

22937

THE STATE OF SOUTH CAROLINA
In the Court Appeals

APPEAL FROM THE CHARLESTON COUNTY
COURT OF COMMON PLEAS

J. C. Nicholson, Jr., Circuit Court Judge
Stephanie P. McDonald, Circuit Court Judge at Trial
Case No. 2012-CP-10-3421

Emily Nichols Felder, Executor of the Estate of Mamie F. Nichols, Appellant,

v.

Albert Napoleon Thompson, Jr., Al Thaddeus Thompson, Titus Sherod Thompson, Asia Rachal
Thompson, Respondents.

RECORD OF APPEAL

PRECIOUS FELDER, LLC
Attorney for Plaintiff-Appellant (Pro Hac Vice)
1800 Peachtree St NW, Suite 809
Atlanta, GA 30309
(404) 478-7207

Eduardo Kelvin Curry
PO Box 42270
N. Charleston, SC
29423
Attorney for
Respondents

INDEX

Judgment/Order dated March 13, 2013, denying motion for summary judgment	2
Jury Verdict	3
Judgment Entered on Jury Verdict on March 7, 2014	5
Judgment/Order dated March 5, 2015, setting time for motion for j.n.o.v.	6
Judgment/Order dated July 20, 2015, denying j.n.o.v.	7
Summons and Original Complaint	9
Original Answer and Counterclaim	18
Reply	25
Amended Complaint	29
Answer to Amended Complaint	37
Excerpts from Trial Transcript	44
Emily Colette Felder (direct)	45
(cross)	57
Allen Nichols (direct)	59
Gary Felder (direct)	61
(cross)	63
Ellis Thomas (direct)	64
(cross)	68
Barbara Gillard (direct)	69
(cross)	71
(redirect)	79
Titus Thompson (direct)	80
(cross)	83
Motion for Summary Judgment	91
Plaintiff's Memorandum in Support of Summary Judgment	94

Affidavit in Support of Summary Judgment	100
--	-----

Attachments to Motion Papers:

Letter to Mamie Nichols from Donna Thompson (Exhibit 3 at trial)	107
Letter to Colette Felder from Donna Thompson (Exhibit 4 at trial)	111
Handwritten Letter (Exhibit 5 at trial)	112
Power of Attorney from Mamie Nichols to Donna M. Thompson (Exhibit 7 at trial)	120
Deed Retaining Life Estate (Exhibit 6 at trial)	127
Memorandum in Support of Motion for Judgment NOV	132
Certificate of Counsel	140

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-3421

Nichols
PLAINTIFF(S)

Thompson
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motion for summary judgment is Denied

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

[Signature]
Circuit Court Judge

2117
Judge Code

3/11/13
Date

For Clerk of Court Office Use Only

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-3421

2015 MAR -5 PM 2:09

Mamie F. Nichols
PLAINTIFF(S)

Albert Napolcon Thompson Jr.
DEFENDANT(S)

JULIE J. ARMSTRONG
CLERK OF COURT

Submitted by:

BY

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before this Court on Plaintiff's Motion for Judgment Notwithstanding the Verdict, filed on March 12, 2014 and presented to this Court on March 2, 2015. By agreement of the parties, this Motion will be determined by this Court and not the original trial judge by the submission of the transcript and memorandums by both parties. The Plaintiff shall have 30 days to submit the transcript and memorandum in support of its Motion, and the Defendant shall have 30 days to respond.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge

2117
Judge Code

3/3/15
Date

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-3421

2015 JUL 20 PM 1:13

Mamie F. Nichols

JULIE J. ARMSTRONG
CLERK OF COURT

Albert Napoleon Thompson, Jr., Al Thaddeus
Thompson, Titus Sherod Thompson, Asia Rachal
Thompson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before this Court on Plaintiff's Motion for Judgment Notwithstanding the Verdict, filed on March 12, 2014 and set before this Court on March 2, 2015. This matter was originally heard in a jury trial in front of the Hon. Stephanie McDonald in March of 2014, but was mistakenly set before this Court's non-jury motions roster. By agreement of the parties, this Motion will be determined by this Court and not the original trial judge through the submission of the transcript and memorandums by both parties. The Plaintiff was given 30 days to submit the transcript and memorandum in support of its Motion, and the Defendant was given 30 days to respond. This Court then granted the Defendant a 15 day extension.

After review of the documents and the transcript, this Court hereby denies plaintiff's motion for judgement notwithstanding the verdict. This Court has examined the trial record in a light most favorable to the non-moving party, and has determined that there were multiple inferences that could be drawn from the record. This Court finds that the jury verdict in this case was a reasonable result given the facts presented to the jury, and that the jury verdict should not be disturbed.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

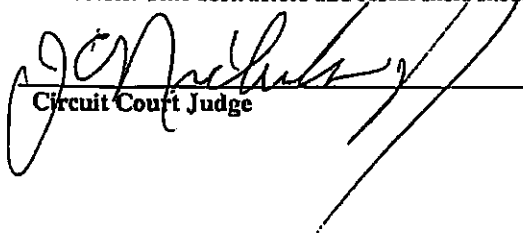
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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


Circuit Court Judge

2117
Judge Code

7/27/15
Date

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

Mamie F. Nichols,

Plaintiff,

v.

Albert Napoleon Thompson Jr.,
Al Thaddeus Thompson
Titus Sherod Thompson
Asia Rachal Thompson

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH CIRCUIT
) CASE NO:

12-CR-10-3421

)
)
) **COMPLAINT**
) (Non-Jury)
)
)
)
)
)
)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2012 MAY 25 PM 2:13

FILED

PLAINTIFF, Mamie F. Nichols ("Plaintiff"), complaining of Defendants, Albert Napoleon Thompson Jr., Al Thaddeus Thompson, Titus Sherod Thompson, and Asia Rachal Thompson, (collectively "Defendants"), would respectfully show unto the Court:

FOR A FIRST CAUSE OF ACTION
(Suit to Set Aside Deed for Unilateral Mistake)

1. That Plaintiff and Defendants are residents of Charleston County, South Carolina.
2. That the property located at ("the property"), the subject of this action is located in Charleston County, South Carolina.
3. That Plaintiff was conveyed the property by deed on August 11, 1993 and recorded in Book S-230, at Page 197.
4. That Defendants are the heirs of Donna M. Thompson ("Mrs. Thompson"), daughter of the Plaintiff.
5. That Mrs. Thompson made Plaintiff believe that she would leave her to live alone if she did not convey an interest in her house to Mrs. Thompson.

6. That Russell Brown published an advertisement as an attorney in South Carolina.

7. That Plaintiff believed Russell Brown to be a licensed attorney in South Carolina.

8. That Russell Brown was employed to prepare a deed to reflect the interest of the Plaintiff which was discovered to be inconsistent to her wishes and to the Plaintiff's affidavit attached to the recorded deed, a copy of said deed with said affidavit recorded in Book R-581, at Page 215 attached hereto.

9. That Russell Brown was disbarred from the practice of law due to incompetence and neglect in the State of South Carolina, and Russell Brown filed said deed and affidavit as an "Attorney at Law," a copy of said deed and affidavit with Recorder's Page recorded in Book R-581, at Page 212 attached hereto.

10. That a material defect appears on the face of the documents.

11. That Plaintiff was informed and believed that upon her daughter's death the property would revert in fee simple to Plaintiff.

12. That Plaintiff was unaware of a defective deed until her daughter's death.

13. That the matter of Russell Brown was reported to the Supreme Court of South Carolina Office of Disciplinary Counsel and such matter has not been dismissed by the Commission.

FOR A SECOND CAUSE OF ACTION
(Suit to Set Aside Deed for Undue Influence)

14. That Plaintiff re-alleges and incorporates by reference all of the allegations contained in paragraphs 1-13 above as though fully restated verbatim herein.

15. That Plaintiff was a seventy-nine year old woman at the time the property interest was conveyed to Mrs. Thompson.

16. That Plaintiff conveyed the property interest to Mrs. Thompson in response to her threats to leave Plaintiff to live alone.

FOR A THIRD CAUSE OF ACTION
(Suit to Set Aside Deed for Lack of Consideration)

17. That Plaintiff re-alleges and incorporates by reference all of the allegations contained in paragraphs 1-16 above as though fully restated verbatim herein.

18. That the consideration given for conveyance of the property was "of Love and Affection...and the sum of Five Dollars (\$5.00)."

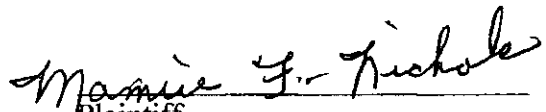
19. That "Love and Affection" is ambiguous and the amount of \$5.00 is insufficient consideration for conveyance of the property.

WHEREFORE, having fully set forth its complaint against Defendants, Plaintiff respectfully prays for the following relief:

- (a) That the Court enters judgment in favor of Plaintiff's claims against Defendants, holding that the deed recorded in Deed Book R 581 at Page 212 is void and that fee simple title be vested in Plaintiff.
- (b) For all such further and equitable relief that this Court deems proper.

Respectfully submitted, this 23rd day of May 2012.

Mamie F. Nichols


Plaintiff
P.O. Box 685
Red Oak, GA 30272
(843) 437-7113

her natural life and on her death, then unto Donna M Thompson, her heirs of her body and her assigns, against me and my heirs, and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof

WITNESS my Hand and Seal, this 22nd day of April, in the year of our Lord, Two Thousand Six and in the Two Hundred and Thirty Ninth Year of the Sovereignty and Independence of the United States of America

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Jake Cohen
Russell Brown

Mamie F. Nichols
MAMIE F NICHOLS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PERSONALLY appeared before me, the undersigned witness, who, after being duly sworn, deposes and says that he/she saw the above named Mamie F Nichols, sign, seal and as her act and deed, deliver the within written deed, and that he/she with the other witness whose signature appears above, witnessed the execution thereof

SWORN to before me, this

22nd day of April, 2006

Russell Brown

Notary Public for South Carolina

My Commission Expires 01-20-10

Jake Cohen

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

OK R 581PG215

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says

- 1 I have read the information on this Affidavit and I understand such information
- 2 The property is being transferred BY Mamie F. Nichols
TO Mamie F. Nichols and Donna M. Thompson
- 3 Check one of the following The DEED is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary
 - (c) ☒ EXEMPT from the deed recording fee because (exemption# _____)
(Explanation if required) conveyance between Mother and daughter (Family Members)
(If exempt, please skip items 4-6, and go to item 7 of this affidavit)
- 4 Check one of the following if either item 3(a) or item 3(b) above has been checked
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
- 5 Check YES or NO to the following A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____
- 6 The DEED Recording Fee is computed as follows
 - (a) _____ the amount listed in item 4 above
 - (b) _____ the amount listed in item 5 above (no amount: place zero)
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place the result
- 7 As required by Code Section 12-24-70, I state that I am a responsible person who was connected With the transaction as Grantor
- 8 I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not ore than one year, or both

Sworn to before me this 20th
day of March, 2000
Donna M. Thompson
Notary Public for South Carolina
My Commission Expires 06-20-10

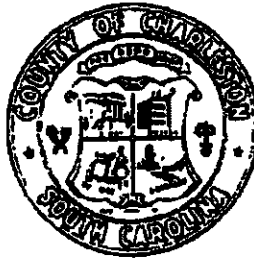
Mamie F. Nichols
Grantor, Grantee, or Legal Representative
Connected with this transaction

Mamie F. Nichols
Print or Type Name here

BK R 581PG216

RECORDER'S PAGE

NOTE. This page MUST remain
with the original document



FILED

May 2, 2006

10 47:43 AM

BK R 581PG212

Charlie Lybrand, Register
Charleston County, SC

Filed By

Russell Brown
Attorney at Law
41-A Morris Street
Charleston

SC 29403

AUDITOR STAMP HERE

RECEIVED FROM RMC

MAY 22 2006

PEGGY A MOSELEY
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR

REP

DATE

5/22/06

AMOUNT

DESCRIPTION

Recording Fee	\$ 10 00
State Fee	<Exempt>
County Fee	<Exempt>
Postage	

TOTAL

\$ 10 00

\$ Amount (in thousands)

DRAWER

B - ecp

DO NOT STAMP BELOW THIS LINE

9. That the Deed, which is the subject of this action, is a legal document clear and unambiguous upon its face and the Parole Evidence Rule prohibits oral testimony to vary, modify, and contradict the terms of said Deed.

For a Third Defense

10. That the Defendants do not waive their allegations of their First and Second Defenses and re-allege the same as if set forth herein again verbatim.
11. That the "Dead Man's" statute Section 19-11-20 of the Code of Laws of South Carolina 1976 provides "no party to an action or proceeding, no person who has a legal or equitable interest which may be affected by the event of the action or proceeding..., shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased as a witness against a party then prosecuting or defending the action as an executor, administer, heir-at-law, next of kin, assignee, legatee, devisee, or survivor of such deceased person...when such examination or any judgment or determination in such action or proceeding can in any manner affect the interest of such witness on the interest previously owned or represented by him...."
12. That the Plaintiff was the Grantor in the Deed, which is subject to this action, in which the Plaintiff reserved unto herself a life estate with the remainder to her daughter, the grantee therein, Donna M. Thompson, and "her heirs of her body and assigns forever, saving, excepting, and reserving unto the Grantor herein, Mamie F. Nichols, for and during her natural life, the use, occupancy, and possession of the property..."
13. That the Plaintiff, Mamie F. Nichols, is attempting to set aside said Deed wherein she reserved unto herself, a life estate and conveyed to the Grantee, who is now deceased, the remainder interest in said property and to the heirs of her body and assigns forever.
14. That the Defendant has both a legal and equitable interest in this matter which will be affected by this action and she is precluded and prohibited from testifying when the judgment or determination, which she is seeking, would affect her interest and/or the interest of any other such family witness, who may be presented to testify, in an attempt to void the Deed.

For a Fourth Defense and First Counterclaim

15. That the Defendants do not waive the allegations of their previous defenses and re-allege the same as if set forth herein again verbatim.
16. That on the 22nd day of April, 2006, Mamie F. Nichols, the Plaintiff herein, by Deed conveyed all of her interest in the real property with improvements thereon as described in said Deed and which is commonly known as _____ ty of Charleston, County of Charleston, State of South Carolina, having a TMS No.: 460-04-01-079 and the Plaintiff herein reserved unto herself a life estate.
17. That Donna M. Thompson is now deceased and the Defendants are the heirs of her body and assigns and they are the owners of the life estate granted unto said Donna M. Thompson.
18. That the subject Deed was duly and lawfully recorded in the RMC Office for Charleston County on May 2, 2006 in Book R-581 at Page 212.
19. That the Defendants are informed and believe they are entitled to have this Court vest the title to subject real estate in them for and during the natural life of the Plaintiff and further confirming that upon the death of the Plaintiff they will be fee simple owners of the subject property.

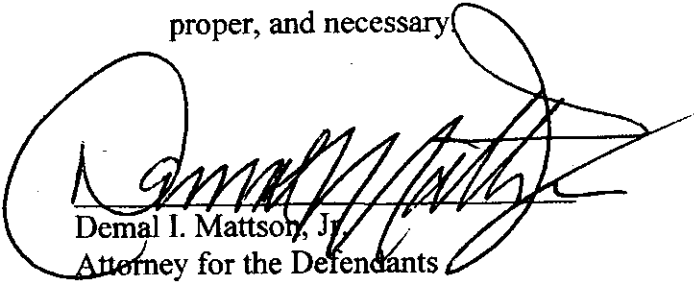
For a Fifth Defense and Second Counterclaim

20. That the Defendants do not waive the allegations of their previous defenses and counterclaim herein above set forth and incorporate the same by reference as if set forth herein again verbatim.
21. That the subject property, which totally under the control of Mamie F. Nichols, the Plaintiff herein, for a during the time of her natural life, is not being maintained by the Plaintiff and said home and improvements thereon are sitting vacant and have been such for approximately three (3) years and the home is deteriorating in that it has a bad roof, structural problems on the second floor (2nd) resulting in a spongy floor and unsafe conditions, that the first (1st) floor has a similar problem and portions of the plaster ceilings are falling and crumbling and the Plaintiff is being derelict in her duty to preserve the property for the Defendants.

22. That upon information and belief the Plaintiff does not have sufficient funds or proceeds to maintain said property and it will continue to deteriorate and the Defendants do not have funds with which to invest in said property and said property will continue to deteriorate possibly to the extent of being condemned.
23. That the Defendants are informed and believes this Court should order that the property be appraised and placed on the market for sale with a local realtor and upon the sale to determine the rights of the parties to the net proceeds of the sale and for the Court to issue a Deed to the purchaser thereof.
24. That the Defendants are informed and believe the Plaintiff should be required to pay their reasonable attorney's fees and costs.

Wherefore the Defendants pray for an Order of this Honorable Court as follows:

- A. Dismissing the Complaint of the Plaintiff and denying her the relief sought therein;
- B. Determining that the Defendants are the rightful heirs of Donna M. Thompson and that upon the death of the Plaintiff, Mamie F. Nichols, that the Defendants will be the owners of a fee simple interest in said property;
- C. Determine that said property is not being maintained by the Plaintiff and is being allowed to deteriorate to the extent that the property is depreciating in value and may be subject to condemnation and that the same should be sold by a private realtor and to determine the percent of ownership of the parties herein and distribute the net proceeds of said sale accordingly;
- D. Ordering and requiring the Plaintiff to pay the Defendants' attorney's fees and costs in this matter and along with such other and further relief as this Court may deem just, proper, and necessary



Demal I. Mattson, Jr.
Attorney for the Defendants

SC Bar No.: 03693

990 Lake Hunter Circle, suite 201

Mt. Pleasant, SC 29464

(843) 881-2234 / (843) 881-2992 fax

DMattson52@aol.com

Dated this 3 day of July, 2012.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
MAMIE F. NICHOLS,)
PLAINTIFF)
VS.)
ALBERT NAPOLEON THOMPSON, JR.,)
AL THADDEUS THOMPSON,)
TITUS SHEROD THOMPSON, AND)
ASIA RACHAL THOMPSON)
DEFENDANT)

IN THE COURT OF COMMON PLEAS

FILE NO: 2012-CP-10-3421

CERTIFICATE OF SERVICE

2012 JUL -5 PM 3:19
JULIE J. ARMSTRONG
CLERK OF COURT
FILED

I certify that, on this date, I served a copy of the Answer and Counterclaim in this action, dated July 3, 2012, on July 3, 2012 by

- ☐ delivering it to him/her personally; or,
- ☒ mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:
PO Box 685, Red Oak, GA 30272 (via regular US Mail and Certified Mail, Return, Receipt, Requested); or
- ☐ Other:
[See Rule 5(b)(1), SCRCF]

July 3, 2012 (Date) Kaenen Thompson (Signature)

DEMAL I. MATTSON, JR.

ATTORNEY AT LAW

PHONE
(843) 881-2334

FAX
(843) 881-2992

July 3, 2012

Mamie F. Nichols
PO Box 685
Red Oak, GA 30272

Re: Nichols vs. Thompson, et al
Case No.: 2012-CP-10-3421

Dear Ms. Nichols:

Please find enclosed for service upon you my Answer and Counterclaim in the above matter along with my Certificate of Service by mail. Said Answer and Counterclaim are being served upon you via Certified Mail Return Receipt Requested. I am simultaneously herewith filing the original of said Answer and Counterclaim and Certificate of Service in the Office of the Clerk of Court for Charleston County Court of Common Pleas.

Very truly yours



Demal I. Mattson, Jr.

DIMjr:lt

Enclosure

CC: Clerk of Court

DEMAL I. MATTSON, JR.

ATTORNEY AT LAW

PHONE
(843) 881-2334

FAX
(843) 881-2992

July 3, 2012

Clerk of Court
Court of Common Pleas
100 Broad St.
Charleston, SC 29401

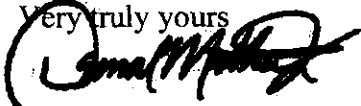
Re: Nichols vs. Thompson, et al.
Case No.: 2012-CP-10-3421

Dear Ladies:

Please find enclosed an original and one copy of my Answer and Counterclaim and Certificate of Service in the above matter. Please file the original and return the copy to me in the enclosed, stamped, self-addressed envelope.

Thanking you in advance.

Very truly yours



Demal I. Mattson, Jr.

DIMjr:lt

Enclosure

CC: Mamie F. Nichols

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
CASE NO.: 2012-CP-10-3421

)

1

1)

1

11

1

1

)

)

)

)

1.

)

PLAINTIFF, Mamie F. Nichols ("Plaintiff"), in reply to the Answer and

Counterclaim of the above-named Defendants, Albert Napoleon Thompson Jr., Al

Thaddeus Thompson, Titus Sherod Thompson, and Asia Rachal Thompson, (collectively “Defendants”), would respectfully show unto the Court as follows:

1. That each and every allegation contained in the Defendants' Answer and Counterclaim not hereafter expressly admitted, qualified, modified, or explained by the Plaintiff is hereby specifically denied and strict proof thereof demanded by the Plaintiff.

2. That Plaintiff hereby reiterates all of the allegations contained in the Plaintiff's Complaint previously filed herein and the Plaintiff specifically denies and demands strict proof of all allegations as contained and set forth in the Defendants' Answer and Counterclaim that are inconsistent therewith.

3. That Plaintiff is informed and believes that no response whatsoever is required from the Plaintiff in response to Paragraph Nos. 1 through 7 (For a First Defense) of Defendants' Answer and Counterclaim since such allegations are in answer and response to allegations contained in the Plaintiff's Complaint filed herein.

4. That Plaintiff specifically denies and demands strict proof of the allegations contained in Paragraph Nos. 8 and 9 (For a Second Defense) of Defendants' Answer and Counterclaim.

5. That Plaintiff specifically denies and demands strict proof of the allegations contained in Paragraph Nos. 10 through 14 (For a Third Defense) of Defendants' Answer and Counterclaim.

6. That Plaintiff specifically denies and demands strict proof of the allegations contained in Paragraph Nos. 15 through 19 (For a Fourth Defense and First Counterclaim) of Defendants' Answer and Counterclaim.

7. That Plaintiff specifically denies and demands strict proof of the allegations contained in Paragraph Nos. 20 through 24 (For a Fifth Defense and Second Counterclaim) of Defendants' Answer and Counterclaim.

WHEREFORE, having fully replied in response to Defendants' Answer and Counterclaim, Plaintiff hereby reiterates the allegations contained in its Complaint and specifically denies and demands strict proof of all allegations contained in the Defendants' Answer and Counterclaim inconsistent therewith; and the Plaintiff further prays that the Defendants' Answer and Counterclaim filed herein be dismissed with costs and prejudice.

Respectfully submitted, this 31 day of July 2012.

Mamie F. Nichols

Mamie F. Nichols
Plaintiff

P.O. Box 685

Red Oak, GA 30272

(843) 437-7113

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
CASE NO.: 2012-CP-10-3421

CERTIFICATE OF SERVICE

12 AUG -3 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

Albert Napoleon Thompson Jr.,
Al Thaddeus Thompson
Titus Sherod Thompson
Asia Rachal Thompson

Defendants

Demal I. Mattson, Jr.
990 Lake Hunter Circle, Suite 201
Mt. Pleasant, SC 29464

Done this 3rd day of Aug 2012.

Mamie F. Nichols

Mamie F. Nichols

Plaintiff
P.O. Box 685
Red Oak, GA 30272
(843) 437-7113

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

Mamie F. Nichols,

Plaintiff,

v.

Albert Napoleon Thompson Jr.,
Al Thaddeus Thompson
Titus Sherod Thompson
Asia Rachal Thompson

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH CIRCUIT
) CASE NO.: 2012-CP-10-3421

PLAINTIFF'S FIRST AMENDED
COMPLAINT
(Jury Demanded)

FILED
JUN 20 PM 12:18
JULIE J. ARMSTRONG
CLERK OF COURT

PLAINTIFF, Mamie F. Nichols ("Plaintiff"), complaining of Defendants, Albert Napoleon Thompson Jr., Al Thaddeus Thompson, Titus Sherod Thompson, and Asia Rachal Thompson, (collectively "Defendants"), would respectfully show unto the Court:

FOR A FIRST CAUSE OF ACTION
(Suit to Set Aside Deed for Unilateral Mistake)

1. That Plaintiff and Defendants are residents of Charleston County, South Carolina.
2. That the property located at . . . 9403 ("the property"), the subject of this action is located in Charleston County, South Carolina.
3. That Plaintiff was conveyed the property by deed on August 11, 1993 and recorded in Book S-230, at Page 197.
4. That Defendants are the heirs of Donna M. Thompson ("Mrs. Thompson"), daughter of the Plaintiff.
5. That Mrs. Thompson made Plaintiff believe that she would leave her to live alone if she did not convey an interest in her house to Mrs. Thompson.

6. That Russell Brown published an advertisement as an attorney in South Carolina.

7. That Plaintiff believed Russell Brown to be a licensed attorney in South Carolina.

8. That Russell Brown was employed to prepare a deed to reflect the interest of the Plaintiff which was discovered to be inconsistent with her wishes and to the Plaintiff's affidavit attached to the recorded deed, a copy of said deed with said affidavit recorded in Book R-581, at Page 215 attached hereto.

9. That Russell Brown was disbarred from the practice of law due to incompetence and neglect in the State of South Carolina, and Russell Brown filed said deed and affidavit as an "Attorney at Law," a copy of said deed and affidavit with Recorder's Page recorded in Book R-581, at Page 212 attached hereto.

10. That a material defect appears on the face of the documents.

11. That Plaintiff was informed and believed that upon her daughter's death the property would revert in fee simple to Plaintiff.

12. That Plaintiff was unaware of a defective deed until her daughter's death.

13. That the matter of Russell Brown was reported to the Supreme Court of South Carolina Office of Disciplinary Counsel and such matter has not been dismissed by the Commission.

FOR A SECOND CAUSE OF ACTION
(Suit to Set Aside Deed for Undue Influence)

14. That Plaintiff re-alleges and incorporates by reference all of the allegations contained in Paragraphs 1-13 above as though fully restated verbatim herein.

15. That Plaintiff was a seventy-nine year old woman at the time the property interest was conveyed to Mrs. Thompson.

16. That Plaintiff conveyed the property interest to Mrs. Thompson in response to her letters threatening to leave Plaintiff to live alone.

FOR A THIRD CAUSE OF ACTION
(Suit to Set Aside Deed for Lack of Consideration)

17. That Plaintiff re-alleges and incorporates by reference all of the allegations contained in Paragraphs 1-16 above as though fully restated verbatim herein.

18. That the consideration given for conveyance of the property was “of Love and Affection...and the sum of Five Dollars (\$5.00).”

19. That “Love and Affection” is ambiguous and the amount of \$5.00 is insufficient consideration for conveyance of the property.

FOR A FOURTH CAUSE OF ACTION
(Suit for Trespass and Damage to Property)

20. That Plaintiff re-alleges and incorporates by reference all of the allegations contained in Paragraphs 1-19 above as though fully restated verbatim herein.

21. Defendants resided in the property between the years of 2009 and 2012.

22. Plaintiff relocated to Atlanta, GA in 2009.

23. Defendants remained on Plaintiff’s property without Plaintiff’s permission and without legal authority.

24. Around December 2009, Plaintiff sent her son, Allen Nichols, to retrieve her possessions from the property and Defendants did not allow Allen Nichols (“Mr. Nichols”) to enter without police intervention.

25. Around December 2009, Defendants improperly used the relevant deed attached hereto, as evidence alleging their exclusive ownership of the property, to prohibit Mr. Nichols' entrance.

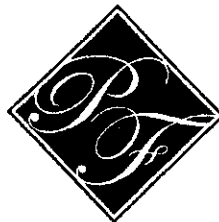
26. During Defendants' possession of property, they caused significant damage to the property including severe water damage, evidenced by many left over water bottles in laying position, carpet damage caused from the water and removal of light fixtures amounting to approximately \$40,000 in damage.

27. Defendants have continued to traverse Plaintiff's property although a "No-Trespassing" sign has been erected on the property's fencing since 2012.

WHEREFORE, having fully set forth its complaint against Defendants, Plaintiff respectfully prays for the following relief:

- (a) That the Court enters judgment in favor of Plaintiff's claims against Defendants, holding that the deed recorded in Deed Book R 581 at Page 212 is void and that fee simple title be vested in Plaintiff.
- (b) That the Court enters judgment in favor of Plaintiff's Fourth Cause of Action against Defendants for damages, jointly and severally, in an amount which a jury determines will compensate Plaintiff for actual damages and punitive damages;
- (c) For all such further and equitable relief that this Court deems proper.

IBEW BUILDING
501 PULLIAM ST. SW,
SUITE 150
ATLANTA, GEORGIA
30324
PHONE: (404) 221-
8888
FAX: (404) 221-8899



THE LAW OFFICES OF
PRECIOUS FELDER

EMAIL:
PFLAWOFFICES@GMAIL.
COM
WWW.PF-LAWLLC.COM

June 18, 2013

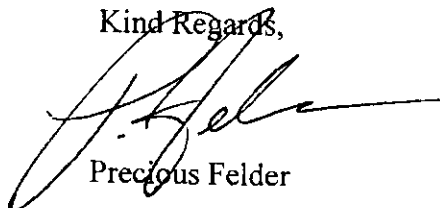
Clerk of Court
Common Pleas and General Sessions
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Re: *Mamie Nichols v. Albert Napoleon Thompson, Jr. et al.*; 2012-CP-10-3421; Charleston County
Court of Common Pleas Ninth Circuit

Dear Mr./Ms.,

Enclosed, please find an original and one copy of Plaintiff's Amended Complaint along with the corresponding Certificates of Service. Please file the original and provide me with a mailed stamped copy. A self-addressed envelope is provided. Please call me if you have any questions.

Kind Regards,



Precious Felder

cc: Demal I. Mattson, Jr.

For a Third Defense

9. That the Defendants do not waive their allegations of their First and Second Defenses and re-allege the same as if set forth herein again verbatim.
10. That the "Dead Man's" statute Section 19-11-20 of the Code of Laws of South Carolina 1976 provides "no party to an action or proceeding, no person who has a legal or equitable interest which may be affected by the event of the action or proceeding..., shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased as a witness against a party then prosecuting or defending the action as an executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee, or survivor of such deceased person...when such examination or any judgment or determination in such action or proceeding can in any manner affect the interest of such witness on the interest previously owned or represented by him...."
11. That the Plaintiff was the Grantor in the Deed, which is subject to this action, in which the Plaintiff reserved unto herself a life estate with the remainder to her daughter, the grantee therein, Donna M. Thompson, and "her heirs of her body and assigns forever, saving, excepting, and reserving unto the Grantor herein, Mamie F. Nichols, for and during her natural life, the use, occupancy, and possession of the property..."
12. That the Plaintiff, Mamie F. Nichols, is attempting to set aside said Deed wherein she reserved unto herself, a life estate and conveyed to the Grantee, who is now deceased, the remainder interest in said property and to the heirs of her body and assigns forever.
13. That the Plaintiff has both a legal and equitable interest in this matter which will be affected by this action and she is precluded and prohibited from testifying when the judgment or determination, which she is seeking, would affect her interest and/or the interest of any other such family witness in an attempt to void the Deed.

For a Fourth Defense

14. That the Defendants do not waive the allegations of their First, Second, and Third defenses and re-allege the same as if set forth herein again verbatim.
15. That the Plaintiff should be estopped by the Doctrine of Collateral Estoppel from litigating this matter on the grounds of her mental infirmity and possible mental incompetence because the issue of her mental incompetence has been resolved because

the Plaintiff was a litigant in a Competency Hearing in the Charleston County Probate Court at which time the challenge by Colette Felder challenging the competency of Mamie F. Nichols was dismissed, which determined her competency and mental feebleness was not an issue.

For a Fifth Defense

16. That the Defendants do not waive the allegations of their First, Second, Third, and Fourth Defenses herein above set forth and incorporate the same by reference as if set forth herein again verbatim.
17. That testimony of the Plaintiff and of possible witnesses are barred by the Parole Evidence Rule and the Statute of Frauds, which prevent oral testimony to change the terms of a written contract in writing that is not ambiguous nor does it allow evidence to alter, contradict or change any of the terms expressed in said agreement or deed.
18. That based upon the Parole Evidence Rule and/or the Statute of Frauds, the actions of the Plaintiff should be dismissed.

For a Sixth Defense and First Counterclaim

19. That the Defendants do not waive the allegations of their First, Second, Third, Fourth, and Fifth Defenses and re-allege the same as if set forth herein again verbatim.
20. That on the 22nd day of April, 2006, Mamie F. Nichols, the Plaintiff herein, by deed conveyed all of her interest in the real property with improvements thereon as described in said Deed and which is commonly known as 84 Sheppard Street, City of Charleston, County of Charleston, State of South Carolina having TMS No.: 460-04-01-079 in which said Deed the Plaintiff herein reserved unto herself a life estate.
21. That the Deed granted unto Donna M. Thompson, the Plaintiff's daughter, the remainder interest in said property and the heirs of her body, and the Defendant children are the natural born children of Donna M. Thompson and they are now the owners of the life estate granted unto said Donna M. Thompson.
22. That the subject Deed was duly recorded in the RMC Office for Charleston County on May 2, 2006 in Book R-581 at Page 212.

23. That the Defendants are informed and believe they are entitled to have this Court vest the remainder interest in the title to the subject real estate interest in them for and during the term of the natural life of the Plaintiff and further confirming that upon the death of the Plaintiff, they will be the fee simple owners of said subject property.

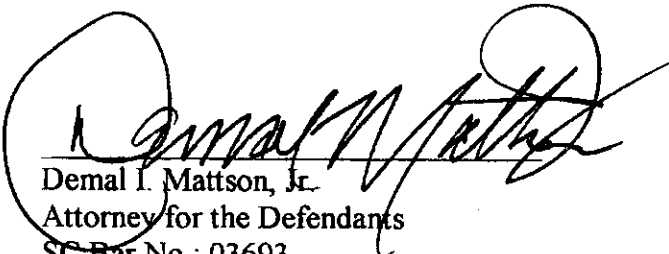
For a Seventh Defense and Second Counterclaim

24. That the Defendants do not waive the allegations of their previous defenses and First Counterclaim and incorporate the same by reference as if set forth herein again verbatim.
25. That the subject property, which is totally under the control of the Plaintiff, Mamie F. Nichols, for and during the time of her natural life, is not being maintained by the Plaintiff and very little maintenance has been provided and the home has been sitting unoccupied for approximately three (3) years; it is deteriorating; it has a bad and leaking roof; it has structural problems on the second floor resulting in a spongy and unsafe condition; that the first floor has similar problems and portions of the plaster ceilings are falling and crumbling; and, the Plaintiff is being derelict in her duty to preserve the property for the Defendants.
26. That upon information and belief, the Plaintiff does not have sufficient funds or proceeds to maintain said property and it will continue to deteriorate and the Defendants do not have funds with which to invest in said property and said property will continue to deteriorate possibly to the extent of being condemned.
27. That the Defendants are informed and believe that this Court should order that the property be appraised and placed on the market for sale with a local realtor and that upon the sale of the property, the Court should determine the rights of the parties to the net proceeds of the sale and for the Court to issue a Deed to the purchaser thereof.
28. That the Defendants are informed and believe the Plaintiff should be required to pay their attorney's fees and costs.

Wherefore the Defendants pray for an Order of this Honorable Court as follows:

- A. Dismissing the Complaint of the Plaintiff and denying her the relief sought therein;

- B. Determining that the Defendant children are the rightful heirs of Donna M. Thompson and that upon the death of the Plaintiff, Mamie F. Nichols, that the Defendant children will be the owners of a fee simple interest in said property;
- C. Determine that said property is not being maintained by the Plaintiff and is being allowed to deteriorate to the extent that the property is depreciating in value and may be subject to condemnation and that the same should be sold by a private realtor and to determine the percent of ownership of the parties herein and distribute the net proceeds of said sale accordingly; and,
- D. Ordering and requiring the Plaintiff to pay the Defendant children's attorney's fees and costs in this matter and along with such other and further relief as this Court may deem just, proper, and necessary.



Demal I. Mattson, Jr.
Attorney for the Defendants
SC Bar No.: 03693
990 Lake Hunter Circle, suite 201
Mt. Pleasant, SC 29464
(843) 881-2234 / (843) 881-2992 fax
DMattson52@aol.com

Dated this 1st day of July, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) 2012 CP 10 3421

MAMIE NICHOLS ET AL

VS.

ALBERT NAPOLEON THOMPSON, JR.
ET AL

CERTIFICATE OF SERVICE
BY MAIL

BY

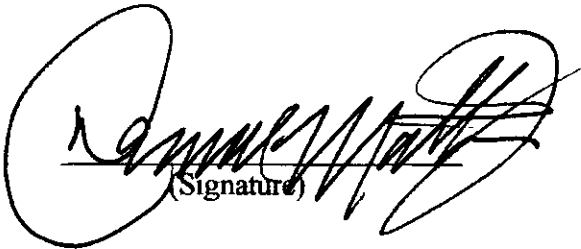
JULIE J. ARMSTRONG
CLERK OF COURT

2013 JUL -3 PM 1:39

FILED

sub

I certify that, on this date, I served a copy of the DEFENDANT'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND DEFENDANT'S AMENDED COUNTERCLAIM dated this 1ST DAY OF JULY, 2013, by mailing it to the Clerk of Court , 100 Broad Street, Charleston, SC 29401, by depositing it in the U.S. Mail, in an envelope, with sufficient postage affixed, thereto.


(Signature)

Dated this 1ST DAY OF JULY, 2013.

[See Rule 5(b)(1), SCRCP]

DEMAL I. MATTSON, JR.

ATTORNEY AT LAW

PHONE
(843) 881-2334

FAX
(843) 881-2992

July 1, 2013

Clerk of Court
Court of Common Pleas
100 Broad St.
Charleston, SC 29401

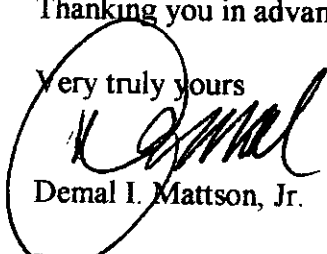
Re: NICHOLS ET AL V THOMPSON ET AL
2012 CP 10 3421

Dear Ladies and Gentlemen:

Please find enclosed an original and one copy of the Defendant's Answer to the Plaintiff's First Amended Complaint and the Defendant's Amended Counterclaim together with a Certificate of Service by Mail. Please file the original and return one copy to me in the envelope provided herein for your convenience.

Thanking you in advance.

Very truly yours



Demal I. Mattson, Jr.

DMjr:lt

Enclosure

1 will be asking that the deed be set aside.

2 You will learn very quickly from the evidence that
3 from her daughter's and son's standpoint, if the deed is set
4 aside, you will learn what will happen to the house. You
5 will see pictures of the house. You will see pictures of the
6 condition of the house after her children left.

7 And, hopefully, you will get some sentiment of your
8 own in this situation and make the right conclusion, and
9 conclude primarily that this deed needs to be set aside and
10 things need to be done the right way, especially while she's
11 alive so she can have some retribution before she passes.
12 Thank you.

13 THE COURT: Thank you.

14 Yes, sir.

15 MR. MATTSON: Ladies and gentlemen of the jury, I'm
16 Demal Mattson. I'm an attorney. My job in this case is to
17 represent Asia Thompson, Thaddeus Thompson, and Titus
18 Thompson. Unfortunately, Donna Thompson, their mother, who
19 was the aunt of Precious Felder, died of breast cancer. She
20 can't be here.

21 What you are going to find out very quickly is that
22 you, ladies and gentlemen of the jury, you have the most
23 important job and duty in this case. You get to decide the
24 facts. And the facts are disputed.

25 The judge will instruct you as to the law. The

1 MR. MATTSON: If they are of the house --

2 THE COURT: That's the thing, we can spare the jury.

3 MR. MATTSON: I don't have any objection.

4 THE COURT: Do you want to show them to Mr. Mattson
5 beforehand so we know?

6 MS. FELDER: Sure.

7 (Plaintiff's Exh. 1, Photograph of 84 Sheppard
8 Street, is moved into evidence.)

9 MR. MATTSON: I don't have any objection.

10 THE COURT: Plaintiff 1 is admitted without
11 objection.

12 BY MS. FELDER:

13 Q. For identification purposes, this is the same
14 property. Is that an accurate depiction of 84 Sheppard
15 Street as well?

16 A. Yes.

17 THE COURT: Is that 2?

18 MS. FELDER: Yes.

19 THE WITNESS: Plaintiff 2 is admitted without
20 objection.

21 (Plaintiff's Exh. 2, Photograph of 84 Sheppard
22 Street, is moved into evidence.)

23 BY MS. FELDER:

24 Q. When did you realize that Donna Thompson had wanted
25 interest in the property?

1 A. When my mother had showed me the letter that Donna
2 wrote to her saying that she wants her to give her the
3 property within a certain period of time, and that's when I
4 found out, when my mother showed me the letter.

5 Q. When did she show you the letter?

6 A. That was probably around -- I can't remember. Maybe
7 if I looked at the letter, I could try to recall. I don't
8 remember.

9 Q. Was it before she did it or was it after she did it?

10 A. It was -- she told me before and she showed me the
11 letter afterwards.

12 MR. MATTSON: I have no objection to the letter.

13 THE COURT: Thank you, sir.

14 BY MS. FELDER:

15 Q. This is Plaintiff's Exhibit 3. Is that an accurate
16 depiction of the letter Ms. Nichols gave you from
17 Ms. Thompson? Do you need your glasses?

18 A. Yes.

19 THE COURT: Are you putting the letter in?

20 MS. FELDER: Yes, Your Honor.

21 THE COURT: Plaintiff's 3 is admitted without
22 objection.

23 (Pleading's Exh. 3, Letter from Donna Thompson,
24 is moved into evidence.)

25 MS. FELDER: May I publish it to the jury, Your

1 Honor?

2 THE COURT: You may, but you need to go ahead and
3 ask your questions.

4 Ladies and gentlemen, any items that are admitted
5 into evidence will go back with you to the jury room at the
6 end of the case. You are certainly welcome to look at the
7 letter now, but I don't want you to stop and read it now,
8 because counsel needs to get moving with her questions and
9 you will have a chance to have it back with you at the end of
10 the trial. Okay?

11 MR. MATTSON: I would ask that since it's a
12 three-page document, the court reporter staple them together
13 so they don't get separated.

14 THE COURT: Let's staple the letter.

15 Ask your next question please.

16 BY MS. FELDER:

17 Q. Ms. Felder, do you recall in Ms. Thompson's letter
18 her asking for interest in

19 A. I'm sorry. Would you repeat the question?

20 Q. Do you recall, from reading Ms. Thompson's letter to
21 Ms. Nichols, Ms. Thompson's request for Ms. Nichols to grant
22 her interest in

23 A. Yes.

24 Q. Do you also recall her suggesting that if she did
25 not give her interest in the property, she would leave her to

1 live by herself?

2 A. Yes.

3 Q. And how long had Ms. Thompson been living with Ms.
4 Nichols at 84 Sheppard Street?

5 A. Well, she lived there after my dad passed, like a
6 year after my dad passed, so it probably was around maybe '94
7 or '95, around that time. She decided to move in with her
8 husband, and it was cheaper to do that. My mother was paying
9 the rent every month for her where she was living at, and I
10 take it the taxes. So I know about that for her. So it was
11 cheaper for her to live with my mother instead of her having
12 to pay rent for the apartment where she was living at.

13 Q. And while living with her mother -- how old was
14 Ms. Nichols at the time?

15 A. She had to be close to 70, I would say. Because
16 they're pretty close to age with my mom and my dad, so she
17 had to be close to 70.

18 Q. Around the time you received this letter, found out
19 about the deed transaction, how old was Ms. Nichols?

20 A. She was almost 81.

21 Q. How was her mental and physical condition?

22 A. She was -- I would go to the doctor with her. She
23 would call me when she needs something. And I would go to
24 the doctor and -- I went to go to the eye doctor. And the
25 doctor really was concerned about her poor mental status and

1 wanted to do some tests. And she was moving pretty slow.
2 She'd fall down a lot. She had black eyes. I was concerned
3 about the black eyes.

4 She hit people, you know, with the automobile, you
5 know. She hit a couple of people. I was concerned about
6 that.

7 Q. So she was involved in some vehicular accidents?

8 A. Yes. She had actually hit people, pedestrians at
9 that time. So I was concerned about that. And I asked the
10 doctor about that. And I mentioned to Donna that we need to
11 try to get a driver, you know, for her. She's driving by
12 herself, even though she wants to drive, she's going to want
13 to do that. But I give her the information that I received
14 from the library downtown to give to Donna so she could see
15 if she could take her. And I also mentioned to my brother,
16 Allen, please try to drive her instead of she's driving
17 herself. There's too many accidents.

18 Q. So Allen, was he living there at the time?

19 A. Oh, yeah, he always lived until they told him not to
20 come back. They told me not to come back anymore. And they
21 said if I come back, I would go to jail. And they told Allen
22 if Allen come back, he would go to jail.

23 Q. And what was Ms. Nichols's hearing like at the time?

24 A. You would have to talk in her -- you have to talk
25 close to her ear. She had a hearing aid at that time for her

1 ears. It's practically closed now. Her mother was deaf. So
2 at that time, you would have to go close to her ear and talk
3 to her. And she would be able to -- regular voice, do not
4 holler, just talk close to her ear, and she will be able to
5 understand what you are saying. But you have to get close to
6 her ear; otherwise, you would have to holler.

7 Q. How many properties did Ms. Nichols own?

8 A. How many properties? She owned about maybe about
9 four properties, I would think, three or four.

10 Q. And were they given to her by her husband?

11 A. No. The one that she live in, her husband give it
12 to her before she (sic) died. It was a quitclaim. And my
13 brother and Donna was a witness for that. And they did the
14 deed at the house. I wasn't there. But they did a quitclaim
15 to that 84 Sheppard Street to my mother. And then the other
16 houses, my dad was basically the business person. My mother
17 taught school. So he pretty much used the money to go ahead
18 and buy like, investment property.

19 Q. So did Ms. Nichols have any real estate
20 background?

21 A. No, no. She was -- she would let my dad handle
22 that. She doesn't want to collect any rent. She doesn't
23 want to do anything of that at all. She doesn't want to deal
24 with it at all.

25 Q. So have you ever had any discussions with

1 Ms. Nichols about any of the property she's owned?

2 A. About -- no. Only time, only time I know about the
3 properties that she owned, when she gave Donna Reid Street,
4 which is like a six-bedroom -- I mean, 6 apartments. And at
5 the same time, I found there she had sent me -- she give
6 me a -- she gave me a piece of property. I didn't ask for
7 it, but she gave it to me. So she gave Donna a piece of
8 property, which is on Meeting Street, which is the biggest
9 property you could get. And it had a duplex in the back, was
10 58 and 58 1/2.

11 And then she went on and she sent to me -- this is
12 years ago now, this is after my dad passed. Okay? This is
13 like when she was younger. She gave Donna a piece of
14 property. And then she -- the property that she give to
15 Allen, she went on and -- it was St. Philip -- I think it was
16 St. Philip Street. That property, she -- I remember.

17 THE COURT: All right. Let's ask a question.

18 BY MS. FELDER:

19 Q. Sure. So in this letter, do you recall -- actually,
20 did Ms. Thompson ever send you a letter?

21 A. Yes, yes, she did.

22 MR. MATTSON: Without objection.

23 THE COURT: Okay. Is this going to be Plaintiff's
24 4?

25 MS. FELDER: This is going to be Plaintiff's 4.

1 BY MS. FELDER:

2 Q. Is this an accurate depiction of the letter she sent
3 you?

4 A. This is a letter that she told me not to come back
5 to the house, and she said I would have to meet my mother at
6 a place nearby. And same thing with Allen, Allen could not
7 come back to the house at all, 84 Sheppard Street.

8 MS. FELDER: Plaintiff moves to admit 4.

9 THE COURT: Plaintiffs 4 is admitted without
10 objection.

11 (Plaintiff's Exh. 4, Letter of Representation, is
12 moved into evidence.)

13 BY MS. FELDER:

14 Q. In that letter, does she discuss how many properties
15 you've owned?

16 A. Yes, she discussed it. I think two and a half
17 properties. She owned property too.

18 Q. And in the letter she wrote to her mother, does she
19 suggest that she owns any property at all?

20 A. May I look at the letter again?

21 Q. Essentially, did Ms. Donna own property from her
22 family?

23 A. Yes. At that time, she owned property. She owned
24 the two properties, the six apartments, they are like two
25 apartments in the back and it's four up front, she owned that

1 telling me that Allen can't go to the house. So we looked it
2 up. And I said, oh, my gosh, he got the house in her name,
3 now I see.

4 MR. MATTSON: No objection.

5 MS. FELDER: Plaintiff moves to admit Plaintiff's
6 Exhibit 6.

7 THE COURT: Plaintiff 6 is admitted without
8 objection.

9 (Plaintiff's Exh. 6, Title of Real Estate, is
10 moved into evidence.)

11 BY MS. FELDER:

12 Q. What did you determine Donna now owned? How much of
13 the property did she own?

14 A. Well, actually, I thought it was like -- when I saw
15 the property -- I mean, when I saw the letter, it was my
16 understanding from Donna it was like just in both names. And
17 it was not until way later, you know, after Donna passed,
18 when my mother thought, you know, that it was her property.
19 You know, my mother thought it was hers. And I found out
20 that something is wrong here. You know, and I found out
21 Russell, the person who did it, was -- the bar told me that
22 he's no longer -- he's not an attorney. He was an attorney
23 for awhile, because he was incompetent --

24 Q. You mean the attorney who drafted the deed?

25 A. Yes, yes. The bar told me that --

1 MR. MATTSON: Your Honor, I object to this
2 testimony.

3 THE COURT : Sustained.

4 MS. FELDER: Well, I do have the case law, Your
5 Honor.

6 THE COURT: Sustained. Ma'am, come up.

7 (Whereupon, a bench conference takes place outside
8 the hearing of the jury.)

9 THE COURT: He's objecting to the hearsay, not to
10 the issue of whether or not --

11 MS. FELDER: I was going to tell you that I had the
12 case law on the case when he was an unlicensed attorney.

13 THE COURT: I do too. It happened in 2003, but you
14 have to get that in. He's objected to it. Once you figure
15 out how you want to get that in, she's not allowed to say
16 so-and-so told me, unless it's a hearsay or falls under the
17 hearsay objection, either three or four. Okay?

18 MS. FELDER: Okay. Thank you.

19 (Whereupon, the bench conference ends.)

20 BY MS. FELDER:

21 Q. Ms. Felder, how did you find out that Attorney Brown
22 was no longer a licensed attorney?

23 A. I found out through calling the bar and --

24 Q. And did you find out what the particular case or --

25 A. Yes.

1 THE COURT: I still think this is a problem. You
2 are not -- I need you to stand up and say, objection, or, I
3 object.

4 MR. MATTSO: I'm trying not to.

5 THE COURT: Instead of making faces at me. We are
6 still in hearsay. Okay?

7 MS. FELDER: Okay.

8 THE COURT: Thank you. Now, if you want to
9 stipulate to that, that's fine.

10 BY MS. FELDER:

11 Q. Ms. Felder, are you familiar with a case in the
12 South Carolina Supreme Court regarding a matter of Russell
13 Brown?

14 A. Yes.

15 Q. And after reading that case, did you determine that
16 he was not a licensed attorney?

17 A. Yes.

18 Q. Okay. And according to that case, did he stop being
19 an attorney in the year of 2003?

20 A. No. He was practicing as though he was an attorney
21 when he was not.

22 Q. Oh, I'm sorry. Did that case determine and did that
23 give you the knowledge that he was no longer a licensed
24 attorney?

25 A. Right, yes.

1 MR. MATTSON: Your Honor, I'm having trouble with
2 leading and assumptions. If there's a case deciding this,
3 that speaks for itself.

4 THE COURT: Well, it's still hearsay. Sustained.

5 Don't lead the witness. Okay? And don't put in
6 hearsay. I mean, you've gotten that part in. Now move on.
7 I don't think they understand who the attorney is.

8 MS. FELDER: Okay. It's fine.

9 BY MS. FELDER:

10 Q. Also, did you found out that Ms. Thompson also had a
11 power of attorney over Ms. Nichols?

12 A. Yes, I found out that she had a power of attorney,
13 yes.

14 Q. Was this done around the same time?

15 MR. MATTSON: Already admitted that.

16 THE WITNESS: Yes.

17 MS. FELDER: Plaintiff's Exhibit 7, Your Honor.

18 THE COURT: Exhibit 7 is admitted without objection.

19 (Plaintiff's Exhibit 7, Power of Attorney, is
20 moved into evidence.)

21 BY MS. FELDER:

22 Q. Let's move forward to the competency hearing that he
23 suggested in his opening statement. Were you at that
24 hearing?

25 A. There was not a hearing.

1 represented by an attorney in that action against your
2 mother?

3 A. Yes.

4 Q. You hired a private attorney?

5 A. Yes.

6 Q. The attorney you hired was a David R. Lawson,
7 correct?

8 A. Yes.

9 Q. Okay. And I will find it. It's in here with a
10 little tab. This is a little different order. And as a
11 result of that petition, your mother had to hire an attorney,
12 didn't she?

13 A. I don't know. It's my understanding Donna did
14 everything. Donna hired Edward Brown. And then she went to
15 a doctor. She was in control of everything. That's what I
16 was advised.

17 Q. And here it is right here. Here's your signature.
18 Here's the petition, one of the petitions that you've filed
19 in the Probate Court, therapeutic division.

20 A. You say I signed this?

21 Q. Yes. Is that your signature?

22 A. No, this is Elizabeth -- this is somebody else.

23 Q. Excuse me. I think it's on the next page. Is that
24 your signature?

25 A. No, that's not my signature. Somebody put an E.

1 Q. And the letter that Donna wrote to your mother
2 suggested that your mother, before making any decisions,
3 talked to Aunt So-and-So, me, or Russell Brown; do you recall
4 that?

5 A. You know, I'm going to tell you, Mr. Mattson. This
6 is the first time I heard about him talking -- she mentioned
7 anything -- I didn't see that part, but when you said to the
8 jury, I didn't know you was involved. This is the first time
9 I'm hearing you was involved in what's going on. I thought
10 it was Russell Brown and -- she mentioned about Russell
11 Brown. But I could see the handwriting. And now you cleared
12 it up to me today, Demal Mattson. I had no idea you had any
13 part of this, this is the first time I heard about it.

14 Q. Okay.

15 A. I didn't know that you was her attorney at that
16 time.

17 Q. Okay.

18 A. I'm surprised now.

19 MR. MATTSON: Give me just one moment, Your Honor.

20 THE COURT: Certainly.

21 BY MR. MATTSON:

22 Q. How far did you go in law school?

23 A. I finished.

24 Q. How long?

25 A. I completed law school.

1 the clothing. But my mother did not object to anything,
2 because she was going to join us, expecting to stay there
3 until after the holiday.

4 Q. Do you remember what year this was?

5 A. Was it 2008?

6 Q. I don't know. You tell me.

7 A. 2009, something like that.

8 Q. Okay. And do you recall what your mom's physical
9 and mental condition was like at the time maybe 2006, 2005?

10 A. Well, what happened, when she had accidents. She
11 hit a guy on a bicycle. She called me. I had to go down
12 there to see about it. Unfortunately, the young fellow did
13 get hurt. He landed on top of the car and rolled over. He
14 had to go to the hospital. So I talked to the police
15 officer. They told me to escort my mother back because they
16 had to take her license, you know, and --

17 MR. MATTSON: Your Honor, I object to what the
18 police said. It's pure hearsay.

19 THE COURT: Objection sustained. Just ask another
20 question please.

21 BY MS. FELDER:

22 Q. What was her physical condition like, her hearing
23 and her --

24 A. She was hard of hearing. And her eyesight was
25 getting worse, a little worse. And I would drive her a lot.

1 I would drive her a lot. Sometimes she would drive herself.
2 She loves to go to Colonial Lake to meet her friends.

3 Q. And did you have any concerns with her living with
4 Donna and her husband?

5 A. Can you rephrase that?

6 Q. Did you have any concerns for your mother while she
7 was living with Donna and her husband?

8 A. Not when Donna was there, I had no concern, no.

9 Q. And what about her husband?

10 A. I had some concerns.

11 Q. What kind of concerns?

12 A. Knowing his history, you know, I'm not getting too
13 detailed about it, but there's always been discussed he had
14 problems, you know. And sometimes he would be there and
15 sometimes he would have problems, you know. I don't want to
16 get too detailed of the problems of it.

17 Q. Okay. And did you take care of a lot of things for
18 your mom around that time, 2006?

19 A. Oh, yes, yes.

20 Q. What kinds of things would you do for her?

21 A. Well, I, more or less, go to the store for her and
22 take her out to the Ryan's, ride her around, basically. She
23 likes to get out. I take her out.

24 Q. And would you say your mother needed some type of
25 assistance around that time?

1 Q. And what happened with that?

2 A. Well, Al Thompson, the father, he's a drug head.
3 And we had a lot of problem with him working. He wouldn't
4 work. He steal money. He break in. We had a lot of
5 problems with Al Thompson, Sr.

6 Q. And on that day, did he tell you you couldn't come
7 in the house?

8 A. Yes, he did. He was cursing and carrying on with my
9 wife on the telephone. And I took the phone from him. And I
10 addressed him about it, he told me to bring it on.

11 Q. Okay. And during the time, I guess when you came to
12 visit after the telephone conversation, did he threaten you
13 with a gun?

14 A. Yes. When I got to the house, and in front of the
15 house, he was sitting in the cab. So I approached the car
16 and I asked him, what was he talking about on the telephone?
17 And he said, I'm going to get my gun, he went in the glove
18 compartment. So I went around the driver's side. I pulled
19 him out of the car and I held him on the ground.

20 Q. And this visit, was this visit to see him or was it
21 to see your --

22 A. No. We were there to see grandma, because she had
23 called us to come up there, like she always calls to have
24 someone come up, and we did. She was having a lot of
25 problems with Al not getting out of the house. He wouldn't

1 do anything. He was influencing Donna before she died and
2 everything. We had a lot of problems with him.

3 Q. Okay. And then after this event, did you have to
4 attend a hearing?

5 A. Yes, there was a hearing on the matter. And he was
6 admonished by the judge not to go back to the house. Donna
7 was admonished by the judge that if she bring him back to the
8 house, he going to have her leave the house also.

9 Q. Okay. And -- in that same hearing, Thaddeus was
10 arrested also, because he pulled a knife on him, and the
11 judge admonished him as well.

12 Q. Some time after this event, do you remember what
13 period of time they eventually moved out of the house
14 after -- some time after, I believe, Ms. Nichols was in
15 Atlanta; do you remember when they moved out?

16 A. Not specifically. It was some time afterward. I
17 don't remember specifically what date it was, because my wife
18 normally keep up with that.

19 Q. Okay. And then at some point, did you come to
20 assist with cleaning the property?

21 A. Yes, I did. When there was an agreement reached,
22 and I think this attorney wrote up the agreement, that was
23 for them to move out of the house. And they gave us the key
24 that didn't fit the lock. So we had to get in the house by
25 other means. And when we got in the house, we found it just

1 name is Emily.

2 Q. Well, I've seen it called both ways. I saw a lot of
3 legal documents with Collette on it.

4 A. Collette Felder, that's my wife.

5 Q. You are married to Emily, also known as Collette,
6 correct?

7 A. Emily Collette Felder.

8 Q. Thank you. Now, when the police got there -- what
9 does Al Thompson have to do with this case anyway?

10 A. Well, Al Thompson was -- he, like I said, he was a
11 drug head. And he was the biggest influence on Donna,
12 everything was fine with Donna until she moved Al into the
13 house. When she moved Al into the house, then she start
14 taking grandma's checks. He create a big confusion between
15 her and my wife. They would get along fine until he moved
16 into the house. That's what he has to do with it. He's the
17 main kingpin behind all of this, which is probably the reason
18 why he's in jail now.

19 Q. Okay.

20 A. He has a long criminal record.

21 Q. Now, in the deed, Mamie Nichols kept control of the
22 house and the ownership of the house in that deed for as long
23 as she lived, didn't she?

24 A. Well, it says so in the deed.

25 Q. It says so in the deed. And then upon her demise,

1 Carolina, because we've been here since '79.

2 Q. Okay. And are you a member of any organizations or
3 do you have any --

4 A. I'm a member of the International Hearing Society.
5 I'm past president of the South Carolina Hearing Aid Society,
6 two different times. And I've served on the South Carolina
7 licensing board; it's the Department of Health and
8 Environment Control.

9 Q. Was Mamie Nichols one of your patients or, I'm
10 sorry, one of your --

11 A. I met Ms. Felder in --

12 Q. I'm Felder. This is Ms. Nichols.

13 A. I mean, yeah. Let me put my glasses on here. Yeah,
14 Ms. Nichols, I met Ms. Nichols in 2003. And she was a
15 patient of ours from 2003 until 2008.

16 Q. Okay. And was she a patient of yours in 2007 at
17 some point?

18 A. Yes.

19 Q. Okay. And what did you observe about Ms. Nichols'
20 hearing abilities?

21 A. Mrs. Nichols has -- let me look at the results
22 here -- 73 decibel loss in her left ear at this time. This
23 was 2007. And a 71 decibel loss in the right ear, which is
24 pretty profound. 90 decibel is profound deafness, so she was
25 pretty far down.

1 Q. Okay. So you would say that's a severe loss?

2 A. Yes.

3 Q. Okay. And with this type of hearing loss, does this
4 happen within a short period of time; does it take a long
5 time?

6 A. No, usually it's a process of a period of years that
7 this would occur.

8 THE COURT: Let me stop you for just a moment.
9 There's been no objection, but are you planning to offer this
10 witness as an expert in hearing aid specialty in order to be
11 able to ask him opinion questions?

12 MS. FELDER: Well, all he's going to do really was
13 authenticate his records and just explain what they mean.

14 MR. MATTSON: I have no objection to him being
15 qualified as an expert in hearing loss.

16 THE COURT: Okay. He is so qualified as an expert
17 in hearing loss.

18 Ladies and gentlemen, normally a witness or a person
19 on the stand cannot give opinion testimony. Normally, when a
20 person testifies, they must testify as to what they saw,
21 heard, did, or experienced, or sensed in some way. We make
22 an exception in the law for witnesses who are qualified by
23 their education or training and experience in some specialty.
24 Those witnesses are permitted to give their opinions in the
25 area in which they are qualified if the Court so qualifies

1 them. We are qualifying Mr. Ellis in the area of hearing
2 aids and hearing loss, I imagine. Mr. Mattson has not
3 objected, so we will go ahead and move forward with that.
4 Thank you.

5 Thank you, counsel.

6 BY MS. FELDER:

7 Q. So you would say that the amount of hearing loss
8 Ms. Nichols had was a progressive hearing loss?

9 A. Yes.

10 Q. So in 2006, would that have amounted -- would she
11 have had maybe the same amount of hearing loss? Would it
12 have been made significantly less or --

13 A. Let's see. I have to back up now. I've got all of
14 her records here.

15 THE COURT: Do you have a particular record to which
16 you would like to direct his attention?

17 MS. FELDER: Sure. He's the expert, so I'm not sure
18 if that's all he needs to make that type of determination.

19 THE COURT: Come on up, please.

20 (Whereupon, the following bench conference takes
21 place outside the hearing of the jury.):

22 THE COURT: Did you not prepare your witnesses and
23 go through, because we need to move this along. The jury is
24 not supposed to sit there while he flips through his papers
25 and tries to figure out how to answer your questions. Is he

1 ready?

2 MS. FELDER: Yeah, I prepared him. I can't make --
3 the records are right in front of him.

4 THE COURT: Most lawyers do. Okay. Thank you.

5 (Whereupon, a bench conference ends.)

6 THE WITNESS: 2007 was when we tested her hearing in
7 October. I mean, she had the same hearing loss that she got
8 in 2008.

9 BY MS. FELDER:

10 Q. Okay. And was she prescribed hearing aids at that
11 time?

12 A. She got analog hearing aids. They are linear
13 hearing aids that were in the ear, sort of like mine.

14 Q. And what were the quality of those hearing aids at
15 the time?

16 A. At that time they were pretty good hearing aids.
17 But, see, the problem is, when your hearing reaches that
18 level of dB, a lot of times you get speech reception
19 problems, being able to understand what you hear. You can
20 amplify it, but the clarity is not there.

21 Q. Okay. And in order for her to -- in order for you
22 to communicate with her, would you have to speak in a
23 moderate voice or low voice, a loud voice? What level or
24 what tone would you have to speak to her in order for her to
25 understand?

1 A. That's a hard one to say. It's been so long ago
2 since I've seen her as a patient. So I can't remember, I
3 mean, exactly on that, you know, how well she did or anything
4 else since that was -- last time I saw her was 2008.

5 Q. Okay. But, generally, with that type of hearing
6 loss and with the type of hearing aid she had, what tone of
7 voice would you have to speak to an individual in order for
8 them to understand what you are saying?

9 A. You may have to raise your voice a bit to make them
10 hear that well. But as long as you are close to them, they
11 should hear and understand better than what they do without
12 the hearing aids on.

13 MS. FELDER: Okay. That's all.

14 THE COURT: Okay, thank you. Any cross-examination?

15 CROSS-EXAMINATION

16 BY MR. MATTSON:

17 Q. Where is your office located, Doctor -- excuse me.
18 Mr. Thomas, where is your office located?

19 A. 1722B Ashley River Road.

20 Q. Okay. And people lose their hearing in different
21 frequency ranges; is that correct?

22 A. Yes, sir.

23 Q. It depends on the particular frequency range that --
24 they can lose it at one frequency and not other frequency; is
25 that correct?

1 made his wife, Mamie Nichols, the executor, the person in
2 charge of his estate.

3 Q. And did Mr. and Mrs. Nichols own real estate?

4 A. Yes, they did. After the death of -- well, I was
5 with Ms. Nichols on a number of occasions that she took care
6 of business. In fact, I was at the hospital when he went
7 into a semi-coma. And I called Collette. She was in the
8 Georgia area. And I told her that I told her that I thought
9 she needed to come home because her dad was not doing well at
10 all.

11 Prior to that, she had not communicated with them.
12 Once he made the change in his decision of who would handle
13 his estate, she didn't respond. I called her back after he
14 had died to tell her that he had died and wanted to know if
15 she was coming to South Carolina, whether she was coming
16 home. She said she was not. And to my knowledge -- I was at
17 the funeral. I was with Ms. Nichols during the whole
18 process. And, to my knowledge, Collette never came.

19 Q. Now, did you ever have any conversations with Mamie
20 Nichols concerning -- I can never remember the address -- 84
21 Sheppard Street?

22 A. Yes, I did. Right after Mr. Nichols died, she said
23 that she didn't want to be responsible for the real estate
24 that she had, so she was going to give the children, her
25 three children, the property that she wanted them to have.

1 The property at -- she was deeding to Donna,
2 because Donna was still -- Donna was in the house, and she
3 wanted Donna to have .

4 MS. FELDER: Objection, Your Honor. She's going to
5 Mamie's state of mind. She didn't say she said or anything,
6 she just said she wanted to have.

7 THE WITNESS: Oh, she said -- can I correct my
8 statement?

9 THE COURT: Objection is overruled.

10 THE WITNESS: She said that she wanted Donna to have
11 84 Sheppard Street and she would live in the house until she
12 died. And after she died, Donna would have -- that would be
13 the property that she wanted Donna to have.

14 BY MR. MATTSON:

15 Q. Okay. Did she ever complain to you about Donna
16 putting pressure on her to do anything?

17 A. You would have to know Donna to know that that was
18 not her nature. That was not -- never had she complained to
19 me about Donna putting pressure on her. In fact, I received
20 a call from Mrs. Nichols' son, Allen, and he wanted me to get
21 with Mrs. Nichols' pastor to tell -- for us to say that
22 Mrs. Nichols was incompetent when she made the papers out for
23 Donna to have the house. He called me -- I told him that I
24 would get back with him. I didn't feel comfortable. So I
25 went to the house, and Mamie had just come back from walking

1 A. Yes, they were, they were close.

2 Q. And you also mentioned there being, I guess, some
3 rift in the family after Mr. Felder found out Mr. Nichols
4 changed his executor of his estate. How did you find out
5 about him changing his executor of his estate?

6 A. Through both Mr. Nichols and Mrs. Nichols.

7 Q. Did you see a will?

8 A. No, I didn't see a will.

9 Q. Did he say whether or not he put it in a will?

10 A. He didn't say, but he said he was going to.

11 Q. And did they say they communicated that with
12 Ms. Felder?

13 A. Yes.

14 Q. Okay. And was there ever any communication between
15 you and Ms. Felder about the will or --

16 A. No.

17 Q. Or executor thing?

18 A. No.

19 Q. You also said that you would be with Ms. Nichols
20 during hospital visits when she would handle business, is
21 that correct, something you stated?

22 A. Say again.

23 Q. You say you were with Ms. Nichols when she would
24 handle business and then you mentioned when she was at the
25 hospital?

1 A. Yes.

2 Q. Okay. Were you ever with Ms. Nichols when she would
3 handle business with her real estate?

4 A. No, I wasn't. After Mr. Nichols got sick and
5 passed, the day that he -- the day that he passed, she called
6 me that morning because they wanted to do a test on
7 Mr. Nichols. And he was resistant. So she asked me if I
8 would come down and talk with him, which I did. I went down
9 and I spoke with him. And he saw the need. He agreed with
10 the doctors that he would have the tests that they wanted to
11 perform.

12 While they were performing the test, Mrs. Nichols
13 asked me if I would take her to take care of some business,
14 which I did.

15 Q. Okay. But you were never around, for instance, if
16 she wanted to sell the property or if she wanted to put
17 property in a trust, you were never around her when she had
18 handled that type of business?

19 A. No, I didn't, but she told me what her plan was and
20 what she was doing.

21 Q. Okay. Did she tell you about what she wanted to do
22 with her property on Reid Street?

23 A. I know she had -- there was a piece of property on
24 Reid Street. Allen -- the Reid Street property, the
25 frontage -- Ashley Avenue property, and there was a property

1 on Reid Street. There was another piece of property over
2 on -- I think it's the other side of the Sheppard Street that
3 she was going to -- she did not want to be a landlord. So
4 she was going to -- while she was still alive, she wanted
5 them to take control of the property. Only property that she
6 was going to be associated with was the one on 84 Sheppard
7 Street. And she would live there until she died. And then
8 the property would go -- it was supposed to go to Donna.
9 And. After Donna died, it would go to her children, was the
10 statement. It wasn't husband. It was supposed to go to her
11 children.

12 Q. We will come back to that. So you said she didn't
13 want to be responsible for real estate. What year was this?
14 What time frame did she say this?

15 A. This was after the death of Mr. Nichols.

16 Q. Okay. And what year did he die?

17 A. It's hard for me to remember dates. My birthday
18 sometimes I forget it, my grandchildren. But, no, I can't
19 tell you what year it was, but I know it was after his death.

20 Q. Would you say it was -- just roughly speaking, was
21 it in '90s? Was it 2000s; do you remember?

22 A. Oh, I'm trying to think. I don't want to tell
23 something that I'm not certain about.

24 Q. That's okay. And she said she wanted Donna to have
25 84 Sheppard Street. What year was this?

1 A. Here again, I'm not going to give you a year,
2 because I'm not absolutely certain about the year.

3 Q. Okay. Was it after Donna died that she said she
4 wanted her to have --

5 A. No. This was prior to when she was preparing to
6 distribute the property to her children.

7 Q. Okay. So after Mr. Nichols died?

8 A. Yes.

9 Q. Is that when she was planning to distribute property
10 to her children?

11 A. Yes, yes.

12 Q. And you are stating that, at that time, she wanted
13 Donna to have

14 A. Yes.

15 Q. Or her kids, rather?

16 A. No, she wanted Donna, because Donna was still alive.
17 It was after Donna passed that we discussed -- after I had
18 the call from Allen Nichols, I went to her and -- because I
19 wanted to be clear in my mind what her decision was. I went
20 to her and I asked her. And she was very candid with me.
21 She said, this is what she wanted: She wanted that she would
22 live in the house until she died, and afterward, that the
23 house would go to Thaddeus, Titus and Asia.

24 Q. And this was after, some time after her husband
25 passed?

1 A. That's correct.

2 Q. Okay.

3 A. They were both after her husband passed, both
4 conversations. She initiated with me --

5 Q. Long after or soon after?

6 A. It was soon after. She was preparing to execute the
7 estate. It was during that time.

8 Q. Okay. You also mentioned that for Donna to
9 influence her to do something, that wouldn't be in her
10 nature; is that a correct statement?

11 A. That is correct.

12 Q. Have you ever seen letters from Donna to her mother?

13 A. No, I haven't.

14 Q. Have you ever seen letters from Donna to her sister
15 assigning the property?

16 A. No.

17 Q. Did Mamie discuss those with you?

18 A. No, she didn't.

19 Q. Did Mamie discuss with you what was in the deed when
20 she did convey the property to Donna?

21 A. We only talked about the -- I knew of some financial
22 situations, because I was with her when she took care of some
23 of her finances, but as far as the property was concerned,
24 was what she told me, how she wanted to distribute the
25 property to her children.

1 Q. Okay. Let me back up and talk about the
2 distribution of property to her children. Are you aware that
3 after Mr. Nichols passed, she did distribute the property to
4 her children, but she did not give anything to anyone 84
5 Sheppard Street? In actuality, what she did was she gave
6 Reid Street to Donna. She put a home in trust for Allen, and
7 she gave Ashley Avenue to --

8 MR. MATTSO: Excuse me, Your Honor. I believe she
9 can ask questions, but I believe she's testifying.

10 THE COURT: Sustained.

11 BY MS. FELDER:

12 Q. Are you aware of how the houses were distributed
13 after Mr. Nichols passed?

14 A. Yes. She did tell me that Collette had the Ashley
15 Avenue and Reid Street property. And I believe there was a
16 piece of property on Reid Street that Allen would have, and
17 the Reid Street property for Donna. She also said that --
18 and this was -- my conversation -- what prompted me to ask
19 her about was my conversation with
20 Mr. Allen Nichols when he called me to ask me to meet with
21 her pastor about possibly declaring her incompetent in her
22 decision-making process where was
23 concerned. So that's what prompted me to go to her to ask
24 her what her decision was as far as was
25 concerned.

1 MR. MATTSON: Thank you. I have no further
2 questions.

3 THE COURT: Thank you.

4 Anything further?

5 MS. FELDER: Nothing further, Your Honor.

6 THE COURT: All right. Thank you, ma'am. You may
7 step down and be excused. Thank you.

8 MR. MATTSON: I have two more witnesses, Your Honor.

9 THE COURT: Okay. Let me just check the jury.
10 Everybody okay? Anybody need a break? You good?

11 Okay. Call your next witness please.

12 MR. MATTSON: Your Honor, I call Titus Thompson.

13 THE COURT: Come on up and we will swear you in.

14 TITUS THOMPSON,

15 having been duly sworn, testifies as follows:

16 THE CLERK: State your name into the microphone and
17 spell your last for the record.

18 THE WITNESS: My name is Titus Thompson,
19 T-h-o-m-p-s-o-n.

20 DIRECT EXAMINATION

21 BY MR. MATTSON:

22 Q. How old are you, Mr. Thompson?

23 A. 25.

24 Q. How old?

25 A. 25.

1 Q. When did you start living with your grandmother,
2 Ms. Nichols?

3 A. It was a long time ago. I want to say somewhere
4 early '90s.

5 Q. And how long did you live with her? Who all lived
6 with her? Let me ask that.

7 A. It was my mom, my dad at a time, my brothers, my
8 sister and I.

9 Q. And is your sister in the courtroom?

10 A. She is.

11 Q. And is your brother in the courtroom?

12 A. He is.

13 Q. Okay. What kind of relationship did you all have
14 with your grandmother?

15 A. We had a real good relationship.

16 Q. I'm going to ask you to speak up just a little bit
17 louder.

18 A. We had a real good relationship. We had a normal
19 grandma-to-grandson relationship. We loved each other. We
20 talked all the time. And it was just really normal.
21 Grandmother was very affirmative in her words, I will say
22 that much. But, yes, we were all close all of us.

23 Q. And what kind of person -- how would you describe
24 your grandmother?

25 A. Oh, she was very, very strong. That's for sure.

1 Q. And did it appear to you that Collette came down to
2 visit or came down to question everything?

3 A. It appeared that she came down to question
4 everything, to gather information, to -- it was motive behind
5 what she was doing. It wasn't, you know, here for family,
6 that's all, get along with. She had intentions, and it was
7 very apparent. And to me, I just believed the truth's the
8 same no matter what, so ...

9 Q. Would you say she had an agenda?

10 A. Yes, we do. Even being young, I could tell.

11 Q. Let me ask you a couple more questions. After your
12 mother died, did you and your brother and sister continue to
13 live with your grandmother?

14 A. Yes, we did.

15 Q. Were you all assisting in her in any way?

16 A. Yes, we drove her to her normal routine. She liked
17 to go walk Colonial Lake. She liked to go to Ryan's. She
18 loved to watch TV and read her newspaper. So -- but we
19 always -- we was just there, but we did assist her in
20 everything she did. We accompanied her.

21 Q. So y'all supported her?

22 A. Yes, we did.

23 Q. Not financially, but emotional and --

24 A. Yes.

25 Q. Now, how did your grandmother end up in Atlanta?

1 the house, 84 Sheppard was still linked to her, they told us
2 that we could still keep her account. All her records were
3 still on file and it would automatically draft from her
4 account.

5 Q. Okay. So the money would draft from her account?

6 A. I believe so.

7 Q. Was this with her permission?

8 A. I mean, like I said, no, it wasn't.

9 Q. Do you communicate with Thaddeus on a regular basis
10 now?

11 A. Yeah, I do.

12 Q. Okay. Where does he live?

13 A. He lives with a friend right now.

14 Q. Okay. And after you left the property, 84 Sheppard
15 Street, where did he live then; do you know?

16 A. He lived with me, my sister, and my dad. He was
17 back and forth between all of us.

18 Q. Okay.

19 A. We was trying to help him out because he was trying
20 to -- he was trying to get ahold of life after my mom's
21 death.

22 Q. Okay. Do you recall doing an affidavit with your
23 attorney, affidavit for your attorney?

24 A. Affidavit for my attorney?

25 Q. Yes, affidavit. Let me show it to you. Just for

1 recollection purposes, does this look familiar to you?

2 A. Yeah, I guess, yes.

3 Q. Okay. Is that your signature there?

4 A. Yes, it is.

5 Q. Okay. So this was sworn testimony in front of a
6 notary, correct?

7 A. Right.

8 Q. Could you read this portion of the affidavit for me?

9 A. Our mother was very concerned about what Collette
10 would do or try to do in the event our mother died without
11 taking care of her legal affairs before something happened to
12 our grandmother. Apparently, this resulted in the deed power
13 of attorney and medical power of attorney.

14 Q. Okay. So according to that statement, it was your
15 mother who had the concerns, correct?

16 A. Yes.

17 Q. And it was your mother who felt that the property
18 needed to be deeded to her, correct, according to the
19 statement?

20 A. Yes.

21 Q. And it was your mother, according to this statement,
22 who felt she needed to get a power of attorney and a medical
23 power of attorney over her?

24 A. Yes.

25 Q. Okay. And all because of Collette?

1 A. All because of the heckle from Collette.

2 Q. And your mother just never talked to you about this?
3 She never talked to you about the house? She never talked to
4 you about power of attorney or medical power of attorney, did
5 she?

6 A. Not in detail.

7 Q. Okay. And you were young at the time, so you
8 wouldn't really understand?

9 A. No. Yes.

10 MS. FELDER: Okay. That's all I have.

11 THE COURT: Thank you.

12 Redirect?

13 MR. MATTSON: None, Your Honor.

14 THE COURT: Thank you, sir. You may step down.

15 MR. MATTSON: Can I have a one-minute conference
16 with my clients?

17 THE COURT: Certainly.

18 MR. MATTSON: Let me check one thing, Your Honor.

19 THE COURT: Sure.

20 MR. MATTSON: Your Honor, I would like to present to
21 the Court the exemplification of the hearing that was in all
22 documents in the probate court. I hope you remove the little
23 stickers I had. I had discussed this with opposing counsel
24 and she had no objection.

25 THE COURT: Are you seeking to admit this into

1 evidence?

2 MR. MATTSON: Admit it into evidence.

3 THE COURT: Is there no objection?

4 MR. MATTSON: No objection, Your Honor.

5 THE COURT: Let's take the stickies off and get a
6 sticker for it. Give me the number. Defendant's Exhibit
7 3.

8 (Defendant's Exh. 3, Exemplification, is moved
9 into evidence.)

10 MR. MATTSON: I'm not going to publish all of this
11 to y'all. I'm going to let you take it into the jury room
12 and read it over. And the defense rests.

13 THE COURT: Okay. Thank you, sir. Any reply from
14 the plaintiff?

15 MS. FELDER: No, Your Honor.

16 THE COURT: Okay.

17 Ladies and gentlemen, the defense has rested.
18 You've heard all of the evidence in the case. I have the
19 charge on the law ready for the attorneys, but I have to go
20 over on it with them and let them argue about any changes
21 that they might have or suggest regarding the charge. So I'm
22 going to send you back to your jury room and ask you to not
23 discuss the case yet because we will get you back out as
24 quickly as we can for closing arguments and the charge on the
25 law. And y'all may be able to have your lunch and begin

1 deliberating then.

2 But as I indicated, you have not heard the closing
3 argument, the charge yet, so please don't discuss the case.
4 Thank you.

5 (Whereupon, the jury leaves open court at 12:17
6 p.m.)

7 THE COURT: All right. Any motions? I assuming the
8 plaintiff has some motions and the defense will want to renew
9 their motions.

10 MR. MATTSON: Yes, Your Honor, I do.

11 THE COURT: We are going to pretend like we are at
12 the end of the defendant's case before I ask you if there was
13 any reply. I just didn't want to send them back and forth.
14 They hate that. So let me hear from the plaintiff first.
15 Any motions from the plaintiff?

16 MS. FELDER: Just -- well, Your Honor, I will move
17 the Court for a directed verdict on the undue influence.
18 There is a sufficient amount of evidence as to Donna's
19 influence. There is a letter from her that specifically
20 talks about the property and how things need to be in order
21 with the property, power of attorney, so on and so forth, and
22 how if she does not -- Mamie does not give her interest in
23 the property, she will leave. And she gives her an ultimatum
24 basically saying if you don't tell me something about April
25 30th, I will leave.

1 There is also evidence, notes taken by Donna, almost
2 as if she was making an agenda before or after to the
3 attorney who drafted the deed.

4 THE COURT: Did that come into evidence, the notes?

5 MS. FELDER: Yes, ma'am. Yes, ma'am. And those
6 notes you will see very clearly she writes Attorney Brown at
7 the top. She talks about leaving things within the notes,
8 which, Your Honor, would go to show that she communicated
9 with the attorney who drafted the deed, which clearly
10 suggests the conflict if this deed -- if that is supposed to
11 be attorney on behalf of Ms. Nichols.

12 There is also evidence that there was a power of
13 attorney done, although a healthcare power of attorney. It's
14 not to suggest that this gave her authority to do the things
15 she was doing. It was actually in to suggest the
16 confidential relationship. Although family can go to
17 confidential relationship, power of attorney is almost
18 indicative of confidence in a relationship, not only
19 confidence, but a fiduciary duty.

20 THE COURT: Was there a power of attorney other than
21 the healthcare power of attorney, a separate power of
22 attorney as well?

23 MR. MATTSO: It was all in one document, Your
24 Honor.

25 THE COURT: Okay. Okay.

1 MR. MATTSON: However --

2 THE COURT: Let her finish, then I'm happy to hear
3 --

4 MR. MATTSON: I realize that. Yeah.

5 MS. FELDER: So with the confidential relationship,
6 South Carolina law, case law, clearly states that once a
7 confidential relationship has been established, that the
8 burden is on the defense to refute a presumptions of undue
9 influence. So at this point there is a presumptions of undue
10 influence, since I believe the plaintiff has very clearly
11 established a relationship of confidence. And I just don't
12 believe that defense has put up enough evidence sufficient to
13 even refute that burden.

14 He keeps mentioning competency, competency; however,
15 competency does not go to influence. I mentioned her hearing
16 infirmities. And I mentioned those things, and how she was
17 going downhill, to suggest that there is some sort of mental
18 weakness and mental weakness does interplay with undue
19 influence. It's not the underlying causation. It's not the
20 underlying action. It's just additional evidence. So with
21 all the evidence I offered, and for him to only suggest,
22 well, she was ruled competent at this guardianship hearing,
23 which serves a completely different purposes, I feel is just
24 not sufficient evidence to refute a burden enough to go to a
25 jury.

1 THE COURT: Okay. I respectfully disagree.
2 Ms. Gilliard's testimony alone, Barbara Gilliard's, gets this
3 to the jury, at least on behalf of the defense.

4 So any further motions?

5 MS. FELDER: No, none.

6 THE COURT: All right. Yes, sir.

7 MR. MATTSON: Nothing further.

8 THE COURT: All right.

9 MR. MATTSON: Except for the original --

10 THE COURT: To renew the directed verdict?

11 MR. MATTSON: Right.

12 THE COURT: And for the reasons set forth before as
13 to the undue influence argument, I do believe there's
14 sufficient evidence to send this to the jury. The
15 burden-shifting that Ms. Felder describes, it is an accurate
16 statement of South Carolina law, is in the charge, which I'm
17 going to print for y'all in just a minute to take a look at.
18 I believe I've gotten everything in that you've both
19 suggested, but I will go through that in just a minute.

20 Now, with respect to the trespass cause of action, I
21 have looked at some more law. Most specifically, the case of
22 Mack vs. Edens, that addressed the exact situation of a judge
23 directing a verdict as to the damages in a trespass cause of
24 action where the plaintiff did not put forth any evidence of
25 the damages figure.

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

Mamie F. Nichols,

Plaintiff,

v.

Albert Napoleon Thompson Jr.,
Al Thaddeus Thompson
Titus Sherod Thompson
Asis Rachal Thompson

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH CIRCUIT
) CASE NO:

AFFIDAVIT

2012 AUG -3 PM 2:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Personally appears before me Mamie F. Nichols, who after being duly sworn deposes and says as follows:

1. That I am the Plaintiff in the above case.
2. That all allegations stated in PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT and PLAINTIFF'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT are true based on my knowledge.

Mamie F. Nichols

Mamie F. Nichols
Plaintiff
P.O. Box 685
Red Oak, GA 30272
(843) 437-7113

SWORN TO AND SUBSCRIBED BEFORE ME
on the 31th day of July, 2012

[Signature]

Notary Public for Douglas County
My Commission Expires: Aug 11, 2013

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

Mamie F. Nichols,

Plaintiff,

v.

Albert Napoleon Thompson Jr.,

Al Thaddeus Thompson

Titus Sherod Thompson

Asia Rachal Thompson

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH CIRCUIT
) CASE NO.: 2012-CP-10-3421

CERTIFICATE OF SERVICE

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2012 AUG -3 PM 2:49

I do hereby certify that a true and exact copy of the foregoing PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT and PLAINTIFF'S MEMORANDUM IN
SUPPORT OF SUMMARY JUDGMENT was properly served on the above-named
Defendants by depositing a copy of same in the U.S. Mail, with sufficient first class
postage duly affixed thereto, addressed as follows:

Demal I. Mattson, Jr.
990 Lake Hunter Circle, Suite 201
Mt. Pleasant, SC 29464

Done this 3rd day of Aug, 2012.

Mamie F. Nichols

Mamie F. Nichols

Plaintiff

P.O. Box 685

Red Oak, GA 30272

(843) 437-7113

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
CASE NO.: 2012-CP-10-3421

**MEMORANDUM IN SUPPORT
OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

2012 AUG -3 PM 2:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

סמ"ח

Defendants

I. STATEMENT OF FACTS

On August 11, 1993, Plaintiff's late husband conveyed property located at 84 Sheppard St Charleston, SC 29403, ("the Property"), to Plaintiff. (Plaintiff's Complaint ¶ 2-3). The Property is Plaintiff's only property. (Affidavit of Mamie F. Nichols). Plaintiff is the mother of two daughters, one deceased, and two sons, one also deceased. (Affidavit of Mamie F. Nichols). Plaintiff has a history of hearing and eyesight disabilities. (Exhibit A and Exhibit B). About 1994, Plaintiff allowed her daughter Donna M. Thompson, ("Ms. Thompson"), her daughter's spouse and her daughter's three children to move-in with Plaintiff. (Affidavit of Mamie F. Nichols). About 2006, there was enmity between Ms. Thompson and Plaintiff's other daughter Emily C. Felder, ("Ms. Felder"). (Affidavit

of Emily C. Felder and Exhibit D). In an effort to prevent further visitation from Ms. Felder, Ms. Thompson sought interest in the Property from Plaintiff. (Exhibit C).

Ms. Thompson communicated with Plaintiff through letters due to Plaintiff's hearing disabilities. (Affidavit of Mamie F. Nichols). At the time, Plaintiff was 80 years old. In a letter from Ms. Thompson to Plaintiff, Ms. Thompson suggested that she would leave Plaintiff to live alone if Plaintiff did not agree to convey interest in the property to Ms. Thompson. (Exhibit C). Ms. Thompson suggested that Plaintiff seek legal counsel of Russell Brown, ("Mr. Brown"), to draft the conveyance. (Exhibit C). Plaintiff believed Mr. Brown to be a licensed attorney, but he was not. (Plaintiff's Complaint ¶ 7). Plaintiff relied on Ms. Thompson's communications with Mr. Brown. (Affidavit of Mamie F. Nichols and Exhibit E). On April 19, 2006, Plaintiff created a Power of Attorney for Healthcare in Ms. Thompson. (Exhibit F). Just three days after, on April 22, 2006, Plaintiff signed a deed conveying an estate interest to Ms. Thompson for five dollars and love and affection. (Exhibit G). Ms. Thompson is now deceased and the Plaintiff is still in lawful possession of the Property.

II. STANDARD OF SUMMARY JUDGMENT

Summary Judgment is appropriate when it is clear there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. *Howard v. Nassar*, 613 S.E.2d 64, 66 (S.C. 2005). In ruling on a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party. *Id.* at 66-67.

III. ARGUMENT AND CITATION OF AUTHORITY

South Carolina jurisprudence on the issue of undue influence involves the contestant seeking to set aside a will, rather than a deed. *Dixon v. Dixon*, 608 S.E.2d 849, 854 (S.C. 2005). Undue influence in the execution of an *inter vivos* conveyance is proved in the same way that undue influence is proved in the execution of a will. *Id.*

‘Where a deed is procured by undue influence exerted upon the grantor, it will be set aside by a court of equity...but, in order to avoid the deed upon this ground, there must be shown such an influence exerted upon the grantor as to overbear her will and to make the act of execution not the carrying out of a real purpose or intention of the grantor, but the mere mechanical performance by her for the wish and design of some other person...In order to make it undue, it must appear that the influence exerted was such as to overcome or destroy the free will of the grantor and to make the deed as executed the expression not of his purpose, but that of some other person.’ *Baynard v. Ulmer*, 153 S.E. 610, 611 (S.C. 1929) (quoting *Du Rose v. Kell*, 71 S.E. 371, 378 (S.C. 1911)).

The deed is presumed invalid once a confidential relationship is shown. *Howard*, 613 S.E.2d at 68. The burden then shifts to the grantee to affirmatively show the absence of undue influence. *Id.* It must be shown that the grantor was unquestionably susceptible to undue influence as a result of old age, mental weakness, or some other cause, and there must be clear evidence of opportunity and disposition on the part of the grantee to exercise such influence. *Atkinson v. Belser*, 255 S.E.2d 852, 855 (S.C. 1979).

A. Plaintiff is Entitled to Summary Judgment because Ms. Thompson Was In A Confidential Relationship with Plaintiff at the Time of the Conveyance as Plaintiff's Daughter and Power of Attorney of Healthcare.

A confidential relationship exists between the grantor and grantee if the grantor has placed trust and confidence in the grantee and the grantee has exerted dominion over the grantor. *Dixon*, 608 S.E.2d 849 at 853. Once a confidential relationship is proven, the burden shifts to the grantee to prove that the contestant's conveyance was not the product

of undue influence. *Id.* A familial relationship alone does not demonstrate a confidential relationship, however it “certainly supports” the argument of a confidential relationship. *Id.* According to South Carolina jurisprudence, where a mother gave her son a limited power of attorney to make decisions for her in case she had to be hospitalized, a confidential relationship existed. *Id.* at 854.

Other considerations include whether grantor and grantee hold joint bank accounts or where the grantee prepares all of the documents. *Id.* “Some evidence is required that the grantor actually reposed trust in the grantee in the handling of her affairs.” *Brooks v. Kay*, 339 S.C. 479, 488 (2000). Where the grantee chose the attorney, told the attorney how to prepare the document and the grantor relied on the grantee to prepare everything for the transaction, the Court held that a confidential relationship existed. *Id.* at 489.

As in *Dixon*, Ms. Thompson is the late child of Plaintiff. In addition to her familial relationship, she was the only child living with Plaintiff at the time of the transaction. Ms. Thompson also obtained a Power of Attorney for Healthcare from Plaintiff three days before the conveyance. Like the relationship between the mother and son in *Dixon*, the Power of Attorney demonstrates Plaintiff’s trust and confidence in Ms. Thompson. Moreover, Ms. Thompson suggested the Plaintiff seek counsel from Mr. Brown and Plaintiff relied on Ms. Thompson to communicate with Mr. Brown, similar to *Brooks*. Ms. Thompson’s familial relationship in addition to her Power of Attorney of Healthcare for Plaintiff, and Plaintiff’s reliance on Ms. Thompson’s communications with Mr. Brown demonstrates that Plaintiff and Ms. Thompson had a confidential relationship during the conveyance of the deed .

B. Plaintiff is Entitled to Summary Judgment Because Plaintiff was Influenced by Old Age, Hearing and Eyesight Disabilities, Threats of Living Alone, and the Real Purpose of the Deed was Not That of the Plaintiff, but the Mechanical Performance of Ms. Thompson to Prevent Ms. Felder from Visiting the Property.

To prove undue influence, it is not necessary to show insanity or a state of mental imbecility. *Zeigler v. Shuler*, 68 S.E. 817, 819 (S.C. 1910). It must be shown that the grantor was susceptible to undue influence as a result of old age, mental weakness, or some other cause. *Atkinson v. Belser*, 255 S.E.2d 852, 854 (1979). Where an aged, weak-minded mother conveyed her property to her son, who she wished to live with her and take care of her, the Court held the mother was unduly influenced. *Wille v. Wills*, 35 S.E. 804, 807 (S.C. 1900). The mother, with little regard for business transactions and without an independent adviser conveyed the property to her son for \$5.00. *Id.* at 804.

A court of equity ought not to be, and is not, a shield or refuge for those who make improvident, or even reckless, contracts, but it would not deserve respect if it had not both power and willingness to shield an infirm helpless mother from her grasping son, who would take her all for nothing. *Id.* at 809.

Plaintiff did not have independent counsel, similar to the mother in *Wille*. Ms. Thompson suggested Plaintiff consult with Mr. Brown and Ms. Thompson maintained communications with Mr. Brown. Furthermore, the Plaintiff suffered from major hearing disabilities and had little regard for business transactions. Living alone was an incredible threat for Plaintiff, a 80-year-old woman at the time. Like *Wille*, Plaintiff conveyed the property, influenced that it was a condition that Ms. Thompson continue to live with her and care for her. Lastly and additionally, Ms. Thompson consulted with Plaintiff as though such conveyance was necessary to prevent Ms. Felder from further visitation. Consequently, Plaintiff's free will was overcome, and was therefore, unduly influenced to convey her only property.

C. Plaintiff is Entitled to Summary Judgment Because Five Dollars is Inadequate Consideration for the Conveyance of the Property

Mere inadequacy of consideration will not justify the cancellation of a deed. *Id.* at 855. However,

whenever there is great weakness of mind in a person executing a conveyance of land arising from age, sickness, or any other cause, though not amounting to absolute disqualification, and the consideration given for the property is grossly inadequate, court of equity will, upon proper and reasonable application of the injured party, or his representatives...set the conveyance aside. *Zeigler*, 68 S.E. at 819.

Where there was a conveyance for \$5.00 and some clothing given to a weak-minded half-brother, the Court held the condition of the grantor coupled with the inadequate consideration constituted undue influence. *Id.* at 820. However, where there is an additional agreement, such as an agreement between a 77 year-old-mother and son's formal agreement that the son will care for the mother and maintain residence, consideration is sufficient. *Dixon v. Dixon*, 608 S.E.2d 849, 853 (S.C. 2005). In *Dixon*, the mother conveyed property to her son by her own motivation to prevent a potential creditor from seizing her property and in exchange, he agreed to care for her. *Id.* at 854.

Ms. Thompson and Plaintiff had no such agreement. Additionally, unlike *Dixon*, Plaintiff did not convey property by her own motivation. The sole consideration was \$5.00, love and affection, similar to *Zeigler*. Given the Plaintiff's old age, hearing disabilities and motivation from Ms. Thompson in addition to the gross inadequate consideration, Plaintiff was unduly influenced.

IV. CONCLUSION

WHEREFORE, based upon the Argument and Citation of Authority herein, Plaintiff respectfully requests that summary judgment be granted on Plaintiff's Second Cause of Action to Set Aside Deed for Undue Influence.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT
CASE NO.: 2012-CP-10-3421

**AFFIDAVIT OF MAMIE F.
NICHOLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT OF MAMIE F.
NICHOLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT OF MAMIE F.
NICHOLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT OF MAMIE F.
NICHOLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT OF MAMIE F.
NICHOLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT OF MAMIE F.
NICHOLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT OF MAMIE F.
NICHOLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT OF MAMIE F.
NICHOLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT OF MAMIE F.
NICHOLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT OF MAMIE F.
NICHOLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT OF MAMIE F.
NICHOLS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

6. Attached to this affidavit, as **EXHIBIT A**, is a true and correct copy of a document from Beltone setting forth the purchase and replacement of two new hearing aids in 2007.

7. Attached to this affidavit, as **EXHIBIT B**, is a true and correct copy of a document from my eye doctor, setting forth my history of cataracts, specifically on March 27, 2006 and June 15, 2006.

8. Attached to this affidavit, as **EXHIBIT C**, is a true and correct copy of a letter received from Ms. Thompson suggesting she would relocate if I did not grant her interest in the Property, demonstrating enmity between Ms. Thompson and her sister, Emily "Colette" Felder, and recommending I consult with Attorney Russell Brown.

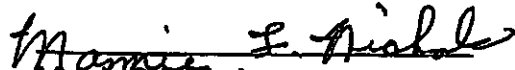
9. Donna Thompson maintained communications with Attorney Russell Brown for me.

10. Attached to this affidavit, as **EXHIBIT E**, is a true and correct copy of notes written to Attorney Russell Brown by Ms. Thompson.

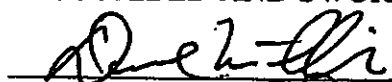
11. Attached to this affidavit, as **EXHIBIT F**, is a true and correct copy of a Power of Attorney for Healthcare I granted to Ms. Thompson on April 19, 2006.

12. Attached to this affidavit, **EXHIBIT G**, is a true and correct copy of the Deed and attached affidavit, granting an interest in the property to Ms. Thompson on April 22, 2006.

Dated this 31 day of July, 2012.


Mamie F. Nichols

SUBSCRIBED AND SWORN TO before me this 31 day of July, 2012.


Notary Public for David Williams
My Commission Expires: Aug 16 2017

102

CE
2pgp

Hearing Instruments

Serial #	Audiogram	Status	Side	Model	Circuit	Shipped Date	Warranty Start	Warranty End	Previous Serial #
<u>0986031821</u>	View Audiogram	ACTIVE	LEFT	RCH62D	REACH		11/12/2009 12:00:00 AM	11/10/2012 12:00:00 AM	
<u>0986031822</u>	View Audiogram	ACTIVE	RIGHT	RCH62D	REACH		11/12/2009 12:00:00 AM	11/10/2012 12:00:00 AM	
<u>0703199219</u>	View Audiogram	ACTIVE	LEFT	Opera Plus	LINEAR-P	11/5/2007 12:00:00 AM	11/5/2007 12:00:00 AM	1/5/2009 12:00:00 AM	
<u>0703194229</u>	View Audiogram	ACTIVE	LEFT	Opera Plus	POLARA	10/29/2007 12:00:00 AM	10/29/2007 12:00:00 AM	12/29/2009 12:00:00 AM	
<u>0703194228</u>	View Audiogram	ACTIVE	RIGHT	Opera Plus	POLARA	10/29/2007 12:00:00 AM	10/29/2007 12:00:00 AM	12/29/2009 12:00:00 AM	
<u>03U01217</u>	View Audiogram	ACTIVE	LEFT	Opera Plus	LINEAR-P	1/20/2003 12:00:00 AM	1/20/2003 12:00:00 AM	3/20/2004 12:00:00 AM	
<u>03U01216</u>	View Audiogram	ACTIVE	RIGHT	Opera Plus	LINEAR-P	10/12/2004 12:00:00 AM	1/17/2003 12:00:00 AM	3/17/2004 12:00:00 AM	

Patient Information

Patient

- File Maintenance
- Find Patient
- Undelivered Orders Report

MAMIE NICHOLS - 037LN1757

Created : 1/21/2003 12:00:00 AM - BELTONE
Modified : 2/22/2012 7:00:00 AM - Keren
Rappa

Status : ACTIVE USER

Contact Information :
MRS MAMIE NICHOLS

Pho: -
Phone 2:
Cell: N/A
Email:

MAMIE NICHOLS

Appointments

Exhibit "A"

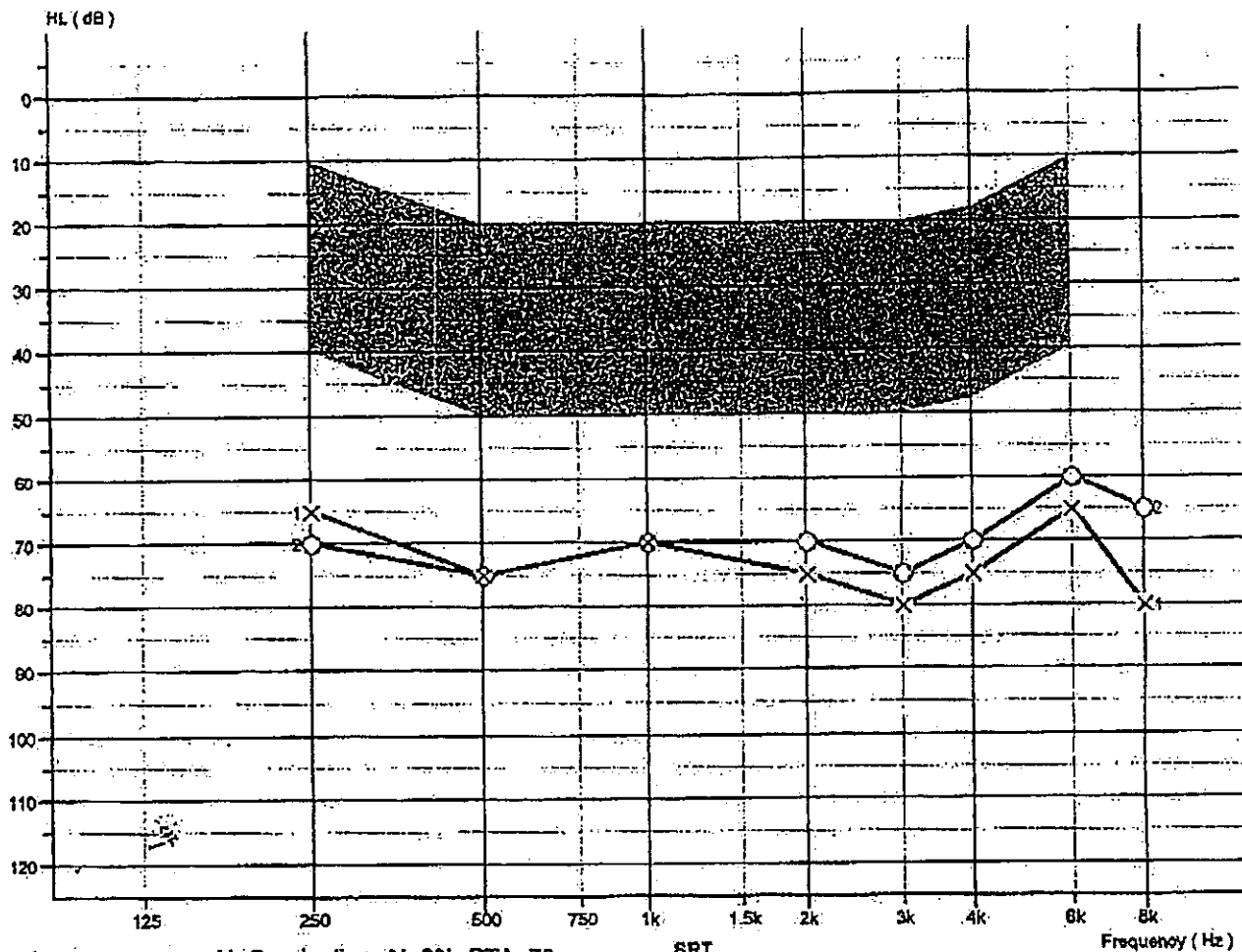
MedRx

nichols, mario

10/23/2007 2:27:59 PM

Page 1

Audiometry [Audiogram]



- 1 — Air Conduction, AI=0%, PTA=73
 2 — Air Conduction, AI=0%, PTA=71

SRT
 Left:
 Right:
 Both:
 DS
 Left:
 Right:
 Both:
 MCL
 Left:
 Right:
 UCL
 Left:
 Right:

Audiometry Legend:
 O - Air Conduction, Right, [] - Masked
 X - Air Conduction, Left, [] - Masked
 < - Bone Conduction, Right, [] - Masked
 > - Bone Conduction, Left, [] - Masked
 M - Most Comfortable Level
 U - Uncomfortable Level
 S - Free Field

Page 2 of 2

104

Exhibit "A"

NAME: Marnie Nichols AGE: W DATE: 3.27.06CC: ☒ Follow up of: ☐ New problem ☐ Emergency ☐ PC IOL OD☒ PC IOL OS
INIDDM ☐ IDDM ☐ BDR ☐ AMD ☐ Drusen ☐ Cataract ☐ OAG ☐ Yag OD ☐ OS

(S)HPI: (Location, quality, severity, duration, timing, context, modifying factors, assoc sx's)

fl (0) Digital echymosis 5 ft 2 weeks ago
Orbita/low in CT with pt patient
LBS 144Eye made: ☐ NonePt History form dated 3/27/06 reviewed: ☐ no changes noted ☒ changes noted on form(O) Vision OD 20/ CFO Face
sc cc OS 20/ 20-N 20/
20/20Manifest OD =20/ add + =20/
OS =20/ =20/Pupils: ☒ ERRL 4-4.3 ☐ Abnormal: GRAM
654321 to 654321 ☐ APDEOM: ☐ Full ROM ☐ Cross-cover normalExternal: ☐ Normal ☐ Abnormal: 90 Visual Field to Confrontation:☐ Ptois R L ☐ Chelasis R L ☐ Poor melt oil ☐ Trichiasis ☐ Full
Slit Lamp Exam: ☐ All normal ☐ Abnormal as follows:OD OS
☒ Conj: Piquacula, SPC tr 1+ 2+ 3+ 4+ Injection
☐ CL's:
☒ Cornea: NV, Inc Tear BU, SPK, BMDZ, KP, guttata
☐ IAC:☒ Iris: Amak 601
90D ☐ Lens: tr 1+ 2+ 3+ 4+ NS, Cort. Cat, Nuc Cat, PSC Cat PC IOL OD OS OU / dear tr 1+2+3+4+ PCO
☐ Vitreous: OD OS OUDRE ☐ Disc: OD cup/disc 0. OS cup/disc 0.☐ Macula: Edema, ERM, Drusen
☐ Vessels: 1+ 2+ 3+ 4+ AV xing, NVE
☐ Periphery: Lattice, Pavingstone, Drusen, NevusTension OD 17
Apply Pen OS 17
@ 12.31
Dilated: M 0.5% OD
M 1% OS
N 2.5% OU
N 10%
C 1%(A) Impression: Slp. fall 2 @ periorbital ecchymosis blocked view (F) Plan:1) ☐ Myopia ☐ Hyperopia ☐ Astigmatism ☐ Presbyopia1) Given Glasses Rx = M ☐ Yes ☐ No2) old unis (slp 00)2) Contacts ☐ Yes ☐ No ☐ Trial Pr ☐ Order ☐ Discontinue Rx3) Aphakia 003) central 004) Tym 11 M14) menular phacolytic5) consider PMA/supine RPO if
MA-during

6) Return Visit in _____ days.

On RV: ☐ Ar ☐ Pupils ☐ Pachymetry
☒ Va ☐ Va w/ glare ☐ OCT ☐ Disc ☐ RNFL ☐ Macula
☐ M ☐ Fog OD OS OU ☐ Repeat Scan
☐ Over-refract ☐ IOL Master
☐ Remove contacts ☐ Visual Field 24-2 SS SF OD OS OU
☐ Re-AR and M ☐ Pre exam
☒ TA or ☐ Tp ☐ Separate day
☐ Pulse ☐ Stereo disc photos
☒ Dil M1/2% M1% ☒ Macular photos
N 2.5% N 10%Mark S. Siegel, MD

NAME: Monica Nichols AGE: _____ DATE: 6.15.06CC: ☐ Follow up of: ☐ New problem ☐ Emergency ☐ PC IOL OD☐ PC IOL OS ☐ NIDDM ☐ IDDM ☐ BDR ☐ AMD ☐ Drusen ☐ Cataract ☐ OAG ☐ Yag OD ☐ OS

(S)HPI: Location, quality, severity, duration, timing, context, modifying factors, assoc sx's

Pl notes v/a in und x 3mo. on -
Pl denies any physical complaints
on - flashes & floatersEye made ☐ NonePE History form dated 3.27.06 reviewed: ☒ no changes noted ☒ changes noted on form

→ TEARS -

(O) Vision OD 20/CF 5th
sc (cc) od OS 20/30+2N 20/400
ec. 20/31Manifest OD =20/ add + =20/
OS =20/ =20/Pupils: ☒ BRRL ☐ Abnormal:65421 to 65432 ☐ APDExternal: ☐ Normal ☐ Abnormal:☐ Pkts R L ☐ Chalasis R L ☐ Poor mab oil ☐ TrichiasisSlit Lamp Exam: ☐ All normal ☐ Abnormal as follows:

OD

OS

☐ Conj: Pinquecula, SPC tr 1+ 2+ 3+ 4+ injection☐ ICL's:☐ Cornea: NV, Inc Tear BU, SPK, BMDZ, KP, guttata☐ IAC:☐ Iris: PE 6090D ☐ Lens: tr 1+ 2+ 3+ 4+ NS, Cort. Cat, Nuc Cat, PSC Cat ☐ PC IOL OD OS OU / dear tr 1+ 2+ 3+ 4+ PCO

OD OS OU

☐ Vitreous:DRE ☐ Disc: OD cup/disc 0.

OS cup/disc 0.

☐ Macula: Edema, ERM, Drusen☐ Vessels: 1+ 2+ 3+ 4+ AV xing, NVE☐ Periphery: Lattice, Pavingstone, Drusen, Nevus(A) Impressions: CR su op1) ☐ Myopia ☐ Hyperopia ☐ Astigmatism ☐ Presbyopia2) Drusen OS of macula3) Anisokia4) DM Type II = NIDDM & NIDDMA cognition

(P) Plan:

1) Given Glasses Rx = M ☐ Yes ☐ No2) Contacts ☐ Yes ☐ No ☐ Trial Pr ☐ Order ☐ Dispense ☐ Rx3) Photo today4) Neurology consult5) Letter to Dr. McChane

6) Return Visit in _____ days.

_____ weeks

_____ months

_____ years

_____ as prev. planned

_____ CL Exam

On RV:

☒ Ar☐ Pupils☐ Pachymetry☒ Va☐ Va w/ glare☐ OCT ☐ Disc ☐ RNFL ☐ Macula☒ M☐ FogOD OS OU ☐ Repeat Scan☐ Over-refract☐ IOL Master☐ Remove contacts☐ Visual Field 24-2 SS SF OD OS OU☐ Re-AR and M☐ Pre exam☒ IA or ☐ Tp☐ Separate day☐ Pulse☐ Stereo disc photos☒ Dil M1/2% M1%☒ Macular photos

N7 5% N10%

Tension OD 14
Appl Pen OS 16.
@ 3.25 q.w.Dilated: M 0.5%
M 1%
N 2.5%
N 10%
C 1%OD
OS
OUMark S. Speer, MD

Dear Mother,

I thank you so much for being there for me especially as an adult. It has not been easy for me with growing children and my estranged difficult husband that I have made a decision to legally separate from at this time in my life. If it had not been for the Lord God who was on my side, I would have fell apart spiritually, emotionally, and physically. But He used you to be there for me especially when I was in desperate straits. As a single mother, I am doing my best to take care of my family, and do what is right by loving and treating others fairly. God is blessing me! I know there were times that I had let you down, and I am truly sorry for all the things I have done to disappoint you in the past. Sometimes we take one mistake a person has done and judge their entire life. I believe that you know that I am a godly person. I practice what is right much more than I make mistakes. The Lord changed me a long time ago. I would have been nowhere to be found if He did not turn my life around. I am thankful that He has forgiven me from my sins and has granted me with strength to forsake my sins. As a result of His presence in my life, I am able to love and do what is right in His eyes. If I fail or fall, I turn to Him for help and He restores me. However, there is one thing that I cannot tolerate. And, that is strife and confusion!!! This is why I am writing this letter to you. I love and care for you very much, but I cannot deal with Colette, who has time after time proven to be a troublemaker. I know that you love her, and I love her also. But I cannot deal with her because she is too treacherous. She is a troublemaker, and in my situation, I cannot ignore her. She has recently made known to me that she will not stop causing problems until there is boundaries set in place to prevent her from doing this. Maybe you don't care, but I was advised by my attorney to stay far away from her due to the potential problems she has and can cause. I love being at , and I am looking forward to ownership one day. I thank you for choosing me to care for this property as I would care for you not because I deserve it, but because I believe you heard from God to bless me in this way. I know that God has me there to care for you and look after the property, but my children and me are unprotected from the wiles of Colette who is lurking to find any opportunity to gain control. I know that you are uncertain about some things. Do not be afraid, do not fear, God will take care of you if you put your trust in Him.

It's time to make certain decision about you relating to me so that I may know what I must do at this time. You are not getting younger, but older with physical health problems. I am noticing how you are becoming more physically slow, fragile, and weak but not mentally. You are still so very bright and intelligent, and I thank God for that. However, things can happen in a split second. Do not allow an unexpected situation especially with your health put my children and me who has been with you since daddy died in a bad situation especially with Colette. Even though you have a will, this does not protect you or me from the wiles of Colette to gain control. You stated that it is me who you would want to care for you. But, if something happens to you due to an accident or if your health condition deteriorates especially to the point of being mentally unaware (maybe temporarily); I have no legal authority to handle your business or care for you. Even worse, it is only right for me to contact Colette and Allen, but she will use this to her advantage unless there is legal protection to keep her from overstepping your

Page 1 of 4

Exhibit C

desires. You're going to have to trust somebody. With God's help, don't fear and put your trust in Him by avoiding problems before they occur. If I am the person you said that you want to take care of you, and that you are leaving the house for, then follow your heart not your fears.

Mother I will never stop Colette or Allen from being with you or receiving what is theirs, but Colette would. I saw how she kept uncle Bob from visiting daddy until I came in the picture. It was total confusion during that time when daddy was sick and even after his death. But, I was there for you, and you were most definitely there for me. Furthermore, she is giving all the indicators now that she is still cunning especially with me. Why is this the case? She is fabricating things to discredit me because she wants to look like the mental and emotional stable person in order to gain control. I believe she will go as far as forging documents like she did with signing daddy's name on the deed and title of Line St. None of us as your children has been perfect, but she is clearly showing me, and even other family members that she is still capable of being a treacherous troublemaker. The problem she caused with aunt Aggie's estate by invading more than she should and not sign her document for distribution tells me a lot.

Therefore mother, since you want me to live at _____, care for you, and handle your business in any case you can't do it, then make me legal to do this now! This will make it easier for me to deal with Colette and her family knowing that she cannot overstep you or me illegally through her wiles and treachery. Then maybe, we can get along better, and have peace. But the way things are now, although you want me there, you are not giving me and yourself something to fight with in order to protect the way you so desire things to be in any case something happens to you. You are leaving yourself and me vulnerable to a con artist. I heard Colette tell the judge that you didn't want me there. If you had said things to her, or promise certain things, let me know so that I can know what to do. But don't cover it. We both love Colette, but don't wait until something happen to do what is protectively right. You and I are an open prey to the schemes of Colette whether you want to believe that or not. She will not stop until she thinks she can make what she wants happen. If this means to lie, forge, fabricate false reports, or hurting others, she will do it. God forbid!

Do not be afraid! Do not be passive nor procrastinate! Don't wait too late! Act now! God must have put me here for a reason with you. I can deal with Colette better knowing that there is something in place to protect you and me. It will be easier to call her and Allen about any physical condition that you may be facing without hesitation and stress. If you care for my peace, please do something. If you decide to keep things the way it is then I will be planning to move simply because I cannot deal with the hostile and treacherous personality of Colette. I cannot deal with her unannounced and unexpected visits with you. Then while she is there, she stirs up trouble. She cannot seem to accept that her visits at _____ are with you not my children nor me. Therefore, she shouldn't even be interrogating my children or me about anything. I don't want to even be around her. I will respect her visit with you. But, I want her to leave my children and me alone. We would never bother her. She is always bothering us. What makes her visits even more difficult is that she lies to you about all she has said or done to smooth things over with you, and you believe her. Therefore, my

Page 2 of 4

Exhibit "C"

attorney has advised me that I should relocate to avoid severe problems from occurring with the unpredictability of my sister and possibly her husband. She may include her children. And children will take up for their mother even if it is based on a lie. Know that I will not be moving out of town; therefore, I will be able to see you on a consistent basis with the children. Sometimes we will spend the night. But due to circumstances, it is best that I have a place of refuge to call my own. This is for my family safety. It would be best that I relocate until there is legal protection for you and my family residing at

I will help you. And maybe Allen or Colette can come and take turns to help as well. If your health gets too bad, it may be better to consider moving into a place where you can get 24-hour care. I will do my best to do certain things for you as long as Colette doesn't contest it because she is your daughter as well. I don't like to fight. I am a person of peace. I am between a rock and a hard place right now. But God has always seen me through from Orangeburg to Charleston.

I recommend that you call someone you trust to get advice: Aunt Tommy, Attorney Russell Brown or my legal advisor Attorney Mattson. Don't wait too late.

P.S. I know Colette will be returning; therefore, I need you to tell me what and how you want to exactly do things so that by April 30, 2006 I can effect and enforce what and how I need to do things. This is not about manipulation, but its all about responding to responsibility to protect you, me, and my children through God's love and wisdom.

Love,

Donna

Page 3 of 4

Exhibit "C"

LETTER OF LEGAL REPRESENTATION

TO: Mamie F. Nichols

FROM: Legal Representation for Donna Nichols Thompson

RE: Help you understanding the vital need for establishing
1) a Durable General Power of Attorney,
2) a Healthcare Power of Attorney, and
3) Joint Tenants In Common With Right Of Survivorship of

Due to aging and healthcare condition; and the critical conflict in the family (especially with daughter in Atlanta), I advise you in order to prevent (hostile) problems from occurring, act now to make sure your house and affairs are in order. In any case something happens to you physically where you are not able to do for yourself, you need a person whom you have deemed legal to act on your behalf while you are living and at your demise. If you do not have this in place, you are leaving yourself and real assets open for contest while you are living and at your demise especially if there is someone lurking to have control.

Page 4 of 4

Exhibit "C"

Letter Of Legal Representation

November 28, 2006

To: Colette Felder
From: Donna Thompson

During the time of your harassing phone calls, I heard your threats to cause problems. You referred to me as a criminal and it's my understanding in opposition to mother putting the Sheppard St. property in my name jointly with hers. However, mother's plan with respect to disposition of that property is now in place and cannot be undone. It is also being represented by Allen that you were dissatisfied by the action our mother took by regards to the disposition with the family residence. Be mindful that you are now and have been sole owner of 2-½ residences in Charleston that were a part of the Nichols family. Furthermore, because of your unverified and unsupported misstatements by intervention from members of the police department and social services has subjected our family to considerably embarrassment.

We are mindful of you and the members of your household coming to Charleston for the purpose of sharing time with our mother and for any other reason; however, we feel as though until such time as it appears as though the hostile differences on your part is in the process of being restored, it is our opinion that there be no visitation at the family homestead, and visitation should be arranged and shared elsewhere. Upon such time as you demonstrate a change in your behavior that will restore peace and harmony within the Nichols family, we consider it would be appropriate for you and members of your household to adhere to this suggestion mentioned above with respect to me and our mother.

We are beginning to become overly concern about your behavior. We would prevail upon you to discontinue with this kind of misconduct. If you continue with this pattern of lunacy by fabricating false complaints, we may have to file a complaint with Mental Health Authorities in Atlanta for a lunacy warrant for lunatic behavior.

*Donna M. Thompson &
Mamie F. Nichols*

Exhibit "D"

Page 1 of 1

Attorney Russel Brown

DATE
Re: [illegible]

Collette

She's not concerned about

mother

Mother is independent

She has no problem

socially, physically,

emotionally etc.

1) D.S. Get a report

of their findings of

complaint / they will give

2) Must treat her a person

letter a report this

hear say your favor

3) Every thing is controlled

by the file deed

4) if she continues w/

pattern of

harassment file a complaint w/

Mental Health Authorities in

Atlanta is harassment (Verbal)

because she's a mother

DATE / /

We are beginning to
become over concerned
about your behaviour

Joint letter

is it now too much for
Always some violence in
Because you are hostile
to mother and sister (and
~~because~~ because
of your
threats
that you will not
let that happen
best that
you make
us feel
like we are
in a war
with you
must see her
own mother
in terms of
calling her for advice

~~Colgate Filler~~ ^{members of family} ~~to be~~
~~Does not~~ on the contents ~~of the~~

We are grateful of
you and the members
of your household coming
to Chas for the
purpose of sharing
time w/ our mother &
other family members
however, we feel
as though with such
time as it
takes to travel & differences
is on the process
of being restore
is our opinion that
there be no
visitation at the
family homestead
and visitation should be
arranged and shared
elsewhere.

DATE

At times I've been
referred by you as

Page 8 of 8

Exhibit "E"

OK V581PG762

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) GENERAL AND DURABLE
POWER OF ATTORNEY
FOR HEALTH CARE

TO ALL PERSON, BE IT KNOWN THAT

I. MAMIE F NICHOLS, SSN of

Charleston, State of South Carolina 29403, (hereinafter Grantor), do hereby grant a General and Durable Power of Attorney for Health Care unto my daughter, Donna M Thompson, SSN of Charleston, South Carolina 29403, as my Attorney in Fact and Agent (hereinafter Agent), and in so doing I hereby grant unto my said Agent full power and authority, for me, and in my name, place and stead, to do, execute and perform any act, deed, matter or thing whatsoever that ought to be done, executed or performed, or that in the opinion of my said Agent ought to be done, executed or performed in or about the premises, of every nature and kind whatsoever, as fully and effectively as I could do if personally present

This General and Durable Power of Attorney for Health Care shall include, but shall not be limited to the power to ask for, collect and receive any monies, wages, salaries, savings, interest, dividends, pensions, annuities, profits, money market certificates, certificates of deposits, saving bonds or any other income of any kind or nature, to demand, sue for, collect, recover and receive all

goods, claims, debts and demands whatsoever due or belonging to me, whether now or in the future and to make, execute and deliver receipts, releases or other discharges therefor, to make, execute, endorse, accept and deliver any and all checks, drafts, notes, or other negotiable instruments, to pay all sums of monies that may now or hereafter be owed by me, to sell, either at public or private sale or to exchange any part or parts of any real estate or personal property owned by me for such consideration and upon such terms as my Agent shall think fit, and to execute and deliver good and sufficient deeds or other instruments for the conveyance or transfer of the same, with such conveyance of warranty or otherwise as my Agent shall deem fit, and to prepare, sign and file any income tax return required by the Internal Revenue Code or the Laws of the State of South Carolina, or any other state, for any and all taxable years during the period this General and Durable Power of Attorney for Health Care shall continue to be in effect

And, I further grant unto my said Agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my Agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my Agent, including, but not limited to, my desires concerning obtaining or withdrawing of life prolonging

care, treatment, services and procedures

In furtherance of the Power of Attorney granted in the preceding paragraph, I hereby authorize all physicians and psychiatrists who have treated me, and all other providers of health care including hospitals, to release to my Agent, all information contained in my medical records which my Agent may request. I hereby waive all privileges attached to physician-patient relationship and to any communication, verbal or written, arising out of such relationship.

My Agent is authorized to request, receive and review any information, verbal or written, pertaining to my physical or mental health, including medical and hospital records, and to execute any releases, waivers or other documents that may be required in order to obtain such information, and to disclose such information to such persons, organizations or health care providers as my Agent shall deem appropriate. My Agent is authorized to employ and discharge health care providers including physicians, psychiatrists, dentists, nurses and therapists as my Agent shall deem appropriate for my physical, mental and emotional well being. My Agent is also authorized to pay reasonable fees and expenses for such services contracted.

Also, my Agent is authorized to apply for my admission to a medical, nursing, residential or other similar facility, execute any consent or admission form required by such facility and to enter into an agreement for my care at such facility or

elsewhere during my lifetime My Agent is hereby authorized to arrange for and consent to medical, therapeutical and surgical procedures for me including the administration of drugs

The power to make health care decisions for me shall include the power to give consent, refuse consent, or withdraw consent given for any care, treatment, service or procedure to maintain, diagnose, or treat a physical or medical condition

I reserve unto myself the right to revoke the authority granted to my Agent hereunder to make health care decisions for me by notifying the treating physician, hospital or other health care provider, orally or in writing Notwithstanding any provision herein to the contrary, I retain the right to make medical and other health care decisions for myself as long as I am able to give informed consent with respect to a particular decision In addition, no treatment may be given to me over my objection, and health care necessary to keep me alive may not be stopped if I object

This General and Durable Power of Attorney for Health Care shall not be affected by subsequent disability or incapacity of the Grantor Notwithstanding any provisions herein to the contrary, my Agent shall take no action under this instrument unless I am deemed to be disabled or incapacitated as defined herein My incapacity shall be as deem to exist when so certified in writing by two licensed

physicians not related by blood or marriage to either me or to my Agent. The said certificate shall state that I am incapable of caring for my self and that I am physically and mentally incapable of managing my personal affairs. The certificate of the physician described above shall be attached to the original of this instrument and if this instrument is filed or recorded among public records, then such certificate shall also be similarly filed or recorded if permitted by applicable law. To the extent permitted by applicable law, I herewith nominate, constitute and appoint my Agent to serve as my guardian, conservator and / or in any similar representative capacity and if I am not permitted by law to so nominate, appoint or constitute, then I request that any Court of competent jurisdiction which may be petitioned by any person to appoint a guardian, conservator, or similar representative for me to give due consideration to my request.

In witness whereof, I hereunto affix my hand and seal to the within General and Durable Power of Attorney for Health Care, this 19th day of April, 2006, at Charleston, South Carolina

Mamie F. Nichols
MAMIE F NICHOLS
Grantor

mfn.

WE saw MAMIE F NICHOLS, Grantor, in our presence, sign this instrument at its end, she then declared it to be her General and Durable Power of Attorney for

Health Care to Donna M Thompson, and requested that we act as witnesses to it, we believe her to be of sound mind, memory and understanding and not under duress or constraint of any kind, and that we, in her presence, and in the presence of each other, signed our name and address as the attesting witnesses, all of which was done on the date of this instrument

Zelma L. Hregy Address

N. Chas. 29405

Thomas L. Davis Address

North Charleston

29405

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PERSONALLY APPEARED before me the undersigned witness, who, after being duly sworn, deposes and says that he/she saw the Grantor, Mamie F Nichols, sign, seal and as her act and deed, deliver the within General and Durable Power of Attorney for Health Care for the uses and purposes therein mentioned, and that he/she with the other witness, whose signature appears above, and in the presence of each other, witness the due execution thereof

Zelma L. Hregy

SWORN to before me this 19th
day of June 2006

Notary Public for South Carolina

My Commission Expires 01-20-10

RECORDER'S PAGE

NOTE This page MUST remain with the original document



FILED

May 2, 2006

9 46 53 AM

FOR

V581PG762

Charlie Lybrand, Register
Charleston County, SC

Filed By

Russell Brown
Attorney at Law
41-A Morris Street
Charleston

SC 29403

DESCRIPTION	AMOUNT
P/ATTY	\$ 17
Postage	
TOTAL	\$ 17

Postage

TOTAL

\$ 17

DRAWER

B - ecp

DO NOT STAMP BELOW THIS LINE

page (7 of 7)
Exhibit "F"

EX R 581PG212

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS that

I, MAMIE F NICHOLS, , in the State aforesaid, and for and in consideration of Love and Affection for my daughter, Donna M Thompson, and the sum of Five (\$5 00) Dollars, to me in hand paid at and before the sealing of these Presents by Donna M Thompson, in the State aforesaid, and the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these Presents do grant, bargain, sell and release unto the said Donna M Thompson, her heirs of her body and assigns forever, saving, excepting and reserving unto the Grantor herein, Mamie F Nichols, for and during her natural life, the use, occupancy and possession of the property hereinafter described, to wit

ALL that lot, piece or parcel of land with the buildings thereon, situate, lying and being on the North Side of Sheppard Street, in the City of Charleston and State aforesaid, now known as No

Measuring and containing in front on Sheppard Street, 35 feet, the same on the back line, and in depth from North to South, 83 feet, be the same more or less

BUTTING AND BOUNDING North on lands now or formerly of Schultz and Brown, known as Lot #4 in Block Q, on the plan of lands of Sophia Mack Frances Marion, East on lands of Equitable Real Estate Company; South on Sheppard Street, and West on lands

-1-

Page 1 of 5

Exhibit "G"

formerly owned by P T Hyde

■ R 581PG213

This lot being made of the Eastern portion of Lot #5 and the remaining portion of Lot #6 of Block Q, on said Plat of Marion, recorded in the RMC Office for Charleston County in Plat Book B, Page 161

BEING the same parcel of land that was conveyed to the Grantor herein by deed of Laurie Louis Nichols, dated August 11, 1993 and recorded on August 16, 1993 in Book S-230 at Page 197, in the Charleston County Register of Mesne Conveyances Office

TMS #

Grantee's Address

Charleston, South Carolina 29403

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging or in anywise incident or appertaining

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Mamie F Nichols, for and during her natural life, and on her death, then unto the said Donna M Thompson, her heirs of her body, and assigns forever

AND I do hereby bind myself, my Heirs and my Executors, Administrators and Personal Representatives, to warrant and forever defend, all and singular, the said premises unto the said Mamie F Nichols for and during

R 581PG214

her natural life and on her death, then unto Donna M Thompson, her heirs of her body and her assigns, against me and my heirs, and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof

WITNESS my Hand and Seal, this 22nd day of April, in the year of our Lord, Two Thousand Six and in the Two Hundred and Thirty Ninth Year of the Sovereignty and Independence of the United States of America

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Jake Cohen
Russell Brown

Mamie F. Nichols
MAMIE F NICHOLS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PERSONALLY appeared before me, the undersigned witness, who, after being duly sworn, deposes and says that he/she saw the above named Mamie F Nichols, sign, seal and as her act and deed, deliver the within written deed, and that he/she with the other witness whose signature appears above, witnessed the execution thereof

SWORN to before me, this
22nd day of April, 2006

Russell Brown
Notary Public for South Carolina
My Commission Expires 01-20-10

Jake Cohen

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

R 581PG215

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says

- 1 I have read the information on this Affidavit and I understand such information
- 2 The property is being transferred BY Mamie F. Nichols
TO Mamie F. Nichols and Donna M. Thompson
- 3 Check one of the following The DEED is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary
 - (c) ☒ EXEMPT from the deed recording fee because (exemption# _____)
(Explanation if required) conveyance between mother and daughter (Family Members)
(If exempt, please skip items 4-6, and go to item 7 of this affidavit)
- 4 Check one of the following if either item 3(a) or item 3(b) above has been checked
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
- 5 Check YES__ or NO__ to the following A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____
- 6 The DEED Recording Fee is computed as follows
 - (a) _____ the amount listed in item 4 above
 - (b) _____ the amount listed in item 5 above (no amount place zero)
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place the result
- 7 As required by Code Section 12-24-70, I state that I am a responsible person who was connected With the transaction as Grantor
- 8 I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not ore than one year, or both

Sworn to before me on this 20th day of March, 2008
Notary Public for South Carolina
My Commission Expires 2-20-10

Mamie F. Nichols
Grantor, Grantee, or Legal Representative
Connected with this transaction

Mamie F. Nichols
Print or Type Name here

M R 581PG216

RECORDER'S PAGE

NOTE. This page **MUST** remain
with the original document



***FILED**

May 2, 2006

10 47 AM

M R 581PG212

Charle Lybrand, Register
Charleston County, SC

Filed By

Russell Brown
Attorney at Law
41-A Morris Street
Charleston

SC 29403

AUDITOR STAMP HERE

RECEIVED FROM RMC

MAY 22 2006

PERCY A MOSELEY
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR

REP

DATE

208
5/22/06

DESCRIPTION

AMOUNT

Recording Fee	\$ 10.00
State Fee	<Exempt>
County Fee	<Exempt>
Postage	

TOTAL

\$ 10.00

\$ Amount (in thousands)

DRAWER

B - ecp

DO NOT STAMP BELOW THIS LINE

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

Mamie F. Nichols,

Plaintiff.

Albert Napoleon Thompson Jr.,
Al Thaddeus Thompson
Titus Sherod Thompson
Asia Rachal Thompson

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH CIRCUIT
) CASE NO.:2012-CP-10-3421

)
)
) MEMORANDUM IN SUPPORT
) OF PLAINTIFF'S MOTION FOR
) JUDGMENT
) NOTWITHSTANDING THE
) VERDICT
)

PS

11
38

no
ro
vs

THIS CAUSE was heard before the Charleston County Court of Common Pleas Judge on the Plaintiffs Motion for Judgment Notwithstanding the Verdict on March 2, 2015. By agreement of the parties, and pursuant to the Court's Order filed on March 5, 2015, Plaintiff Mamie F. Nichols ('Ms. Nichols') in accordance with and in support of her Motion for Directed Verdict and Motion for Judgment Notwithstanding the Verdict, states the following:

I. RECITATION OF FACTS

This matter involves the conveyance of property initially owned by the Plaintiff, Ms. Nichols, and later deeded to her daughter, Donna Thompson ('Donna'), now deceased. The property is located at _____ (hereinafter "the Property"). Ms. Nichols is the mother of two daughters, Emily Colette Nichols Felder ('Colette') and Donna. Ms. Nichols is also the mother of two sons, one Allen Nichols ('Allen') and another, now deceased. Donna along with her entire family,

husband, Albert Napoleon Thompson Jr. (“Al”) and her three children, Al Thaddeus Thompson (“Thaddeus”), Titus Sherod Thompson (“Titus”) and Asia Rachal Thompson (“Asia”) resided with her mother, Ms. Nichols. Tr. Transcr. 189:5-8. Ms. Nichols, an elderly woman, has a long history of hearing disabilities. Tr. Transcr. 138:13-142:13. In 2006, around the time she conveyed her property to Donna, she suffered from 71 decibels of hearing loss, only 19 decibels away from “profound deafness.” *Id.* Even with the support of an analog hearing aid, at her level of decibel loss, she would still suffer from speech reception problems. *Id.* Thus, in order to communicate with Ms. Nichols, her daughter would occasionally write her letters. Plaintiff’s Exh. 3, Letter from Donna Thompson. Around 2006, Ms. Nichols also suffered from diminished mental capacity and eyesight, although not incapacitated. Tr. Transcr. 106:8-107:2.

Al, Donna’s husband, had a long-standing criminal history and a very prevalent substance abuse issue. Tr. Transcr. 116:2-5 and 123:10-20. When Al would reside with Donna and Ms. Nichols, the family’s relationship would become tumultuous. *Id.* On one occasion, shortly before the property was conveyed, Ms. Nichols called Colette and her husband, who reside in Atlanta, to come to her home because she was having problems with Al. Tr. Transcr. 116:22-117:11. There was a physical altercation between Al and Colette’s husband, which led to Al’s arrest. *Id.* Al was then prohibited from residing with Ms. Nichols. *Id.*

Soon thereafter, on April 22, 2006, Ms. Nichols conveyed a remainder interest in her property to Donna and her heirs for an amount of five dollars (\$5.00), leaving herself a life estate. Plaintiffs Exh. 6, Title of Real Estate. After the property was conveyed, during one of her visits to Charleston, Colette received a copy of a letter written by

Donna to her mother suggesting that she would leave Ms. Nichols to live alone if she did not agree to convey interest in the property to her. Plaintiffs Exh. 3, Letter from Donna Thompson and Tr. Transcr. 56:24-59:20. She was almost 81 years old when the deed was closed. *Id.* In the letter, Donna also suggested that Plaintiff seek legal counsel of Russell Brown to draft the conveyance. Plaintiff's Exh. 3, Letter from Donna Thompson. Ms. Nichols relied on Donna's communication with Mr. Brown rather than communicating with him herself. See Plaintiff's Exh. 5, Handwritten Letter from Ms. Thompson. Additionally, on April 19, 2006, Ms. Nichols gave Donna a Power of Attorney over her, just three days before the deed was signed. Plaintiff's Exh. 7, Power of Attorney. Finally, Donna sent a letter to Colette prohibiting her from future visitation. Plaintiff's Exh. 4, Letter of Representation and Tr. Transcr. 63:1-12.

II. LEGAL STANDARD

When deciding a motion for directed verdict or judgment notwithstanding the verdict, a trial court must consider the evidence in the light most favorable to the non-moving party. *Brady Dev. Co. v. Town of Hilton Head Island*, 312 S.C. 73 (1993). A judgment notwithstanding the verdict should not be granted unless only one reasonable inference can be drawn from the evidence. *Id.* In deciding a motion for directed verdict or a judgment notwithstanding the verdict, if more than one inference can be drawn from the evidence, the case must be submitted to the jury. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 42 (2010).

UI. DEFENDANTS DIP NOT PRESENT ANY EVIDENCE TO REBUT THE
PRESUMPTION THAT MS. NICHOLS HAD BEEN UNDULY
INFLUENCED TO CONVEY PROPERTY INTEREST TO DONNA

South Carolina jurisprudence on the issue of undue influence involves the contestant seeking to set aside a will, rather than a deed. *Dixon v. Dixon*, 608 S.E.2d 849, 854 (S.C. 2005). Undue influence in the execution of an *inter vivos* conveyance is proved in the same way that undue influence is proved in the execution of a will. *Id*

‘Where a deed is procured by undue influence exerted upon the grantor, it will be set aside by a court of equity...but, in order to avoid the deed upon this ground, there must be shown such an influence exerted upon the grantor as to overbear her will and to make the act of execution not the carrying out of a real purpose or intention of the grantor, but the mere mechanical performance by her for the wish and design of some other person...In order to make it undue, it must appear that the influence exerted was such as to overcome or destroy the free will of the grantor and to make the deed as executed the expression not of his purpose, but that of some other person.’ *Baynard v. Ulmer*, 153 S.E 610, 611 (S.C. 1929) (quoting *Du Rose v. Kell*, 71 S.E. 371, 378 (S.C. 1911)).

- A. Donna was in a confidential relationship with Ms. Nichols at the time of the conveyance as Ms. Nichols’ daughter and Power of Attorney.

In order to demonstrate undue influence a party challenging a deed may show the existence of a confidential relationship between the grantor and the grantee. *Bullard v. Crawley*, 294 S.C. 276, 280 (1987). Once a confidential relationship is shown, the deed is *presumed* invalid. *Id*. The burden then shifts to the grantee to affirmatively show the absence of undue influence. *Id*. at 281. A confidential relationship arises when the grantor has placed his trust and confidence in the grantee, and the grantee has exerted dominion over the grantor. *Id*. The essence of the relationship is the trust and confidence. *Id*.

A familial relationship alone does not demonstrate a confidential relationship, however it “certainly supports” the argument of a confidential relationship. *Id* According

to South Carolina jurisprudence, where a mother gave her son a limited power of attorney to make decisions for her in case she had to be hospitalized, a confidential relationship existed. *Dixon*, 608 S.E.2d 849 at 853. Other considerations include whether grantor and grantee hold joint bank accounts or where the grantee prepares all of the documents. *Id.* “Some evidence is required that the grantor actually reposed trust in the grantee in the handling of her affairs.” *Brooks v. Kay*, 339 S.C. 479, 488 (2000). Where the grantee chose the attorney, told the attorney how to prepare the document and the grantor relied on the grantee to prepare everything for the transaction, the Court held that a confidential relationship existed. *Id.* at 489.

A presumption of undue influence also arises if the alleged wrongdoer was in a confidential relationship with the donor and there were suspicious circumstances surrounding the preparation, formulation, or execution of the donative transfer, whether the transfer was by gift, trust, will, will substitute, or a donative transfer of any other type. *Howard v. Nassar*, 364 S.C. 279 (2005). The effect of the presumption is to shift to the proponent the burden of going forward with the evidence, not the burden of persuasion. *Id.* The presumption justifies a judgment for the contestant as a matter of law only if the proponent does not come forward with evidence to rebut the presumption. *Id.*

In this case, Plaintiff offered evidence to establish a confidential relationship. Donna is the late child of Ms. Nichols. In addition to her familial relationship, she was the only child living with Ms. Nichols at the time of the deed. Plaintiff offered a Power of Attorney, both Durable and Healthcare, to establish a relationship of trust and confidence. See *In re Estate of Cumbee*, 333 S.C. 664, 672-73 (1999) (finding in a will contest that a fiduciary relationship, which created the presumption of undue influence, existed

between son and mother where son had mother's power of attorney and managed her finances). Moreover, Donna suggested the Plaintiff seek counsel from Mr. Brown and Plaintiff relied on Ms. Thompson to communicate with Mr. Brown, similar to *Brooks*.

B. Ms. Nichols was influenced by old Age, hearing and eyesight disabilities, threats of living alone, and the real purpose of the deed was not that of Ms. Nichols, but the mechanical performance of Donna to prevent Ms. Felder from visiting the property.

To prove undue influence, it is not necessary to show insanity or a state of mental imbecility. *Zeigler v. Shuler*, 68 S.E. 817, 819 (S.C. 1910). It must be shown that the grantor was susceptible to undue influence as a result of old age, mental weakness, or some other cause. *Atkinson v. Belser*, 255 S.E.2d 852, 854 (1979). Where an aged, weak-minded mother conveyed her property to her son, who she wished to live with her and take care of her, the Court held the mother was unduly influenced. *Wille v. Wills*, 35 S.E. 804, 807 (S.C. 1900). The mother, with little regard for business transactions and without an independent adviser conveyed the property to her son for \$5.00. *Id.* at 804.

A court of equity ought not to be, and is not, a shield or refuge for those who make improvident, or even reckless, contracts, but it would not deserve respect if it had not both power and willingness to shield an infirm helpless mother from her grasping son, who would take her all for nothing. *Id.* at 809.

Plaintiff admitted the following evidence: (1) Donna's letter to Ms. Nichols, influencing her to give her interest in the property and threatening that if she does not, Donna would leave her to live alone, (2) That Ms. Nichols was 80 years old at the time the deed was executed; (3) That Ms. Nichols was hard of hearing, more specifically, that she was only 19 decibels away from being deaf; (4) Ms. Thompson's letter to her sister, Colette, informing her that she could not visit anymore; (5) Ms. Thompson's notes from communications with "Attorney Russell Brown", the unlicensed attorney who drafted the

deed; (6) testimony from Ms. Nichols' son, Allen, that Ms. Nichols' health went "downhill" after a vehicular accident; and (7) testimony from Ms. Nichols' son-in-law Donna had been ordered by a South Carolina judge to never bring her husband back to Ms. Nichols' home, showing Donna's possible motive to want interest in the property.

At this point, now that a confidential relationship has been proved and evidence has been provided to show "suspicious circumstances" surrounding the preparation of the deed, there is a presumption of undue influence and the burden then shifted to the Defendants to provide evidence that the deed was not procured by undue influence to rebut the presumption. See *Bullard*, 294 S.C. 276 at 280.

C. Defendants did not present any evidence to rebut the presumption of undue influence.

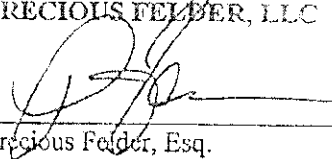
The Defendant first admitted a Petition for Conservatorship/Guardianship action in Probate Court, offered to prove "competence." Then Defendants admitted the testimony of Donna's son, who testified that his mother did not discuss the home and business affairs with him and that the deed, power of attorney and medical power of attorney was a result of his mother's concern, not his grandmother's, Ms. Nichols. Tr. Transcr. 213:22-215:9. Defendant also admitted testimony by Barbara Gilliard who testified that Ms. Nichols wanted Donna to have the property and that she (Ms. Nichols) would live there until she died. Tr. Transcr. 161:19-162:13. Ms. Gilliard testified that she only talked to her about the property *after* Donna passed. Tr. Transcr. 174:1-7. To be clear, she testified that Ms. Nichols wanted to distribute *all of her properties* to her *children*, soon after her husband passed. Tr. Transcr. 161:19-162:13 and 172:12-176:29. Then, after the death of Donna, also long after _____ had already been

IV. CONCLUSION

WHEREFORE, Plaintiff, Mamie F. Nichols, respectfully request this Court set aside the verdict in favor of Defendants upholding the deed and enter a judgment in favor of Plaintiff as to her claim to set aside the deed for undue influence and for all such other and further relief as the Court deems just and proper.

Respectfully submitted this 26th day of March, 2015

**THE LAW OFFICES OF
PRECIOUS FELDER, LLC**

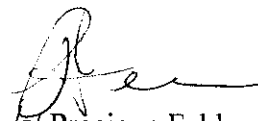


Precious Felder, Esq.
Georgia Bar No. 648264
Attorney for Plaintiff
1800 Peachtree St NW
Suite 809
Atlanta, GA 30309
pflawoffices@gmail.com
Phone: (404)478-7207
Facsimile: (404)478-7207

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.

Dated: March 14, 2016


/s/ Precious Felder

FILED

2016

SC Court of Appeals