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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
In the Court of Common Pleas

The Honorable Craig D. Brown, Presiding Judge

RECEIVED

DEC 23 2015

SC Court of Appeals

Case No. 2013-CP-21-01408

Elizabeth J. Langley.....Appellant,

v.

Wendy J. Lynch, Rebecca M. Lynch, James M. Lynch, II, Donald Jordon, III,
Jimmy White and S. Porter Stewart, II, as Personal Representative of the Estate of
James M. Lynch, *Defendants,*

Of Whom Wendy J. Lynch is the Respondent.

RECORD ON APPEAL

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S.C. Bar #3230
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ATTORNEYS FOR APPELLANT

Joseph M. McCulloch, Jr., Esquire
Kathy R. Schillaci, Esquire
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(803) 799-0005

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

Elizabeth J. Langley,

v.

Wendy J. Lynch, Rebecca M.
Lynch, James M. Lynch II, Donald
Jordan, III, Jimmy White and S.
Porter Stewart, II., as Personal
Representative of the Estate of
James M. Lynch,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-21-01408

ORDER GRANTING
MOTION FOR SUMMARY
JUDGMENT

RECEIVED

DEC 23 2015

SC Court of Appeals

2015 JUN 22 PM 4:22
FILED
CLERK OF COURT
C.C.P. & G.S.
FLORENCE COUNTY, S.C.

THIS MATTER came before me on motion of counsel for the Defendant, Wendy J. Lynch, for an Order of Summary Judgment. This matter was heard on June 17, 2015. Defendant, Wendy J. Lynch, was represented by Joseph M. McCulloch and Plaintiff, Elizabeth J. Langley, was represented by James T. Irvin, Jr. After carefully reviewing and considering the motion, memoranda of both parties, and all exhibits and attachments thereto, I hereby GRANT Defendant Wendy J. Lynch's motion for summary judgment and find as follows:

1. The undisputed evidence establishes that the testator, James M. Lynch ("Judge Lynch") was diagnosed with cancer in April 2012. He executed a will in Attorney Frederick ("Rick") Hoefer's office on May 11, 2012. Judge Lynch continued to serve as magistrate until sometime late in June of 2012 and thereafter passed away on February 9, 2013;

2. Plaintiff, Elizabeth Langley, filed a complaint on April 30, 2013 challenging the will of Judge Lynch on the basis of incompetence and undue influence;

3. On December 29, 2014, Defendant Wendy Lynch filed her motion for

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FLORENCE COUNTY, S.C.
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summary judgment along with numerous affidavits in support of her motion including the affidavit of the attorney who drafted the will, Rick Hoefer, medical providers who treated the testator, and numerous other witnesses addressing the testator's competence and lack of undue influence;

4. On the day of the hearing, Plaintiff filed a Memorandum in Opposition to Motion for Summary Judgment which contained affidavits and other documents. It appears some of the supporting material was provided to defense counsel the day prior to the hearing.

5. At the hearing, defense counsel moved under Rule 56(c), SCRCP, for the exclusion of Plaintiff affidavits served upon defense counsel the *day prior* to the hearing as untimely. Specifically, defense counsel made reference to the Affidavits of Dr. Joseph Healy, the purported affidavit of Dr. Troy Gamble, the Affidavit of Rebecca White, and the signed Affidavit of Donald Campbell. It is undisputed that neither Dr. Healy nor Dr. Gamble was included in Plaintiff's list of witnesses. Although the Complaint was filed on April 30, 2013 and Plaintiff was questioned about experts and other witnesses at her deposition on November 25, 2014, it is further undisputed that the identity of these medical witnesses and their affidavits were not produced to the defendant until the day before the hearing. Further, defense counsel pointed out that the Affidavit of Dr. Healy attached to the Plaintiff's Memorandum in Opposition contained changes from the affidavit provided the day earlier. Defense counsel also pointed out that the purported affidavit of George McClam attached to the Plaintiff's Opposition motion had not been earlier provided;

6. While I find the affidavits were untimely and provided in violation of Rule 56(c), SCRCP, in consideration of the motion in the light most favorable to the Plaintiff, I have considered the affidavits and other materials provided by Plaintiff to this Court;

7. As to Plaintiff's claim of **incompetence**, the burden of proof is upon the contestant to show lack of mental capacity at the time of the execution of the will. See Havird v. Schissell, 252 S.C. 404, 166 S.E.2d 801 (1969). Pursuant to Sumter Trust Company v. Holman, 134 S.C. 412, 132 S.E.811 (1926), the standard for capacity to make a will is whether at the time of the execution of the will the testator knew his estate, the objects of his affection, and to whom he wished to give his property and incompetence must be established by a preponderance of evidence standard;

8. In reviewing the memoranda of counsel and supporting documents, including the Plaintiff's Memorandum in Opposition and accompanying affidavits, all in the light most favorable to Plaintiff, I find that there is no genuine issue of material fact as to Plaintiff's allegations of incompetence. In my review of the affidavit of Dr. Healy and purported affidavit of Dr. Gamble, I find that neither examined the testator for competency at the time the will was made and neither can offer an opinion to a reasonable degree of medical certainty as to the testator's competency at the time the will was made on May 11, 2012. The doctors who did examine the testator in May of 2012, including Dr. Ranjan, found him to be competent to handle his affairs. Similar findings of competency were made by examining physicians as late as December of 2012 as established by defense affidavits;

9. I find Plaintiff has provided no affidavits or other evidence to create a genuine issue of material fact as to the testator's competency to make a will on May 11th, and I therefore GRANT summary judgment to Defendant Lynch as to Plaintiff's claim of lack of capacity/incompetence;

10. As to the **undue influence** claim of the complaint, there is a higher standard

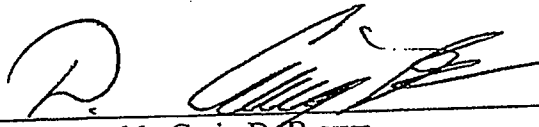
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P. 3 of 4

as set forth in Russell v. Wachovia which requires the contestant to prove undue influence by "unmistakable and convincing evidence." Id., 353 S.C. 208, 578 S.E.2d 329 (2003). Once again, the affidavits of the defense persuasively establish an absence of undue influence, and the affidavits and documents of Plaintiff presented to the Court fall far short of "unmistakable and convincing" evidence and provide only conclusory statements of opinion that do not raise a genuine issue of material fact. The affidavits of the defense establish the testator took up residence with a friend, well beyond the influence of the Defendant, for several months after the will execution on May 11, 2012. Where the testator has an unhampered opportunity to revoke the will and does not change it, undue influence is destroyed. See Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982).

11. In reviewing the evidence in the light most favorable to Plaintiff, I find that there is no genuine issue of material fact as to Plaintiff's claim of undue influence. The only affidavit or other evidence provided by Plaintiff that even touches on the subject is that of Rebecca White, and I find that it contains a bald assertion of undue influence with nothing more. As such, I GRANT summary judgment to Defendant as to Plaintiff's claim of undue influence;

12. I further find that this action should be dismissed in its entirety.

IT IS SO ORDERED.


The Honorable Craig D. Brown,
Presiding Judge

This 22 day of June, 2015

Florence, South Carolina

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p. 4 of 4

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
Elizabeth J. Langley,)
v.)
Wendy J. Lynch, Rebecca M.)
Lynch, James M. Lynch, II, Donald)
Jordon, III, Jimmy White and S.)
Porter Stewart, II, as Personal)
Representative of the Estate of)
James M. Lynch,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-21-01408

ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER

JOANNE REEL-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

2015 AUG 17 AM 9:38

FILED

Defendant Wendy Lynch's Motion for Summary Judgment was heard at length by this Court on June 17, 2015. On the day of the hearing, Plaintiff's counsel presented the Court with a memorandum in opposition that included numerous affidavits not earlier provided to defense counsel. Albeit tardy, the documents submitted by Plaintiff's counsel were considered by the Court. After due consideration, the Court granted the Defendant's summary judgment motion on all issues and dismissed Plaintiff's lawsuit in its entirety by Order dated June 22, 2015 and duly filed on June 26, 2015. On or about July 1, 2015, Plaintiff filed a Motion to Reconsider that this Court has reviewed and denies.

The Plaintiff's two paragraph Motion to Reconsider appears to be based upon Rules 52(b) and 59(e), SCRCF, but fails to conform to the requirements of Rule 7(b) SCRCF which requires that motions "state with particularity" the grounds for the relief sought. The motion for reconsideration fails in this requirement and generally states:

The grounds for this Motion shall be such as argued at the re-hearing of this matter, and be based on the laws and decided appellate court decisions of South Carolina, including but not limited to the fact that the Court's Order itself expresses that there are disputed factual issues in the case by referring to evidence as being a 'bald assertion.'"

FILED

Id.

This Court's use of the phrase "bald assertion" was not a comment on evidence adduced at the proceeding. It was instead a reference to the fact that the only substantive offer made by Plaintiff at the hearing was, in the light most favorable to Plaintiff, the unsupported belief of one person that undue influence must have existed but a belief not supported by any facts or evidence meeting the summary judgment standard.

In this Court's original review of the presentation by Plaintiff, and now upon review of the Motion for Reconsideration, the Court notes: "Fundamental fairness would seem to indicate that there should be one basic fact-finding process, and that review thereafter should be on the record made in that fact-finding process or procedure." Milliken & Co. v. SC Department of Labor, 275 S.C. 264, 269 S.E.2d 763 (1980). Without restating in total the Court's findings that summary judgment was appropriate, this Court concluded that the Plaintiff submitted no material substantive evidence, medical or otherwise, that met the required legal standards at summary judgment for challenging the Will based on incompetency or undue influence - both required by our established case law as cited in this Court's Order of June 22, 2015.

Upon reconsideration, the defense presentation was compelling and the Plaintiff's presentation devoid of any evidence raising a genuine issue of material fact. The Plaintiff's Motion to Reconsider is DENIED.

IT IS SO ORDERED.


The Honorable Craig D. Brown
Presiding Judge, Court of Common Pleas
Florence County

this 14 day of August, 2015

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ROA
CLERK OF COURT
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Elizabeth J. Langley)

Plaintiff,)

vs.)

Wendy J. Lynch, Rebecca M. Lynch, James M. Lynch, II, Donald Jordan, III, Jimmy White and S. Porter Stewart, II., as Personal Representative of the Estate of James M. Lynch)

Defendant.)

IN THE FAMILY COURT
TWELFTH JUDICIAL CIRCUIT

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

2014 DEC 29 AM 11:03
FILED
CLERK OF COURT
FLORENCE COUNTY, SC

Docket No. _____

Plaintiff's Attorney:
Joseph M. McCulloch, Bar No. 3760
Address:
1426 Richland Street
Columbia, SC 29201
Phone: 803.779.0005 Fax 803.779.0666
E-mail: joe@mccullochlaw.com Other: _____

Defendant's Attorney:
Jim Irvin, Bar No. n/a
Address:
1101 3rd Avenue S.
Myrtle Beach, SC 29577
Phone: _____ Fax: _____
E-mail: irvinlawfirm@aol.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: Summary Judgment

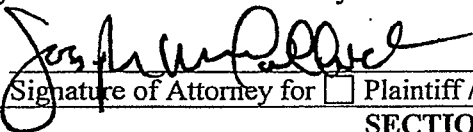
Estimated Time Needed: 2 hours

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 ☐ Plaintiff / ☒ Defendant

December 23, 2014
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ 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: _____

Judge Signature: _____

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CLERK'S VERIFICATION

Collected by: JP Date Filed: 9/6
☐ MOTION FEE COLLECTED: \$ 96
☐ CONTESTED - AMOUNT DUE: \$

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
Elizabeth J. Langley,)
)
v.)
)
Wendy J. Lynch, Rebecca M.)
Lynch, James M. Lynch II, Donald)
Jordan, III, Jimmy White and S.)
Porter Stewart, II., as Personal)
Representative of the Estate of)
James M. Lynch,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-21-01408

**MOTION FOR SUMMARY
JUDGMENT BY DEFENDANT
WENDY LYNCH**

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2014 DEC 29 AM 11:03
CLERK OF COURT
COMMON PLEAS
FLORENCE COUNTY, SC

ARGUMENT OUTLINE

I. MOTION FOR SUMMARY JUDGMENT

II. AFFIDAVITS

- A. Witnesses to Competence/Lack of Undue Influence
- B. Witnesses to Execution of the Will
- C. Witnesses to Competence in Handling Business Affairs
- D. Witnesses as to Opportunities for Judge Lynch to change his will
- E. Physician Statements of Competence

III. APPENDIX 1: BRIEF ON COMPETENCE

IV. APPENDIX 2: BRIEF ON LACK OF UNDUE INFLUENCE

I. MOTION FOR SUMMARY JUDGMENT

Defendant, Wendy Lynch, moves for summary judgment in the above-captioned case based on the following facts and law establishing that no genuine issue of material fact exists.

INTRODUCTION

This will contest action was filed by Plaintiff Elizabeth Langley (hereinafter "Plaintiff Langley") on April 30, 2013. The testator's three additional children who are takers under the will and named as defendants are: Wendy Lynch (the moving party), Rebecca M. Lynch and James M. Lynch, II. Other takers under the will, also named are defendants, are Donald Jordan, III (the testator's only grandchild and the child of Defendant Wendy Lynch) and Jimmy White (friend).

In support of the motion for summary judgment, Defendant Wendy Lynch attaches affidavits, pertinent deposition pages, and other documents to demonstrate there is no genuine issue of fact regarding the ultimate issues. Additionally, Ms. Lynch has attached appendices on competence and undue influence – the only legal issues before this Court. The supporting documents and appendices are incorporated herein by reference and attachment. Based on the law and facts, this Court should find that no genuine issue of material fact exists and grant Summary Judgment in favor of Defendant Wendy Lynch.

SOLE FACTUAL ISSUES

The Plaintiff has made no challenge as to the form of the will or validity of its execution. As such, the sole issues in the Complaint are:

- Whether the testator, Judge James M. Lynch (hereinafter "Judge Lynch"), was competent on May 11, 2012 to make a will;

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- Whether the will was the product of undue influence by Defendant Wendy Lynch (hereinafter "Defendant Wendy Lynch") or others;
- Following execution of the will on May 11, 2012, was the fact the will was never thereafter amended the product of undue influence.

South Carolina law dictates the competence of the testator at the time of the will execution, in this case May 11, 2012, is the primary issue. Second, undue influence must be specific to the testamentary act of making the will or preventing amendment thereafter (e.g. May 11, 2012 until his death on February 9, 2013).

THE FACTS

Judge Lynch, a longtime resident of Florence and Timmonsville, South Carolina, learned of his diagnosis of terminal brain cancer in April 2012. He discussed the diagnosis with family and friends and contacted longtime friend and attorney Rick Hoefer to discuss the preparation of powers of attorney in late April and a will which was executed by Judge Lynch in attorney Hoefer's law office on May 11, 2012. Judge Lynch continued to work and hold court in his capacity as a Florence County Magistrate, resigning that position on June 29, 2012. He continued his medical treatments with intermittent hospitalizations until he succumbed to the illness on February 9, 2013.

Following his diagnosis in April of 2012, his daughter, Wendy Lynch, a licensed nurse, left her job and took up residence with Judge Lynch. On or about May 31, 2012, Judge Lynch moved in with a female friend and lived with her until mid-August of 2012, after which he resumed residence with Wendy Lynch at his residence. Judge Lynch passed away on February 9, 2013.

The general timeline is as follows:

- April 2012 Judge Lynch is Diagnosed
- April 7, 2012 Dr. Naso, a physician, finds Judge Lynch "competent" (Exhibit E)
- April 18, 2012 Judge Lynch executes a POA and Durable Health Power
- May 2, 2012 Dr. Ranjan, a physician, finds Judge Lynch "competent" (Exhibit E)
- May 11, 2012 Will execution
- May 30-August 2012 Testator moves in with female friend (Exhibit D)
- December 2012 Dr. Dersch and Barnes-Young find Judge Lynch "competent"
- February 9, 2013 Judge Lynch's death

Following Judge Lynch's death, Plaintiff Langley filed this action contesting the will on the grounds of incompetence and undue influence. For the reasons that follow, Defendant Wendy Lynch moves that Summary Judgment be granted.

THE LAW

In Baughman v. American Telephone and Telegraph Co., 306 S.C. 101, 410 S.E.2d 537 (1991), the Supreme Court cited with approval the United States Supreme Court case of Celotex Corp. v. Catrett, 477 U.S. 317 (1986):

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by 'showing' - that is, pointing out to the [trial] court - that there is an absence of evidence to support the nonmoving party's case. The moving party need not "support its motion with affidavits or other similar materials negotiating the opponent's claim.

Once moving party carries its initial burden, opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with 'specific facts showing that there is a *genuine issue for trial*. Indeed, Rule 56(e)

specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings.

Id., 410 S.E.2d at 454 (internal citations omitted).

The Plaintiffs have not “come forward with specific facts showing that there is a *genuine issue for trial*.” The sole purpose of a summary judgment rule is to avoid the necessity of preparing for and trying a case before the court can consider a directed verdict motion. The Defendants should not be required to endure such if the Plaintiff has no case.

Under South Carolina law, summary judgment is warranted if there is “no genuine issue as to any material fact.” Rule 56, SCRPC. As our courts have explained:

On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party. Nonetheless, a court “cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts...

We note that our decision is no departure from the rule that summary judgment is a “drastic remedy” which should be “cautiously invoked.” Nevertheless, in the rare case where a verdict is not reasonably possible under the facts presented, summary judgment is proper.

Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000)(internal citations omitted)(emphasis added). The evidence is positive, cogent and convincing that there was no undue influence bearing upon the “testamentary act” of Judge Lynch or evidence of incompetence to make his will. Even if undue influence existed, which it did not, it has been “destroyed” by the ongoing daily opportunities Judge Lynch had to change his will.

ANALYSIS AND DISCUSSION

Defendant Wendy Lynch believes the following evidence and factors support and require the dismissal of Plaintiff's action by Summary Judgment:

- There is no evidence of undue influence or incompetence. To the contrary, numerous longtime friends and business associates dealt with Judge Lynch before and after his cancer diagnosis in April of 2012 and swear to his competence until the end of 2012 or beginning of 2013. Their affidavits and depositions are attached as **Exhibit A**;
- The attorney preparing the will found Judge Lynch competent at the time of the will execution. Judge Lynch's personal attorney, Frederic "Rick" Hoefer, II, prepared a Power of Attorney and Durable Health Care at Judge Lynch's direction on April 17 and 18, 2012 and shortly thereafter a will, executed in Mr. Hoefer's office on May 11, 2012. Judge Lynch was driven there by Defendant Wendy Lynch, and driven home by Plaintiff Langley, neither being present during the execution of the will. As discussed hereafter, the opinion of the attorney preparing a will is given great deference and weight on the issue of competence. See affidavits of attorney Hoefer and his paralegal, Christina Graves at **Exhibit B**;
- After the will execution, Judge Lynch continued to hold court and conduct his own affairs. After May 11, 2012, Judge Lynch continued to conduct his own business and hold court, retiring on June 29, 2012, and arranging for the appointment of his daughter, Wendy Lynch, to the magistrate position. Affidavits **Exhibit C**;
- Judge Lynch had opportunities to change his will but did not do so. Judge Lynch moved from his home and took up residence with a female friend, Quinn Schaeffer, from around May 30 through mid-August of 2012. During this period, despite being far removed from any opportunity for undue influence by Defendant Wendy Lynch and/or others, Judge Lynch made no will changes. **Exhibit D**;
- Treating physicians found Judge Lynch competent. Numerous treating doctors before and long after May 11, 2012 found Judge Lynch competent to make his own medical decisions. Affidavits of Doctors Naso, Dersch, Barnes-Young, Rao, and Ranjan. **Exhibit E**.

It should be noted that Plaintiff Langley was asked in response to Interrogatory requests and in her deposition to identify witnesses to establish her claim of incompetence and undue influence. While Plaintiff listed a series of witnesses to undue

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influence and incompetence, the Defense spoke to many of these same witnesses. Surprisingly, most of these “witnesses” had never been contacted by Plaintiff or interviewed by Plaintiff’s former counsel. Some of these “witnesses” wanted no involvement in the case and others – such as Drs. Rao and Rhea and Dennis Hill – to the contrary found no undue influence or incompetence. See Exhibits A and E.

The Plaintiff must now come forward with witnesses and evidence to confront and establish a genuine issue of fact to prevent Summary Judgment. To date, the Plaintiff has presented no such witness or evidence of Judge Lynch’s incompetence to make a will on May 11, 2012 (or raise a suspicion thereabouts) and has presented no witness to establish undue influence upon the Testator to make the will on May 11, 2012. There is likewise no evidence of undue influence upon Testator to prevent him from amending the May 11th will to a form more befitting Plaintiff’s expectations.

The presumption of will validity, the facts as set forth in the Will attorney’s affidavit (Exhibit B), unanimity of fact witnesses, and the law support the grant of summary judgment.

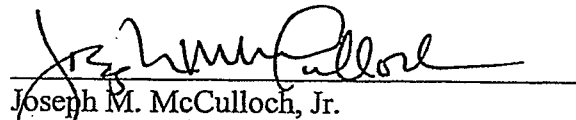
CONCLUSION

The following excerpt from Smith v. Whetstone, 209 S.C. 78, 39 S.E2d 127, 132 (1946), is particularly applicable to the facts of this case given Judge Lynch’s personality and strong character, as set forth in the attached affidavits:

The Testator was a man of strongly marked characteristics, of sound mind and determined will, abundantly able to protect himself, which should not be overlooked in a case of this kind. The mere fact that the Testator made an unequal, partial, or seemingly unjust division of his property is no ground for setting it aside.

Because "no issue of material fact concerning the validity of" Judge Lynch's Will exists, summary judgment is appropriate in this case at this time.

Respectfully submitted,



Joseph M. McCulloch, Jr.

Kathy R. Schillaci

Law Office of Joseph M. McCulloch, Jr.

1426 Richland Street

P.O. Box 11623

Columbia, South Carolina 29211

T: (803) 779-0005

F: (803) 779-0666

Columbia, South Carolina

this ____ day of December, 2014.

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CERTIFICATE OF SERVICE

I, Elizabeth Radford, an employee of the Law Offices of Joseph M. McCulloch, Jr., on behalf of the Plaintiff, Marie Vernon Wolfe, do hereby certify that I have served all parties who have entered an appearance in this action with the **Notice and Motion for Court to Set Damages Hearing** via first-class United States Mail, with sufficient postage, addressed to:

Jim Irvin, Esq.
1101 3rd Avenue S.
Myrtle Beach, SC 29577

This 23rd day of December, 2014. Copies have been served on all parties who have appeared in to this action in accordance with Rule 5, SCRPC.



Law Offices of Joseph M. McCulloch, Jr.

2014 DEC 29 AM 11:03
CONJUD. RECD.
CCRP & CS
FLORENCE COUNTY

EXHIBIT A

Affidavits of Michael Ballenger, Esq., Tyrie White, Patrick Mancill, Rusty Smith, Wiley
Turner, Kim White, Dennis Hill, Jimmie Lee Hampton;

Deposition extracts of Jeff Ard, Rhett Garner, Leon Gaddy, Dennis Hill

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, Michael Ballenger, who, a:
being duly sworn, deposes and says as follows:

1. I am a duly licensed and practicing attorney in the Cou
of Florence, State of South Carolina.

2. I began the practice of law in the City of Florence on
December 18, 1972.

3. I have continued to practice law since that time and am
licensed to practice in State and Federal Courts.

4. I came to know James M. Lynch and represented him on
several matters.

5. James M. Lynch (Jimmy) was my client and my friend.

6. After Jimmy was diagnosed with a brain tumor, we talked on
the telephone and in person on numerous occasions.

7. Much too soon, but on May 11, 2012, Jimmy was in our
office to execute his Last Will, I was out of the office. If I had
been in the office, I certainly would have spoken to him.

8. Although I did not see him on May 11, 2012, I specifically
recall a Saturday morning in the Summer of 2012, when I visited
Jimmy at his home. I stopped to visit and talk with him about his
condition and what the future held in store. Our discussion was
frank and completely candid. At that time, Jimmy and I both knew
that his physical condition was not good, and was most likely going
to get worse and we discussed that. Jimmy's mental condition was
just as it had been throughout the 22 years I had known him.

He
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was in complete control of his faculties and was absolutely clear in his mind.

9. By the Fall of 2012, I would estimate October or November, I learned that Jimmy was at McLeod Regional Medical Center in Florence. I was led to believe that Jimmy's condition was grave. I learned this on a Saturday evening and I went to the hospital on the next day, Sunday morning.

10. At that Sunday morning visit, Jimmy's daughter Rebecca, was sitting with him.

11. I visited with Jimmy and could see that he was weak and in a great deal of pain. During that visit, even though his physical condition was terrible, Jimmy's mind was clear. Jimmy was completely aware of his condition and totally lucid and competent.

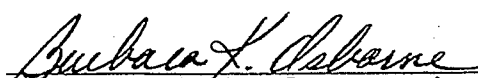
12. When I stood beside his bed and held his hand, we both knew that we were saying "goodbye". That was the last time I saw Jimmy.

13. Jimmy's body finally surrendered to cancer, but from the first time I met him until our last goodbye, Jimmy was always the same man in regard to his mind and mental faculties.

FURTHER DEPONENT SAITH NOT!


MICHAEL BALLENGER

Sworn to this 13th day of
June, 2014


Notary Public for South Carolina
My Commission Expires: 1/3/2023

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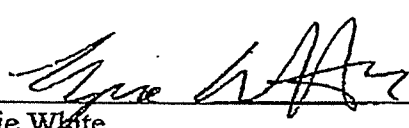
STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

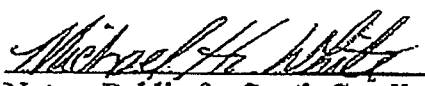
AFFIDAVIT OF
TYRIE WHITE

Personally appeared before me, Tyrie White, who after being sworn, deposes, and states:

1. I am a resident of Florence, South Carolina and in the car business and frequently sold, or worked on cars for Mr. James Lynch. I knew him for a good long time.
2. I frequently saw him during April, May and the summer of 2012 and continued to see him into the fall of that year. I was aware he had been told in April he had cancer, but I never saw any effect on his mental abilities in all our conversations. He was always oriented and good mentally.
3. I never saw him incompetent and know nothing about his will or about anyone trying to influence him.


Tyrie White

Sworn to before me this
this 8 day of July, 2014.


Notary Public for South CarolinaMy commission expires: February 8, 20221883 ROA
000021

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

AFFIDAVIT OF
PATRICK MANCILL

Personally appeared before me, Patrick Mancill, who after being sworn,
deposes, and states:

I live in Florence County, South Carolina and knew James Lynch Judge James
Lynch for many years as a friend of our family.

From 2006 until 2009 I think, I worked with the Judge as a Constable, and
thereafter ran my own business in Florence. Even after I started my own business, I
saw him regularly.

I learned of his illness in April of 2012 and talked with him several times in
April and May on the phone and when he would come by the shop after haircuts or
other business in Florence. I know these visits were in April, May and June because
he was still holding Court.

After his retirement, I continued to keep up with him and he seemed to get
physically better after some treatments. During this specific period of April through
June I have no doubt about his mental ability and competence.

After his retirement from Magistrate, I visited him at his home, and even
though he went downhill physically, his mind was always good. He was always aware
and mentally ok.

During this entire time period from diagnosis until his death, I do not believe
he was in a condition that would have allowed anybody to force, influence, or make
him do anything he did not want to do. Judge Lynch was a very independent and
tough man.



Patrick Mancill
3543 W. John Paul Jones Road
Timmonsville, SC 29161

Sworn to before me this
21 day of July, 2014.



Notary Public for South Carolina
My commission

July 12th, 2021

ROA
000022

001874

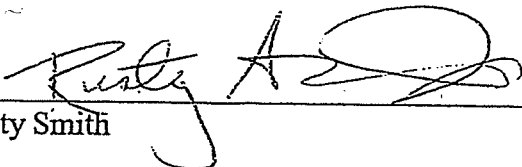
STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

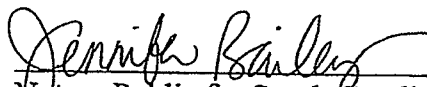
AFFIDAVIT OF
RUSTY SMITH

Personally appeared before me, Rusty Smith, who after being sworn, deposes, and states:

1. I am a resident of Lake City, South Carolina, and knew James Lynch as a friend for a long time.
2. I learned of his being diagnosed with a serious illness and visited him at his home and talked a good while about things that caused me to believe he was alert and competent. Nothing suggested he had been affected mentally.
3. I cannot name the day I visited with him at his home but I know it was after he was diagnosed (I am told the diagnosis was on April 14, 2012) and before Wendy Lynch was sworn in as judge around the end of June.


Rusty Smith

Sworn to before me this
1st day of July, 2014.
August


Notary Public for South Carolina
My commission expires: June 11, 2024

ROA
000023

001898

COUNTY OF FLORENCE

Personally appeared before me, Wiley Turner, who after being sworn, deposes, and states:

I live in Florence, South Carolina, and was a longtime friend of James Lynch. I learned of his illness soon after he was diagnosed. I went and saw him at his home, I think probably during the summer months. He was obviously physically ill, but he was mentally the same as always. I again visited him in the fall after it got cold. I saw him that time at McLeod Hospital in Florence when I visited with Patrick Mancille. On that visit we talked and he was clear headed and fine mentally as far as I was concerned. I did not see him again.

Wiley B Turner
PO Box 12728
Pamplico Hwy.
Florence, SC 29504

Sworn to before me this 20 day of August, 2014.

Rachel D. Turner
Notary Public for South Carolina
My commission expires: 3-30-2019

ROA
000024

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

**AFFIDAVIT OF
KIM WHITE**

Personally appeared before me, Kim White, who after being sworn, deposes, and states:

I am the wife of Jimmy White and we live in Florence County. Through Jimmy I met and came to know James Lynch very fondly. We did things with him over the years like motorcycling, dinners and knew him to be a smart and tough man – well aware of the problems between his children. Because my husband had been married to one of Mr. Lynch's daughters, and then divorced, James Lynch continued to love my husband – even after the divorce.

We knew when James Lynch was told he had cancer and spent time with him as he continued being a judge. In that period of April, May and through the Summer and until the Fall he was mentally fine and aware and business-like but it was affecting him physically. I saw no time that he was not competent to make decisions until the very end of his life.

He went where he wanted to, had people take him places, including us, and went places until his hospital admissions and health got so bad in November of 2012, or around then.

I never saw Wendy keep people away from him, and certainly he was so strong willed, nobody could have kept him from doing what he wanted to do until late in December or in early 2013 – when he was so sick. I know nothing about anyone trying to influence him about what to do about his Will.

Kim White

Kim White

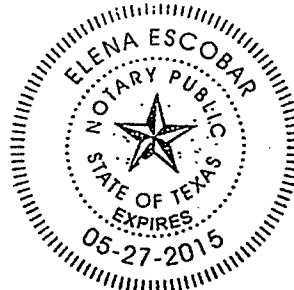
654 Beaverdam, Florence, SC 29501

Sworn to before me this
11th day of June, 2014.

Elena Escobar

Notary Public for Texas

My commission expires: 05-27-2015



ROA
000025

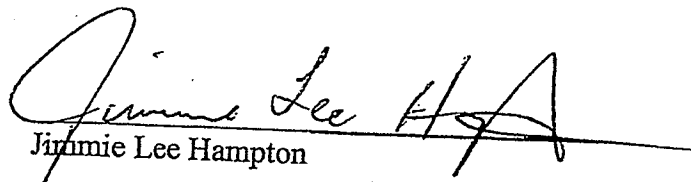
STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

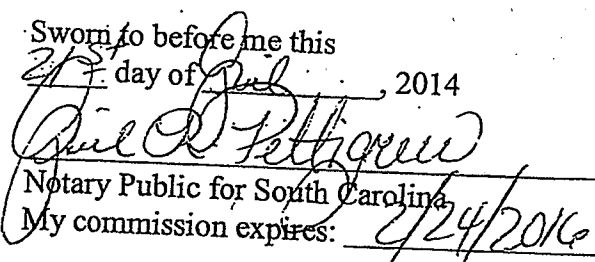
**AFFIDAVIT OF
JIMMIE LEE HAMPTON**

Personally appeared before me, Jimmie Lee Hampton, who after being sworn,
deposes and states:

1. I live in Timmonsville, South Carolina and have been a life-long resident.
2. I grew up with and continued my friendship with James Lynch through his death in 2013 of cancer.
3. I never heard James Lynch speak of any effort by Wendy Lynch or her son to influence his decision about his Will, but I can say that James Lynch told me on an occasion that Wendy was the "only one helping me", and "the only one who deserved a damn thing".
4. I knew James Lynch to be a very independent person and not able to be persuaded or made to do something by someone that he did not want to do.
5. In the context of his Will, I saw no evidence of influence on him and know that he would not have been influenced by anyone at the time of his Will making, which I understand to have occurred in May of 2012. After May 2012, on the occasion when I saw James Lynch, though his physical health was in decline, he was the same mentally – aware, competent and very independent and not under anyone's force or influence


Jimmie Lee Hampton

Sworn to before me this
24th day of Feb, 2014


Notary Public for South Carolina
My commission expires: 2/24/2016

ROA
000026

State of South Carolina

In Common Pleas Court

County of Florence

Elizabeth J. Langley,
Plaintiff,

 **COPY**

V.

2013-CP-01408

Wendy J. Lynch, Rebecca M. Lynch,
James M. Lynch, II, Jimmy White,
and S. Porter Stewart, II, as Personal
Representative of the Estate of James M. Lynch,
Defendants.

Deposition of: Jeff Ard

Location: 509 South Dargan Street

Florence, South Carolina

Date: Tuesday, July 1, 2014

Time: 10:11 a.m. - 11:16 a.m.

Court Reporter: April Llewellyn

The deposition is taken pursuant to notice and/or
agreement, in the above-entitled cause pending in
the above-named court and pursuant to the South
Carolina rules of civil procedure.

Q & A COURT REPORTING SERVICES
Post Office Box 4563 (29502)
273 West Evans St. (29501)
Florence, South Carolina
Telephone Number: (843) 673-9845
E-mail: info@qacourtreporting.com
Visit: www.qacourtreporting.com

ROA
000027

1 A Yes, sir.

2 Q And you continued to see him and --
3 and, in fact, as you've testified today, do work
4 for him.

5 A Yes, sir.

6 Q Now, I ask you during -- and you've
7 testified repeatedly and you told me you didn't
8 have any information about his will.

9 A Right.

10 Q If I ask you to assume -- for the sake
11 of this continuing discussion, questions -- that a
12 will was executed by him in May. So diagnosed as
13 ill in April, and a will done by him with the
14 lawyers here, locally, in May. Those -- that's a
15 period of time I kind of want you to focus on,
16 okay?

17 A Okay.

18 Q Now, in our telephone conversation, I
19 asked you if you had any concerns whatsoever about
20 Mr. Lynch's competence, his mental abilities to
21 make decisions about his business and about things
22 in that period when you learned he was ill and for
23 months afterwards.

24 A Uh-huh.

25 Q And -- and what's your answer to that

ROA
000028

1 today?

2 A Well, I assume he was still conducting
3 business as usual.

4 Q Well --

5 A I mean, he didn't never say one way
6 another to me whether he could or not.

7 Q Did you notice any inability? Did you
8 notice any incompetence? Did he appear --

9 A No, sir.

10 Q -- not to know what he was doing?

11 A No.

12 Q All right. So there was nothing about
13 your conversations with him during this April/May
14 period and even, as I think you've testified,
15 until late in the fall, sometime in -- between
16 September/October --

17 A Yeah.

18 Q -- or January, for that period from
19 April when you learned he was ill until maybe
20 January of 2013, did you see a point in time when
21 he was -- at least in the times that you saw him.
22 And I understand you can't speak to other times,
23 but in the times and occasions that you met with
24 him, did you see him unable to or -- or exhibit
25 any behavior that suggested to you that he was no

ROA
000029

1 longer competent to make decisions?

2 A Like I say, from September on and
3 into -- maybe to January, I didn't see him much
4 because I had some stuff of my own going on --

5 Q Right.

6 A -- that would be the -- I -- I can't
7 answer in that time frame.

8 Q So the first time you would be in a
9 position to say that he seemed incompetent would
10 be in January of 2013 when he was not even
11 communicating?

12 A Right.

13 MR. LANE: Objection.

14 THE DEPONENT: Right.

15 BY MR. MCCULLOCH:

16 Q Okay. Now, we talked about -- we
17 talked about Mr. Lynch as a man. Was he strong
18 willed?

19 A Oh, me, what are you talking -- yes,
20 sir.

21 Q Would he be a person easily influenced?

22 A No, sir.

23 Q In April, May, June, July, August,
24 September, anything about his demeanor, behavior,
25 your discussions with him at the time you spent

ROA
000030

1 with him, anything about that suggest that he was
2 able to be pushed around?

3 A No.

4 Q I think you mentioned to me that he was
5 a guy with a bit of a temper?

6 A Yeah.

7 Q If he didn't like what you said, what
8 we he tell you?

9 A You know, his mind and quickly.

10 Q Okay. Are you aware of any undue
11 influence -- and by that I mean pressure or
12 coercion or threats made to Mr. Lynch by anybody
13 to make a will?

14 A I have no knowledge. I'm -- of
15 anything like that.

16 Q All right. Now, when we spoke in May,
17 were you aware that -- that you were on a witness
18 list of the plaintiff in this case, until I told
19 you you were?

20 A No, sir.

21 Q Okay. The -- Ms. Shaffer we spoke
22 briefly about here today, did you know that he
23 lived with her for a time?

24 A Yeah --

25 Q Moved out --

ROA
000031

1 A -- Yeah.

2 Q -- of his home --

3 A Yeah.

4 Q -- and -- and moved in with her?

5 A Yeah.

6 Q And -- and that was after his illness
7 was diagnosed?

8 A Yes, sir.

9 Q All right. And it was after
10 May of 2012 when we believe the will was done. Do
11 you know when it was that he moved in with her?

12 A No, not specifically, I don't.

13 Q But when you would see them around
14 town, it would have been together. Would it have
15 been after May during the summer of -- of 2012,
16 you think?

17 A He -- that's -- during the summer of
18 20--- he didn't get out much then on -- around the
19 town.

20 Q Okay. Now, the -- let's talk about the
21 R.V. repair. Is that your business? Is that what
22 you do for a living?

23 A I do truck and equipment repair. Yes,
24 sir.

25 Q Okay. Been doing that a long time?

ROA
000032

1 A Yes, sir. I've been in business for 57
2 years.

3 Q Okay. Now, the paperwork you've given
4 me here, there -- there are a couple of them I
5 wanted to focus on, but --

6 A Okay.

7 Q -- what, I guess, the first question
8 is, do you remember -- and -- and -- and I'll hand
9 this stuff back to you if you need to take a look
10 at it, but you may remember. Do you remember when
11 this R.V. was brought to you for -- for repairs?

12 A Maybe August.

13 Q Of --

14 A May of -- of 2012.

15 Q All right. And did Mr. Lynch come when
16 it -- when it was delivered?

17 A I picked it up.

18 Q Okay. You picked it up from --

19 A Yes, sir.

20 Q -- him?

21 A Yes, sir.

22 Q Okay. And you and he talked about what
23 was wrong with it and what he wanted done?

24 A It was wrecked -- damaged on the side.

25 And I believe it was Dennis Hill -- Dennis backed

ROA
000033

1 it into the house or a tree or something another.

2 Q Okay.

3 A Tore up the side of it.

4 Q Well, was Mr. Lynch happy or unhappy
5 about that?

6 A Oh, he was way unhappy.

7 Q Okay. Now, this is August of 2012.

8 A I think that's the right time frame.

9 Q All right. Well, would these papers
10 help you?

11 A That one there with the billing doesn't
12 have a date --

13 Q Okay.

14 A -- on it, this will -- if you'll look
15 in there, you'll see the --

16 Q Here, let me give it to you and you
17 find me the --

18 A -- that they --

19 Q -- piece of paper that helps you with
20 the dates.

21 A This would be more --

22 Q All right.

23 A -- there should be a -- on here where
24 the -- that's from September 18th is when this was
25 filed. Through his insurance that he filed it

ROA
000034

State of South Carolina

In Common Pleas Court

County of Florence

Elizabeth J. Langley,
Plaintiff,

 **COPY**

V.

2013-CP-01408

Wendy J. Lynch, Rebecca M. Lynch,
James M. Lynch, II, Jimmy White,
and S. Porter Stewart, II, as Personal
Representative of the Estate of James M. Lynch,
Defendants.

Deposition of: Rhet Garner

Location: 509 South Dargan Street

Florence, South Carolina

Date: Tuesday, July 1, 2014

Time: 3:34 p.m. - 4:18 p.m.

Court Reporter: April Llewellyn

The deposition is taken pursuant to notice and/or
agreement, in the above-entitled cause pending in
the above-named court and pursuant to the South
Carolina rules of civil procedure.

Q & A COURT REPORTING SERVICES

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273 West Evans St. (29501)

Florence, South Carolina

Telephone Number: (843) 673-9845

E-mail: Info@qacourtreporting.com

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ROA
000035

1 A Don't recall the time.

2 Q Do you have any -- any different
3 recollection than that?

4 A I just don't recall times. I don't --
5 I don't do times. I don't wear wrist watches and
6 I don't look at calendars.

7 Q And so what was your sense for how long
8 it had been since he was diagnosed that you had
9 that first conversation with him?

10 A Oh, probably a couple of weeks, a
11 month, something like that.

12 Q And some --

13 A Somewhere -- somewhere in that period
14 of time.

15 Q And then --

16 A Because I had gone in to -- to speak to
17 him about a little problem I had had, and -- and
18 he and I -- he said that he had had a bad
19 diagnosis is all he said.

20 Q Okay. So just to -- to put a -- a -- a
21 fence around it, you had one --

22 A I can't put a fence around it because I
23 don't know.

24 Q Is it fair to say you had one
25 conversation with him a couple of weeks after

ROA
000036

1 diagnosis, and then three more times after that
2 you saw him --

3 A Yes --

4 Q -- before he passed away?

5 A There you go. You can narrow it down
6 to that.

7 Q Okay. So --

8 A It may have been four, but I know it
9 was three.

10 Q So what else can you tell me about the
11 conversation you had where you learned about his
12 diagnosis?

13 A Nothing I remember. I mean, what's
14 there to tell?

15 Q What did he say about what his
16 condition was?

17 A He just said they had -- had found
18 some -- I don't know the technical term -- spots
19 or whatever, and that he just really didn't know
20 what they were going to do about it.

21 Q Did it sound to you like it could be a
22 terminal illness?

23 A I can't make a judge. I'm not a
24 doctor. I mean, you know, I don't know what he
25 thought. And he just told me it was serious.

ROA
000037

1 Q And did he talk about how he was going
2 to handle it? What kind of treatment he was going
3 to get or anything like that?

4 A No, we changed the subject and went to
5 talking about hunting, stuff like that. That I'd
6 be on -- I'd been on a hunt.

7 Q Okay.

8 A And I'd been shooting at -- and I was
9 telling him about the shooting contest I did.

10 Q All right. So tell me what -- the next
11 time you remember being around Mr. Lynch after the
12 one we just finished talking about.

13 A I went to the house to see him.

14 Q Tell me what you all talked about that
15 time.

16 A I asked him if he was doing better. He
17 said he'd seen some doctors and didn't know. And
18 we changed the subject.

19 Q So when you say you went to the house,
20 you went to his house out in Timmons ville?

21 A Uh-huh.

22 Q And was anybody there besides the two
23 of you?

24 A There was someone working in the yard.
25 And that's all I recall at that time.

ROA
000038

1 Q Did he talk about how he was feeling at
2 that point in time?

3 A Like I said, we didn't get into
4 details. He just said that he had -- was being
5 treated or whatever. And that's as far as we got
6 on that. Then he and I talked about -- I had a
7 new pistol, and I was showing it to him, and that
8 was it.

9 Q Okay. What about the next time after
10 that you talked to him?

11 A Then, I -- I don't know if this is the
12 second or third time I went. Jordy was out there.
13 And I can't remember the lady's name with the -- I
14 don't even know what the correct term is now right
15 now -- African/American, colored or whatever she
16 was, but she's an old friend of his, and she was
17 there with him.

18 Q Do you know --

19 A And he was --

20 Q -- her name?

21 A -- I don't remember her name. I know
22 her, but I had so many names in my head. I used
23 to be the mailman, and we used have to memorize
24 like 2,000 names. So when I retired, I quit all
25 that, so I don't remember. But she was there, and

ROA
000039

1 she -- she left the room. Jimmy hopped up and he
2 said, I got to go to the bathroom, and he hopped
3 up and ran and went to the bathroom. Came back
4 and we had talked about, you know, just some
5 different things, odds and ends.

6 And I said, well, are you doing any
7 better. And he said, well, you know, the doctors
8 say I'm not. And I said, well, what do you think?
9 He said, well, I'm going to try to beat this thing.
10 I said, well, okay. And then we just talked about
11 stuff that he and I used to do together.

12 Q Okay.

13 A Old times so to speak.

14 Q So this third time -- well, one time
15 after the diagnosis, the other time --

16 A Uh-huh.

17 Q -- you went to see him at his --

18 A Uh-huh.

19 Q -- house, and you just talk about your
20 pistol?

21 A Uh-huh.

22 Q Then you went there and Jordy was there
23 and --

24 A Uh-huh.

25 Q -- the black woman was there.

ROA
000040

1 A Uh-huh.

2 Q He was -- at that point in time, the
3 Jordy and -- and the black woman visit, still in
4 his head trying to beat this thing.

5 A Oh, yeah, he was perfectly co---
6 coherent and everything was fine. I mean, he was
7 Jimmy. I mean, he hopped up -- I don't know if
8 I'm supposed to say this. He always wore speedo
9 underwear. He -- he had his speedos on, and he
10 had to -- he had to run to the bathroom. So he
11 got up and went to the bathroom by his self and no
12 problem. Came back and got in bed, drank a drink
13 of water and as--- asked me if I'd like something
14 to drink, and I said I would, and the lady,
15 whoever she was, the colored lady, or whatever you
16 want to call her, went and got me a drink. And we
17 sat there and just talked about old times. Which
18 is what you do when a friend's sick.

19 Q Okay. And you don't know when that
20 was?

21 A No clue.

22 Q All right. Was there another time
23 after this that you can remember?

24 A My wife and I were shopping at
25 Sam's Club, and Jimmy had -- I saw Jimmy. He was

ROA
000041

1 in a -- a -- it's not a hover around they have.
2 You know those little electric carts they have?
3 He was in the little electric cart. And he was
4 looking for a safe.

5 Q And was anybody with him?

6 A Yeah, the Shaffer granddaughter who is
7 named Quinn. Do not know her last name.

8 Q So you saw him at Sam's Club.

9 A Uh-huh.

10 Q And he was shopping for a safe with
11 Quinn Shaffer.

12 A Uh-huh.

13 Q Was anybody with them, or was it just
14 the two of them?

15 A It was the two of them.

16 Q Did you stop and talk to him?

17 A Yep, about 15, 20 minutes.

18 Q And what did you talk about that time?

19 A He wanted to know what a -- which safe
20 to get that she could open.

21 Q And did you have any advice about that?

22 A Yeah, I went and showed him one.
23 Showed him how to open it. And I've got one
24 similar to it. It's a not easy -- a number safe.

25 Q Okay.

ROA
000042

1 A And I asked him, I said, you know,
2 you've got plenty of safes, Jimmy. He said this
3 one's for her. He said, I want to put a chunk of
4 money in it in case one of my children want to put
5 me in a nursing home. And I said, well, this is a
6 easy one to open.

7 Q So --

8 A And I said, well, why do you want to do
9 that? He said, well, I don't want to go to a
10 nursing home. He said, I -- I'm not doing as good
11 as I was, and I just don't want to go to a nursing
12 home. And I don't know what a chunk of money
13 means. But he said, I'm going to put a chunk of
14 money in it so she can take care of me.

15 Q And again, you don't know when this
16 was?

17 A No, but you could go to -- probably go
18 to the records of Sam's Club and find out --

19 MS. WHITE: When he bought it.

20 THE DEPONENT: -- when -- who bought
21 safes of the time he bought the safes. But he was
22 perfectly coherent. He was in his right mind. I
23 mean, there was no question about he was worrying
24 about being put in a nursing home. Which I would,
25 too, if I was sick, you know. And he just said

ROA
000043

1 Q -- was May 11. All right.

2 A Uh-huh.

3 Q So your -- some of these meetings would
4 have been --

5 A After that.

6 Q -- with him or during that period of
7 time --

8 A Uh-huh.

9 Q -- and after. Is that correct?

10 A That's correct.

11 Q All right. And the reverse of the
12 question you've been asked is, did you ever see
13 anything about this interaction with you -- his
14 conversation with you that suggested to you that
15 he was -- he was unable to do his own business?

16 A Oh, no.

17 Q You -- you've used the phrase coherent.
18 Do you --

19 A Uh-huh.

20 Q -- but you understand the word
21 competent.

22 A Uh-huh.

23 Q In your opinion, throughout all of
24 these meetings you've --

25 A Uh-huh.

ROA
000044

1 Q -- get together --

2 A Uh-huh.

3 Q -- I don't call them meetings. Was he
4 competent --

5 A Oh, yeah.

6 MR. LANE: Objection.

7 BY MR. MCCULLOCH:

8 Q -- to do his own business?

9 A As far as I'm concerned.

10 Q All right, sir.

11 MS. WHITE: Objection.

12 BY MR. MCCULLOCH:

13 Q And do you have any information of
14 anyone applying or pressuring Mr. Lynch to do his
15 will in any particular way?

16 A Not to my knowledge.

17 Q All right. In your opinion, as -- as
18 based on your life experience with --

19 A Uh-huh.

20 Q -- with Mr. Lynch and your meetings
21 with him, your interactions with him as you've
22 described --

23 A Uh-huh.

24 Q -- do you think anybody could have
25 pressured him to do anything?

ROA
000045

1 A Who, Jimmy?

2 Q Yes, sir.

3 A Like I said, I've known him most all my
4 life. And I don't really know if anybody can
5 pressure him into anything.

6 Q All right. You -- do you have an
7 opinion about whether he, in these meetings, knew
8 who you were?

9 A Oh, he knew exactly who I was.

10 Q All right.

11 A I mean, I can't go through my life
12 experience with Jimmy.

13 Q All right.

14 A But I'd known him since I was yea high.

15 Q Well --

16 A I mean, and -- and the -- and it was
17 always the same. Jimmy was always the same.

18 Q To go back to this issue of
19 competence --

20 A Uh-huh.

21 Q Did he know who you were when y'all got
22 together?

23 MR. LANE: Objection.

24 THE DEPONENT: Back to the Walmart
25 thing.

ROA
000046

State of South Carolina

In Common Pleas Court

County of Florence

Elizabeth J. Langley,
Plaintiff,

 COPY

V.

2013-CP-01408

Wendy J. Lynch, Rebecca M. Lynch,
James M. Lynch, II, Jimmy White,
and S. Porter Stewart, II, as Personal
Representative of the Estate of James M. Lynch,
Defendants.

Deposition of: Leon Gaddy

Location: 509 South Dargan Street

Florence, South Carolina

Date: Tuesday, July 1, 2014

Time: 4:19 p.m. - 5:21 p.m.

Court Reporter: April Llewellyn

The deposition is taken pursuant to notice and/or
agreement, in the above-entitled cause pending in
the above-named court and pursuant to the South
Carolina rules of civil procedure.

Q & A COURT REPORTING SERVICES
Post Office Box 4563 (29502)
273 West. Evans St. (29501)
Florence, South Carolina
Telephone Number: (843) 673-9845
E-mail: info@qacourtreporting.com
Visit: www.qacourtreporting.com

1 A I can -- I can take you right around
2 here and go in the --

3 Q But it's here --

4 A -- end door. I think it was Carolinas.

5 Q Here in Florence.

6 A Yeah.

7 Q Okay.

8 A It's right around this -- down this
9 street about three block--- three or four blocks.

10 Q All right. Now, you have described, in
11 some detail, a -- a doctor who was a white guy
12 with black hair.

13 A Uh-huh.

14 Q Now, you've suggested that you might
15 remember his name. Dr. Dirsch sound familiar?

16 A It may have because I remember seems
17 like it was a kind of strange name to me.

18 Q All right.

19 A Which it may not be, but --

20 Q But --

21 A I don't really recall the name. I
22 couldn't say, honestly, one way or the other, but
23 I remember him coming in there and saying I'm
24 going to give you a competency test.

25 Q Yeah.

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1 A And I said, whoa, let me out of here.
2 He said, no, I prefer you stay.

3 Q Okay. Well, after you heard that, as
4 you've already testified to, and you heard his
5 determination or opinion of his competency, did
6 you agree or disagree with his evaluation?

7 A Oh, I agreed with it. He could tell me
8 anything that I wanted to know. If I -- anything
9 we talked about, he would -- it was just like he,
10 you know, like I said, his speech was a little
11 slurred, but like mine because I've knocked some
12 teeth out, but --

13 Q Okay.

14 A -- but anything I asked him, he was
15 just as competent as he was when I was -- when I
16 first started hanging out with him.

17 Q So from your visits with him after his
18 diagnosis, at home, until you visit to the rehab
19 facility, do you have an opinion about his
20 competence to make his own decisions?

21 MR. LANE: Objection.

22 THE DEPONENT: Yes.

23 BY MR. MCCULLOCH:

24 Q Do you have an opinion? What's that
25 opinion?

1 A He was competent as it -- anything I --
2 like I said, anything I asked him about anything,
3 it was just like we were talking about old times
4 and stuff. So -- he could remember anything that
5 I -- about the four-wheeler, about the beavers.
6 I'd ask him that just to see if he could remember
7 to make sure I knew who I was talking to kind of,
8 you know. But he, actually, could remember -- he
9 would bring up things that I had forgot about.
10 So...

11 BY MR. MCCULLOCH:

12 Q I think my last question, just to be
13 sure, from the time that you saw him in April at
14 home, again through this period of seeing him at
15 the rehab facility, did he ever complain to you
16 about -- or did you -- do you have any information
17 about anyone exerting pressure or undue influence
18 on him to make a will?

19 A No, I never heard anything about a will
20 of any kind or anything like that. You know, we
21 just, you know, talked about old times and stuff.
22 We -- he didn't talk about his personal --

23 Q Okay.

24 A -- stuff then.

25 MR. MCCULLOUGH: Thank you, sir.

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State of South Carolina
In Common Pleas Court
County of Florence

Elizabeth J. Langley,
Plaintiff,

 COPY

V.

2013-CP-01408

Wendy J. Lynch, Rebecca M. Lynch,
James M. Lynch, II, Jimmy White,
and S. Porter Stewart, II, as Personal
Representative of the Estate of James M. Lynch,
Defendants.

Deposition of: Dennis Hill

Location: 509 South Dargan Street
Florence, South Carolina

Date: Tuesday, July 1, 2014

Time: 3:04 p.m. - 3:32 p.m.

Court Reporter: April Llewellyn

The deposition is taken pursuant to notice and/or
agreement, in the above-entitled cause pending in
the above-named court and pursuant to the South
Carolina rules of civil procedure.

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been listed as a witness? Did he ever talk to you about that, listing you as a witness?

A No.

Q Do you believe that Mr. Lynch was competent in May, 2012?

MR. LANE: Objection.

THE DEPONENT: I'm like you, I don't -- it -- the first thing is, I don't know what date -- the date doesn't tell me what the situation he was in.

BY MS. SCHILLACI:

Q Okay. But --

A And -- and --

Q -- and -- and let me help with that -- clarify. If Mr. Lynch was diagnosed in April, 2012, in your personal observations of him, did he appear able to carry on his affairs a -- a month after his diagnosis?

A Yes.

Q Okay. And -- and how about two months after his diagnosis?

A Probably starting to get shaky by now. I mean, I just don't know. I -- I -- you -- we -- we can't get these dates, and -- and I don't know exactly what shape he was in on what date. This

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PSchaffer

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is confusion. I mean, I could be answering wrong here.

Q And when Mr. Lynch said that, you know, I've got to get a will done, do you know how soon that occurred after his diagnosis?

A I'm thinking two weeks.

Q Okay. And then to your knowledge, he got the will done fairly quickly after he --

A Fair -- fairly --

Q -- said he needed one?

A -- fairly quickly, yes.

Q And again, that would have been Rick Shaffer, correct?

A Yeah.

Q Rick Hoefer.

A Hoefer. Hoefer -- Hoefer, I don't know. I just...

Q Okay. And -- and other than discussions about Wendy getting the house, you never discussed the details of --

A No --

Q -- any will?

A -- not the details.

Q About --

A I surely didn't.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

AFFIDAVIT OF
DENNIS HILL

Personally appeared before me, Dennis Hill, who after being sworn, deposes, and states:

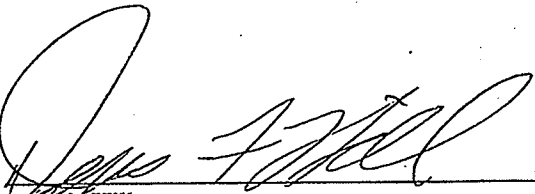
1. I am a longtime resident of Florence County and knew Mr. James Lynch for more than 60 years.

2. I appeared and testified at a deposition in Florence on July 1, 2014 and my answers were as accurate as my memory and recollections permit.

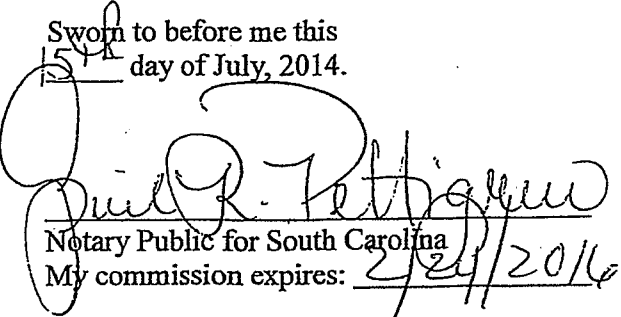
3. During the deposition I was asked about the extent of any conversations I might have had with Mr. Lynch after his diagnosis in April of 2012. I testified he told me he needed a will. Later he told me that Lawyer Hoefer had done one for him. The only detail mentioned by him to me was that he did not want his house sold and he was giving it to Wendy because he knew she would never sell it.

4. I also testified that on one occasion Wendy was present during our short conversation __

(degree of participation) AND NO DETAILS OF THE CONTENT
OF THE WILL WERE DISCUSSED.
I have no other information to give and have no information on anyone influencing Jim Lynch in the making of his will.


Dennis Hill
843-229-7484

Sworn to before me this
15th day of July, 2014.


Notary Public for South Carolina
My commission expires: 2/24/2016

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EXHIBIT B

Affidavits of Frederick "Rick" Hoefer, Christina Graves

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
_____)

AFFIDAVIT OF FREDERICK A. HOEFER, II

Personally appeared before me, Frederick A. Hoefer, II, who after being duly sworn,
deposes and states:

1. I am a licensed, practicing attorney in the State of South Carolina having been admitted to the South Carolina Bar on November 12, 1980.
2. I am a partner in the law firm of Ballenger, Barth, Hoefer & Lewis, L.L.P., located in Florence, South Carolina. I have practiced at this firm, including its predecessor firms, since July of 1987.
3. I am in good standing with the South Carolina Bar, the U.S. District Court for South Carolina and the Fourth Circuit Court of Appeals.
4. My practice is a general practice which includes the areas of wills and estates.
5. I had the honor of knowing James M. "Jimmy" Lynch for over twenty years, not only in a professional sense, but also as a friend and client. In those years, I had occasion to appear before Jimmy Lynch as a Florence County Magistrate and to, also, represent him in legal matters as did my law partner Mike Ballenger. I was well acquainted with Jimmy's family structure and either knew personally, or knew of, his children and grandchildren. During these last twenty plus years, I have had the opportunity to have direct and personal knowledge of the mental, physical and emotional state of Jimmy Lynch.
6. On April 17, 2012, I was contacted by Wanda Mouzon who was Jimmy's long-time clerk of court. She advised me of the news that Jimmy had been diagnosed with a brain tumor and would be undergoing treatment for that in the near future. Wanda stated that Judge Lynch had asked her to call me to see if I would prepare



both a "temporary power of attorney" and a "healthcare power of attorney" for him. I had to inquire as to what the term "temporary" was intended to mean and also, who the attorney-in-fact was to be as well as whether the power of attorney would be limited in any fashion.

I then spoke to Jimmy and determined that he wanted to have general power of attorney available to him but that would not be put into effect unless he determined that it was needed. He wanted to appoint two of his daughters, Beth Langley and Wendy Lynch, as his attorneys-in-fact. He also wanted a healthcare power of attorney, naming the same daughters as his agents.

7. I prepared both documents, according to his wishes, and delivered them to him, at his office in Timmonsville, South Carolina, on the afternoon of April 18, 2012.
8. At that meeting, I again explained to Jimmy that the power of attorney was "temporary" only in the sense that he could revoke it at any time prior to his becoming incompetent. I also explained to him that as long as he retained the original in his possession and until he delivered the original document to one of the girls, or submitted it to the Clerk of Court for recording, it would not be effective for them to use. I advised him about the authority that was being granted to Beth and Wendy by virtue of the general power of attorney and explained that it was also considered to be a "durable" power of attorney because of the included language which preserved the powers of the girls to act on his behalf in the event of his later physical or mental disability or incompetence.
9. We then discussed his healthcare power of attorney and the fact that this document only became effective in the event of his future mental incompetence. We discussed, in detail, his desire for a natural death as well as his ability to either



require, or decline life sustaining treatment or nutrition. Although he was to initial only one each of the choices, Jimmy initialed the provision allowing for his agents' discretion but then also initialed the directive to withhold the same. He was aware of this but indicated that, although he was giving his daughters discretion, he wanted them to know how he felt. We also discussed that, according to his instruction, a paragraph allowing him to name alternate agents had been omitted from this form.

10. Both documents were executed on April 18, 2012 by Jimmy Lynch and witnessed by April Pettigrew, Gerald Vause and myself.
11. Once the signing of the documents had been completed, I asked for a copy to be made of each. The originals were then given to Jimmy and I explained that he should provide the healthcare power of attorney to his primary physician to be included in his chart. I further explained that, when he determined that his general power of attorney was needed, he should deliver the same to Wendy and Beth to be recorded with the Clerk of Court. I retained the copies for my file.
12. Although the mood was indeed somber for myself and the witnesses, I found no difference in Jimmy's mental, physical or emotional state than I had observed and had come to expect from my previous years of interaction with Jimmy.
13. I am confident that Jimmy Lynch was fully aware of, and understood, the documents that he was to sign and that he did so freely and voluntarily and of his own volition.
14. On this same occasion, Jimmy asked me if I would be willing to prepare his last will and testament. I agreed and was given a handwritten list of assets. I do not know who prepared the list. As there were a number of people around, Jimmy and



I agreed to talk at a later time for me to determine the exact provisions to be included in his will.

15. On April 25, 2012 Jimmy Lynch and I spoke by telephone about his condition, his medical treatment and, lastly, his will. In that conversation, using the handwritten asset list mentioned above, Jimmy instructed me as to specific devises of certain assets as well as instructions for his residual estate.
16. I then drafted Jimmy's Last Will and Testament according to those instructions.
17. At some point thereafter, I spoke with Jimmy by telephone to clarify an item and also to set an appointment for him to come into the office to execute the will. As I recall, he had some upcoming appointments with a doctor and wasn't sure of the date. As a result, we agreed that we would calendar his appointment for May 10 and another for May 11 in the event that the first date did not work out.
18. I next met with Jimmy on May 11, 2012, in my office. I gave him a copy of the will, which I had prepared, and reviewed the same with him. In that same conversation, we again discussed his assets, children and grandchildren. We again discussed his bequests, the reasons for his specific bequests and the reason for not including his son, Jim, by way of specific bequest.
19. I was fully aware of Jimmy's diagnosis and wanted to be certain that he was aware of what we were undertaking. Because of that, along with the fact that Jimmy was a personal friend, I took substantially longer to talk with him than I would normally spend.
20. I recall that I had misspelled Rebecca's name and had to make that correction.
21. After this was accomplished, and the final form of Jimmy's will had been printed, he and I moved from my office into our conference room in order to accommodate



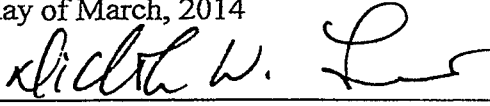
the witnesses. We laughed about my getting to put him under oath and whether Jimmy was indeed over the age of eighteen years and whether he was signing freely and voluntarily. He assured us that he was. He then signed his will in my presence and in the presence of Christie Graves and Ashley Coleman who are, both, still employed by my firm.

22. Jimmy was then given the original of his Last Will and Testament along with a copy of the same to take with him. I retained a copy for my file.
23. Following the completion of our business that day, Jimmy and I returned to my office to chat. When he was ready to leave, he inquired about my bill. I advised him that there would be no charge. He protested but I prevailed. Jimmy's eyes began to tear up and we hugged. I walked with him to our reception area where his daughter, Beth, was waiting. They left together.
24. Sometime, later that same afternoon, Jimmy returned to my office. He had bought two bottles of Irish Whiskey. They were not both the same brand but he explained that the store only had one bottle of the brand he wanted to buy for me so he also purchased a second brand that he thought that I would enjoy.
25. During my discussions of that day with Jimmy, as with all of my other discussions with him relating to his affairs, he was clearly of sound mind, was acutely aware of his mortality, his assets and, most importantly, his family.
26. At no time did I observe any evidence that would cause me to question either his competence or the voluntariness of his actions.
27. Jimmy Lynch's exact estate plans, as directed by him, are memorialized in his Last Will and Testament dated May 11, 2012.
28. I am not aware of any subsequent last will or codicil executed by Jimmy Lynch.



29. It is my firm conviction that, in all our conversations about his will, estate, family, assets, debts and his plan of distribution, Jimmy Lynch was of sound mind, used calm and deliberate reflection and was free from any undue influence.
30. The information contained in this affidavit is true of my knowledge.


Frederick A. Hoefler, II

Sworn to before me this 12th
day of March, 2014

Notary Public for South Carolina
My Commission expires: 1/9/2017



STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

AFFIDAVIT OF CHRISTINA H. GRAVES

PERSONALLY APPEARED BEFORE ME, Christina H. Graves, who being first duly sworn, deposes and says as follows:

1. I am a paralegal and am employed with the law office of Barth, Ballenger & Lewis, LLP, formerly Ballenger, Barth, Hoefer & Lewis, LLP. I have been employed with this firm since November 1998.

2. Our office dealt with Jimmy in a professional manner since he was a Florence County Magistrate for many years. Additionally, I grew up in the town of Timmons ville where Jimmy served as Magistrate Judge and he was well known to me and my family. My grandmother owned a lot and building next door to the Magistrate's office and would often seek Jimmy's advice for different issues.

3. On May 11, 2012, I was asked by Rick Hoefer to be a witness to Jimmy signing the Last Will and Testament that had been prepared for him. When I entered the conference room where Jimmy was seated, he appeared to be in good spirits. He indicated that the Last Will and Testament was prepared pursuant to his wishes, and he and Mr. Hoefer were joking about his being under oath and over the age of eighteen. Jimmy indicated that he was "well over eighteen" and that he was signing voluntarily.

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4. At no time during my interaction with Jimmy that day did I observe anything that would lead me to question his mental competence or whether his actions were completely voluntarily.

FURTHER DEPONENT SAITH NOT!

Christina H. Graves
Christina H. Graves

Sworn to and subscribed before me
this 26th day of June, 2014

Barbara K. Osborne
Notary in and for South Carolina
My Commission Expires: 1/3/2023

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EXHIBIT C

Affidavit of Senator John C. Land, Mark Fulehan, Linda Denham, Joyce Thompson,
Gerald Vause

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

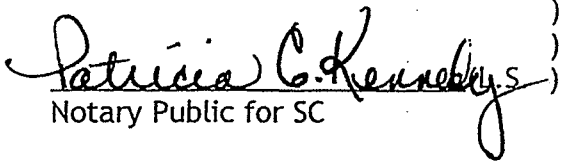
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AFFIDAVIT OF JOHN C. LAND, III

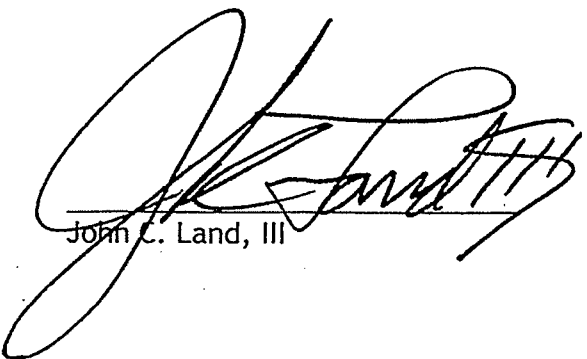
Personally appeared before me John C. Land, III, who being sworn, deposes and states:

1. I live in Manning, South Carolina and am a member in good standing of the South Carolina Bar and served in the South Carolina Senate representing District 36 for 36 years.
2. In my capacity as State Senator, Mr. James Lynch, Jr. was recommended by me to serve as one of the Florence County magistrates and did so with distinction for many years.
3. In April 2012, I received a call from Judge Lynch with a request for a meeting which took place later that month.
4. At that meeting towards the end of April, Judge Lynch arrived at my office with Gerald Vause and Judge Lynch's daughter, Wendy Lynch. We discussed Judge Lynch's retirement as a result of his illness and the possibility of Wendy's being appointed to the magistrate position.
5. It was agreed that in anticipation of his retirement in June of 2012 that I would recommend her appointment to the magistrate position, which I did.
6. Prior to this meeting in April of 2012, I, of course, had known and talked with Judge Lynch on many occasions. In our meeting Judge Lynch was concerned about his health for obvious reasons, but it is my opinion that he was totally competent, quite capable and we interactively discussed all the issues of his judgeship and his health. There is no question in my mind he was mentally competent.

SWORN to before me this 3rd
Day of April 2014


Notary Public for SC

My Comm. Expires: 6/7/22


John C. Land, III

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STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

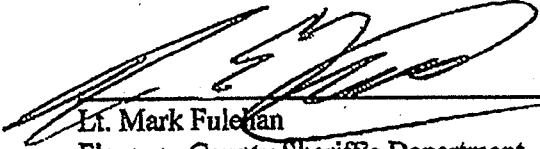
AFFIDAVIT OF
MARK FULEHAN

Personally appeared before me, Mark Fulehan, who after being sworn, deposes, and states:

I am and have been a law enforcement officer for over twenty years and am currently employed as a Lieutenant with the Florence County Sheriff's Department. I have known and worked in Judge Lynch's courtroom for the last twenty years and have had numerous opportunities to observe his demeanor in and out of the courtroom, and to talk with him. He was always a very tough, fair and decisive man even through his illness. He was a man not easily swayed.

I became aware of the diagnosis of his illness in April and continued to appear in his courtroom until his retirement in June of 2012, having the opportunity to observe him and to talk with him in and out of court. In my opinion, his mental powers and demeanor remained the same as before his diagnosis and continued after his retirement.

The last time I visited Judge Lynch was around Halloween of 2012. Though physically ill, I found his demeanor and mental abilities to be unaffected by the illness, though we discussed it, and through that October day, he appeared to be competent in his judgments.


Lt. Mark Fulehan
Florence County Sheriff's Department

Sworn to before me this
_____ day of May, 2014.

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Judy B. Marlow
Notary Public for South Carolina
My commission expires: 2-28-17

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

AFFIDAVIT OF
LINDA DENHAM

Personally appeared before me, Linda Denham, who after being sworn, deposes
and states:

1. I am a citizen and resident of Summerton, South Carolina and am a tax advisor in Kingstree, South Carolina at H & R Block, 407 N Longstreet Street, Kingstree, South Carolina.
2. I knew Mr. Lynch for 52 years, and he was best man at my wedding. I have known his children all their lives.
3. In my accounting practice, I began preparing tax filings and providing tax advisement to James Lynch in 1998, and continued to work in that capacity for James Lynch until the time of his death in 2013. During the intervening 15 years, I had many opportunities to speak and work with Mr. Lynch. I continued my interactions with Mr. Lynch throughout much of his illness. In my capacity as his tax preparer, I became very familiar with his assets, debts, property and revenue flow. He was a very thorough and conscientious businessman, and a decisive person.
4. James Lynch and I had occasion to discuss the issue and details of his intention to make a Will and discussed his Will on April 16, 2012 when he came to pick up tax materials from my office. At that meeting, he explained he had decided on the details of his Will, and said he had split things as equally as he felt proper.
5. In April, 2012, I became aware of the fact that James Lynch had been diagnosed with cancer. During the years I knew Mr. Lynch including after his diagnosis and

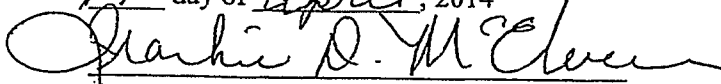
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through his hospitalization and in my interactions with Mr. Lynch in 2012, I saw no evidence that he was anything but fully aware and competent to conduct his personal business. If I had any belief that he was to any degree not competent, I would have discussed with him and/or family members the tax filings in 2012. In addition to my belief of his full competence, I never saw any evidence of, nor did Mr. Lynch ever complain of any pressure or influence by his daughter Wendy Lynch or her son to influence his decisions about his estate or his Will. In my understanding of the Will distribution, he did in the Will what he had planned to do as discussed with me.

6. In November of 2012, while Mr. Lynch was hospitalized at McLeod Hospice, I overheard a conversation between Beth and Becky in which Becky stated that if Mr. Lynch would go ahead and give her the lake house she would move into it.
7. Following our meeting on April 16, 2012, I went and saw Mr. Lynch in November of 2012, while he was hospitalized at McLeod Hospital and then began to visit him 2 or 3 days a week from then until he passed away in 2013.
8. In the period of time from April and into 2013, I was aware that Wendy Lynch had moved home to assist Mr. Lynch and was aware that Mr. Lynch for a period of time in the summer of 2012 had moved in with a friend, Ms. Schaefer. During that entire period, James Lynch never expressed any regret over his Will nor any desire to change the Will, and I am not aware of any reason he could not have amended the Will had he wished to do so.


Linda Denham

Sworn to before me this
17th day of April, 2014



Notary Public for South Carolina

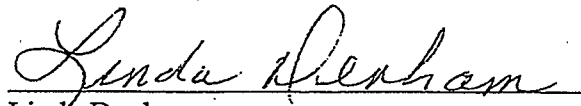
My commission expires: 4-19-2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
_____)

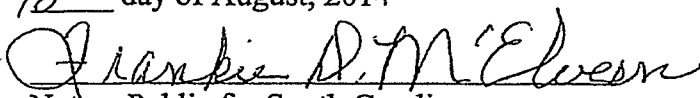
**SECOND AFFIDAVIT OF
LINDA DENHAM**

Personally appeared before me, Linda Denham, who after being sworn, deposes and states:

1. I am a citizen and resident of Summerton, South Carolina and am a tax advisor in Kingstree, South Carolina at H & R Block, 407 N Longstreet Street, Kingstree, South Carolina.
2. I make this my affidavit to correct certain evidence given in my first affidavit, sworn in this matter on 17 April 2014.
3. At No. 6 of the first Affidavit, I discuss how while Mr. Lynch was hospitalized In December of 2012, I overheard a conversation between Beth and Becky in which Becky stated that if Mr. Lynch would go ahead and give her the lake house she would move into it. There is an error with respect to the medical facility. My first affidavit states the conversation took place at McLeod Hospital. The conversation, in fact, took place at the Transitional Care Unit of Carolinas Hospital System.
4. In all other respects the evidence given by me in the first Affidavit is true and accurate.


Linda Denham

Sworn to before me this
18th day of August, 2014


Notary Public for South Carolina
My commission expires: 4-19-2017

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COUNTY OF FLORENCE

1. My husband, son, and I are lifelong residents of Timmonsville, South Carolina and knew James Lynch before and during his illness. We owned several pieces of real estate with him.

2. Before and after he was diagnosed with cancer, we saw Jimmy Lynch, talked with him about business and our rental property, and even saw him at the grocery store. Even after his illness, he continued to take care of the rental property, made arrangements for repairs and such.

3. We never saw a time after his diagnosis that he was not fine mentally and never felt he was incompetent or unable to handle his business.

Joyce Thompson
Joyce Thompson

Columbia, South Carolina
this ____ day of July, 2014.

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STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

**AFFIDAVIT OF
GERALD VAUSE**

Personally appeared before me, Gerald Vause, who after being sworn, deposes and states:

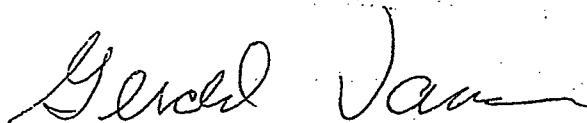
1. I live in Timmons ville, South Carolina and have been a life-long resident.
2. I was a member of Mr. Lynch's court staff for three and a half years and interacted with him constantly during those years. During the period of April through September of 2012 I saw Mr. Lynch almost every day as we were also neighbors.
3. As we lived across the street from Mr. Lynch, I continued to see him frequently even after he retired his judgeship.
4. I was aware that Wendy Lynch had moved in with Mr. Lynch to care for him after he was diagnosed with cancer.
5. I was aware that after that Mr. Lynch briefly moved in with Ms. Quinn Schaefer during a portion of the summer of 2012, before he returned home and resumed residency with Wendy.
6. Sometime between April 12th and 29th, 2012, I drove Wendy and Mr. Lynch to Senator John Land's office where we met with Senator Land to discuss Mr. Lynch's retirement and the possibility of Wendy's appointment to the Magistrate position.
7. Mr. Lynch discussed his Will with me in general terms, saying some people were going to be very surprised his decisions in his Will.
8. I never heard James Lynch speak of, nor did I see any myself, any effort by Wendy Lynch or her son to influence his decision about his Will. I can say that

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James Lynch told me on one occasion that Wendy was the only one of the children to borrow from him and pay him back.

9. While Mr. Lynch was certainly worried about his health for obvious reason, it is my opinion that he was competent and capable and remained so until the last three months or so of his life.

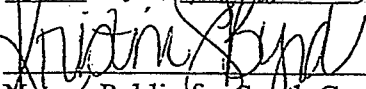
10. I can say with confidence that if Mr. Lynch made his Will in April or May of 2012, he was competent to do so as my contact with him during those months and for months after convince me he was quite competent to make decisions and absolutely free from any influence to do anything from anyone.



Gerald Vause

Sworn to before me this

27 day of March, 2014



Notary Public for South Carolina

My commission expires: August 30, 2020

EXHIBIT D

Affidavits of Jimmy White, Gerald Vause

Deposition of Joe Whitaker

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

**AFFIDAVIT OF
JIMMY WHITE**

Personally appeared before me, Jimmy White, who after being sworn, deposes, and states:

I live in Florence County and knew James Lynch all of my life. I have not been contacted by the Plaintiff or their attorney.

I was married for a time to his daughter, Becky, and during that time developed a great friendship with Mr. Lynch. After I divorced Becky, Mr. Lynch and I maintained our close friendship, even to the point of his introducing me to friends by telling them he "lost a daughter but gained a son-in-law".

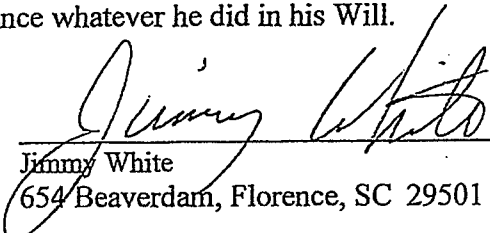
Both my third wife and I were close to James Lynch and saw him frequently.

In April we knew he had been diagnosed with cancer, and he seemed physically and mentally unaffected during April and May 2012 and for some months thereafter. In May and June 2012, he continued his duties as judge, even riding his motorcycle to work some days.

I knew he lived with a friend named Quinn Shafer for a part of that summer and he was the same mentally as always. I have no doubt of his being competent in May of 2012.

Only in the very late stages of the disease did he seem to lose his mental abilities, just before his death in February 2013.

James Lynch was a man who could not be made to do anything he did not want to and I never saw anyone try to influence whatever he did in his Will.


Jimmy White

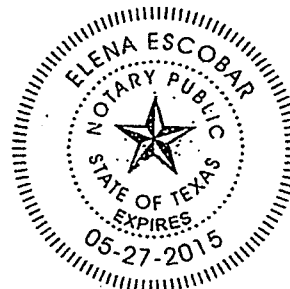
654 Beaverdam, Florence, SC 29501

Sworn to before me this
11th day of June, 2014.



Notary Public for Texas

My commission expires: 05-27-2015



ROA
000076

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

)
)
)
)
**AFFIDAVIT OF
GERALD VAUSE**

Personally appeared before me, Gerald Vause, who after being sworn, deposes and states:

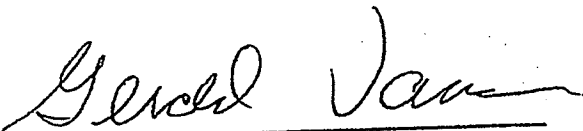
1. I live in Timmonsville, South Carolina and have been a life-long resident.
2. I was a member of Mr. Lynch's court staff for three and a half years and interacted with him constantly during those years. During the period of April through September of 2012 I saw Mr. Lynch almost every day as we were also neighbors.
3. As we lived across the street from Mr. Lynch, I continued to see him frequently even after he retired his judgeship.
4. I was aware that Wendy Lynch had moved in with Mr. Lynch to care for him after he was diagnosed with cancer.
5. I was aware that after that Mr. Lynch briefly moved in with Ms. Quinn Schaefer during a portion of the summer of 2012, before he returned home and resumed residency with Wendy.
6. Sometime between April 12th and 29th, 2012, I drove Wendy and Mr. Lynch to Senator John Land's office where we met with Senator Land to discuss Mr. Lynch's retirement and the possibility of Wendy's appointment to the Magistrate position.
7. Mr. Lynch discussed his Will with me in general terms, saying some people were going to be very surprised his decisions in his Will.
8. I never heard James Lynch speak of, nor did I see any myself, any effort by Wendy Lynch or her son to influence his decision about his Will. I can say that

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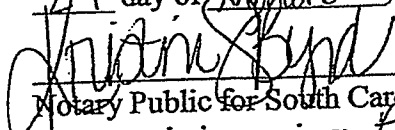
James Lynch told me on one occasion that Wendy was the only one of the children to borrow from him and pay him back.

9. While Mr. Lynch was certainly worried about his health for obvious reason, it is my opinion that he was competent and capable and remained so until the last three months or so of his life.

10. I can say with confidence that if Mr. Lynch made his Will in April or May of 2012, he was competent to do so as my contact with him during those months and for months after convince me he was quite competent to make decisions and absolutely free from any influence to do anything from anyone.


Gerald Vause

Sworn to before me this
27 day of March, 2014


Notary Public for South Carolina
My commission expires: August 30, 2020

State of South Carolina

In Common Pleas Court

County of Florence

Elizabeth J. Langley,
Plaintiff,

 COPY

V.

2013-CP-01408

Wendy J. Lynch, Rebecca M. Lynch,
James M. Lynch, II, Jimmy White,
and S. Porter Stewart, II, as Personal
Representative of the Estate of James M. Lynch,
Defendants.

Deposition of: Joe Whitaker

Location: 509 South Dargan Street

Florence, South Carolina

Date: Tuesday, July 1, 2014

Time: 11:23 a.m. - 1:33 p.m.

Court Reporter: April Llewellyn

The deposition is taken pursuant to notice and/or
agreement, in the above-entitled cause pending in-
the above-named court and pursuant to the South
Carolina rules of civil procedure.

*Argument time
Lane
+ Rebecca
Myatt, etc
7-1-83*

Q & A COURT REPORTING SERVICES
Post Office Box 4563 (29502)
273 West Evans St. (29501)
Florence, South Carolina
Telephone Number: (843) 673-9845
E-mail: info@qacourtreporting.com
Visit: www.qacourtreporting.com

ROA
000079

1 A -- he always had -- he had a problem
2 because no--- they didn't want nobody to be around
3 him. I mean, you know, there was Jill and then
4 there was her and then other one. And he didn't
5 never -- he didn't -- he didn't never have but
6 like three girlfriends that I know of, you know.

7 Q And Ms. Lynch had a problem with every
8 one of them.

9 A Apparently.

10 MS. WHITE: Thank you. No further
11 questions.

12 F U R T H E R E X A M I N A T I O N
13 BY MR. MCCULLOCH:

14 Q Mr. Whitaker, just a couple of
15 follow-ups. You knew that he went to live with
16 Ms. Shaffer. And no one stopped him from doing
17 that. And I'm talking about in the summer of
18 2012, correct?

19 A That's correct.

20 Q That wasn't a -- was that a delusional
21 decision of his, or a decision he felt was one he
22 needed to make?

23 A No, he made -- he -- he made that
24 decision because he needed somebody there with
25 him, and she was going to take care of him.

ROA
000080

EXHIBIT E

Affidavits of Dr. William Naso, Dr. Stephen Dersch, Dr. Leslie E. Barnes-Young, Dr.
Tulika Ranjan, Dr. Sreenivas Rao

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

**AFFIDAVIT OF
WILLIAM NASO**

Personally appeared before me, William Naso, who after being sworn, deposes, and states:

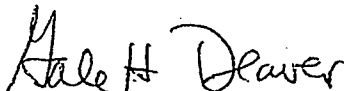
I am a physician practicing primarily in Florence County, South Carolina. I was one of several treating physicians for Mr. James M. Lynch, who I saw in April of 2012 with certain medical issues determined to be caused by brain tumors. During his office visit on April 17, 2012, I conducted a physical and cognitive evaluation and made the findings set forth on the attached medical records, including "The patient is awake, alert, oriented to person, place, time and situation. The patient's short-term and long-term memory appear preserved. Attention span and concentration are full. Speech is fluent".

Based upon my treatment and interaction with Mr. James Lynch, and my training and experience as a medical doctor, I believe James Lynch on April 17, 2012 was quite competent to make important decisions and I am of this opinion to a reasonable degree of medical certainty to the extent of my contact with him.



Dr. William Naso
Florence Neurosurgery and Spine P.C.
1204 E. Cheves St.
Florence, SC 29506

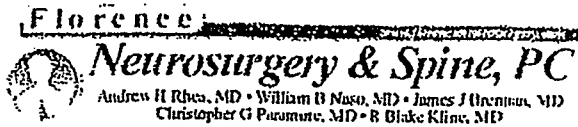
Sworn to before me this
30 day of July 2014.



Notary Public for South Carolina

My commission expires: 12/20/2015

1876 ROA
000082



1204 E. Cheves Street
Florence, SC 29506
phone: (843) 673-0122
fax: (843) 673-0227

Patient Name: JAMES LYNCH (48602E)

DOB: 09/30/1941

Date of Service: 04/17/2012

History of Present Illness

The patient is a 70 year old male who presents with a complaint of left sided weakness. He continues to have left-sided weakness and difficulty with coordination. He had seen Dr. Rhea who had recommended a stereotactic biopsy. He wanted a second neurosurgical opinion. He denies right-sided weakness. He denies headache. He denies seizure activity. He denies bowel or bladder incontinence.

History

Allergy

No Known Drug Allergies (04/13/2012)

Past Medical

Unremarkable

Other Medical History

BRAIN TUMOR (239.6)

Social

Marital status

Most recent primary occupation Magistrate Judge

Tobacco use Quit in 1965; smoked for 5 to 6 years.

Alcohol use

Medications

Multivitamin (Oral) Active - Hx Entry.

Meclizine HCl (12.5MG Tablet Oral) Active - Hx Entry.

Family

No pertinent family history

Past Surgical

unremarkable

Diagnostic Studies

MRI Brain I reviewed the patient's brain MRI. There are multiple enhancing lesions throughout the brain. The two most significant lesions are 1) a left posterior frontal area near the corpus callosum and 2) one on the right side a bit anterior to this I think in the right parasagittal posterior frontal premotor cortex which is more superficial. The one on the right side measures about 2.3 x 1 cm. The one on the left side which is deeper measures 1.6 x 1.3 cm. The lesion on the right side does seem to extend down toward the corpus callosum.

Review of Systems

Respiratory: Not Present- Shortness of Breath.

Cardiovascular: Not Present- Chest Pain.

Neurological: Not Present- Incontinence Stool and Incontinence Urine.

Please see the health history questionnaire for full details of the patient's review of systems, past medical history, and family and social history. The patient is to follow-up with their family physician for any positive review of systems.

Vitals

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Physical Exam

General: Well-developed, well-nourished 70-year-old white male

Neck: Supple with no carotid bruits.

Chest: Clear to auscultation.

CV: The heart has a regular rate and rhythm.

NEURO/MUSCULOSKELETAL EXAM

Cognitive: The patient is awake, alert, oriented to person, place, time, and situation. The patient's short-term and long-term memory appear preserved. Attention span and concentration are full. Speech is fluent.

Cranial nerves: Pupils are equal and reactive. Extraocular movements are intact. The face is symmetric. The tongue is midline. Uvula and palate elevate normally. Shoulder shrug is 5/5.

Motor exam: Both upper and lower extremities have normal bulk and tone with 5/5 strength throughout, including the right grip biceps, triceps, deltoids, iliopsoas, quadriceps, hamstrings, gastrocnemius, and anterior tibialis motor groups with good range of motion throughout. He has a relative left hemiparesis with 4/5 strength in the left upper and lower extremities. Although he can get up onto the examination table without assistance he does have some difficulty. While sitting he leans toward the left side.

Deep tendon reflexes: 1+/4 throughout

Pathological reflexes: There are no Hoffman signs. There is no clonus. He does appear to have a Babinski sign on the left.

Coordination: No gross dysmetria with finger-to-nose testing.

Gait: No ataxia but he has weakness in the left lower extremity and he uses a cane.

Assessment & Plan**BRAIN TUMOR (239.6)****Current Plans:**

- Right Sided Stereotactic Biopsy of Brain Tumor Routine
- The patient's diagnosis, prognosis, and treatment options were all discussed at length. The risks of infection, bleeding, neurologic injury, paralysis, stroke, coma, and death were all discussed. The risks of unforeseen medical complications both cardiac and pulmonary were also discussed. The option of obtaining additional neurosurgical opinion was offered. The patient seemed to understand and agreed to proceed. We specifically discussed in detail risk of hemorrhage from a biopsy and death. We discussed the risk of a nondiagnostic biopsy.

LEFT HEMIPARESIS (342.90)**Current Plans:**

I would agree with Dr. Rhea's recommendation for a stereotactic biopsy. Given the patient's left hemiparesis and its more anterior and superficial location I would favor that we biopsy the right posterior frontal parasagittal lesion. I discussed the risk of surgery in detail with the patient and his 3 daughters. We have reviewed the MRI as well. We discussed staying off of aspirin. He has not been on chronic aspirin therapy although he has had a few over the weekend. I think it would be safe to proceed. I do think that he needs a biopsy to determine what this represents so that treatment could begin as soon as possible. Certainly the diagnostic possibilities include lymphoma and multifocal glioma.

CC Jeffrey Stephens M.D.

W. B. Naso

1878

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Electronically signed by WILLIAM B NASO MD 04/17/2012

JAMES LYNCH

Patient #: 48602E

DOB: 09/30/1941 (72 year)

Monday, December 9, 2013

Page 12

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

**AFFIDAVIT OF
STEPHEN A. DERSCH**

Personally appeared before me, Stephen A. Dersch, who after being sworn, deposes, and states:

I am a physician practicing primarily in Florence County, South Carolina. I was one of several treating physicians for Mr. James M. Lynch, who was admitted to the Transitional Care Unit of Carolinas Hospital System in December of 2012. During that admission, Mr. Lynch announced his decision to leave the skilled nursing facility and return home. Family members were divided in their opinion of whether returning home or remaining in the hospital was a good decision and some attempted to persuade him to remain. For this reason, I determined to request a competence evaluation which was performed by Dr. Barnes-Young. The result of that evaluation as documented in medical records dictated by me at the time, states:

Dr. Barnes-Young evaluated him today after reviewing the psychiatry notes from Duke. She stated quite clearly in her note that he is competent to make these sorts of medical decisions for himself, and sees no reason, assuming he is medically appropriate, that he cannot and should not be discharged home if that is what he so desires. ... Both she and I consider him competent to make basic medical decisions for himself...it is not an unreasonable desire given his current medical condition and prognosis which he seemed to understand reasonably well. ...We definitely consider him competent to make these sorts of decisions.

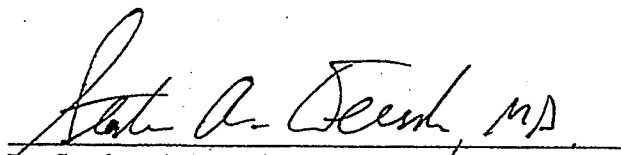
In light of the split of opinion of family members on remaining or leaving the hospital, I believe Mr. Lynch was competent and considered the opinions of family

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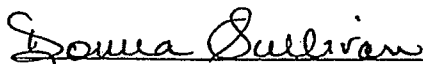
members, resisted the efforts of family members who wished for him to remain in the skilled nursing facility, and made a competent decision.

Based upon my treatment and interaction with Mr. James Lynch, and my training and experience as a medical doctor, I believe James Lynch was competent to make basic medical decisions and I am of this opinion to a reasonable degree of medical certainty.



Dr. Stephen A. Dersch
1925 Hoffmeyer Road
Florence, South Carolina 29501

Sworn to before me this
7 day of ~~July~~, 2014.
August



Notary Public for South Carolina

My commission expires: November 29, 2016

Extremities: No lower extremity edema. He is rather rigid, particularly in his lower extremities and also rigid on truncal posture but overall medically he looks stable. He frankly looks better than he did Friday when I evaluated him.

Neurologic: He is alert and oriented x3. He is really quite lucid. He does require some increased effort with thought processes, but he is clearly aware what is going on and able to clearly and lucidly

Page 1 of 2

NAME: JAMES M LYNCHMRN: 625897
ACCOUNT#: 3429208

DOB: 09/30/1941

ADM DATE: 12/06/2012
DIS DATE:

express his desires.

ASSESSMENT: 71-year-old white male with a brain tumor, some debilitation, seizure disorder, etc. Also with marked agitation.

PLAN:

1. Debilitation: We will continue PT and OT until he goes home, but we anticipate sending him home tomorrow with family once we get home health arranged and so on.
2. Astrocytoma: He can follow up with Oncology as an outpatient for chemotherapy. Continue dexamethasone.
3. Seizures: Continue his Keppra and his Vimpat. No new seizures.
4. Agitation: We are going to increase his Risperdal to 1 mg q.h.s. and also have another 0.5 mg as needed 2 hours after the initial dose. Anticipate discharging him tomorrow morning. We have already contacted his _____ services. They feel this is primarily an inter-family squabble, which I would rather agree with that opinion. Home Health will be looking for any signs of potential harm to the patient though I think it is rather unlikely.

I did speak with the patient's daughter, "see chart", on the phone regarding all this. We did try to talk with "see chart" who is the "opposing" daughter who has in general desired the patient to stay here. The nurse tried to get on the phone, but she was not picking up.

Stephen A. Dersch, MD

This job has been electronically signed by: Stephen A Dersch MD
on 02/06/2013 at 4:13:00 PM (EST) Verification:
6143221020130206161300 D

Print CC:

Fax CC:

D Date/Time: 12/11/2012 06:08 PM ET
T Date/Time: 12/11/2012 07:26 PM ET
R Date/Time:
S Job #: CARHS61432210

000 02

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STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

AFFIDAVIT OF

DR. LESLIE E. BARNES-YOUNG

Personally appeared before me, Dr. Leslie E. Barnes-Young, who after being sworn, deposes and states:

1. I am a citizen and resident of Darlington, South Carolina and am employed currently as a psychologist in private practice and was formerly employed as a psychologist at Carolina Hospital.
2. I was requested by Dr. Stephen Dersch in the Fall of 2012 to perform a competency evaluation on a patient at McLeod Hospital by the name of James Lynch. It was my understanding at the time of the request that Mr. Lynch was ill with terminal cancer and desired to be released from the hospital to move home to be cared for by family. This was in a sense against physician advice, and the "competence evaluation" was to document Mr. Lynch's ability to make important decision about his medical affairs.
3. Consistent with the assignment, I conducted an evaluation of Mr. Lynch, utilizing standard methods of psychological evaluation, and it was my opinion, memorialized in medical records that Mr. Lynch was quite competent, to a reasonable degree of medical certainty, to make medical decision for and by himself, including the decision to leave the hospital. This was based on his medical history at the time and our discussions. I saw no evidence that Mr. Lynch was being influenced in his decision-making process, nor did I believe that his physical or mental state would have made him mentally susceptible to undue influence to do anything against his judgment.

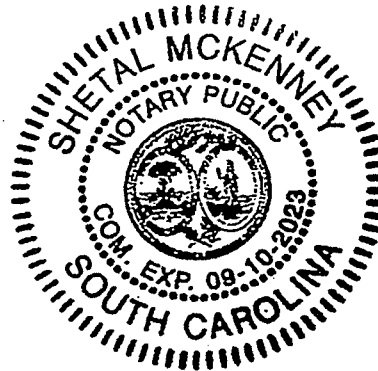
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4. The "delirium" referenced in the attached medical note refers to
his presentation on admission, and was discounted because
it had resolved such that the patient was oriented to
time, place, location and reason for hospitalization.

Dr. Leslie Barnes-Young
Dr. Leslie E. Barnes-Young

Sworn to before me this
4th day of April, 2014

Shetal Mckenney
Notary Public for South Carolina
My commission expires: 09-10-2023



From:

03/03/2014 17:42

#056 P.007/007

CAROLINAS HOSPITAL SYSTEM
South Carolina

REQUEST FOR CONSULTATION

Consultation to:
(Service or Physician)

Dr. Bama-Ying

Requested by:
(Service or Physician)

Dr. Dersch

Date of Request: *12/10/12*

Time: *1445*

Check: Consultation only ()

Consult and Follow ☒

Accept for Transfer ()

Diagnosis and Information Desired:

Competency?

309.28

adjustment impaired mood

Ward Clerk Telephoned Consultant, His/Her Office, or Answering Service on

Time:

REPORT OF CONSULTANT (Please sign your name, date and time to each consultation)

He presents w/ a recent hx of delirium, now resolved. Today, he is alert, oriented x3. He requires some additional time for processing, problem-solving & reasoning, but appears perfectly competent to make decisions on his own behalf at this time. He is anxious to go home. Mood is otherwise stable & appropriate now.

Recommend: d/c home when medically stable w/ family training on signs & symptoms of delirium & the aging brain.

Signature of Consultant:

UBJ, PhD

Service:

U

Time:

9

Date: *12.11.12*

FC-012062

REQUEST FOR CONSULTATION

WHITE - MEDICAL RECORD

YELLOW - CONSULTING PHYSICIAN

ROA
000090

CAROLINAS HOSPITAL SYSTEM
LYNCH JAMES M
09/30/1941 71 M SNF MRH:000625897
DERSCHE STEPHEN ANDRE DOS:12/06/12
PATH: 3429208

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

**AFFIDAVIT OF
SREENIVAS V. RAO**

Personally appeared before me, Sreenivas V. Rao, who after being sworn, deposes, and states:

I am a physician practicing primarily in Florence County, South Carolina. I was one of several treating physicians for Mr. James M. Lynch, who was examined by me in April and continued to treat him throughout 2012. My examination as evidenced on the attached letter dated April 24, 2012 I found him to be alert and competent and discussed his medical options and treatment with him and family members on that occasion.

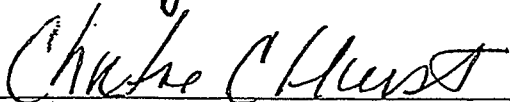
Based upon my treatment and interaction with Mr. James Lynch in 2012, and my training and experience as a medical doctor, I believe James Lynch was quite competent to make important decisions and I am of this opinion to a reasonable degree of medical certainty to the extent of my contact with him.



Dr. Sreenivas V. Rao
401 E. Cheves Street, Florence, South Carolina 29506

Sworn to before me this
11th day of ~~July~~ 2014.

Aug



Notary Public for South Carolina

My commission expires: 3/18-2023

ROA
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001811

Neurological Exam:

Mental Status: X Awake, alert, and oriented. He can point to the ceiling and the door. He can name his three daughters. He knows it is 05/02/12. He knows the President and Vice-President as Obama and Biden, respectively. He can name 3/3 objects without difficulty, recall 3/3 immediately, and in twenty-five minutes, as well. He has difficulty with serial sevens. He can spell the word WORLD forwards. He cannot spell it backwards. He can repeat "no ifs, ands, or buts".
Speech: 0

Cranial Nerves:

Visual Fields (II): 0 Intact.
OMs (III, IV, VI): 0 Intact with no obvious nystagmus.
Pupils (III)/fundi (papilledema): 0 Pupils are round and reactive.
Face (V, VII): 0 Sensory and motor to the face are intact.
Hearing (VIII): 0 Grossly intact.
Gag, Swallow (IX): 0
Palate (X): 0
Neck Strength (XI): 0 Shoulder shrug is intact.
Tongue (XII): 0 Midline without fasciculations.

Motor Strength:

0-no contraction, 1-flicker, 2-w/o gravity,
3-against gravity, 4-against resistance, 5-full strength

5/5 strength on the right

4/5 strength on the left

Tone: 0

Pronator Drift: X Left-sided drift.

Deep Tendon Reflexes:

0-no response, 1-diminished, 2-average, 3-brisker than average, 4-hyperactive

+2 and symmetrical.

Sensory:

Light touch: X Diminished on the left.

Vibratory: X Diminished on the left.

Proprioception: 0

Coordination:

Finger to nose: X Done with some slight difficulty with the left upper extremity.

Finger to finger: X Done with some slight difficulty with the left upper extremity.

Rapid alternating movements: X Done with some slight difficulty with the left upper extremity.

Tandem Walking: X Unable to do.

Romberg: 0

Gait: X Slightly slowed and slightly ataxic.

Laboratory Studies:

Patient: LYNCH, JAMES XA1420

GENLAB Hematology: Final 05/02/2012 13:17 Acc# 001212307153 Acct# 6259RY
AUTO BLOOD CT WITH AUTO DIFF

HEMOGLOBIN

*17.4

g/dL

Reference
13.7-17.3

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STATE OF NORTH CAROLINA

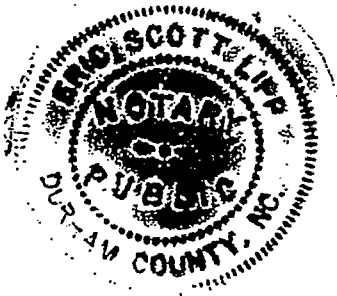
COUNTY OF WAKE

AFFIDAVIT OF
TULIKA RANJAN

Personally appeared before me, Tulika Ranjan, who after being sworn, deposes, and states:

I am a physician practicing primarily in Wake County, North Carolina. I was one of several treating physicians for Mr. James M. Lynch, and saw him in May of 2012. During that examination I reviewed his medical history and conducted a physical and mental examination. As stated on the attached page of my medical records, I found him on May 2, 2012 to be awake, alert and oriented.

Based upon my treatment and interaction with Mr. James Lynch on May 2, 2012, and my training and experience as a medical doctor, I believe James Lynch was quite competent to make important decisions and I am of this opinion to a reasonable degree of medical certainty to the extent of my contact with him.



Tulika Ranjan

Dr. Tulika Ranjan
Duke Cancer Ctr Level 3, Clinic 3-1
20 Duke Medicine Circle
Durham, NC 27710-2000

Sworn to before me this
31 day of July, 2014.

Eric Scott Lipp

Notary Public for North Carolina
My commission expires: 9/15/15

1879 ROA
000093

Neurological Exam:

Mental Status: X Awake, alert, and oriented. He can point to the ceiling and the floor. He can name his three daughters. He knows it is 05/02/12. He knows the President and Vice-President as Obama and Biden, respectively. He can name 3/3 objects without difficulty, recall 3/3 immediately, and in twenty-five minutes, as well. He has difficulty with serial sevens. He can spell the word WORLD forwards. He cannot spell it backwards. He can repeat "no ifs, ands, or buts".
Speech: 0

Cranial Nerves:

Visual Fields (II): 0 Intact.
EOMs (III, IV, VI): 0 Intact with no obvious nystagmus.
Pupils (III)/fundus (papilledema): 0 Pupils are round and reactive.
Face (V, VII): 0 Sensory and motor to the face are intact.
Hearing (VIII): 0 Grossly intact.
Gag, Swallow (IX): 0
Palate (X): 0
Neck Strength (XI): 0 Shoulder shrug is intact.
Tongue (XII): 0 Midline without fasciculations.

Motor Strength:

0-no contraction, 1-flicker, 2-w/o gravity,
3-against gravity, 4-against resistance, 5-full strength

5/5 strength on the right
4/5 strength on the left

Tone: 0

Pronator Drift: X Left-sided drift.

Deep Tendon Reflexes:

0-no response, 1-diminished, 2-average, 3-brisker than average, 4-hyperactive

+2 and symmetrical.

Sensory:

Light touch: X Diminished on the left.

Vibratory: X Diminished on the left.

Proprioception: 0

Coordination:

Finger to nose: X Done with some slight difficulty with the left upper extremity.

Finger to finger: X Done with some slight difficulty with the left upper extremity.

Rapid alternating movements: X Done with some slight difficulty with the left upper extremity.

Tandem Walking: X Unable to do.

Romberg: 0

Gait: X Slightly slowed and slightly ataxic.

Laboratory Studies:

Patient: LYNCH, JAMES XA1420

GENLAE Hematology: Final 05/02/2012 13:17 Acc# 001212307153 Acct# 6259RY
AUTO FLOOD CT WITH AUTO DIFF

HEMOGLOBIN

*17.4

g/dL

Reference
13.7-17.3

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APPENDIX 1

BRIEF ON THE COMPETENCE OF JAMES LYNCH ON MAY 11, 2012 TO MAKE A WILL

A

In her complaint, Plaintiff asserts Judge Lynch was incompetent to make his will on May 11, 2012. The burden of proof is upon the contestant to show a lack of mental capacity. This principle was more fully stated in Havird v. Schissell, 252 S.C. 404, 408, 166 S.E.2d 801, 803 (1969):

It is the settled law of this state that when the formal execution of a will is admitted or proved, a prima facie case in favor of the will is made out, and that, as a general rule, the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation, and such burden remains upon the contestants throughout.

No one here challenges the form of the will, only its substance.

The relevant standard for capacity to make a will is a contractual standard, i.e. that at the execution of the will the testator "had the mental capacity to understand or comprehend the subject of the contract, its nature, and its probable consequences." Dubose v. Kell, 90 S.C. 196, 71 S.E.2d 371 (1911) quoted in MacAulay v. Wachovia Bank of South Carolina, N.A., 351 S.C. 287, 569 S.E.2d 371 (S.C. App. 2002).

South Carolina follows the general rule which permits a non-expert to "give his opinion concerning the mental condition of a testator when a proper foundation for such testimony is laid by proof of opportunity on his part to observe the testator and of the facts and circumstances upon which the opinion reasonably may be based." 79 Am. Jur. (2d), 290 Wills, Section 146, p. 380; Garbade v. Garbade, 260 S.C. 58, 194 S.E.2d 186 (1973).

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Importantly, the mere fact that the testator disposed of property contrary to what others usually consider fair is not sufficient to declare a will void. This principle is thus stated in Matheson v. Matheson, 125 S.C. 165, 171, 118 S.E. 312, 313: "The right to make a will carries with it the right to disregard what the world considers a fair disposition of property." "That a will is unjust to one's relations is no legal reason that it should be considered an irrational act. The law puts no restrictions upon a man's right to dispose of his property in any way his partialities, or pride, or caprice may prompt him'." Helms v. Ross, 268 S.C. 284, 233 S.E.2d 98, 100 (1977)(citing Lee's Heirs v. Lee's Executors, 4 McCord 183, 17 Am. Dec. 722). The party alleging incompetence bears the burden of proving incapacity at the time of the transaction by a preponderance of the evidence. Id.; MacAulay, 569 S.E.2d at 376.

The capacity of the testator to make a will is tested by whether he (1) knew his estate, (2) the objects of his affections, and (3) to whom he wished to give his property. Sumter Trust Company v. Holman, 134 S.C. 412, 132 S.E. 811 (1926). Upon proof of due execution of the will, the presumption arises that the testator knew its contents. Estate of O'Neill, 259 S.C. 55, 190, S.E.2d 754 (1972).

B

Judge Lynch clearly knew his estate. He personally handled his business affairs until well past the will execution. No one to this point contends that Judge Lynch did not know his estate, and the complexity of the allocations and specific bequests made in the will demonstrate his lucid awareness of his assets. Indeed, as the affidavits illustrate, Judge Lynch's will fulfilled his stated prophecy to leave his home to Defendant Wendy Lynch (and her son). Although technically inadmissible under the Dead Man statute, the

dispensations under the will are consistent with comments to friends during his lifetime (affidavits of Jimmie Lee Hampton, Dennis Hill, Linda Denham, **Exhibits A and C**). The will was executed within the privacy and confines of his attorney's office and duly witnessed by the required two witnesses. As set forth in the Affidavits of the will attorney and one of the witnesses, Ms. Graves, Judge Lynch was of sound mind and capacity to make his will and there was no evidence of undue influence on him by anyone. **Exhibit B.**

C

Judge Lynch knew the "objects of his affection." During his lifetime, he consistently made disbursements to his daughters, son, and certain grandchildren by gifts of cash and by designation as beneficiaries of life insurance or mutual funds.

He was well aware of the mental illness of his son, James, made certain inter vivos arrangements for him, and at the time of the will execution specifically and judiciously excluded James from the will disbursements so as not to jeopardize the government medical benefits he knew James would need in the future. The disposition of his estate in the will demonstrates recognition of his loved ones, and valid and thoughtful disbursements as Judge Lynch intended. All of this is clearly demonstrated by the affidavit of attorney Rick Hoefer, **Exhibit B.**

The consistent, repetitive theme from the cases cited is that the role of the attorney who drew and supervised the execution of the will is a core factor to be applied. Only if there is evidence "unmistakably and convincingly" to the contrary can that core factor be bypassed. There are many good and sufficient reasons for this legal application, but only one reason need be addressed now. When a testator retains an attorney to

prepare a will for him, the role of the attorney is in fact broader than merely drafting and overseeing the signing of documents. The attorney must be convinced that the testator's act is voluntary and that the testator knows what he is doing. Otherwise, the attorney has done a disservice to the client. Moreover, the attorney will have violated his ethical and moral duty to the client and to the legal justice system. The role of the attorney continues beyond his preparation of a will and supervising its execution. Not only must the preparation be in conformity with the instructions of the client, but the execution must be in compliance with the requisite law.

Implicit in the attorney's role is his affirmation that the testator has the capacity to execute a will and that he did so voluntarily. This obligation of the attorney does not lessen upon the testator's death. The attorney's legal, ethical and moral obligation may then become the sole lifeline to keep the will viable and insulate it from attack by bitter and disappointed relatives. This is why the Court makes the attorney's role a core factor in these cases. The testator has no opportunity to come into court to uphold his wishes. The testator can prove his case only by what he did before he died and before his will became effective (by reason of the event of his death). The method by which this occurs is the process of showing that the attorney was convinced that the will was the voluntary act of the testator, who had the mental capacity to execute the will, and that the will reflected the directions of the testator and was properly executed.

The effect of our appellate court decisions is to establish an unyielding principle that accusation and innuendo by a parade of witnesses (or single witness) who are disappointed with the testator's disposition of his earthly assets will not be permitted - absent a violation of some applicable legal principle - to override the testator's desires

which are solemnly formalized in a written, signed, witnessed and notarized document. Were this not so, every will would be subject to what is in effect a collateral attack upon one now deceased who cannot defend himself. It is worth observing that this consistent theme is not one in ancient and stale decisions, but is one that is current and authored by courts consistently. Mock v. Dowling, 266 S.C. 274, 222 S.E.2d 773 (1976); Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982); Todd v. Woodard, 297 S.C. 264, 376 S.E.2d 276 (1989).

D

Everyone who knew Judge Lynch was in accord that he made his own decisions and was in life a forceful and decisive individual. *See Exhibits A-E*. He would listen to people but make up his own mind. No one controlled him. Judge Lynch knew how he wanted his estate to be divided and accomplished his intentions through his will with clarity and direction to a competent lawyer who by virtue of his past relationship was in a superior position to judge the testator's competence to make the will. The will reflected Judge Lynch's desire and wishes - not someone else's. *Exhibit B*. As such, Summary Judgment should be granted.

APPENDIX 2

BRIEF ON LACK OF EVIDENCE OF UNDUE INFLUENCE IN THE MAKING OF THE WILL

A

There is a total absence of any evidence or witnesses offered by the Plaintiff during discovery to demonstrate the will at issue was the product of undue influence on Judge Lynch during the making and execution of his will on May 11, 2012. The evidence leads only to a conclusion of the validity of the will and the absence of undue influence. Judge Lynch's will reflects his thoughtful decisions about the disposition of this estate, implemented by his personal attorney, selected by him. His attorney, Rick Hoefer, attested that he prepared the will in conformity with Mr. Lynch's directions. The drafting and executed will was in keeping with the instructions and desires of Judge Lynch, and reviewed carefully by Judge Lynch on May 11, 2012. **Exhibit B.**

On May 11, 2012, when the will was executed in Florence, neither the Plaintiff nor Defendant were present at the time of its execution. Judge Lynch was delivered to the lawyer's office by Defendant Wendy Lynch, who left immediately, and thereafter Judge Lynch was picked up by Defendant Elizabeth Langley after execution and delivered to his home. No testimony or other evidence exists that Defendant was present or participated in any way in the execution of these documents. To reach any different factual conclusion one would first have to deliberately eliminate the un-contradicted sworn testimony of Judge Lynch's personal attorney, Rick Hoefer, as to the formulation and circumstances of the will execution. **Exhibit B.**

The one substantial factual circumstance that moots any issue of undue influence is that following execution on May 11, 2012, it is uncontroverted that Judge Lynch had ongoing ample opportunity to revise his will had he desired to do so. These “opportunities” to seek revision of his will during the 274 days from will execution to his death including the 70 day period when he lived with a female friend, his many visits with friends, his attendance at work – all in the absence of those parties of interest in the will. Case after case recited by the South Carolina Supreme Court and the South Carolina Court of Appeals have established with clarity and repetition that where the opportunity exists to revise a document which is suspected to be the result of undue influence, and the maker of the document does not do so, the undue influence is destroyed as a matter of law.

B

In Smith v. Whetstone, 209 S.C. 78, 39 S.E.2d 127 (1946), a will was executed in March 1943, a codicil was executed in July 1943, and the testator died in 1944. He left more of his property to a daughter and her son who lived with him than he did to his other sons and daughters. The Probate Court and the Circuit Court held that there was undue influence as to the codicil, but the Supreme Court reversed saying that a directed verdict should have been granted.

[W]here the Testator has had the unhampered opportunity to revoke his will or codicil subsequent to the operation of an undue influence upon him, but makes no changes in it, the Court as a general rule considers the effect of the testimony bearing upon undue influence in a large measure destroyed. (Emphasis added)

Id., 39 S.E.2d at 133.

In Mock v. Dowling, 266 S.C. 274, 222 S.E.2d 773 (1976), the testatrix had two daughters, Patricia and Betty. Her will left one-half of her estate to Patricia and the other half to her executors in trust with the income therefrom to be paid to Betty and the corpus to be paid to Betty's children at her death or when the youngest child reached age thirty. Betty challenged the will, alleging undue influence by Patricia and Patricia's husband. The facts were stated to be that:

The testatrix had been in poor health for years, but her condition became acute months prior to her death and rapidly declined until her death. The testatrix could not get around easily by herself. She fell asleep at any time, even at work at the nursery and her mind wandered in conversations. Also, Patricia Smith spent a great deal of time with her and the husband of Patricia Smith was the financial advisor of the testatrix . . .

It is uncontradicted that the will was prepared by a reputable, competent attorney, who was previously unknown by the testatrix. Moreover, the testimony reveals that, obedient to the wishes of the testatrix, the attorney arranged to interview, and did interview, the testatrix, relative to her will, on occasions, alone at his office. He testified that she was precise, rational and decisive in answering questions in regard to her family, her property and its disposition . . .

It is elementary that the statutory right of a competent person to dispose of her property as she wishes, may not be thwarted by disappointed relatives or by one who thinks the testatrix used bad judgment or was misled.

The fact that the testator gave one daughter one-half of her property in fee while leaving the other daughter's share in trust, as may have been urged upon her, does not invalidate the will; this would not constitute undue influence.

Id.

The factual circumstances in Mock v. Dowling were insufficient to create a jury issue on the allegations of undue influence and the trial court directed a verdict in favor of the proponent of the will.

In Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982), the will was dated October 31, 1975. The testator died June 12, 1978 at seventy years of age. At his death, he was confined in a nursing center where he had been a patient for approximately three and one-half years. A sister visited him almost every day. She drove him to his attorney's office to prepare the will but was not present during conferences with the attorney or when the will was executed. He made her the chief beneficiary of the will. Under prior wills she shared with two sisters. The will was contested on the premise that the testator had insufficient testamentary capacity to make the will and that he was under undue influence when he made and signed the Will. A jury found that the testator was under undue influence "when he made and signed¹ the will." The Supreme Court reversed this finding because of an absence of evidence to support undue influence, observing:

The circumstances must point unmistakably and convincingly to the fact that the mind of the testator was subjected to that of some other person, so that the Will is that of the latter and not of the former . . .

It is not sufficient to condemn and avoid the Will to find that there was influence, which affected the testator's disposition of his property . . .

Undue influence, the influence necessary to void a will, must amount to force and coercion, destroying free agency; it must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act; by importunity which could not be

¹ [290 S.E.2d 415; emphasis added.]

resisted; that it was done merely for the sake of peace; so that the motive was tantamount to force and fear. Even though one may have unreasonable likes and dislikes and may act unjustly and even cruelly towards his family in the disposition of his estate, still his will, when legally expressed, must be supported. Therefore, the issue of undue influence should be resolved in the light of proposition that a sane testator has the right to dispose of his property as he chooses. . .

Additionally, where the testator has had the unhampered opportunity to revoke his will subsequent to the operation of any undue influence upon him, but makes no changes in it, the court generally considers the effect of the testimony bearing upon undue influence in a large measure destroyed. The evidence reflects that the testator had made several previous wills; therefore, he knew he could alter or revoke this one. The testator continued to transact other business until his death so that had he desired, he could have changed his will.

Id., 290 S.E.2d 417-419 (emphasis added)(internal citations omitted).

In Martin v. Smoak, 286 S.C. 419, 334 S.E.2d 806 (1985), the testator and his wife had no children. Promptly following the wife's death in May 1979, the testator had his attorney prepare and he executed a new will and full Power of Attorney in favor of a niece, Janette. Under this will, three nieces, including Janette, who was named Executrix, shared equally in the estate. About a week after his wife's death, Janette and her husband moved the testator into their home and adapted their residence to his semi-hospitalization needs. Five months later in October 1979, Janette had her attorney draw a new will for the testator under which Janette and her husband got one-third; one-third went to another niece; and the remaining third went to the children of the other niece. The third niece (the niece who was also a one-third beneficiary under the earlier will and who was the contestant), received a \$2,000.00 bequest. Following the testator's death in December 1980, a jury found that the October 1979 will was the result of undue influence

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by Janette. The Supreme Court reversed, holding there was an absence of undue influence::

The mere existence of influence is not enough to vitiate a Will. The influence must be of such a degree that it dominated the testator's will, took away his free agency, and prevented the exercise of judgment and choice by him. If the testator had the testamentary capacity to dispose of his property and was free and unrestrained in his violation at the time of making the Will, the influence that may have inspired it or some provision of it will not be "undue influence." ...

He lived fourteen months after the execution, yet the record does not reveal his expressing any desire to alter his Will of October 1979 ...

Not even the court nor its jury is permitted to rewrite one's will, which is what has taken place here ...

A jury issue is not created by inference - - only by a reasonable inference. To reach the conclusion that the evidence is susceptible of more than one reasonable inference, one must supplement the record with his imagination.

Id., 334 S.E.2d at 809-811; see also First Citizens Bank and Trust Company v. Inman, 296 S.C. 8, 370 S.E.2d 99 (Ct. App. 1988); Mock v. Dowling, 266 S.C. at 274, 222 S.E.2d at 773; and Calhoun v. Calhoun, 277 S.C. at 527, 290 S.E.2d at 415.

In Todd v. Woodard, 297 S.C. 264, 376 S.E.2d 276, (1989), the decedent was hospitalized with lung cancer when he executed a new will on June 29, 1985. He died on July 24, 1985. The record does not indicate if the decedent was constantly hospitalized between the time of the execution of the will and the time of his death. How long the decedent had been hospitalized is not revealed in the record but it apparently had been for some time because the sole beneficiary under the new will stayed with him "days at time" while he was hospitalized. The prior will of the decedent made his cousin the

beneficiary. The new will made a friend of the decedent the sole beneficiary. The friend, who was separated from her husband, apparently spent much time with the testator and "cared for him during his illness." There was controverted evidence about whether she occupied the decedent's bed with him in the hospital on one occasion. The Probate Court granted a Motion for Summary Judgment in favor of the beneficiary under the new will. The Circuit Court reversed. The Supreme Court reversed the Circuit Court holding that there was no genuine issue of material fact. The attorney who drew the will and the two witnesses to its execution in the hospital, all testified that the decedent was of sound mind and that there was no coercion or duress involved.

The mere existence of influence is not enough to vitiate a Will. The influence must be of such a degree that it dominated the testator's Will, took away his free agency, and prevented his exercise of judgment and free choice. A mere showing of opportunity or motive does not create an issue of fact regarding undue influence.

Id. (emphasis added).

In Hembree v. Hembree, 311 S.C. 192, 428 S.E.2d 3 (Ct. App. 1993), the will was dated September 30, 1988. The Testator died September 23, 1989. The will left his residuary estate to three daughters by his first marriage and left his second wife (contestant) an income interest in a trust comprised of one-third of his probate estate. The summer before the will's execution, the Testator had been hospitalized for head surgery to lessen pressure on the brain because of blood clots. Following the surgery he was weak and had problems conversing and not being able to maintain a conversation. During his hospital stay, a daughter talked with him privately about his will and he requested her to arrange an appointment for him with a lawyer at the firm where she worked, and she did. Before he met with the attorney, the daughter obtained a medical

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opinion as to the Testator's capacity. He was driven to the law firm by his daughter's husband and she greeted her father when he arrived at the law firm but did not sit in on the attorney/client conference. The next month, this daughter delivered a letter from the attorney to the Testator. Following this, he requested the other daughter to prepare two letters detailing his wishes about his estate. Later that month, a daughter picked him up at his house and drove him to a filling station where he signed the letters. Later that month, he executed his will and a Power of Attorney in the law office. Both these daughters were present, but neither witnessed nor were in the attorney's office during the execution of the documents. One of those daughters was given the will for safekeeping. The challenge was on the basis of undue influence and testator incapacity. The matter was removed to the Common Pleas Court and jury tried, but the trial court granted a directed verdict as to both issues. The Court of Appeals affirmed. In affirming the trial court, the Court of Appeals cited Smith v. Whetstone, 209 S.C. 78, 39 S.E.2d 127 (1946), Todd v. Woodard, 297 S.C. at 264, 376 S.E.2d at 276; Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d at 415, and other cases, saying:

In cases where allegations of undue influence have been successful, there has been evidence of threats, force, restricted visitation, or an existing fiduciary relationship at the time of or before the will's execution.***

However, even if a contestant does establish an inference of undue influence, the unhampered opportunity of the testator to change the will after the operation of the undue influence destroys this conclusion.

Id. (emphasis added).

C

Judge Lynch died on February 9, 2013, 274 days from the date of the execution of his will on May 11, 2012.

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For most of those days until the progression of his illness in the early months of 2013, each day offered Judge Lynch an opportunity for reflection and the opportunity to change his will. The lawyer was ever present – a phone call or short drive away.

During the period from before his diagnosis through the end of the year, Mr. Lynch attended work and held court until June 29, 2012, and continued to oversee his business affairs. If any undue-influence ever existed as to any issue, especially the will which Defendant denies, such influence was “destroyed” by Judge Lynch’s many and continuous opportunities to change the will, or even discuss changes with his attorney, Rick Hoefer. Neither occurred.

To establish undue influence “the circumstances must point unmistakably and convincingly to the fact that the mind of the testator was subjected to that of some other person.” Calhoun v. Calhoun, supra. Here the circumstances point unmistakably and convincingly to the fact that there was no undue influence.

D

Where undue influence is alleged, two additional points are central to a correct decision.

(a) The role of the attorney who prepared the will is critical on the issue of undue influence.

It is highly significant that the role of the attorney who prepares the will and who supervises its execution is usually the foundation stone on which the holding rests, as a matter of law, that undue influence was not shown.

In Smith v. Whetstone, 209 S.C. 78, 39 S.E.2d 127 (1946), the Supreme Court reversed a finding of undue influence and held unanimously as a matter of law that undue influence was not proved. The Court noted:

The attorney testified that there was nothing in the appearance or the actions of Mr. Whetstone, the testator, to indicate or suggest a lack of mental capacity, or that he had been subjected to undue influence... It was witnessed by Mr. Merritt [the attorney], his secretary, and a friend who happened to be passing by the office and was called in.

Id., 39 S.E.2d at 130.

In the case of Havird v. Schissell, 252 S.C. 404, 166 S.E.2d 801 (1969), a directed verdict that a will was not the product of undue influence was affirmed by the Supreme Court. In that case, the attorney's role was stated:

Mr. Parr prepared the Will, based on instructions brought to him by Schissell [the Executor and longtime friend of the Testator] from Mr. Havird [the Testator]. After the Will was prepared, Mr. Parr accompanied by Mr. Harley, Mr. Schissell and another witness went to the store or Mr. Havird where the Will was executed in a back room.

Id., 166 S.E.2d at 805.

Similarly in Mock v. Dowling, Todd v. Woodard, and Calhoun v. Calhoun, discussed earlier, the Court found the role of the attorney as a critical factor in the determination of lack of undue influence. See Mock v. Dowling, 266 S.C. at 274, 222 S.E.2d at 773 ("the attorney . . . did interview the Testatrix, relative to her Will . . . alone at his office. He testified that she was precise, rational and decisive in answering questions in regard to her family, property and its disposition."); Todd v. Woodard, 297 S.C. at 264, 376 S.E.2d at 276 ("Nathan Davis is the attorney who drew the 1985 Will. He stated he questioned decedent thoroughly to determine why he was changing his Will."); Calhoun v. Calhoun, 277 S.C. at 527, 290 S.E.2d at 415 ("The unquestionably reputable attorney who drafted the Will was satisfied that the Testator was sane when he executed the Will.")(emphasis added.)

(b) As a matter of law, the influence is not "undue" unless the influence bears directly upon the "testamentary act."

A contestant must show that the influence was brought directly to bear upon the testamentary act.

Mock v. Dowling, supra; First Citizens Bank and Trust Company of South Carolina v. Inman, 296 S.C. 8, 370 S.E.2d 99, 100 (Ct. App. 1988). The contestant must prove this "unmistakably and convincingly." Mock v. Dowling, 266 S.C. at 274, 222 S.E.2d at 774.

The "testamentary act" is the execution of the will. Until that event occurs there is no testamentary document. The setting which formalizes execution of the will is dispositive. The cases demonstrate that legal principle time after time.

In Smith v. Whetstone, 209 S.C. at 78, 390 S.E.2d at 127, Mrs. Berry, a daughter accused of exerting undue influence on her father, took her father to another attorney when her father's attorney was out of town and not available. He then prepared and executed a codicil to a will he had executed less than four months earlier. In reversing the trial court's finding of undue influence, the Supreme Court held as a matter of law that there was no undue influence under the facts:

Mrs. Berry did not return to the attorney's office the second time, nor the third time when the codicil was finally executed. It was witnessed by Mr. Merritt [the drafting attorney], his secretary, and a friend who happened to be passing by the office and was called in.

Id., 390 S.E.2d at 130.

In Havird v. Schissell, 252 S.C. at 404, 166 S.E.2d at 804, the court noted the absence of any influence of a chief beneficiary on the execution of the will: "The

evidence in the record on behalf of the Respondent, affirmatively shows that John Frank Tribble had nothing whatever to do with either the preparation or execution of the Will, and that he, in fact, did not know the contents of the Will until after the death of Mr. Havird.” Those circumstances in the Havird case, as a matter of law, affirmed the absence of undue influence.

The factual parallels in the instant case to the Havird case in that regard are on all fours. The accused Defendants in the instant case had nothing whatsoever to do with either the preparation or execution of Judge Lynch’s will and did not know their contents until after the death of Judge Lynch.

In Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415, 419 (1982), the Supreme Court reversed the trial court and held as a matter of law that undue influence had not been proved even though the favored beneficiary had driven the Testator to the attorney’s office to prepare the will. The Court said:

Virginia Calhoun was not present during any of the Testator’s conferences with his attorney nor was she physically present when the Will was executed. She did not have possession of the Will after execution;...

The record is devoid of any evidence that Appellant Virginia Calhoun interfered with the making of the Will.

In the case of Smoak v. Smoak, the Supreme Court reversed a trial court’s finding of undue influence and ruled as a matter of law that undue influence was not proved even where the will contestor produced a physician opinion. Unless the opinion is based upon “the circumstances under which the Will was executed”, there is no evidence to support an opinion and it has “no probative value.” Id., 334 S.E.2d at 811.

Here, even if Plaintiff attempts to seek refuge in the types of evidence rejected by our Court's set forth above such as medical evidence or testimony, such evidence cannot override the legal criterion that for undue influence to be operative, it must bear directly upon the "testamentary act." See Hembree v. Hembree, 311 S.C. at 192, 428 S.E.2d at 5:

There was no evidence that [defendants] coerced the Testator by force or threat to sign the letters, set up the appointment, go to the law offices or make the Will. They were not in the room when the Will was executed nor when the Testator first met with the attorney. They had no way of knowing what he was signing until after the act. At most, the evidence showed opportunity which alone did not create an issue of fact. (Emphasis added.)

Id.

Even a confidential or fiduciary relationship is not enough to override the requirement that the undue influence must involve (1) coercion and (2) duress and (3) be applied to the "testamentary act." Todd v. Woodard, 297 S.C. at 264, 376 S.E.2d at 276. No such evidence is offered by Plaintiff.

E

There is no evidence Defendant Wendy Lynch exerted coercion or duress upon Judge Lynch in connection with any testamentary act. She did not participate in drafting the will, nor did she select the attorney. Judge Lynch selected his own attorney to draft his will and chose a longstanding attorney and personal friend. Judge Lynch had unimpeded and ongoing appointments to consult with his counsel after the will execution, and he did – never evidencing any dissatisfaction with the will or requesting any changes.

Defendant Wendy Lynch was not present when the will was executed by Judge Lynch. Defendant Wendy Lynch and Plaintiff Langley each separately transported Judge Lynch to attorney Hoefer's office, to and from respectively. Defendant Lynch did not

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know what was in the document prior to the death of Judge Lynch. Accordingly, there is "no issue of material fact concerning the validity" of Judge Lynch's will.

The consistent, repetitive theme from the cases cited is that the role of the attorney who drew and supervised the execution of the Will is a core factor to be applied. Only if there is evidence "unmistakably and convincingly" to the contrary can that core factor be bypassed. There is no genuine issue of fact about any undue influence upon Judge Lynch in the making of the Will on May 11, 2012, and no evidence of any influence or isolation or coercion that prevented his right to amend the will thereafter, had he chosen to do so. Summary judgment should be granted.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN RE: ESTATE OF JAMES M.)
LYNCH,)

ELIZABETH L. LANGLEY)

Plaintiff,)
vs.)

WENDY J. LYNCH, REBECCA M.)
LYNCH, JAMES M. LYNCH II,)
DONALD JORDAN III, JIMMY)
WHITE AND S. PORTER)
STEWART II, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF JAMES M. LYNCH,)

Defendants.)

IN THE COURT OF COMMON PLEAS
IN THE TWELFTH JUDICIAL CIRCUIT
Docket No.: 2013-CP-21-01408

MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY
JUDGMENT

2015 JUN 17 PM 1:38
CONNIE REEL-SHEARER
CCCP & GS
FLORENCE COUNTY, S.C.

FILED

Plaintiff, Elizabeth Langley, submits this Memorandum in Opposition to Defendant's Motion for Summary Judgment and respectfully prays that this Honorable Court deny the Motion.

INTRODUCTION

Plaintiff, Elizabeth Langley, filed a will contest action on April 30, 2012. Named as Defendants are the testator's three other children who are takers under the will: Wendy Lynch (the moving party), Rebecca M. Lynch, and James M. Lynch, II. Other takers under the will also named as defendants are Donald Jordan, III and Jimmy White.

In defense of the Motion for Summary Judgment submitted by Defendant, Wendy Lynch, Plaintiff attaches affidavits, the opinion of a neurologist that previously treated the testator, and other documents to demonstrate that a genuine issue of material fact exists. The supporting documents are incorporated herein by reference and attachment. Based on the law and facts, this Court should find that a genuine issue of material fact exists and deny Defendant's Motion for Summary Judgment.

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FACTUAL ISSUES

Defendant, Wendy Lynch, accurately states that the sole issues in the Complaint are:

- Whether the testator James M. Lynch was competent on May 11, 2012 to make a will;
- Whether the will was the product of undue influence by, Defendant Wendy Lynch, or others; and
- Following the execution of the will on May 11, 2012, was the fact that the will was never thereafter amended the product of undue influence.

Under South Carolina law, competence of the testator is determined at the time the will is executed which in this case is May 11, 2012. Undue influence must be specific to the testamentary act of making the will or preventing amendment thereafter. In this case, the will was executed on May 11, 2012 and the testator's date of death was February 3, 2013. Thus, the primary concern for undue influence is at the time the will was created on May 11, 2012 as well as until his date of death on February 3, 2013.

FACTS

In April 2012, James M. Lynch was diagnosed with terminal brain cancer. More specifically, James M. Lynch was diagnosed with glioblastoma multiform (brain tumors in the frontal lobe of his brain). According to Dr. Gamble the Chief Medical Officer of Williamsburg Regional Hospital:

The frontal lobe contains one third of all the cerebral cortex in the human brain. The frontal lobe plays an important role in behaviors that require integration of thought with emotion and motivation. The integrity of the frontal lobe is important for the simultaneous awareness of context, opinions, consequences, relevance, and emotional impact so as to allow the formulation of adaptive inferences, decisions, and actions. Therefore, damage to this part of the brain from multiple tumors, stroke, infection, or trauma can impair mental flexibility, reasoning, hypothesis formation, abstract thinking, foresight, judgment, the attentive

holding of information, and the ability to inhibit appropriate responses."

Upon diagnosis, the testator experienced changes to both his personality and cognitive abilities. As noted in medical records submitted by Defendant, Wendy Lynch, James Lynch experienced memory problems and failed to be able to spell simple words like "WORLD" backwards. As noted by affidavits of various individuals, James Lynch experienced substantial changes to his memory and mood.

On April 18, 2012, James Lynch executed a General Durable Power of Attorney as well as a Health Care Power of Attorney in which he appointed his two daughters, Elizabeth Langley and Wendy Lynch, to serve jointly. On May 11, 2012, Defendant Wendy Lynch took James Lynch to the office of Rick Hoefer to execute the Will. The Will failed to include large portions of the testator's estate as well as ignored the testator's only son and a grandchild. Furthermore, an attorney that was not previously used by James Lynch drafted the Will, but rather was a close friend of the Defendant, Wendy Lynch. James Lynch received chemotherapy, was hospitalized on various occasions, and then lost the battle with his disease on February 9, 2013.

LAW

The Supreme Court in Baughman v. American Telephone and Telegraph Co., 306 S.C. 101, 410 S.E.2d 537 (1991), cited with approval the United States Supreme Court case of Celotex Corp. v. Cartrett, 477 U.S. 317 (1986) providing:

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by 'showing' - that is, pointing out to the [trial] court - - that there is an absence of evidence to support the nonmoving party's case. The moving party need not "support its motion with affidavits or other similar materials negotiating the opponent's claim.

Once moving party carries its initial burden, opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with 'specific facts showing that there is a *genuine issue for trial*. Indeed, Rule 56(e) specifically prohibits the nonmoving party from

resting upon the mere allegations or denials of its pleadings.

Id., 410 S.E.2d at 454 (internal citations omitted).

The Plaintiff submits the medical opinion of a neurologist who previously treated James Lynch. Dr. Healy states that not only did he believe that James Lynch did not have sufficient cognitive ability to understand the complexities of a will, but also that he did not believe James Lynch was able to exercise a will on May 11, 2012. See Exhibit A. Furthermore, Dr. Healy stated that, to the best of his recollection, James Lynch typically did what was directed by people who were with him.

Furthermore, Dr. Troy B. Gamble, Jr., Chief Medical Officer of the Williamsburg Regional Hospital submitted an affidavit detailing the signs and symptoms of individuals who possess tumors in the frontal lobe as those James Lynch was diagnosed with. Dr. Gamble, Jr., states that it is his:

“[O]pinion as a Board Certified Family Physician with over 30 years of clinical experience, and former Associate Professor of the University of South Carolina School of Medicine that patients with evidence of significant frontal lobe lesions, traumatic infectious, or neoplastic, should not be deemed competent to make good decisions despite appearing normal without first being given a battery of complex mental and psychological testing.” Exhibit A

Under South Carolina law, summary judgment is warranted if there is “no genuine issue as to any material fact.” Rule 56, SCRPC. In Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000), the Court explained, “On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party.”

ANALYSIS AND DISCUSSION

Plaintiff Elizabeth Langley believes the following evidence and factors support and require the denial of Defendant’s Motion for Summary Judgment:

- Evidence exists of undue influence and incompetence. Dr. R. Joseph Healy is a neurologist in Florence, South Carolina who treated the late James M. Lynch. Dr. Healy states, “My recollection was that the patient typically did what was directed by people who were with him. I don’t

believe that he would have had sufficient cognitive ability to understand the complexities of a will. As a consequence it would be my medical opinion to a reason of little degree of medical certainty that he was not able to exercise a will on 5/11/12." The affidavit is attached in Exhibit A.

- Evidence exists that James M. Lynch knew he did not possess the capacity to handle his affairs. James M. Lynch executed a General Durable Power of Attorney and a Health Care Power of Attorney on April 18, 2012 appointing his daughters, Elizabeth Langley and Wendy Lynch, to serve jointly. The copies of the Health Care Power of Attorney and General Durable Power of Attorney are attached in Exhibit B.
- Medical records suggest that James M. Lynch lacked the capacity to execute a Will.
 - Medical Records of Dr. Naso at Florence Neurosurgery and Spine on April 13, 2012 (prior to the execution of the will) indicate that James Lynch also has some memory alteration recently. Exhibit C
 - Medical records of Dr. Ranjan dated May 2, 2012 state that James Lynch could name his three daughters, but made no mention of his son. Furthermore, the records state that he had difficulty with serial sevens and that he was unable to spell the word "WORLD" backwards. Exhibit D
 - Medical records of Stephen A. Dersch submitted with the Motion for Summary Judgment by the Defendant, Wendy Lynch, dated December 6, 2012 states "he does require some increased effort with thought processes." Note that the doctors opinion provides merely that in December 2012 James Lynch was competent to make basic medical decisions such as the determination of whether he wanted to remain at the nursing facility or go home.
 - Medical records of Dr. Leslie E. Barnes Young submitted with the Motion for Summary Judgment by the Defendant, Wendy Lynch, dated December 11, 2012 indicate that the patient, James Lynch, presented with "delirium, non-resolved".

The Defendant Rebecca Lynch submits an affidavit in which she states that in her opinion her father, James Lynch, lacked the capacity to make a will at the time the Will was executed on May 11, 2012 and that her sister, Wendy Lynch, unduly influenced her father in the creation of the Will. Rebecca Lynch details that her sister, Wendy Lynch, immediately began discussions about settling their father's estate after his diagnosis stating that James Lynch was unable to do so.

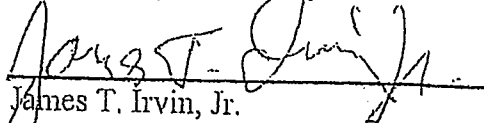
At the time of the execution of the Will, Elizabeth Langley was living at the home of James Lynch. On Friday, May 11, 2012 Elizabeth Langley was out of town. Wendy Lynch drove James Lynch to the office of Rick Hoefer, the attorney, in order for James Lynch to execute a Will. Neither Elizabeth Langley nor Rebecca Lynch had any knowledge neither that James Lynch was executing a Will nor that a Will was executed on that date despite Defendant, Wendy Lynch's, insistence that the estate should be settled.

Furthermore, Rebecca Lynch states that upon their father's diagnosis with brain cancer, James Lynch was unable to handle his affairs. The testator required assistance remembering who owed him money, handling the affairs of his businesses, and completing simple tasks such as dialing his phone. The testator experienced memory problems as documented in his medical records and required the assistance of others. The testator's diagnosis of glioblastoma multiform, which affected his frontal lobe combined with the evidence of the change in his cognitive functions as well as the opinion of neurologist, Dr. R. Joseph Healy create a genuine issue of material fact to survive a Motion for Summary Judgment.

CONCLUSION

A genuine issue of material fact concerning the validity of James Lynch's Will exists and, thus, summary judgment is not proper and we respectfully request this Court to deny the Defendant's request.

Respectfully submitted,



James T. Irvin, Jr.

SC Bar No.: 2921

Irvin Law Firm, LLC

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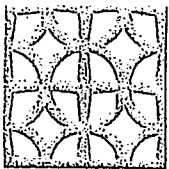
P.O. Box 2677
Myrtle Beach, SC 29579
T: (843) 445-6200
F: (843) 445-6202

Myrtle Beach, South Carolina

This 16th day of June, 2015.

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EXHIBIT A



Williamsburg

Regional Hospital

I have been asked to provide a summary of the signs and symptoms one would experience if they had injury to the frontal lobe of the brain, be it from trauma, stroke, infection or tumor. The frontal lobe contains one third of all the cerebral cortex in the human brain. The frontal lobe plays an important role in behaviors that require integration of thought with emotion and motivation. The integrity of the frontal lobe is important for the simultaneous awareness of context, options, consequences, relevance, and emotional impact so as to allow the formulation of adaptive inferences, decisions, and actions. Therefore, damage to this part of the brain from multiple tumors, stroke, infection, or trauma can impair mental flexibility, reasoning, hypothesis formation, abstract thinking, foresight, judgment, the attentive holding of information, and the ability to inhibit inappropriate responses. In other words, your "executive functions" related to the manipulation of mental content becomes impaired. While even large or multiple lesions of the frontal lobe may leave sensory, motor, and basic cognitive functions intact, they may lead to dramatic alterations in personality and behavior. There are two distinct syndromes often seen. In the Frontal Abulic Syndrome, patients show lack of creativity and curiosity, loss of initiative, and displays emotional blandness and apathy. In the Frontal Disinhibition Syndrome, the patient shows severe impairments in judgment, insight, and foresight. The dissociation between intact intellectual function and a total lack of even rudimentary common sense can be striking. Despite the preservation of all essential memory functions, the patient cannot learn from experience and continues to display inappropriate behaviors without appearing to feel emotional pain, guilt, or regret even when such behaviors may have disastrous consequences. When asked simple questions to test judgment in an office setting, the patient may answer appropriately, yet act foolishly in a more complex real life setting. Therefore, Harrison's Text Book of Medicine states that the physician must be prepared to make a diagnosis of frontal lobe disease based on historic information provided by family even though on an office exam, the mental status may seem quite intact. It would therefore not seem prudent to declare patient competent to make complex financial or other life decisions with evidence of frontal lobe injury. With frontal lobe syndromes patients, can exhibit frontal lobe release signs like grasping when the palm is stroked and sucking or lip smacking elicited by stroking the lips. However, the vast majority of patients with frontal lobe syndromes do not exhibit these signs.

The patient with frontal lobe disease raises potential dilemmas in the differential diagnosis. For example, the abulia and blandness may be misinterpreted as depression and the disinhibition misinterpreted as mania or acting out. Therefore, appropriate intervention may be delayed while a treatable tumor grows. An informed approach to frontal lobe presentations may avoid such errors. It is my opinion as a Board Certified Family Physician with over 30 years of clinical experience, and former Associate Professor of the University of South Carolina School of Medicine, that patients with evidence of significant frontal lobe lesions, traumatic, infectious, or neoplastic, should not be deemed competent to make good decisions despite appearing normal without first being given a battery of complex mental and psychological testing. Allowing patients to make such decisions without first doing detailed testing could very well lead to disastrous consequences.

Troy B. Gamble, Jr., M.D.

Chief Medical Officer - Williamsburg Regional Hospital

Barbara O. Dugger
07/16/2023

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN RE: ESTATE OF JAMES M.)
LYNCH,)

ELIZABETH L. LANGLEY)

Plaintiff,
vs.)

WENDY J. LYNCH, REBECCA M.)
LYNCH, JAMES M. LYNCH II,)
DONALD JORDAN III, JIMMY)
WHITE AND S. PORTER)
STEWART II, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF JAMES M. LYNCH,)

Defendants.)

IN THE COURT OF COMMON PLEAS
IN THE TWELFTH JUDICIAL CIRCUIT
Docket No.: 2013-CP-21-01408

AFFIDAVIT OF DR. JOSEPH HEALY

The affiant, being first duly sworn, deposes and says:

1. My name is Dr. R. Joseph Healy. I am over eighteen (18) years old. I am competent to testify in this action. I live in Florence, South Carolina.
2. I am a neurologist and I practice medicine at 805 Pamplico Highway, Suite A130 in Florence, South Carolina.
3. Mr. James Lynch was a 70 year old white male who had a glioblastoma multiform.
4. The patient underwent biopsy and radiation along with chemotherapy.
5. Apparently, James Lynch signed a will on May 11, 2012.
6. His biopsy was done on April 20, 2012.
7. Prior to the MRI of the brain showed multiple enhancing lesions throughout. Most significant was in the left posterior frontal area near the corpus collosum but there was also one in the right anterior area and in the right parasagittal area. These measured approximately 2.3 X 1 cm.

8. The records indicate that the patient was alert and typically knew the day and the date. His higher cortical functioning was not as intact. He had problems with directions and had problems with two step commands.
9. My recollection was that the patient typically did what was directed by people who were with him.
10. I don't believe that he would have had sufficient cognitive ability to understand the complexities of a will. As a consequence it would be my medical opinion t reason ^{able} ~~that~~ ^{with} ~~the~~ degree certainty that he was not able to exercise a will on May 11, 2012. ^{6/17/15}

FURTHER DEPONENT SAID NOT!

R. Joseph Healy, M.D.

R. Joseph Healy, M.D.

Sworn to this 16th day of June, 2015

Cornie M. Aspin

Notary Public for South Carolina

My commission expires: 5/2/17

EXHIBIT B

HEALTH CARE POWER OF ATTORNEY

(South Carolina Statutory Form, Code of Laws Section 62-5-504)

1. DESIGNATION OF HEALTH CARE AGENT

I, James M. Lynch
(Principal)

334 32 6048
(Social Security Number)

hereby appoint:

Wendy Lynch and Elizabeth Lynch Langley
(Agent)

2208 SLIGEN COVE.
(Address)

FLORENCE, SC 29501

Home Telephone: (714) 234-3152 Work Telephone: (714) 777-2156 as my agent to make health care decision for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence.

3. HIPAA AUTHORIZATION

When considering or making health care decisions for me, all individually identifiable health information and medical records shall be released without restriction to my health care agent(s) and/or my alternate health care agent(s) named above including, but not limited to, (i) diagnostic, treatment, other health care, and related insurance and financial records and information associated with any past, present, or future physical or mental health condition including, but not limited to, diagnosis or treatment of HIV/AIDS, sexually transmitted disease(s), mental illness, and/or drug or alcohol abuse and (ii) any written opinion relating to my health that such health care agent(s) and/or alternate health care agent(s) may have requested. Without limiting the generality of the foregoing, this release authority applies to all health information and medical records governed by the Health Information Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164; is effective whether or not I am mentally competent; has no expiration date; and shall terminate only in the event that I revoke the authority in writing and deliver it to my health care provider.

4. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then

my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desire is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by Section E. below, my agent is authorized as follows:

- W. H. V. 2
Page 2
- A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;
 - B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;
 - C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;
 - D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.
 - E. The powers granted above do not include the following powers or are subject to the following rules or limitations:

5. ORGAN DONATION (INITIAL ONLY ONE)

My agent may _____; may not _____ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

6. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situation to which the Declaration does not apply.

7. STATEMENT OF DESIRES CONCERNING LIFE-SUSTAINING TREATMENT
With respect to any Life-Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS):

(1) ☒ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

(2) ☒ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:
a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or
b. if I am in a state of permanent unconsciousness.

OR

(3) ☐ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures

8.

STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that in situations where life-sustaining treatment is being withheld or withdrawn pursuant to Item 7, (INITIAL ONLY ONE OF THE FOLLOWING THREE PARAGRAPHS):

(a) ☒ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged by tube feeding if my agent believes the burdens of tube feeding outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved, and the quality as well as the possible extension of my life in making this decision.

OR

(b) ☒ DIRECTIVE TO WITHHOLD OR WITHDRAW TUBE FEEDING. I do not want my life prolonged by tube feeding.

OR

(c) ☐ DIRECTIVE FOR PROVISION OF TUBE FEEDING. I want tube feeding to be provided within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedure, and without regard to whether other forms of life-sustaining treatment are being withheld or withdrawn.

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IF YOU DO NOT INITIAL ANY OF THE STATEMENTS IN ITEM 8, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

10. UNAVAILABILITY OF AGENT

If at any relevant time the Agent or Successor Agents named herein are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT. I sign my name to this Health Care Power of Attorney on this 18 day of April, 2012.

My current home address is: 826 W. Main St
Timminsville SC 29161

Signature: [Signature]

Print Name: JAMES M LYNCH

WITNESS STATEMENT

I declare, on the basis of information and belief, that person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence.

I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his/her decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principals estate as of this time. I am not the principal's attending physician, nor an employee

of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care agent or Successor Health Care Agent by this document.

Witness No. 1:

Signature: [Signature] Date: 4-18-12
Print Name: Garold Vance Telephone: 843-346-7320
Residence Address: 849 S. Wacker St Florence
SC 29101

Witness No. 2:

Signature: [Signature] Date: 4-18-2012
Print Name: April R. Peltagrew Telephone: (843) 669-7870
Residence Address: 59 King Road
Wenatch, SC 29160

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

The foregoing instrument was acknowledged before me by Principal, and the witnesses named herein, on this 18th day of April, 2012.

[Signature]
Notary Public for South Carolina
My Commission Expires: 4/21/14

Received 12/13/2012 12:32:32 AM

Book B 439 Page 1488

Power of Attorney

CONNIE REEL-SHEARIN
FLORENCE COUNTY CLERK OF COURT
CITY-COUNTY COMPLEX, 180 N. IRBY ST., MSC-E
FLORENCE, SOUTH CAROLINA 29501
(843) 665-3031

RECEIVED FROM: WENDY LYNCH

DATE: 121212 826 S. Warren St.

Timmusville, S.C. 29161

RECEIPT NO: 363372-000000

DESCRIPTION

# OF INST.	AMOUNT	FEES	#PAGES	STATE	COUNTY	TOTAL
Power of Attorney	.00	15.00	4	BOOK: B439 FROM PAGE: 1488 THRU PAGE: 1491		15.00

THIS SHEET IS NOW PART OF THIS DOCUMENT
===== PLEASE LEAVE ATTACHED =====

CERTIFIED: A TRUE COPY

Connie Reel Shearin

CLERK OF COURT C.P & G.S.
FLORENCE COUNTY, S.C.

TOTAL RECEIPT:

15.00

.00

.00

15.00

TOTAL

CHECK

CASH

CHANGE

15.00

.00

20.00

CR2

CLERKPAY

69 KIM WINBURN

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STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

GENERAL, DURABLE POWER OF ATTORNEY

RECORDED 12 PM 12:32
JES & GS
COUNTY, SC
ELL

KNOW ALL MEN BY THESE PRESENTS, that I, James M. Lynch, of the County of Florence, State of South Carolina, first revoking any Powers of Attorney heretofore given by me, have made, constituted and appointed and by these presents do make, constitute and appoint Wendy Lynch and Elizabeth Lynch Langley as my true and lawful attorneys for me, and in my name, and on my behalf to ask, demand, sue for, recover and receive all sums of money, debts, dues, goods, wares, merchandise, chattels, effects, and things of whatsoever nature or description which now or hereafter shall be or become due, owing, payable or belonging to me in or by my right, title ways or means howsoever, and deliver such receipts, release or other discharges for the same respectively as they shall think fit or be advised; to settle any account or revoking whatsoever wherein I now or at any time hereafter shall be in any wise interested or concerned with any person or firm whatsoever, and to pay or receive that balance thereof as the case may be required; and in general to do all other acts, deeds, matters and things whatsoever in or about my estate, property and affairs, or to concur with persons jointly interested with myself therein in doing all acts, deeds, matters, and things herein either particularly or generally described as fully and effectually to all intents and purposes as I could do in

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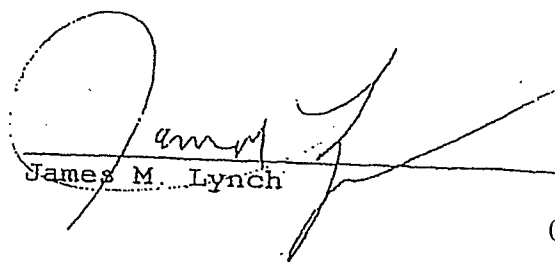
B439-1488

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my own proper person if personally present: to buy and sell property, whether real or personal, to mortgage property and to execute any and all documents necessary for the purchase, sale or mortgage of property, including but not limited to the execution of deeds or mortgages, any closing statement which might accompany such purchase or sale of property; it being the specific intent of the principal that the authority conferred herein shall be exercisable notwithstanding my physical disability or mental incompetence, the authority of Wendy Lynch and Elizabeth Lynch Langley, is exercisable as provided in this Power of Attorney on behalf of the principal notwithstanding later physical or mental disability or incompetence of the principal.

I also, specifically authorize Wendy Lynch and Elizabeth Lynch Langley, to handle any and all of my affairs as if I were handling them myself the same to include, but is not limited to, the transfer of property.

I, James M. Lynch, the principal, sign my name to this instrument this 18 day of April, 2012 and being first duly sworn, do hereby declare to the undersigned authority that I sign it willingly, that I execute it as my free and voluntary act for the purpose therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.


James M. Lynch

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We, April PETTIGREW and GERALD VAUSE,
the undersigned witnesses sign our names to this instrument, being
first duly sworn, and do hereby declare to this instrument as his
Power of Attorney and that he signs it willingly, and that each of
us, in the presence and herein the principal, hereby sign this
Power of Attorney as witness to his signing, and that to the best
of our knowledge, the principal is eighteen years of age or older,
of sound mind, and under no constraint or undue influence.

Paul R. Pettigrew
Witness

Gerald Vause
Witness

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
_____)

Subscribed, sworn to, and acknowledged before me by James M.
Lynch, the principal, and subscribed and sworn to before me by
April PETTIGREW and GERALD VAUSE, this
18th day of APRIL, 2012.

[Signature]
Notary Public for the
State of South Carolina
My Commission Expires: 4/21/19

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EXHIBIT C

Patient Name: JAMES LYNCH (48602E)

DOB: 09/30/1941

Date of Service: 04/13/2012

History of Present Illness

The patient is a 70 year old male who presents for a new patient consultation. Patient complained of dizziness and mild left-sided weakness which has been present for approximately week. He also has some memory alteration recently. Really no other neurologic symptoms at this point. He denies any visual loss, headache nausea, vomiting or seizure.

He has undergone MRI scan of the brain shows multiple intracranial lesions.

History

Allergy

No Known Drug Allergies (04/13/2012)

Past Medical

Unremarkable

Social

Marital status

Most recent primary occupation Magistrate Judge

Medications

Multivitamin (Oral) Active - Hx Entry.

Melazine HCl (12.5MG Tablet Oral) Active - Hx Entry.

Family

No pertinent family history

Past Surgical

unremarkable

Diagnostic Studies

MRI Brain MRI scan of the brain was reviewed from Florence MRI and imaging and shows a dominant lesion in the left superior posterior frontal region as well as a less discrete lesion in the right medial frontal lobe. There is some enhancement down towards the corpus callosum. Has several other small pea-sized lesions. Overall picture is consistent with either metastatic disease or lymphoma. Less likely glioma

Review of Systems

Respiratory: Not Present- Shortness of Breath.

Cardiovascular: Not Present- Chest Pain.

Neurological: Not Present- Incontinence Stool and Incontinence Urine.

Please see the health history questionnaire for full details of the patient's review of systems, past medical history, and family and social history. The patient is to follow-up with their family physician for any positive review of systems.

Vitals

04/13/2012 10:07 AM

Weight: 144 lb Height: 67 in

Body Surface Area: 1.76 m² Body Mass Index: 22.55 kg/m²

Pulse: 83 (Regular)

BP: 129/94 Manual (Sitting, Left Arm, Standard)

EXHIBIT D

Neurological Exam:

Mental Status: X Awake, alert, and oriented. He can point to the ceiling and the door. He can name his three daughters. He knows it is 05/02/12. He knows the President and Vice-President as Obama and Biden, respectively. He can name 3/3 objects without difficulty, recall 3/3 immediately, and in twenty-five minutes, as well. He has difficulty with serial sevens. He can spell the word WORLD forwards. He cannot spell it backwards. He can repeat "no ifs, ands, or buts".
Speech: 0

Cranial Nerves:

Visual Fields (II): 0 Intact.
EOMs (III, IV, VI): 0 Intact with no obvious nystagmus.
Pupils (III)/fundi (papilledema): 0 Pupils are round and reactive.
Face (V, VII): 0 Sensory and motor to the face are intact.
Hearing (VIII): 0 Grossly intact.
Gag, Swallow (IX): 0
Palate (X): 0
Neck Strength (XI): 0 Shoulder shrug is intact.
Tongue (XII): 0 Midline without fasciculations.

Motor Strength:

0-no contraction, 1-flicker, 2-w/o gravity,
3-against gravity, 4-against resistance, 5-full strength

5/5 strength on the right
4/5 strength on the left

Tone: 0

Proneator Drift: X Left-sided drift.

Deep Tendon Reflexes:

0-no response, 1-diminished, 2-average, 3-brisker than average, 4-hyperactive.

+2 and symmetrical.

Sensory:

Light Touch: X Diminished on the left.

Vibratory: X Diminished on the left.

Proprioception: 0

Coordination:

Finger to nose: X Done with some slight difficulty with the left upper extremity.

Finger to finger: X Done with some slight difficulty with the left upper extremity.

Rapid alternating movements: X Done with some slight difficulty with the left upper extremity.

Tandem Walking: X Unable to do.

Romberg: 0

Gait: X Slightly slowed and slightly ataxic.

Laboratory Studies:

Patient: LYNCH, JAMES KA1423

CEMLAB Hematology: Final 05/02/2012 13:17 Acc# 001212307153 Acct# 6259RY
AUTO BLOOD CT WITH AUTO DIFF

HEMOGLOBIN

*17.4

g/dL

Reference
113.7-17.3

This fax was received by GFI FAXmaker fax server. For more information, visit: <http://www.gfi.com>

1880
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000138

EXHIBIT E

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN RE: ESTATE OF JAMES M
LYNCH,

ELIZABETH L. LANGLEY

Plaintiff,

vs.

WENDY J. LYNCH, REBECCA M.
LYNCH, JAMES M. LYNCH II,
DONALD JORDAN III, JIMMY
WHITE AND S. PORTER
STEWART II, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF JAMES M. LYNCH,

Defendant.

IN THE COURT OF COMMON PLEAS
IN THE TWELFTH JUDICIAL CIRCUIT
Docket No.: 2013-CP-21-01408

AFFIDAVIT OF REBECCA M.
WHITE

The affiant, being first duly sworn, deposes and says:

1. My name is Rebecca White. I am over eighteen (18) years old and I am competent to testify in this action. I live in Forsythe County, North Carolina.
2. I am the daughter of the late James M. Lynch and a named defendant in this action.
3. It is my firm belief and opinion that my father, James M. Lynch, lacked the capacity to make a will at the time it was executed on May 11, 2012. Furthermore, I believe that my sister, Wendy J. Lynch, unduly influenced my father in the creation of the will.
4. Immediately, after my father's diagnosis of brain tumors, Wendy would call me via phone and initiate conversations about what I wanted to have from my father's estate. Wendy stated that she wanted the house and that my sister, Elizabeth

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Langley, desired to have the businesses. When I asked Wendy if I could speak with my father, she would respond that our father was unable to talk and that our father couldn't talk about these things. Wendy stated that daddy was not able to understand this stuff and that we would need to work these things out between ourselves because daddy had glioblastoma. Wendy went so far as saying I didn't understand what a glioblastoma was as I was not a nurse and she informed me that our father was going to die.

5. Wendy insisted that we, as siblings, needed to go ahead and divide everything because our father was unable to do so. These conversations happened on more than one occasion and immediately after his diagnosis of brain tumors in April 2012.
6. Furthermore, Wendy had her son, Jordy, move into our father's house without his permission. Jordy gave up his house and job of five years in order to move with my father and police him.
7. Wendy never wanted our father to speak to me privately when I visited my father's home. Wendy would constantly come into the room to prevent any private conversations or send her son, Jordy, into the room. Wendy went so far as to have baby monitors in our father's room that she kept on her person at all times. She was constantly patrolling him and the individuals who were visiting him.
8. Wendy would deny other individuals from seeing our father at her discretion.
9. For the first three months, Wendy would constantly tell me that our father was not available or would not be at his home, thus, there was no reason for me to make the

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trip. When I came down for visits with my father, Wendy would attempt to keep our father from the home for as long as possible and then claim that our father was too tired to take visitors.

10. Both Beth and I never wanted to discuss creating a will or how the property would be divided because we believed it was both rude and disrespectful when our father was fighting for his life and he had just been diagnosed with brain cancer. I had no knowledge that a will was actually created and signed by my father. Now I know that Wendy took our father to an attorney that was not only a good friend of hers but also her son's soccer coach. Our father was on a myriad of medications and I was told that he was given alcohol at the time that he executed the will. A voice message I received confirms that the law firm that prepared the will does not typically draft wills, which further makes me believe that the attorney was doing a favor for a friend.

11. Wendy prevented me from taking our father anywhere by ourselves when I came down to visit. I often wanted to just help him get some fresh air and take him on a ride through the country. Yet, Wendy always found a reason why I could not be permitted to take my father out alone. On the weekend that I was allowed to stay with my father, Wendy had Rae White stay at the home the entire weekend.

12. Wendy constantly kept our father upset. Wendy would tell me via telephone that I was not permitted to bring my son to visit because "she didn't want any problems or drama" thereby making my father upset in the background.

13. When our father was diagnosed with brain tumors you could see a drastic change in his abilities. Our father had issues with his memory and trouble doing

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everyday tasks. He was unable to dial calls on his cell phone and could not recall information that he could remember easily prior.

14. In my opinion, from the day our father was diagnosed Wendy began attempting to divide the estate and get what she wanted. She attempted to control our father's actions, the individuals who were in his presence, and limit his interactions with anyone that was not supporting her agenda. While my sister, Beth, myself, and other family members were attempting to deal with my father's diagnosis, Wendy was attempting to influence our terminally ill father to divide his estate in the way she saw fit.

15. Large portions of my father's estate were not specifically referenced in his will. Things that I feel that if my father truly possessed the capacity to make the will, they would not have been left out like Silver Dollar Enterprises and We Rent. Specifically, our father completely left out my brother as well as his other grandchild. I believe that at the time that he executed the will he not only did not understand who his heirs were but also what he owned.

16. It is my opinion that Wendy Lynch unduly influenced my father to sign the will that she was most comfortable with despite having known that my father lacked the capacity to do so.

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This the 12th day of June, 2015.

Rebecca M. White

Rebecca M. White

Sworn before me, this 12th day of June, 2015.

Cathie A. McCallum

Notary Public for North Carolina

Cathie A McCallum
Notary Public State of North Carolina
Forsyth County
My Commission Expires 8-14-15

ROA
000144

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-21-01408

Elizabeth L. Langley)

Plaintiff,)

vs.)

Wendy J. Lynch, et al)

Defendants.)

AFFIDAVIT OF
TRACEY FRAZIER

The affiant, being first duly sworn, deposes and says:

1. My name is Tracey Frazier. I am over eighteen years old. I am competent to testify in this action. I live in Durham, North Carolina.
2. I am the niece of the late James M. Lynch. My mother, Tish Hurt, was his sister.
3. During my lifetime, I have spent a great deal of time with James M. Lynch and his four children. We all call him "Bird."
4. When I married my husband, Bird officiated the wedding.
5. After Bird got sick, in April of 2012, I helped take care of him at various points in time. I would go to Bird's home in Timmonsville to help take care of him.
6. Wendy Lynch was frequently present during this period of time. Wendy did not act like she was concerned with Bird's well being. Instead, she constantly bombarded him with questions about his assets and his will.
7. Wendy would pester Bird so much that it rose to the level of verbal assault.
8. Wendy would constantly harp on Bird about what his will said and who would receive his property at his death.
9. Wendy argued with Bird every day, continually, until somebody would make her stop.
10. Wendy would try to keep Bird away from the people that loved him. She would try to control who he saw.

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11. I was present at one point when Wendy threatened Bird that he would "have to choose." Bird was in tears at this point, and he said to me: "I don't know what I am going to do." Bird also said: "It is the biggest mistake that I have made, but I don't know how to fix it."
12. At one point, Wendy was accusing Quinn Shaeffer of poisoning Bird. (Using some kind of lotion). "Why does he need the sunscreen on him, he is dying anyway."
13. Wendy and James White and Kim White would harass Quinn until she was scared. Wendy told Bird "What would a woman want with you, because your are so old." Wendy never wanted Bird to be happy. Quinn finally had to stop coming out there.
14. There was a calendar. We would sign our name so everybody would know when someone would be there. Wendy would right her name all over the calendar, just to confuse.
15. Wendy changed Bird's phone number three times. (So people could not get in touch with him).
16. Wendy had a party over Thanksgiving 2012. Wendy got very drunk. Becky found Bird in pain and called medic. Wendy laid over Bird's body while he was on the gurney.
17. I met Bird at Duke Regional. Wendy had already taken the money out of the safe before he was dead. He would not hold his head up. Kim White and James White came up with Bird. They went into doctor's office with Tracey.

Tracey was on the phone with Beth at the house right after Bird died. In the house was Wendy, Eric, and the White's. The deputy said "your only going to make matters worse."

Laws for a vulnerable adult. Bird is being hurt and abused. Kim White stood up and began to tell doctor that Bird had dental issues which caused an inspection and caused him to be disoriented. Real reason was a catheter that had been improperly installed.

Dr. Ron Jon came in and said "what has happened to him"

Pauline (who used take care of things at house) is not to be trusted.

In waiting room, Tracey was attacked by Kim and James White. Backed her up against the wall. Filed police report. Warrant for James White.

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Tracey confronted Wendy. Wendy texted Tracey "do you want to be accused of stealing the money too."

They are sick people and they keep a lot of secrets.

Tracey received a phone call that said Tracey's grandfather (Willis Moore) was Wendy's father. Willis Moore was mean and dangerous and got drunk a lot. People pulled guns on each other.

Bird said "There is only 1 that will hurt me." Tracey said she would protect him. He tried to pray. =====

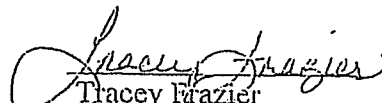
There is no doubt in my mind that Wendy tried to kill Bird.

Wendy texted Tracey to "keep the conversation to herself."

Tracey knows about nutcracker attack. (Although she did not witness it).

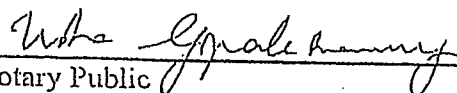
Wendy overmedicated Bird and left him to die. This was around thanksgiving. Becky gave Bird fluid and food and he perked up.

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Tracey Frazier

This the 31 day of July, 2014.

Sworn before me, this the 31 day of July, 2014


Notary Public

Usha Gopalaswamy
NOTARY PUBLIC
Wake County, NC
My Commission Expires November 27, 2016

ROA
000148

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
 FOR THE TWELFTH JUDICIAL CIRCUIT
 CASE NO.: 2013-CP-21-01408

Elizabeth L. Langley)

Plaintiff,)

vs.)

Wendy J. Lynch, et al)

Defendants.)

AFFIDAVIT OF
 RAE WHITE *Wilkinson*

The affiant, being first duly sworn, deposes and says:

1. I have been a friend of Mr. Lynch for many years.
2. I was at Jimmy's house in 2012. Becky was there. It was just the three of us.
3. Mr. Lynch could not remember the combination to the safe. He told Becky to go get the combination. Becky came back with the combination. Mr. Lynch opened the safe. He took out a duffel bag with several plastic bags in it. Mr. Lynch took out a plastic bag with \$100,000 in it. It was all in 100 dollar bills.
4. It took a moment for it to click with Jimmy how much was in the plastic bag. Jimmy and Becky spread the contents of the bag out. He told Becky to take \$50,000.
4. Becky took the money that Mr. Lynch told her take, \$50,000. They put the rest back in the plastic bag.
5. Mr. Lynch gave me the bag and I immediately put it back in the safe.
6. This was the "new" safe with the code. Not the old key safe.
7. I called Jimmy the next day and asked him if he realized how much he had given Becky. He said yes, I made her put half of it back. (So Becky ended up with \$50,000, which was what Jimmy wanted).
8. After he got sick, Jimmy said that he would leave everything split equally to his daughters. Jordy was going to get Wendy's portion after she passed away.

9. ~~_____~~ *EW*

10. The lake house was supposed to be split three ways. Jimmy wanted the family to see each other at the lake house. ~~_____~~ *PW*
11. Jimmy told me these things over long talks at his house. We would take rides in his golf cart. Jimmy told me these things over time after he got sick. ~~_____~~ *PW*
12. After he got sick, Jimmy told me he was going to get a will done. After he did the will, he told me that he had taken care of it and that it left everything equally three ways to his daughters.
13. After Jimmy died, Dennis Hill showed me what was allegedly Jimmy's will. ~~_____~~ *PW*

This the 17 day of July, 2014.

Rae White
Rae White

Sworn before me, this the 17 day of July, 2014

Wendy Lynne Newman
Notary Public

*my commission expires
10, APRIL 2023*

*Wendy Lynne sent me the text
message attached as Exhibit A, PW*

Wendy Lynd

Wendy Lynd

He not been competent
since his brain tumors dx
due to damage seizure
memory loss

Wendy Lynd

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-21-01408

Elizabeth L. Langley)

Plaintiff,)

vs.)

Wendy J. Lynch, et al)

Defendants.)

AFFIDAVIT OF
DONALD CAMPBELL

The affiant, being first duly sworn, deposes and says:

1. My name is Donald "Dondi" Campbell. I am over eighteen years old. I am competent to testify in this action. I live in Timmonsville, South Carolina.
2. I am the nephew of the late James M. Lynch. My mother, Alberta Campbell, was Betty David's mother. Betty David was married to Jimmy for many years.
3. During my lifetime, I have spent a great deal of time with James M. Lynch and his four children.
4. I went by Jimmy's office a lot to visit with him when he was working.
5. Before Jimmy got sick, when I talked to Jimmy about his kids, he mentioned that he and Wendy were not getting along and that Wendy was "crazy as hell."
6. After Jimmy got sick, in April of 2012, he could not drive any more.
7. We put on two or three horse rides per year. Jimmy usually joins in on the rides. The last ride that I discussed with Jimmy was in April of 2012. Jimmy came to my house to see me and told me that he could not make the ride. Gerald Vause was driving Jimmy that day. Jimmy did not get out of the truck. It was unusual for Jimmy not to get out of the truck and walk around and talk. This took place shortly before Jimmy was diagnosed.
8. After Jimmy got sick, I stopped by Jimmy's house to visit with him. I talked with Jimmy for a while. I asked Jimmy if he had a will made up. Jimmy said that he did not, but he had two attorneys that he might be working with to stop by his house about a will.

9. During the above conversation, Jimmy talked to me about who he was going to leave his property to. Jimmy mentioned that he was going to leave his residence to Wendy or Beth and the lake house to the other one. Beth was living with Jimmy at the time. Jimmy also mentioned that he was going to the Hill Street house to Becky. He said he was going to set up a trust for Jim. Jimmy said he was going to divide the rest of it up equally between the three girls. Jimmy mentioned that he was going to leave Jordy \$25,000 or \$50,000.
10. Wendy Lynch was present during the above visit. She was hateful to me. She made it clear that she did not want me around. Mary Alice Richardson was with me that day. I did not feel comfortable going back to see Jimmy because Wendy was so angry about me stopping by.
11. Every time I spent time with Jimmy after he was diagnosed I could tell that he was not the same. He was unsteady and could not walk very well. He acted confused. He was able to talk with me, but was not as sharp as he used to be.
12. In 2007, Wendy tried to purchase a life insurance policy on me without my knowledge or permission. She tried to purchase \$5,000,000 in term life insurance on my life. Wendy accessed my medical records through the hospital without my permission. The first I heard about was when the insurance company called my house to verify some information and my wife answered the phone. My wife did not know what was going on. My wife asked the insurance company to fax us the application. The insurance company faxed me the application and I saw that Wendy had applied for the insurance.
13. I took the matter to my attorney. He advised me to go to the Sheriff. I took the information to the Sheriff. At first, the deputy said it was a serious matter. But, the Sheriff did not pursue the matter to my knowledge.
14. At the time this took place, Wendy and I were involved in a dispute over some land. We were trying to divide the land up. I believe that Wendy wanted to collect the insurance when I died.
15. One time I did a job for Jimmy. He paid me in cash. We went to his safe and he opened it up. There was a large amount of cash in the safe. He paid me \$5000 or so in cash for the first installment.
16. Jimmy told me that he had a safe buried in the concrete.
17. Jimmy told me that he had over 50 pounds of gold. This was a year or so before he got sick. Jimmy also said he had a lot of silver.
18. Jimmy told me that his kids never had to worry about anything.

19. Jimmy and Wendy frequently argued over the years. Jimmy had been estranged from Wendy for a while at the time when he got sick.
20. In October of 2011, Jimmy came to my horse ride. He was driving his RV. He got out and asked me to park the RV for him. He normally parked the RV by himself. The parking spot that it needed to go in was right off the road and not difficult to access. During the ride, Jimmy drove his Gator instead of riding a horse as he had in the past.

This the 17 day of July, 2014.

Donald Campbell
Donald Campbell

Sworn before me, this the 17 day of July, 2014

Kristina Jeffers
Notary Public

My Commission Expires 9/23/2019

June 10, 2015

Donald Campbell

Meredith J. Burr
EXP. 9-1-19

Page #1 *ADm*
ADm

This affidavit is prepared by George Davis McClam. I am over eighteen years old, I am competent and I live in Lynchburg, South Carolina.

I became acquainted with Jimmy Lynch in 1964. I knew him on a casual basis until I worked at his liquor store the summer that he was going through his divorce from his wife, Betty. Having recently gone through a divorce with similar circumstances naturally we began to discuss the emotions and human drama associated with our divorces. After that experience we both realized that we could discuss personal things with confidence that they would never be repeated.

My friendship with Jimmy was not one where we attended parties together. Rather it was one where our interaction was usually one on one. Over the years we discussed his relationships with his female friends, his children, his former wife and various other topics.

I learned of Jimmy's condition when I was informed that he had been taken to urgent care for what may have been a seizure. Several days before I had visited with him in the magistrates office and he informed me that he had been experiencing bouts of losing his balance. At that time I told him it was probably vertigo. Later I learned that Jimmy had been diagnosed with a brain tumor.

On what I believe to be April 22, 2012 I visited with Jimmy after his discharge from the hospital. There were three other people there and

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Page #2 Bob
LB

later another person arrived alone. Everyone present was seated under the carport in a social area of the home. Jimmy asked me to come inside for a private conversation. I became aware at this time that his behavior was a little out of order and I attributed it to the stress associated with his condition.

On what I believe was May 3, 2012, I visited Jimmy at his home. During the course of the conversation I asked him if he had a health care power of attorney. He inquired as to why I thought he needed one.

On what I believe was May 9, 2012 I visited Jimmy at his home. There was a woman there who I knew as Kim White. When I entered the residence she was sitting at the counter in the kitchen with a box that was the approximate size of a large shoebox. The box was full of paper currency. She volunteered that it was silver certificates and she was using the computer to determine the value. Jimmy was in the television room and as soon as I entered he told me that he wanted to get out of the house for awhile. We drove a golf cart over the road to a pond that had what he referred to as a cabin. I had been there before. We were there for about one hour. At this time, I asked if he had prepared the health care document and he said that he had signed some papers at the hospital but did not know exactly what. He informed me that his son Jim had telephoned earlier. When I asked about the conversation, he blurted out that he had to do something for him as related to his living arrangements. The conversation continued but the train of thought was incoherent. Later that day I visited with Dennis Hill, another lifelong friend who lived on the same property as Jimmy's

Page #3 *John*
John

residence and told him that I was concerned about Jimmy's cognitive skills. My concern was that he may unknowingly do something that was harmful to himself. Dennis admitted that he too had seen some odd behavior in regard to some handyman jobs that he had done inside the residence.

I visited Jimmy almost daily in the afternoon. On what I believe to be either May 8 or May 9, 2012 he told me that he wanted something to eat that was not available in the house and asked me to drive him to the local IGA in Timmonsville which may be two miles from the home. We did go there, but he was unable to make a purchase, it was like he had entered a strange and unfamiliar place. We left without making a purchase. I did not know whether it was medication, the tumor, or just the stress of the uncertain that caused behavior. I did recognize that one on one, in simple conversation that he seemed to function in a normal manner.

As to his caregivers, Jimmy had told me that he had an agreement with his current female friend to take care of him at the residence. He did not spend every night at his residence during the early period of his treatment and I assume he was at the residence of this friend. By early fall his health and mobility had failed. At some point during this time relationship with his female friend seemed to have cooled and his daughter Beth took up residence in the home, being assisted by an African American woman local to the community. This arrangement continued till Jimmy went to Duke Hospital in November. At that time, another daughter, Wendy took up residence in the home. After Jimmy's

Page #7 *Edm*
Edm

return from Duke, Wendy stayed in the residence and refused to let Beth do no more than visit. On Thanksgiving Jimmy was comatose to the point that he was totally unresponsive to me. For several days I actually heard arguments between Beth and Wendy as to how to proceed with Jimmy's healthcare. These arguments were within earshot of Jimmy and I did not know how much if any he could understand. Wendy was in residence at the home and Beth was living in Florence. I took it upon myself to contact Beth and meet with her in Florence in order to mediate some agreement so as to quell the arguments in what I knew would be the last Christmas Jimmy spent on this earth. Beth told me that she would meet with Wendy and try to reach a compromise. After meeting with Beth, I drove to Jimmy's residence and after some knocking Wendy came to the door. I explained what I was trying to do and why. Wendy flatly refused to meet with Beth and told me no compromise was suitable with her.

I do know there were several times that law enforcement was involved in who occupied the residence, but I do not know to what extent. I also know that Beth actually resided in Jimmy's home off and on over the years. It was not unusual to find her there on my visits. I never, not even one time remember Wendy living there.

The above statements are the truth as I know it to be and am willing to swear to that effect. *Sept 11/20*

George Davis McClam

Stacy
My Commission Expires
September 5, 2018

I am resigning this affidavit that I originally signed on July 31, 2014
NOTARIZED by ROA Jena Rose on 7/31/14 for se expires Jan. 18, 2016

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

ELIZABETH LANGLEY

Plaintiff,

vs.

WENDY J. LYNCH, ET AL.

Defendant.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2013 -CP-21-01408

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

COPY

Plaintiff's Attorney:

James T. Irvin, Jr., Bar No. 2921

Address:

P.O. Box 2677, Myrtle Beach, South Carolina

Phone: 843-445-6200 Fax 843-445-6202

E-mail: irvinlawfirm@aol.com Other:

Defendant's Attorney:

Joseph M. McCullough, Jr., Bar No. _____

Address:

P.O. Box 11623, Columbia, South Carolina 29211

Phone: _____ Fax _____

E-mail: _____ 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: _____

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.

James T. Irvin, Jr.
Signature of Attorney for ☒ Plaintiff/☐ Defendant

July 1, 2015

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ 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, SCRCP)

☐ 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: VS Date Filed: _____

☐ MOTION FEE COLLECTED: \$ 25

☐ CONTESTED - AMOUNT DUE: \$ _____

CERTIFIED: A TRUE COPY

Carla R. Smith

ROA

CLERK OF COURT C.P. 000159
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN RE: ESTATE OF JAMES M.)
LYNCH,)

ELIZABETH L. LANGLEY)

Plaintiff)

vs.)

WENDY J. LYNCH, REBECCA M.)
LYNCH, JAMES M. LYNCH II,)
DONALD JORDAN III, JIMMY)
WHITE AND S. PORTER)
STEWART II, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF JAMES M. LYNCH,)

Defendant.)

IN THE COURT OF COMMON PLEAS
IN THE TWELFTH JUDICIAL CIRCUIT
Docket No.: 2013-CP-21-01408

COPY

**PLAINTIFF'S
MOTION TO RECONSIDER**

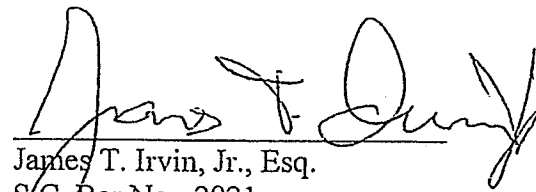
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CLERK OF COURT
FLORENCE COUNTY, SC

Plaintiff, Elizabeth L. Langley ("Langley") moves the Court, pursuant to Rules 52(b) and 59(e), SCRCPP, and all other applicable rules, to reconsider, alter, and amend its Order granting summary judgment in favor of the Defendant, Wendy J. Lynch, based on a finding of no genuine issue of material fact as to undue influence or the testator's competency. The grounds for this Motion shall be such as argued at the re-hearing of this matter, and be based on the laws and decided appellate court decisions of South Carolina, including but not limited to the fact that the Court's Order itself expresses that there are disputed factual issues in the case by referring to evidence as being a "bald assertion."

Based on the evidence, it is Plaintiff's position a genuine issue of material fact exists as evidenced in Plaintiff's Memorandum in Opposition to Summary Judgment and supporting documentation. Defendant, Wendy Lynch, was not entitled to Summary Judgment against Plaintiff, Elizabeth Langley, based on the genuine issue of material facts presented at the hearing as well as in Plaintiff's Memorandum in Opposition to Summary Judgment and supporting documentation. Plaintiff respectfully requests that the Court reconsider, alter, and amend its Order to the extent that the action not be dismissed in its entirety.

CERTIFIED: A TRUE COPY

Carrie H. Spain ROA
000160
CLERK OF COURT C.P. & C.P.
FLORENCE COUNTY, SC



James T. Irvin, Jr., Esq.

S.C. Bar No.: 2921

The Irvin Law Firm, LLC

ATTORNEY FOR THE PLAINTIFF

PO Box 2677

Myrtle Beach, S.C. 29578

The 1 day of July, 2015.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served the attached Plaintiff's Motion to Reconsider in the above captioned action on counsel of record to this cause as indicated by depositing a copy hereof, postage paid, in the United States mail to counsel as indicated below:

Daniel M. Bradley, Esq.
875 Law Country Blvd.
Suite 210
Mt. Pleasant, SC 29465

Attorney for Defendants

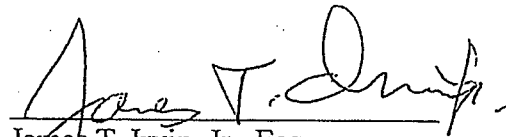
Joseph McCulloch, Esq.
Law Offices of Joseph McCulloch
P.O. Box 11623
Columbia, S.C. 29211

Attorney for Defendants

S. Porter Stewart II
PO Box 1461
Florence, S.C. 29503

Defendant Pro Se

The 1 day of July, 2015.



James T. Irvin, Jr., Esq.
The Irvin Law Firm, LLC
PO Box 2677
Myrtle Beach, S.C. 29578

FILED
2015 JUL -1 PM 4:05
CLERK OF COURT
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY

Candice A. Spivey
ROA
CLERK OF COURT C.P. & C.S.
FLORENCE COUNTY, S.C. 000162

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July 1, 2015

Via First Class Mail

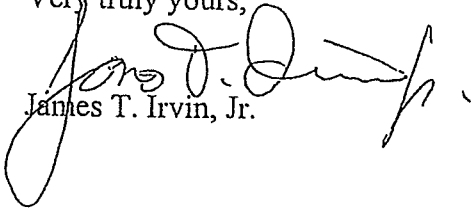
Joseph McCulloch, Esq.
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P.O. Box 11623
Columbia, S.C. 29211

Re: Elizabeth Langley v. Wendy J. Lynch, et. al.
2013-CP-21-01408

Dear Mr. McCulloch:

Please find enclosed a copy of the Motion to Reconsider. If you have any questions, please do not hesitate to contact our office.

Very truly yours,


James T. Irvin, Jr.

Enc.

Cc.: Daniel M. Bradley
S. Porter Stewart, II

ROA
000163

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
	)	CASE NO.: 2013-CP-21-01408
Elizabeth J. Langley,	)	
	)	
v.	)	DEFENDANT'S RESPONSE IN OPPOSITION
	)	TO PLAINTIFF'S MOTION FOR
Wendy J. Lynch, Rebecca M.	)	RECONSIDERATION OF SUMMARY
Lynch, James M. Lynch II, Donald	)	JUDGMENT ORDER
Jordan, III, Jimmy White and S.	)	
Porter Stewart, II., as Personal	)	
Representative of the Estate of	)	
James M. Lynch,	)	
	)	
_____ Defendants.	)	

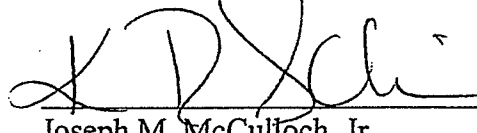
The defendant, Wendy J. Lynch ("Ms. Lynch"), by and through undersigned counsel, files this opposition to Plaintiff's Motion for Reconsideration of this Court's June 22, 2015 Order granting defendant's Motion for Summary Judgment. Ms. Lynch's opposition to the plaintiff's reconsideration motion is based on the following:

1. The case law on undue influence and incompetence requires evidence to be focused on the *testamentary act*. At the summary judgment hearing, even in the light most favorable to plaintiff, plaintiff set forth no evidence of incompetence or undue influence at any time.
2. The motion for reconsideration, relying on the Plaintiff's Memorandum in Opposition to Summary Judgment and supporting documents, again does not point to any genuine issues of material fact in dispute. It further fails, again, to set forth any evidence of undue influence or incompetence.

As there is no genuine issue of material fact of undue influence or incompetence at the time of the testator's testamentary act, summary judgment is appropriate, and the motion for reconsideration should be DENIED without a re-hearing.

ROA
000164

Respectfully submitted,



Joseph M. McCulloch, Jr.

Kathy R. Schillaci

Law Office of Joseph M. McCulloch, Jr.

1426 Richland Street

P.O. Box 11623

Columbia, South Carolina 29211

T: (803) 779-0005

F: (803) 779-0666

Columbia, South Carolina

this 6th day of July, 2015.

CERTIFICATE OF SERVICE

I, Stuart Inman, an employee of the Law Offices of Joseph M. McCulloch, Jr., on behalf of the Defendant, Wendy J. Lynch, do hereby certify that I have served all parties who have entered an appearance in this action with the **DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF SUMMARY JUDGMENT** via first-class United States Mail, with sufficient postage, addressed to:

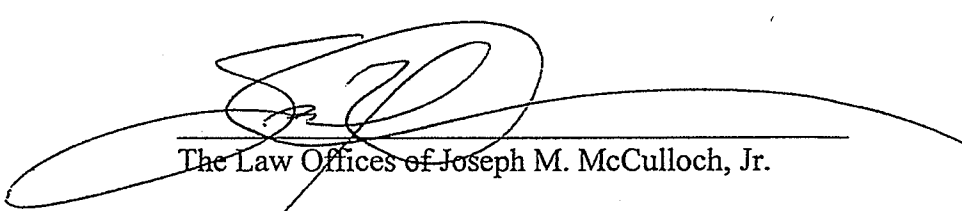
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Mt. Pleasant, South Carolina 29465

S. Porter Stewart, II, Esq.
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pstewart@mcgowanlaw.com

Rebecca Lynch
415 Wayside Drive
Winston Salem, North Carolina 27107

This 6th day of July, 2015. Copies have been served on all parties who have appeared in to this action in accordance with Rule 5, SCRCP.


The Law Offices of Joseph M. McCulloch, Jr.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF FLORENCE

IN THE CIVIL COURT

3
4 ELIZABETH L. LANGLEY,
ET AL,

5 Plaintiffs,

6 -vs-

7 WENDY J. LYNCH,
ET AL,

8 Defendants.
9

TRANSCRIPT OF RECORD

13-CP-21-1408

10
11 June 17, 2015
12 Florence South Carolina

13
14 B E F O R E:

15 HONORABLE D. CRAIG BROWN, Judge.
16

17 A P P E A R A N C E S:

18 JAMES T. IRVIN JR., Esquire
Attorney for the Plaintiffs

19
20 JOSEPH M. McCULLOCH, JR., Esquire
KATHY R. SCHILLACI, Esquire
21 Attorneys for the Defendants
22
23

24 L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter
25

1 INDEX

2 Motion Hearing 06/17/15 3

3 Ruling of the Court 24

4 Certificate 31

5

6 INDEX OF EXHIBITS

7 (Court Reporter's Note: No exhibits were marked or

8 received into evidence).

9

10 DEFENDANT'S EXHIBITS

11

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
12 1	Affidavit (Healy)		19
13 2	Affidavit (Healy)		19
14 3	E-mail 06/17/15)		19
15 4	Depo excerpts (Langley)		19

16

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25

1 (The following proceedings are reported on
2 June 17, 2015.)

3 THE COURT: Mr. McCulloch, this is your motion
4 for summary judgment?

5 MR. McCULLOCH: Your Honor, it is our motion.

6 THE COURT: I would be happy to hear from you.

7 MR. McCULLOCH: Thank you, Your Honor. There
8 is one matter I would like to take up first, Your Honor;
9 and that is that a brief and quick scan of the
10 plaintiff's memorandum in opposition and --

11 THE COURT: Have you had an opportunity to
12 look at it yet?

13 MR. McCULLOCH: I've had enough of an
14 opportunity, Your Honor. I notice that it relies almost
15 in total on what I will call two and a half affidavits
16 that were provided to us yesterday at 12:30 by e-mail.
17 I have that e-mail here if Your Honor needs it.

18 I assume the plaintiff will stipulate that
19 that information was provided us. Your Honor, I do not
20 believe under the rule and the case law that those
21 affidavits should be considered by you, but that is
22 absolutely within your discretion.

23 So if you will indulge me just a moment. This
24 lawsuit was filed by the plaintiff on April 30, 2012.
25 The interrogatories were last amended April 9th of 2014,

1 listing about seven witnesses.

2 One of the affidavits of a Dr. Healy was not
3 listed in the interrogatory responses. We took the
4 plaintiff's deposition in November of 2014, and
5 Dr. Healy was not mentioned. The first notice we had
6 that Dr. Healy had any kind of an opinion was yesterday
7 at 12:30.

8 There is also included a letter from a doctor
9 who, as far as his letter goes, never examined this
10 gentlemen, the testator, has no direct information and
11 has an opinion which is not in the form of an affidavit
12 and therefore that should be excluded for that reason
13 alone.

14 The third affidavit is one of one of the
15 defendants in this lawsuit, and that lady is Rebecca
16 White. She is in the courtroom. And just for the
17 Court's orientation, this is a will contest that in a
18 fashion alleges the incompetence of the testator on
19 May 11, 2012, when the will was executed.

20 THE COURT: Before you go any further, let me
21 say this.

22 MR. McCULLOCH: Yes, sir.

23 THE COURT: I have read the entire file before
24 you came in here today. I have read your memorandum.

25 MR. McCULLOCH: I expected that.

1 THE COURT: I just want to make you aware of
2 that, but you put on the record what you feel like you
3 need to make sure the record is clear. But before we go
4 any further, I want you to know, as well as Mr. Irvin,
5 that I have read it all. But go ahead.

6 MR. McCULLOCH: Your Honor, I expected no
7 less. It was not my intention today expecting that to
8 laboriously drag you through all the facts and the
9 affidavits because I believe that the result is clearly
10 dictated by the evidence.

11 But on this issue of these affidavits, I want
12 to say first, again, I don't believe they are timely. I
13 believe they are in violation of Rule 56(c), I believe
14 it is. Frankly, this information, even if it's
15 considered -- for instance, Dr. Healy's affidavit,
16 which, of course, we believe to be untimely -- he does
17 not tell us when he examined this gentlemen in the
18 affidavit.

19 He opines in paragraph 10, "I don't believe he
20 would have had sufficient cognitive ability to
21 understand the complexities of a will. As a
22 consequence, it would be my medical opinion reasoned a
23 little degree certainty that he was not able to exercise
24 a will." [Verbatim]

25 I'm not sure what that means, but it certainly

1 doesn't comply with the rule. I would think it would be
2 a opinion, and I would ask the Court to reject it, even
3 if you consider the affidavit, which is untimely.

4 Your Honor, there have been -- we have taken a
5 number of depositions in this case. I have copies of
6 the interrogatories that I will present to the Court and
7 make those a part of the Court's exhibit as needed.

8 But the plaintiffs have been through three
9 lawyers. Mr. Irvin is their third lawyer. So he is at
10 a little bit of a disadvantage because he doesn't have
11 the panoramic view of this case.

12 The issues are whether there is any genuine
13 issue of fact with respect to Mr. Lynch's abilities to
14 execute a will on May the 11th of 2012; and whether or
15 not prior to that date or subsequent to that date,
16 whether undue influence was exerted upon him and whether
17 he was susceptible to that.

18 The total of the landscape, Your Honor, after
19 these years of discovery efforts, the plaintiff has
20 challenged the Mayfair case by discovery by listing
21 witnesses.

22 Your Honor, we have attached to our motion --
23 which is rather lengthy and I apologize to you about
24 that -- it's lengthy because I got a real lesson in this
25 area of the law in a case some years ago, which we

1 reference in the brief.

2 Your Honor, that case is Walter Scott Russell
3 and Neiman versus the estate of Donald Russell and
4 Wachovia Bank. That case dealt with competence, as well
5 as undue influence.

6 I think it establishes the benchmark for the
7 need to grant a summary judgment under circumstances
8 exactly like this, where unless there is unmistakable
9 and convincing evidence, summary judgment should be
10 granted according to our Supreme Court.

11 Your Honor, what we have tried to do in this
12 brief is to provide you with a recitation of the facts
13 of this case from a chronological standpoint. That
14 appears on page 3, and then on page 4 there is a
15 timeline of what I will call events.

16 We felt that would be helpful to the Court in
17 trying to understand the case at its inception. The
18 underlying facts are basically that Mr. Lynch was
19 diagnosed in April with a certain type of brain cancer.

20 On May 11th -- or in April he first saw
21 Attorney Rick Hoefer, who is now in the Solicitor's
22 Office because -- and we are all jealous -- he has left
23 the private practice of law and is now on the State
24 payroll.

25 But he and his office prepared the will for

1 Mr. Lynch, which was executed on May 11th. Your Honor
2 has attached to our motion, among the many affidavits
3 that we provided, some 22, I believe, Attorney Hoefer's
4 affidavit speaks for itself.

5 He knew Mr. Lynch prior to this. He and his
6 law partner, Mike Ballenger, were good friends of
7 Mr. Lynch. They knew him from years of socializing and
8 having a representation relationship.

9 They were with him on May the 11th. There is
10 an affidavit from Mr. Ballenger, as well as members of
11 their staff, the paralegals, who were present during the
12 discussions.

13 It is all of their considered opinions that he
14 was quite competent on May the 11th. Of some
15 interest -- and I note that it is mentioned in this
16 brief we just got -- that the plaintiff asserts that she
17 was not present at the office.

18 It is, of course, important to your
19 consideration and understanding, Your Honor, and the
20 affidavits will support this. On May the 11th, Wendy
21 Lynch, our client, drove Mr. Lynch to the lawyer's
22 office.

23 She then turned Mr. Lynch over to the
24 plaintiff, who was there and present, and to the lawyer
25 and to the paralegals. To my knowledge, based on the

1 affidavits we have, no one was present in the room
2 during the discussion and the execution of the will,
3 except the lawyer and paralegal.

4 But there is no question -- at least no
5 question based on the affidavit and the evidence in this
6 case -- that the plaintiff drove Mr. Lynch home. That
7 all becomes important to the issue of undue influence.

8 In this brief or memorandum of the plaintiff,
9 I see that it mentions on the final page that ends with
10 a conclusion: "At the time of the execution of the
11 will, Elizabeth Langley was living at the home of
12 Mr. Lynch, also a very pertinent fact, Your Honor.

13 On Friday, May 11, 2012, Elizabeth Langley was
14 out of town. That's a non sequitur, Your Honor, simply
15 because during Ms. Langley's five-hour deposition, she
16 couldn't remember what day it was that she was at the
17 lawyer's office.

18 She certainly conceded that it could have been
19 the 10th or the 11th that the will was executed, and
20 then she gave him a ride home. So I don't want the
21 Court to be confused by that fact.

22 So, Your Honor, we have tried, as I
23 mentioned -- and we do this a little on page 6 of the
24 brief -- looking at the legal issues, which are, of
25 course, whether he was competent on May 11th.

1 That's the only date that really matters,
2 whether there is any evidence, convincing evidence, of
3 undue influence; and there is not in this case, Your
4 Honor.

5 We, on page 6, divided up the periods of time
6 pertinent to those questions. We then set out on a
7 course to interview as many people who were friends and
8 professional associates of Mr. Lynch, who at that time
9 was a magistrate and had for some years been a local
10 magistrate in this county.

11 So we divided this into that period of time
12 leading up to May 11th, May 11th itself, the operative
13 date, which, of course, all of the case law as we have
14 outlined -- maybe to a fault. We have extensively
15 briefed this. I am not going to do that, Your Honor. I
16 will not talk about that.

17 And it's the period following May 11th. Those
18 are the pertinent periods because the first two periods
19 leading up to May 11th and May 11th relate directly to
20 his competence. And subsequent to May 11th, they relate
21 directly to his competence and to this undue influence
22 aspect.

23 I will simply say this, Your Honor. We fully
24 briefed it. I don't want to belabor your time because I
25 think the evidence we have presented is more than

1 sufficient for the granting of summary judgment.

2 I firmly believe, Your Honor, that these
3 affidavits should not be considered because of the
4 lateness. But even if considered, they do nothing more
5 than present a plaintiff who is relying upon the
6 pleadings.

7 Your Honor, the evidence and affidavits of
8 people who dealt with this gentleman on a daily basis,
9 including his lawyer, establish his competence. We have
10 doctors who examined him in and around -- obviously, we
11 don't have a doctor who examined him on May the 11th --
12 but there were doctors, unlike Dr. Healy, because to the
13 best of our knowledge, he didn't personally see this
14 gentlemen until sometime in July, if then.

15 We don't have the medical records for any of
16 the -- in fact, we have a bill somewhere that says that
17 the first time he ever saw him was in late July. We
18 have doctors, and their affidavits are attached to the
19 memorandum and the motion that establish that they did
20 competency evaluations in April.

21 He was determined to be competent in their
22 medical opinions to a degree of medical certainty, which
23 is what our affidavits said; and was as of November and
24 December, again determined to be competent to make
25 medical decisions for himself to a degree of medical

1 certainty.

2 There are people who saw him on a daily basis,
3 and their affidavits are attached. Senator John Land is
4 one of the affidavits that I thought was important.
5 Senator Land learned of Mr. Lynch's illness. Mr. Lynch
6 was diagnosed, again, in April.

7 He executed the will in May, May 11th. Some
8 time in the latter part of May or early June, he
9 contacted Senator Land and indicated that it was his
10 desire and his recognition of his illness that he
11 desired to retire or resign.

12 He hoped that Senator Land would consider
13 appointing his daughter, Wendy Lynch, as the magistrate;
14 and she was appointed for a brief period of time.
15 Senator Land has given us an affidavit that he met,
16 spent time with Mr. Lynch.

17 I apologize, Your Honor. I don't recall
18 whether it was late May or early June, but it was after
19 May 11th; and he found him to be the same Jim Lynch he
20 had known and reappointed time after time.

21 The other affidavits simply buttress the
22 position that that there is no legitimate, genuine issue
23 of fact about his competence on the date, May 11th,
24 before and after that, until very late in his illness
25 after December of 2012. He died in February of 2013.

1 The interrogatories, answers by the plaintiff
2 caused us, of course, to reach out to those people to
3 try to talk with them informally. Several of their
4 witnesses or I think it was two of their witnesses
5 indicated they didn't want to talk to us and didn't have
6 any information.

7 Only two of, I think, eight people indicated
8 as witnesses in the interrogatory answers told me, after
9 they were listed as witnesses in support of the
10 plaintiff's case, that they had even been contacted,
11 only two out of eight.

12 The plaintiff simply -- and this was not
13 Mr. Irvin. He was not involved in this case. This was
14 a second lawyer involved. They apparently simply took a
15 bunch of names given to them by whoever and threw them
16 down there.

17 Eventually the plaintiff themselves took the
18 depositions of several of their own alleged witnesses or
19 those witnesses listed in the interrogatories. During
20 those depositions, most of them we already had
21 statements which we reduced to affidavits, which are
22 attached here.

23 Your Honor, I have the interrogatories here.
24 I would be happy to provide that to the Court so you can
25 see what I regard as bad faith, whether committed by the

1 plaintiff or the plaintiff's counsel.

2 But I think it's irresponsible to list
3 witnesses you haven't bothered to talk to who ultimately
4 caused either us to take their deposition or the
5 plaintiff took their deposition and we participated; and
6 the deposition that resulted in evidence against the
7 plaintiff's own case.

8 I think that is significant. The Court may,
9 in fact, depending on the Court's attitude about this,
10 56(g), I think, allows for the assessment of attorney's
11 fees in egregious cases.

12 I'm not so concerned about that, Your Honor,
13 as I am about finally making the point. This is a case
14 without evidence. It started and was filed at a time
15 when there were no witnesses to his incompetence, no
16 witnesses to undue influence exerted by Ms. Lynch or
17 anybody.

18 During the period of time leading up to
19 May 11th and, in fact, on May 11th, according to the
20 plaintiff herself, she was living with Mr. Lynch, as was
21 Wendy Lynch.

22 Thereafter she continued to live with
23 Mr. Lynch, but ultimately Mr. Lynch moved out and moved
24 in with a lady friend for the entire summer following
25 May the 11th.

1 He continued to live rather independently,
2 though with family around; and all of that is relevant
3 because Your Honor is quite familiar with the law of
4 undue influence.

5 As the Court indicates in the Wachovia, Donald
6 Russell estate case -- and I have a copy of it here --
7 when there are periods of time, that unless there is
8 evidence of a person being essentially caged and
9 obstructed from communication, that might lend itself as
10 circumstantial evidence to the possibility of undue
11 influence.

12 Here you had a gentleman who was ill but quite
13 competent, who needed physical help but was quite
14 independent, and who moved out and lived with a
15 girlfriend from May 11th until December when he was
16 judged still competent by his doctors.

17 He never contacted Mr. Hoefer nor any lawyer
18 to alter his will. There are affidavits in there, I
19 believe, Your Honor, that will indicate that his
20 determination on May 11th was consistent with what he
21 told a number of those people.

22 I will represent to the Court that the will
23 itself distributes in equal shares most of his assets to
24 the plaintiff, to Wendy Lynch, and to Rebecca White, the
25 third sister.

1 It judiciously excluded a son. I believe that
2 is addressed in Mr. Hoefer's affidavit. But his son is
3 a young man who suffers from some disabilities and is on
4 government support.

5 According to the affidavits and the witnesses
6 that we talked with, Mr. Lynch was very concerned about
7 whether or not a bequeath would affect his entitlement.
8 So the ultimate disposition in the will and the fact
9 that Mr. Lynch did not give anything in the will to his
10 son all makes sense and were consistent with the
11 conversations supported by the affidavits that Mr. Lynch
12 had during his lifetime and the conversations he had
13 with Mr. Hoefer, his lawyer, which are outlined in that
14 affidavit.

15 But we have presented you with a series of
16 affidavits that break out into these various periods of
17 time and we hope conclusively so, Your Honor. I will be
18 happy to stand for questions or pop back up in brief
19 reply. Thank you, Your Honor.

20 THE COURT: Thank you.

21 Mr. Irvin, I will be happy to hear from you.

22 MR. IRVIN: Your Honor, let me sort of recap
23 what we believe the factual situation is with regard to
24 this man. This man had a serious cancer of the brain.
25 This man, when he made his will and said he was

1 competent to make his will, he left out parts of his
2 property in the will. He couldn't remember what he
3 owned. Also, he left out his son, which is certainly
4 something that nobody would normally do.

5 I suggest the evidence that we presented
6 today, we have just received that evidence from the
7 medical providers in this case; and I got it to the
8 Court and I got it to him as soon as possible.

9 But the main thing in this case, I believe, is
10 the fact that a jury -- this is a factual issue. A jury
11 could believe one affidavit, not believe another
12 affidavit.

13 It's a question of fact for a jury to decide
14 whether or not there was undue influence and whether or
15 not in this particular case, he was competent to make
16 his will. I certainly say that the facts of this case
17 merit a jury trial, and that's our argument.

18 I am the third lawyer, but I believe that the
19 plaintiff in this case, she is fighting for the brother,
20 Your Honor. She is fighting this will. It's more
21 beneficial to her personally if it goes this way, but we
22 are asking the Court to deny the motion.

23 We don't believe that they have met the burden
24 under the law, and we believe that they should be given
25 a jury trial as we analyzed in our memorandum to the

1 Court.

2 THE COURT: Anything in reply?

3 MR. McCULLOCH: Only this, Your Honor. As we
4 have been talking, we have been wandering through the
5 plaintiff's brief in opposition. I want to point a
6 couple of things out that do concern me.

7 First, Your Honor -- I guess I would like to
8 make these Court's exhibits.

9 THE COURT: What are those, first?

10 MR. McCULLOCH: These are appended to -- and I
11 do this because you have not made a ruling on whether
12 you will consider these, but I think this is pertinent
13 to whether you do or not, Your Honor.

14 THE COURT: Are those attachments to this
15 memorandum?

16 MR. McCULLOCH: Yes, sir. The first one I
17 would reference is the affidavit of Dr. Joseph Healy.
18 This is what is apprehended to the memorandum that you
19 just received.

20 COURT REPORTER: Do you want me to mark them
21 as Court's exhibits, Your Honor?

22 THE COURT: You can mark them as defendant's
23 exhibits.

24 (Defendant's Exhibits Number 1-4 are received
25 into evidence.)

1 MR. McCULLOCH: Your Honor, the second page of
2 Dr. Healy's attached affidavit has changes to it that do
3 not appear in what was provided us yesterday at 12:30.
4 Now, that's a small matter. Defense 2 is what we
5 received by facsimile -- by e-mail -- yesterday. You
6 will see these notations.

7 THE COURT: I see it.

8 MR. McCULLOCH: Obviously, it's a
9 late-breaking event to try and reach the medical
10 standard for a valid opinion; and I don't think it's
11 valid yet.

12 THE COURT: All right.

13 MR. McCULLOCH: I think it's irrelevant.

14 MR. IRVIN: If I can clear that up.

15 THE COURT: I will give you a chance to.

16 MR. IRVIN: All right.

17 MR. McCULLOCH: Your Honor, the third exhibit,
18 Defense Exhibit 3, is simply the e-mail that was the
19 transmittal to our Number 2 and the other affidavits,
20 but I have already mentioned that. I put that there
21 only so the Court can see, as we received this about
22 12:30 yesterday.

23 Of some importance is the extract from the
24 plaintiff's deposition, Your Honor, which is Defense
25 Exhibit 4. I offer this to you simply because -- and we

1 have the sealed deposition transcript here and the
2 extracts pertinent to this issue of the medical opinion
3 and the witnesses.

4 We asked in a laborious -- I think it was a
5 five-hour deposition of Ms. Langley -- we asked, of
6 course: "These witnesses you have listed in your
7 interrogatories, are these the witnesses? Only
8 witnesses you know of?"

9 Her deposition was taken -- it's on the front
10 of that, I believe, November, Your Honor. She confirmed
11 those were the only witnesses. Then, as Defense's
12 Exhibit 4, indicates we asked, "At this time do you have
13 expert witnesses?"

14 "I don't recall," or something to that effect.
15 Mr. Irvin at that point said, "We expect to have an
16 expert witness who will be Dr. Susan Van Epps."

17 "Is that your only expert?"

18 "Yes."

19 We still have yet to hear from Ms. Epps, and
20 now we see Dr. Healy attempting to do something. I
21 would again say, Your Honor -- and I will sit down
22 now -- I believe this case is so overwhelming that it is
23 akin to the Donald Russell estate case, which I had the
24 unfortunate -- though I was well paid -- but I had to
25 argue that in the Supreme Court.

1 It was a very short argument there, Your
2 Honor. The Court determined that there was no valid
3 evidence in support of any genuine issue of fact and
4 concluded that there just was no reason to allow that
5 case to go forward. I believe the same is true here.

6 Your Honor, Ms. Schillaci asked me to point
7 out to you, among the attached things to the memorandum
8 provided you just this morning or this afternoon, is a
9 an affidavit of Donald Campbell.

10 Months and months ago or a year or more ago,
11 we received an unsigned affidavit from Mr. Campbell. We
12 never received that document that is attached to that.
13 Again, Your Honor, I don't know whether he signed it. I
14 assume he did.

15 It indicates his signature on it was July 17,
16 2014; but we have never been provided that. I would
17 again say to Your Honor, we never received a signed
18 affidavit.

19 We never had any reason to give any
20 credibility to an unsigned affidavit, and it should
21 not be considered by you, Your Honor. Thank you very
22 much.

23 MR. IRVIN: Judge, Your Honor, let me tell
24 you, there's about ten boxes of stuff that I got from a
25 lawyer in New York -- I mean -- North Carolina, who was

1 the second lawyer in this case he referred to. We just
2 got the affidavit today from the one that Joe just
3 talked about. It's there. It was given to us by
4 Ms. Langley today.

5 With regard to Dr. Van Epps being the expert
6 witness in this case, I said then and apparently she has
7 got to come to an agreement with Ms. Langley to move
8 forward with her being the expert witness.

9 I don't think she has completely reviewed all
10 the records yet, Your Honor. So that was the intent of
11 us to use Dr. Van Epps. I will certainly get him a
12 report as soon as I have a report. She has not reviewed
13 the records at this point.

14 The records that we have come from the doctors
15 who treated him, come from the other records that we
16 have, and come from the affidavits that we have. So
17 those are the records he has that we have given him.

18 There are not any records that I'm aware of
19 that he has not been given.

20 THE COURT: Do you want to address this change
21 that was on the affidavit? You indicated --

22 MR. IRVIN: Yes, sir. Yes, sir, that was --

23 THE COURT: Hold a minute. Please don't talk
24 when I'm talking. Okay? My court reporter can't take
25 it down when both of us are talking.

1 You indicated that you had -- you wanted to
2 clarify why there was a change or why the affidavit of
3 Dr. Healy, paragraph 10, read one way when it was
4 forwarded to Mr. McCulloch, and a change on paragraph 10
5 on what was submitted to this Court today. I would be
6 happy to hear from you concerning that issue.

7 MR. IRVIN: Thank you, Your Honor. We got
8 that and forwarded it directly to him. I was able to
9 look at that affidavit. It was typed by his office.
10 Today we questioned -- we asked his office if it needed
11 to be corrected in any fashion.

12 So today between federal court and this court,
13 Ms. Langley, who had the original document, went by his
14 office; and he corrected that and initialed it, and I
15 substituted that for the other document. It was a typo.
16 "Reasonable" is what the word should be, reasonable. He
17 did it today and he dated it.

18 THE COURT: All right.

19 MR. IRVIN: I waited downstairs or upstairs on
20 the second floor to insert it in my memorandum and gave
21 him a copy of my memorandum. I did not point it out to
22 him that it was changed. That's my fault. I should
23 have done that for Mr. McCulloch.

24 THE COURT: Counsel?

25 MR. McCULLOCH: Only this, Your Honor.

1 Yesterday when we received the e-mail, attached to that
2 affidavit was a letter from Dr. Healy, if indeed from
3 Dr. Healy, that is dated June the 8th.

4 That's a small matter. What is an important
5 matter, Your Honor, is your court file will indicate and
6 include a certificate of service, if not the cover
7 letter, advising plaintiff that this motion was
8 scheduled to be heard today.

9 That was filed -- I'm sorry -- the motion for
10 summary judgment was filed February 19, 2015. So I
11 cannot imagine any excuse that would be acceptable to
12 Your Honor.

13 THE COURT: Mr. Irvin, how long have you been
14 involved in the case?

15 MR. IRVIN: Since September, Your Honor.

16 THE COURT: Okay. I will stand down for just
17 a minute. I want to look at what has been at least
18 submitted here to me here today. I will be back in a
19 few minutes.

20 (Whereupon there is a recess.)

21 THE COURT: The Court has reviewed, prior to
22 the hearing today, the motion, memorandum, affidavits
23 presented by defense counsel in its motion for summary
24 judgment.

25 As to plaintiff's cause of action -- causes of

1 action -- correct me if I misstate here, to set aside
2 the will based upon incapacity and/or undue influence.
3 Is that correct, Mr. McCulloch?

4 MR. McCULLOCH: That is correct, Your Honor,
5 as I understand their complaint.

6 THE COURT: The Court has also reviewed
7 plaintiff's memorandum, along with various attached
8 exhibits that were provided to the Court today.

9 Under Rule 56, South Carolina Rules of Civil
10 Procedure, which addresses a motion for summary
11 judgment, Subsection (c) of Rule 56 says: "Adverse
12 party" -- that being plaintiff in the case -- "may serve
13 opposing affidavits not later than two days before the
14 hearing."

15 This motion for summary judgment filed by
16 Mr. McCulloch was filed on or about, according to my
17 review of the file, on or about, it looks like,
18 December 29th of 2014, approximately six months ago.
19 I'm not exactly sure when this roster came out.

20 Can you tell me, Madam Clerk?

21 CLERK: May 15th.

22 THE COURT: May 15th?

23 CLERK: Yes, sir.

24 THE COURT: Over a month ago. Summary
25 judgment is appropriate when there is no genuine issue

1 as to any material fact and the moving party is entitled
2 to judgment as a matter of law. The Court is required
3 to view the evidence in the light most favorable to the
4 nonmoving party.

5 As it relates to the competency issue, as well
6 as undue influence, the burden is on the contestant to
7 prove undue influence, incapacity, or other basis of
8 invalidation; and such burden remains upon the
9 contestants throughout.

10 The relevant standard for capacity to make a
11 will is a contractual standard, that the testator had
12 the mental capacity to understand or comprehend the
13 subject of the contract, its nature, and its probable
14 consequences.

15 The party alleging incompetence bears the
16 burden of proving incapacity at the time of the
17 transaction by a preponderance of the evidence. I
18 emphasize, "at the time of the transaction," because
19 this Court believes that that is what is key here.

20 The undisputed testimony or evidence in this
21 case is that Mr. Lynch, formerly Judge Lynch, was
22 diagnosed with cancer in April of 2012. He remained and
23 served in his capacity as a judge until the end of June
24 2012; that he executed a will in May, May the 11th of
25 2012.

1 The law requires, in citing Sumter Trust
2 Company v. Holman, that a testator, the capacity of the
3 testator to make a will, is tested by whether he knew
4 his estate, the objects of his affection, and to whom he
5 wished to give his property.

6 The plaintiff, in their memorandum today,
7 provided numerous affidavits which defense counsel
8 objected to because of the untimeliness; and this Court
9 certainly finds that the providing of such was untimely.
10 I have reviewed them anyway.

11 In reviewing the affidavits, one of which I
12 don't even -- maybe it's proposed or purported to be an
13 affidavit of Troy Gamble. It appears to be signed by
14 him as Exhibit A.

15 I assume -- I can't even read it -- maybe
16 Driggers, Brenda Driggers maybe -- it's dated July 16th.
17 It's got to be a notary, indicating that expiration of
18 the notary may be July 16, 2023.

19 Even in looking at Troy Gamble, Dr. Gamble's,
20 affidavit or purported affidavit, along with Dr. Joseph
21 Healy's affidavit, neither of those affidavits indicate
22 that at the time of the transaction that they believe or
23 had an opinion to a reasonable degree of medical
24 certainty that Judge Lynch was incompetent.

25 Furthermore, neither one of these doctors ever

1 examined Judge Lynch to determine whether or not he was
2 competent. The doctors that did exam Judge Lynch, up
3 until the fall of 2012, months after his diagnosis, and
4 I believe it was more specifically Dr. Ranjan
5 [phonetic], at the request of the one of the other
6 doctors, performed a competency evaluation of Judge
7 Lynch or either Dr. Rao, R-A-O, determined even at that
8 point, the late stage, that he was competent.

9 None of the further affidavits submitted by
10 plaintiff have raised a general issue of material fact
11 indicating anything as it relates to the competency of
12 Judge Lynch at the time that his will was executed,
13 nothing.

14 The only -- the only -- reference to any
15 capacity at all in this Court's view is that of Rebecca
16 White, who is a daughter and a defendant in this case,
17 in paragraph 3, which is a bald assertion that her
18 father lacked the capacity to make a will when it was
19 executed on May 11th, a bald assertion. That's it.

20 There is nothing further that would create a
21 genuine issue of material fact as it relates to Judge
22 Lynch's capacity to make a will or execute such when it
23 was done on May 11th.

24 Therefore, this Court is granting summary
25 judgment as to lack of capacity. Now, as it goes to the

1 issue of undue influence, undue influence, there is a
2 higher standard pursuant to Russell v. Wachovia Bank,
3 353 SC 2008, which is a 2003 case.

4 "The standard of proof in an undue influence
5 case is unmistakable in convincing evidence" -- let me
6 repeat that -- "The standard of proof is unmistakable
7 and convincing evidence. The mere existence of
8 influence is not enough to vitiate a will.

9 A mere showing of opportunity and even a
10 showing of motive to exercise undue influence does not
11 justify submission of that issue to a jury unless there
12 is additional evidence that such influence was actually
13 utilized.

14 Furthermore, where the testator has an
15 unhampered opportunity to revoke a will or codicil,
16 subsequent to the operation of undue influence upon him,
17 but does not change it, the Court as general rule
18 considers the effect of undue influence destroyed." And
19 that is cited again in Russell v. Wachovia Bank, 353 SC
20 2008.

21 This Court finds, further finds, that the
22 plaintiff has failed, has failed to meet the burden.
23 Again, that burden being unmistakable and convincing
24 evidence of undue influence.

25 Therefore, the Court is granting summary

1 judgment as to plaintiff's cause of action for undue
2 influence as well.

3 Mr. McCulloch, if you will prepare me an order
4 and get it to me within ten days, I would appreciate it.

5 MR. McCULLOCH: I will do so, Your Honor.
6 Thank you very much.

7 MS. WHITE: Excuse me. Can I ask a question?

8 THE COURT: You can talk to Mr. Irvin.

9 MS. WHITE: He is not my attorney. There was
10 a case in there from my sister that said my daddy wasn't
11 competent and was diagnosed --

12 THE COURT: Ma'am, I have made my ruling.

13 MS. WHITE: It's her own words.

14 THE COURT: I have made my ruling. Thank you.

15 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
16
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COPY

Last Will and Testament

of

JAMES M. LYNCH

FILED
2013 MAR - 1 PM 3:54
JAMES M. LYNCH
FLORENCE COUNTY, S.C.

KNOW ALL MEN BY THESE PRESENTS, that I, James M. Lynch, a resident of the County of Florence, State of South Carolina, being of sound mind, memory and understanding, but being mindful of the uncertainty of life and the certainty of death, do hereby make, will, ordain, publish and declare that this to be my Last Will and Testament hereby revoking any and all Wills, Testaments and/or Codicils heretofore made by me.

ITEM I. I hereby direct my Personal Representative(s) hereinafter named, to pay all my just debts, which may be legally owing, as soon after my death as is practical.

ITEM II. I hereby give, will, devise and bequeath to my daughter, Wendy Lynch and to my grandson, Donald Jordan, III (Jordy), as joint tenants with the right of survivorship and not as tenants-in-common, both my farm in Florence County, containing approximately 103 acres and also my lot and house at Santee in Clarendon County, to be theirs absolutely in fee simple.

ITEM III. I hereby give, will, devise and bequeath to my daughter, Wendy Lynch and to my grandson, Donald Jordan, III (Jordy), all boats to go with the Santee property and my 2008 Kubota tractor to go with the farm.

ITEM IV. I hereby give, will, devise and bequeath to my daughter, Elizabeth Lynch Langley, my farm in Florence County on Highway 76, to be hers in fee simple absolute.

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ITEM V. I hereby give, will, devise and bequeath to my daughter, Elizabeth Lynch Langley my 2008 Chevrolet Tahoe.

ITEM VI. I hereby give, will, devise and bequeath to my daughter, Rebecca Marion Lynch, the lot and any buildings thereon known as the Ponderosa and the lot and buildings thereon known as the Cartersville Store, both in Florence County, to be hers in fee simple absolute.

ITEM VII. I hereby give, will, devise and bequeath to my daughter, Rebecca Marion Lynch, my 2010 Silverado truck.

ITEM VIII. I hereby give, will, devise and bequeath to my daughters, Rebecca Marion Lynch and Elizabeth Lynch Langley all my right, title and interest in that certain debt of Andrew McFadden and Luretha McFadden, secured by real property on Hill Street, as evidenced by mortgage recorded February 1, 2010 in Book B-286 at page 1488, Clerk of Court for Florence County. I direct my Personal Representative to so assign the Note and Mortgage so as to give effect this disposition.

ITEM IX. I direct my personal representative to sell my 1986 El Camino and 1989 dump truck and thereafter apply the proceeds as set forth in Item X, below.

ITEM X. I hereby give, will, devise and bequeath to my daughters, Wendy Lynch, Elizabeth Lynch Langley and Rebecca Marion Lynch, share and share alike, the following:

- a) My farm with pond and house of approximately 63 acres;
- b) My motorhome;
- c) All guns;
- d) All silver coins;
- e) All stocks including, but not limited to, First Citizens Bank, First Ottawa Bank and shares representing my ownership of Silver Dollar Enterprises;
- f) All ATVs, including 4 wheelers and the Gator;
- g) The proceeds from the sale of the 1986 El Camino and 1989 dump truck.

ITEM XI. From such direct deposit bank accounts (checking) as I may have at the time of my death, I direct that my Personal Representative

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Representative, first, pay such legal debts as I may owe and thereafter fulfill the bequest set forth in ITEM XII below. After payment of the above, I hereby give, will, devise and bequeath any funds remaining from these accounts to my daughters, Wendy Lynch, Elizabeth Lynch Langley and Rebecca Marion Lynch, share and share alike.

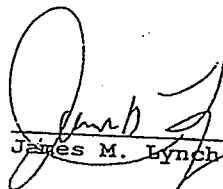
ITEM XII. I hereby give, will, devise and bequeath to my ~~son, James M. Lynch, the sum of \$100,000.00.~~

ITEM XIII. I hereby give, will, devise and bequeath all the rest and the residue of my property, of every kind and nature, both real and personal, wherever situate and whether now owned or hereafter obtained, to my daughters, Wendy Lynch, Elizabeth Lynch Langley and Rebecca Marion Lynch, share and share alike.

ITEM XIV. Because of circumstances, well known to my family, I make no direct provision for my son, James M. Lynch, II, in this, my Last Will and Testament.

ITEM XV. I hereby nominate constitute and appoint Wendy Lynch and Elizabeth Lynch Langley as the Personal Representatives of this my Last Will and Testament and direct that they shall be allowed to serve without Bond. In the event that either is unwilling or unable to serve, the other shall serve as sole Personal Representative.

I, James M. Lynch, the testator, sign my name to this instrument this 10 day of May, 2012, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.


James M. Lynch

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we Ashley E. Coleman and Christina H. Graves

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

Ashley E. Coleman
WITNESS

Christina H. Graves
WITNESS,

4/22
RC
after

THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

Subscribed, sworn to, and acknowledged before me by James M. Lynch, the testator, and subscribed and sworn to before me by Ashley E. Coleman and Christina H. Graves, witnesses, this 11 day of May, 2012.

[Signature]
Notary Public for the
State of South Carolina
My Commission Expires: 4/21/19

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
In the Court of Common Pleas

The Honorable Craig D. Brown, Presiding Judge

Case No. 2013-CP-21-01408

RECEIVED
DEC 23 2015
SC Court of Appeals

Elizabeth J. Langley.....Appellant,

v.

Wendy J. Lynch, Rebecca M. Lynch, James M. Lynch, II, Donald Jordon, III, Jimmy White and S. Porter Stewart, II, as Personal Representative of the Estate of James M. Lynch,

Of Whom Wendy J. Lynch is the Respondent.

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.

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P.A.

December 22, 2015

By:

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