

Via U.S. Postal Service

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April 24, 2016

The Honorable Jenny Abbott Kitchings
Clerk of the Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Swiger v. Smith and Kelly, as Personal Representatives
Appellate Case No: 2016-000096

Dear Ms. Kitchings:

I have decided to add an addendum to my letter dated to you April 18, 2016 addressing Mr. Brackett's letter. His letters to the Court has given the impression that this is a frivolous and ridiculous case and we are just keeping them from getting their money. Therefore, I am going to address why we have continued this case through two summary judgment hearings and have proceeded to the Appellate Court.

I have read about 800 pages of medical records and the entire record of my uncle's stay at Westminster Towers. Remember, I am a nurse practitioner so these types of records are not strange to me. I noticed the following information in these records to name just a few pieces of information to me that caused concern:

- Ben Smith listed my uncle as an orphan in the Admission paperwork to Westminster Towers
- Ben Smith listed Brenda Snow as forbidden to visit on the admission forms and subsequently gave a picture of her to circulate among the staff to be certain they could correctly identify her and prevent her from visiting.
- My uncle was specifically NOT put in the facility phone directory; a form was done saying this. This would have made it more difficult, if not almost impossible, to find him. We made several attempts during this time to find him. We thought he was just out of the house when my sister went by.
- The Respondents listed all the nieces and nephews on a paper with their addresses and phone numbers and gave it to Westminster Towers as part of his chart. People working with my uncle had no idea he had other family. This also supports that the Respondents are the nieces and nephews that my uncle is talking about on the social worker, Marcy Thomas, notes saying he has no intentions of leaving his money to them dated about February 8, 2012. The staff had no other point of reference.

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- ALL the physician consultations and medical notes are very consistent in their assessments of his condition and of his cognitive abilities. He was definitely a "sundowner". These records give far more information than the depositions by they physicians and have records in real time.
- The physical therapy notes say family was not involved prior to this illness and did not know his "prior level of function". This leads me to conclude they were not in close contact with him through the years.
- The nurses did a cognitive assessment sheet every day on him from admission to about the end of January at Westminster Towers. He is almost always listed as deficient in short term and long term memory. These terms are clearly defined.
- The ambulance crew that transported him to the hospital on January 14 (Will night) after his loss of consciousness listed him as confused. The triage nurse at the ER listed him as confused. The nurse admitting him to the unit about midnight after the ER stay listed him as confused.
- ALL of his paperwork at the ER/hospital was signed by Margaret Kelly, and she was called to consent to blood about 1am. The hospital treated him as if he was unable to sign for medical care. Why should I believe that he was able to competently, of his own free will, initiate an action disposing of his entire life savings? The fact that he needed a transfusion (done after the will) indicates his body/brain was not getting enough blood to function normally.
- My uncle's signature is very different on the Will document. We have signatures from when he assigned Power of Attorney in November 2011 and when he signed a new Healthcare Power of Attorney about February 8, 2012. Those signatures are about identical. The Will signature done January 14, 2012 is very different. First, he initials the form. He would know that only a full signature is acceptable on a will document if he was thinking clearly. His first name is printed. He would not have done that if thinking clearly. His last name is also different.
- The Will being probated as being genuine is not legal in North Carolina. I asked on one of my trips. At the very least, since he lived 93 plus years in Charlotte, both States should have signed off on it before it was allowed into probate as a legal will. My mother was not sent a copy of the will as she requested in writing. This leads us to wonder if they were acting without trying to hide something.
- Bringing comfort items to a facility, as we did for our mother, should not constitute being domiciled in a state. Ben Smith brought my uncle's car down for safekeeping and managed some accounts online. This seemed to make my uncle domiciled in the state by Judge Rogers' ruling though my uncle initiated none of this; Mr. Smith was making things easier for him to manage. I hope the laws can be clearer concerning people brought to facilities for treatment.
- My uncle had his will, that Mr. Smith tore up, done by Edward Knox, the former mayor of Charlotte. This tells me that my uncle did everything he knew to make a strong legal document.
- The court should count the times in Mr. Smith's deposition that he says, "I don't know/remember". Credible people can remember a little more than him leading us to believe he is not truthful.

- Mr. Smith's admission of tearing up the will done by Mr. Knox for my uncle constitutes substituting his will for my uncle's by Mr. Smith, a violation of his duty to my uncle. It also puts the Respondents in a very difficult position when they hear that my uncle has a 7.5 cm abdominal aortic aneurism. My uncle is now intestate although he does not know that. All his estate will go to his blood relatives, not them. What are they to do? Panic time....amazingly family members are immediately there to witness and notarize a new will that was done immediately after this diagnosis was discussed with him. The ER timeline is clear in the documents; it had to have been done less than one hour after the diagnosis was discussed. I mean dictated, written, signed, and witnessed, all without any hospital staff knowing it was occurring. It is very difficult for us to believe that this all occurred spontaneously without any maneuvering on their part. We also know he would not have torn up a will favorable to him or his relatives though he claims he never read it. Really?
- We also cannot ignore that the will makes no provisions for the church next door. One thing he said to multiple people over a few years on our side of the family was that he wanted the church next door to have his home. They desperately need a parking lot (middle of Charlotte). I talked to the financial leaders of the church. They confirmed that my uncle had said this to them, and they stated the amount Ben Smith offered the home to them for. He offered it to them for \$300,000, but sold it for less.
- What credible and honest people do not tell blood relatives of their loved one's decline and keep them updated on what's happening? Who takes a person out of state and does not tell ANY of his relatives where he is and what the concerns are? Who does not have a funeral for a person so that we and his neighbors of 30-40 years can honor him? Totally disrespectful of my uncle and his life. My mother and his brother never got to hold his hand or say goodbye. Good people just don't do that.

All these facts and more have been our motivation for keeping this case alive. Our family has paid the legal expenses because we believe strongly that my uncle was mistreated and his will is a fraud. We all know this case stinks. I am asking that you make a ruling in the case if we can get a lawyer in time, not remand it to the lower courts for reconsideration or anything else. We also desire that this proceed from the Appellate court to a jury trial.

Sincerely,

Carol DeHaven

Cc: Mr. Brackett
Ben Smith
Margaret Kelly

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VIA: (540) 972-7683

SC Court of Appeals

DATE: April 25, 2016
 TO: Honorable Jenny Kitchings, Clerk of the Court
 VIA FAX #: 803-734-1839
 FROM: Carol Dettaven
 RE: Case No: 2016-000096
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MESSAGE: The following has been mailed via USPS
to all parties and your office 4-25-2016, just
in case, faxing due to time constraints.