Isaiah Thompson

REMARKS.....Friend, Mrs. Pauline Ladson,
Ladson Residential Home Care

Family

SELECTION #378..... "Amazing Grace"

SERMON.....Reverend Dr. Timothy J. Bowman

COMMENDATION.....Minister

PRAYER OF THANKSGIVING.....Minister

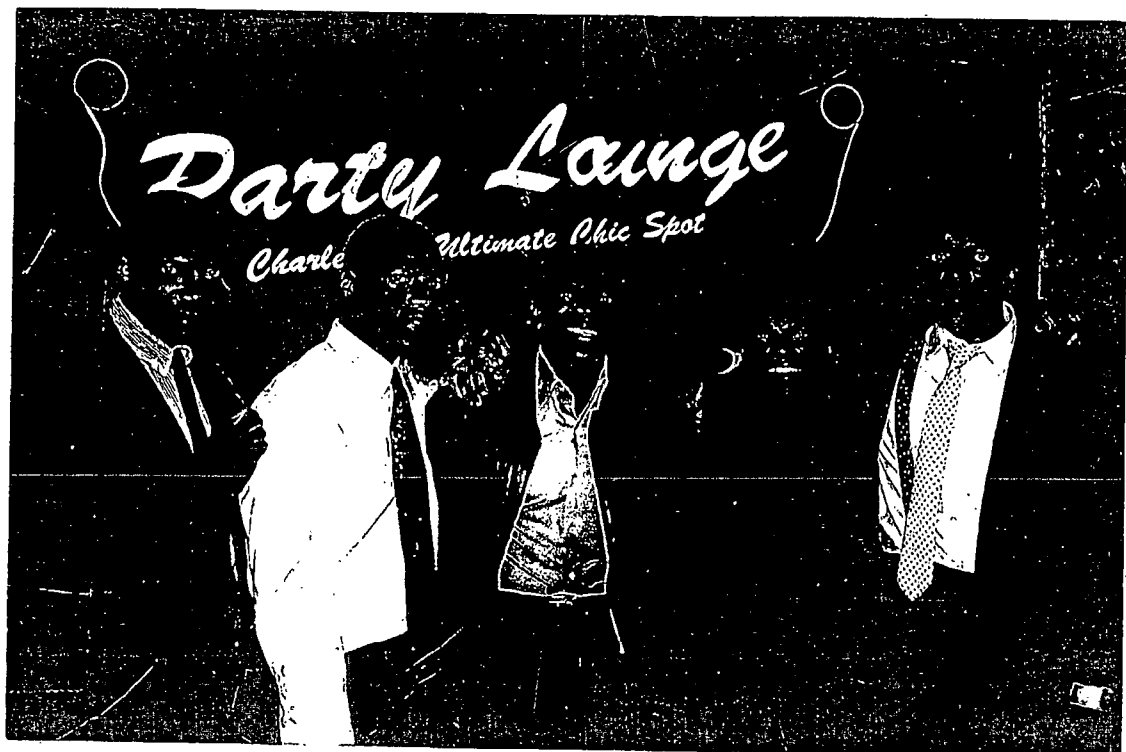
DISMISSAL WITH BLESSING

RECESSIONAL



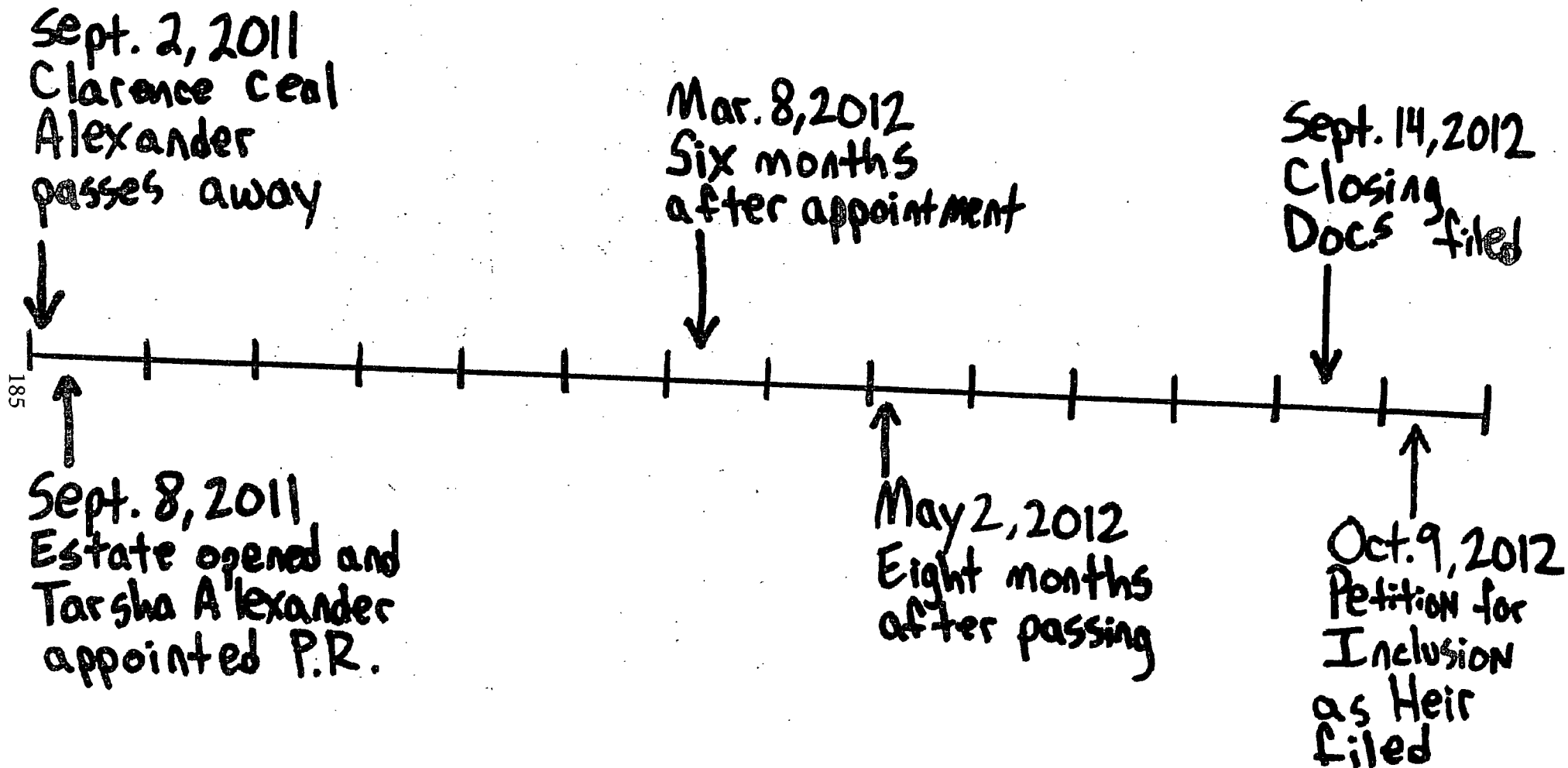
EXhibit # 4

2013-CP-10-5973



Movant's Exhibit "A"

A 7-10-13



Motion Hearing date: July 10, 2013
Case No. 2011-ES-10-1300

MOVANT'S EXHIBIT "B"

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person, a person born out of wedlock is a child of the mother.

That person is also a child of the father IF
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.

S.C. Code of Laws § 62-2-109(2)(ii) (1976, as amended)..

62-2-109 requires the adjudication to be commenced by the later of eight months after the father's death or six months after the probate of his estate. If the adjudication is not commenced in time, the illegitimate child cannot inherit under intestacy. The SCPC does not permit inheritance by an illegitimate who was acknowledged by the father but for whom paternity has not been adjudicated.

Medlin, Alan S. Recent Amendments to the South Carolina Probate Code, S.C. Lawyer, 40, 1990, Vol. 2, No. 3, 37.

South Carolina's Probate Code does not provide a statute of limitations for determining paternity. Smith v. Doe, 592 S.E.2d 322, 325 n.3 (S.C.App. 2003).

[W]e affirm the court of appeals, but hold that there is no statute of limitations that is applicable for an action to determine paternity. Smith v. Doe, 623 S.E.2d 370, 372 (S.C. 2005).

South Carolina's Supreme Court stated that if paternity is questioned, then such action must be brought within the statutory time frame.

Parker v. Parker, 443 S.E.2d 388, 390 (S.C. 1994).

South Carolina's Supreme Court cited the United States Supreme Court when it remarked that

certain children will not be able to inherit from their biological fathers even though their paternity is not disputed. While this may be unfortunate, the United States Supreme Court found the strict paternity requirement was necessary, as a matter of public policy, to prevent spurious claims.

Pinckney v. Warren, 544 S.E.2d 620, 626 (S.C. 2001).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2013-CP-10-5993

Tracy Hines,

Respondent,

v.

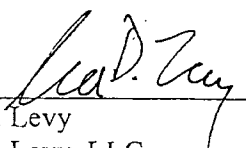
Tarsha Y. Alexander, Personal
Representative of the Estate of
Clarence Ceal Alexander,

Appellant.

NOTICE OF APPEAL

Tarsha Y. Alexander, Personal Representative of the Estate of Clarence Ceal Alexander, appeals the Order of the Honorable J. C. Nicholson, Jr. dated January 13, 2015. Appellant received written notice of entry of this Order on January 26, 2015.

this 13th day of February, 2015,
Charleston, South Carolina.


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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FEB 13 2015

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2013-CP-10-5993

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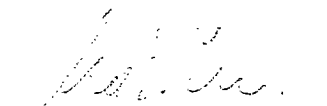
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Charleston, South Carolina.


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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FEB 16 2015

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

J. C. Nicholson, Jr., Circuit Court Judge

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Tracy Hines,

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v.

Tarsha Y. Alexander, Personal
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Appellant.

PROOF OF SERVICE

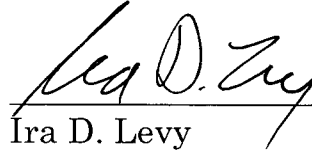
I certify that I have served the Notice of Appeal on Tracy Hines by depositing a copy of it in the United States Mail, postage prepaid, on February 13, 2015, addressed to his attorney of record, Ashley G. Andrews, Catherine B. LaFond, P.A., 544 Savannah Highway, Charleston, SC 29407.

this 13th day of February, 2015,
Charleston, South Carolina.


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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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This 23rd day of July, 2015,
Charleston, South Carolina.

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JUL 27 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

JUL 27 2015
SC Court of Appeals

J. C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2015-000330

Tracy Hines,

Respondent,

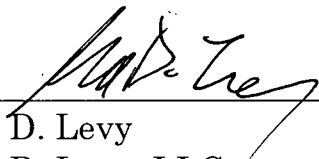
v.

Tarsha Y. Alexander, Personal
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Clarence Ceal Alexander,

Appellant.

PROOF OF SERVICE

I certify that I have served the Final Brief of Appellant and Record on Appeal on Tracy Hines by depositing a copy of it in the United States Mail, postage prepaid, on July 23, 2015, addressed to his attorney of record, Ashley G. Andrews, LaFond Law Group, P.A., 544 Savannah Highway, Charleston, SC 29407.


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this 23rd day of July, 2015,
Charleston, South Carolina.