

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas L. Hughston, Jr., Circuit Court Judge

Circuit Court Case No. 2009-CP-10-3010
Appellate Court Case No. 2018-000566

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S.C. SUPREME COURT

Betty Fisher and Lisa Fisher, ...Appellants

v.

Bessie Huckabee, Kay Passailaigue Slade and Sandra Byrd,.....Respondents

In the Matter of the Estate of Alice Shaw-Baker.

RECORD ON APPEAL

VOLUME 3 OF 4

**CERTIFICATION;
JOINDER BY APPELLANT BETTY FISHER**

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(Appellant)

BETTY FISHER (*Pro Se*)
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(Appellant requesting Joinder)

1 present in terms of challenging that as being her
2 will? Call your first witness.

3 MR. COOPER: Your Honor, the Plaintiff
4 calls Lisa Fisher to the stand.

5 THE COURT: All right. Come up and be
6 sworn.

7 LISA FISHER,
8 being first duly sworn, testified as follows:

9 THE CLERK: Please state your full name
10 for the record and spell your last.

11 THE WITNESS: Lisa Fisher; my spelling
12 is F-I-S-H-E-R.

13 DIRECT EXAMINATION

14 BY MR. COOPER:

15 Q. Morning, Ms. Fisher. Tell the jury, if
16 you would, how you were related to Alice Shaw
17 Baker.

18 A. Alice Shaw Baker is my great aunt. She
19 was my grandmother's sister.

20 Q. And even though you lived in California
21 and she lived in South Carolina, did you have
22 occasion to see her from time to time?

23 A. I didn't see her a lot, but we
24 communicated by phone and sent her gifts, and she
25 sent me gifts, and we had a good relationship.

1 Q. Okay. When did you first become
2 concerned about Alice Shaw Baker?

3 A. Well, I got a letter from a neighbor,
4 and so the neighbor said that Alice needed some
5 help. And I called her and inquired as to what was
6 going on. And Alice told me that the neighbor was
7 interested in her home and causing problems for
8 her.

9 So I sent the neighbor a nice letter
10 saying, well, you know, I'm here. Here's my phone
11 number. You can call me any time, and if there is
12 any other problem, I will come there directly.

13 Because I made sure that Alice had
14 food. I asked her if she had food, if she had
15 transportation, if she was going to the doctor.
16 And she was talking to me in a very affirmative and
17 clear-headed way. So when I discovered that she --
18 and then I told Alice that, you know, she needed to
19 call me if she needed anything else and I would
20 come and see her.

21 Then, at that point, I started to call
22 her more regularly than I had before. Because I
23 called her -- she was a very independent person,
24 and I didn't want to impose myself on her, but I
25 called her regularly. Probably -- I think it was

1 about once a month before this happened.

2 Then, when this happened, I was calling
3 her maybe every week, every two weeks, because I
4 wanted to make sure that she had an opportunity and
5 she didn't think there was any problem and that she
6 could talk to me freely.

7 And so at some point -- some point I
8 got notice -- I guess my mother got notice in the
9 mail, which I saw the notice, that the State was
10 trying to conserve her. And so I contacted Alice,
11 and she was -- she was beyond-words upset about
12 being potentially conserved.

13 So I informed her that, you know, we
14 would do whatever we could to help her. And I came
15 immediately, and I contacted an attorney to try and
16 help her so she could either avoid conservatorship
17 if she didn't need it, or if she did need help,
18 then I would help her and my mother would help her;
19 although, I was the one petitioning to be appointed
20 her conservator and guardian.

21 Q. Okay. And at the end of those
22 proceedings in the probate court where the
23 Elizabeth Spencer and the adult -- whatever the
24 agency is called, at the end of that proceeding
25 that was instituted by Elizabeth Spencer, were you

1 appointed?

2 A. I was appointed.

3 Q. And what were you appointed to be?

4 A. I was appointed as her conservator and
5 her guardian and -- trying to remember. There were
6 two proceedings actually. There was a temporary
7 proceeding and then there was a -- where I was
8 appointed full blown as her guardian and
9 conservator.

10 Under the temporary conservatorship,
11 they had appointed me with some local conservator,
12 and I can't remember her name right now, but -- so
13 we both worked to try and make sure that Alice was
14 doing okay. We didn't work great together because
15 she wanted to place Alice and she wanted to have
16 her on anti-psychotics.

17 Q. Where did she want to place Alice?

18 A. There was a discussion about an
19 assisted living; and I had talked to Alice about
20 it, and she didn't want that. And at this point,
21 Alice was pretty devastated because she indicated
22 -- she would cry every time the conversation would
23 turn to the conservatorship because she thought --
24 she said --

25 MR. WILLS: Objection; hearsay.

1 THE COURT: Do you want to be heard?

2 MR. COOPER: Your Honor, we will
3 withdraw that.

4 THE COURT: I'm sorry?

5 MR. COOPER: I say --

6 THE COURT: Withdraw the question, is
7 that what you said?

8 MR. COOPER: Well --

9 THE COURT: I'll sustain the question.

10 MR. COOPER: Thank you, Your Honor.

11 BY MR. COOPER:

12 Q. Did it become clear --

13 THE COURT: No; ask another clear
14 question. That's not a proper question.

15 MR. COOPER: What were --

16 THE COURT: What did you do next?

17 BY MR. COOPER:

18 Q. What did you do next?

19 A. So Alice -- what I did next was I tried
20 to -- during the temporary conservatorship, I got
21 her 24-hour caregivers; I had the house cleaned up;
22 I had sprinklers put in; I had new carpet put in.

23 I think there was a life -- where you
24 press the button and somebody comes if you're in
25 trouble. I can't remember the name of it, but it

1 was a security, system so if she fell or something,
2 I had that put into place so that she would always
3 be safe.

4 And so, at that point, I came to visit
5 her regularly. Now, it's true I was still in
6 California, but I would come out every few weeks,
7 every month. It started, I think, in August, and I
8 believe it was either in October or November where
9 I was actually appointed permanent.

10 So there was about three months where I
11 was her temporary conservator, and I was taking
12 care of all of her bills and all of the things that
13 she had to take care of, food and making sure that
14 she had caregivers. And the caregivers --
15 although, the money was not under my control.

16 The money hadn't been transferred over
17 for me to take care of it at that point. There was
18 not a transfer of her assets until I was appointed
19 formally.

20 And then -- and then, at that point,
21 then her bills were paid through a conservatorship
22 account, but before that I was paying them directly
23 to ensure that she had the things that she needed
24 so she was protected.

25 After I was appointed formally as

1 conservator -- well, let me step back. So I hired
2 these caregivers for 24-hour care in the hopes that
3 they would be able to make sure that she was okay
4 and there was no problem. They were nice, but I
5 was having problems with them because they weren't
6 taking her out the way that I wanted her to get
7 out. I thought she was too isolated. They told
8 me, oh, no, no. She won't go out.

9 So in November, they told me they were
10 going to have a Thanksgiving party for them -- for
11 her, and they all were going to attend. So I
12 didn't make arrangements to come out to stay with
13 her and I called. And then I found out that they
14 didn't have a party. So I was very upset at that
15 point, and I decided that that was not going to
16 happen again.

17 So I started to arrange for her to have
18 food brought in from, like, a restaurant, a fancy
19 restaurant occasionally --

20 THE COURT: Excuse me just a minute.
21 Members of the jury panel, go to the jury room,
22 please.

23 (Jury out, 11:29 a.m.)

24 THE COURT: Are you all listening to
25 this?

1 MR. WILLS: Yes, Your Honor.

2 THE COURT: What does this have to do
3 with anything as far as what we're trying?

4 MR. COOPER: Well, Your Honor, it has
5 to do with background from which --

6 THE COURT: It's okay to have a little
7 background, but we don't need to know about all
8 these details about all this stuff. As far as
9 that's concerned, it doesn't have anything to do
10 with what we're trying.

11 THE WITNESS: Your Honor, can I --

12 THE COURT: No. No. You're a witness.
13 I'm telling you that and I'm -- my job is -- I'm a
14 very active judge in regards to things like that,
15 and that's to keep this case on track. And all
16 this stuff that we're hearing now has absolutely
17 nothing to do with the case, as far as I can see.

18 MR. COOPER: I believe it does, Your
19 Honor.

20 THE COURT: Well, I don't. You tell me
21 why it has something to do with whether or not that
22 will is her will.

23 MR. COOPER: Because Ms. Fisher is
24 going to come to the part of the testimony in the
25 next month or so in her relationship with Alice

1 Shaw Baker where Alice Shaw Baker revoked the will.

2 THE COURT: I'm not sure of that
3 either, and everything and all. As far as what her
4 testimony is going to be in regard to that concern,
5 I don't know whether -- are you familiar with the
6 dead man's statute?

7 MR. COOPER: I am, Your Honor.

8 THE COURT: Well, we're going to have
9 to cross that bridge at some point --

10 MR. COOPER: We will.

11 THE COURT: -- as far as any testimony
12 is concerned. But I would ask you to get to the
13 point and leave out all the details about what went
14 on in regards to what she did as a conservator. I
15 don't think it has anything to do with what we're
16 trying.

17 Bring the jury in.

18 THE WITNESS: Your Honor, can I --

19 THE COURT: No, you keep quiet. You're
20 a witness.

21 THE WITNESS: I just want to ask for a
22 break to go to the restroom, Your Honor.

23 THE COURT: Okay. Go ahead.

24 THE WITNESS: Thank you.

25 (A recess transpired.)

1 THE COURT: All right. Bring the jury
2 in.

3 (Jury in, 11:37 p.m.)

4 THE COURT: All right. We have the
5 jury back with us. You may continue to examine the
6 witness. Try to focus it on what we're here about.

7 MR. COOPER: Yes, Your Honor.

8 BY MR. COOPER:

9 Q. Ms. Fisher, you first -- I think you
10 testified that you first heard about the efforts to
11 conserve Alice Shaw Baker in about August. When
12 was it that you started spending more time with
13 Alice here in South Carolina?

14 A. In September. I think it was about
15 September. I came in August to one of the hearings
16 and then I came more regular after that.

17 Q. Okay. And then she passed away when?

18 A. Passed away February.

19 Q. The following year?

20 A. February 2009.

21 Q. Okay. So you had some months where you
22 were able to observe her in her house?

23 A. Yes.

24 Q. Okay. And tell the jury, if you would,
25 what you observed about the house. What were the

1 most salient points that have to do with her
2 intentions as far as her will?

3 A. Okay. So Alice would talk to me every
4 time that I came to see her about -- about what I
5 was supposed to do with --

6 MR. WILLS: Judge, objection; hearsay.

7 THE COURT: Okay. All right. Members
8 of the jury panel, you need to go to the jury room,
9 please.

10 (Jury out, 11:33 a.m.)

11 THE COURT: Let's hear what the
12 testimony is going to be nonjury and see what the
13 situation is.

14 Go ahead and ask your question and get
15 your answer.

16 MR. COOPER: Yes, Your Honor.

17 BY MR. COOPER:

18 Q. All right. Did there come a time when
19 you and Alice had a discussion about the contents
20 of her will?

21 A. Yes. We had discussions on several
22 occasions. We had a discussion when she was first
23 conserved. She cried all the time because Bessie
24 Huckabee broke her heart, as she said, and would
25 not act on her behalf and had betrayed her. So at

1 the time, I learned at the conservatorship hearing
2 that Kay Slade did not have an animal charity.

3 I asked Alice prior to her being
4 conserved if she had taken care of her estate plan
5 and knew what she was doing, because I wanted to
6 make sure that she had appropriate care. And she
7 said, yes, she had an estate plan, and her monies
8 were going to animal charities.

9 So when I was appointed formal
10 conservator on the day in the hearing room, the --
11 Kay Passailaigue Slade indicated to me that she
12 didn't run a dog charity and she was retired and
13 she never had an interest in the charity and she
14 didn't know why Alice thought that. And so on a
15 day when I went to see Alice, she would ask me to
16 do things.

17 For instance, she asked me to write
18 checks to animal charities that she wanted to give
19 money to. Thereafter, she asked me -- she told me
20 there were certain things she wanted to do with her
21 estate, and she wanted to make sure that was done.

22 And she told me again about her will.
23 And I said, okay, Alice, but Kay doesn't have --
24 she doesn't have a dog charity. And when I told
25 Alice she didn't have a dog charity, she said,

1 well, no, she does. And I said, well, that's what
2 she told me.

3 She got extremely upset. She looked at
4 her will and she said no, no, no. And she
5 attempted to start scratching it out. And I said,
6 no, no, everything is okay. I tried to calm her
7 down and I put aside the will.

8 And then at some point she said, it's
9 my will, I can do what I want with it, and she tore
10 it up. And so I said, no, no, Alice, let me call
11 the attorney. I'm sure there is some other way we
12 can go to the conservator court and make sure that,
13 you know, this is done.

14 I had no idea what was going on. I
15 just was trying to calm her down because that was
16 my intention as her conservator, to make sure that
17 she was feeling okay. Upon learning that Kay
18 Passailaigue was not in dog charities, and after
19 she knew that Bessie Huckabee had betrayed her and
20 wasn't going to -- wasn't going to help her, that's
21 when she agreed to have me as her conservator. And
22 she completely revoked the will.

23 It was on January 1st when I went to
24 see her, because I did not want her to be alone on
25 the holiday, and none of the caregivers want to

1 work that day. On December 25th I came out with my
2 mother, and at the same time, she would tell me
3 things that she wanted done. That was the
4 relationship we had, that she would tell me, I need
5 these things done.

6 You know, she wanted to have her life
7 back in a way where she had some control, and as
8 her conservator and her family member, I wanted to
9 make sure that I accommodated her. So it was on
10 January 1st that she first attempted to scratch out
11 the will, and when I moved it away, she then --
12 moved it away and tried to calm her. And then she
13 pulled it from the table and tore it up.

14 And she said it was her will and she
15 could do with it what she wanted. So, at the time,
16 I didn't realize whether South Carolina revoked
17 wills that way. So I attempted to contact my
18 attorney. And I had planned on trying to see if
19 there was some other way to address the will which
20 she had made clear that she did not want to be
21 active anymore. And that was going to take place
22 and then she died.

23 THE COURT: What do you want to say?

24 MR. WILLS: I suppose, Your Honor, that
25 was hearing that in camera so I didn't need to

1 object.

2 THE COURT: Well, what do you want to
3 say about it? What is your objection? What do you
4 want to say about what she testified to and any
5 objection to it?

6 MR. WILLS: Well, all of that is
7 hearsay. It's all violation of the dead man
8 statute and, of course, we object to it on those
9 grounds.

10 THE COURT: Well, I think, at least the
11 -- well, this is what it says. It says,
12 notwithstanding the provision and so forth of the
13 code section, no party to an actual proceeding, no
14 person who has a legal and equitable interest, so
15 forth, may be affected by the event of the action
16 or proceeding, so forth. However, the same may
17 have been transferred, so forth. May -- shall be
18 examined in regards to any transaction or
19 communication between such witness and a person at
20 the time of such examination is deceased, blah,
21 blah, blah.

22 So seems to me that anything -- that
23 she's prohibited by the statute -- the so-called
24 dead man statute, prohibited by the statute since
25 she is a party to this action. At least by that

1 reason, also -- I mean, that's what she is. She's
2 a party to the action. She is not allowed to
3 testify concerning any transaction between her --
4 communication between her and the deceased.

5 Now, as far as anything that she may
6 have done, that she witnessed, such as what she's
7 claiming, that she tore up the will, I don't think
8 the dead man statute prohibits that; but as far as
9 transaction or communication, or anything like
10 that, between her and the deceased, I think the
11 statute does prohibit her from testifying to that.

12 MR. COOPER: I disagree, Your Honor.

13 THE COURT: Okay.

14 MR. WILLS: Your Honor, as well --

15 THE COURT: Wait. Wait. Why do you
16 say that's wrong?

17 MR. COOPER: Well, if I may be heard,
18 to invoke the dead man statute, the party opposing
19 the evidence must make a satisfactory showing of
20 four elements. And I'm citing from Long v. Conroy,
21 246 SC 225, 1965 case.

22 The four elements they have to show:
23 The witness must be within the class of witnesses
24 who may be disqualified under the statute; the
25 witness offers to testify about a transaction with

1 the deceased; the testimony is offered against the
2 representative of the estate; and number four, a
3 present or previous interest of the witness could
4 be affected by the testimony.

5 And citing from -- let's see. The test
6 for an interest which disqualifies the witness is
7 that the witness will either gain or lose by the
8 direct legal operation of the judgment, which is
9 not the case here.

10 THE COURT: Well, she's a party. And
11 it says no party.

12 MR. COOPER: She's a party in her
13 representative capacity, Your Honor. And I would
14 like to cite --

15 THE COURT: She's a party -- an
16 individual-named party as far as this suit is
17 concerned. I think the statute prohibits her
18 testimony by any transaction between her and the
19 deceased.

20 MR. WILLS: Your Honor, if I may as
21 well, I believe that a -- that her explanation of
22 the tearing up of the will in front of her, when
23 there was no sign of a torn-up will -- obviously,
24 the original was not torn up -- this constitutes a
25 communication. And by her making scratches or

1 tearing it up, it is a communication. It is the
2 communication that she wants her will revoked.

3 And to that extent, we think that that
4 falls under the dead man's statute as well, any
5 kind of act that she may have done. Particularly,
6 since the revocation of the will, specifically --
7 the statute specifically says any act or other is
8 included in whatever requires revocation.

9 THE COURT: No, I disagree with you.
10 If she wants to testify that she saw her tear up
11 the will, she can testify to that, I think. As far
12 as communications between her or anything said by
13 her to the person in response or anything like
14 that, I don't think any communication between her
15 and the deceased is allowed under the statute.

16 MR. COOPER: Your Honor --

17 MR. WILLS: And we would put an
18 objection there that as to her being able to talk
19 about tearing up the will as well.

20 THE COURT: I appreciate your position,
21 but I overrule that.

22 MR. WILLS: Thank you.

23 MR. COOPER: Your Honor, may I be
24 heard?

25 THE COURT: Sure.

1 MR. COOPER: You say she's a party, and
2 she is a party, but it's Betty Fisher -- I'm
3 reading from the verified Complaint. It's Betty
4 Fisher and Lisa Fisher as conservator for Alice
5 Shaw Baker. She's only here as conservator.

6 THE COURT: I appreciate the position.
7 I'm not -- I'm not agreeing with you on that.

8 MR. COOPER: Your Honor, let me just
9 cite one supreme court case that I would like you
10 to look at before you make that ruling permanent.
11 The witness's interest is not affected when he or
12 she has no interest, other than in a representative
13 capacity. And in that interest is not subject --
14 and that interest is not subject to change by the
15 outcome.

16 And that is Havird v. Schiffell,
17 H-A-V-I-R-D, S-C-H-I-F-F-E-L-L, 252 SC 404. It's a
18 1969 case. Also it cites ex parte Newton 183 SC
19 379, a 1937 case.

20 The statute does not apply when the
21 witness's interest will not be affected. And
22 Ms. Shaw Baker -- excuse me, Ms. Shaw Baker's
23 conservator here, Lisa Fisher. But she's not here
24 in her individual capacity. She's here as
25 conservator only.

1 Now, her mother, Betty Fisher, who is
2 going to attend the trial, is coming from
3 California, and she is involved in an individual
4 capacity. We are not offering her to testify about
5 the revocation of the will.

6 And Mr. Wills also made an objection
7 based on hearsay; but, Your Honor, as you know, the
8 Rule of Evidence 803(3) specifically provides that
9 a statement of the declarant's then-existing state
10 of mind, emotion, sensation, or physical condition,
11 such as intent, plan, motive, design, mental
12 feeling, pain and bodily health, but not including
13 a statement of memory or belief to prove the fact
14 remembered or believed unless it relates to the
15 execution, revocation, identification or terms of
16 the declarant's will.

17 I think this is an exception to the
18 hearsay rule and is not covered by the dead man
19 statute. There is no transaction here. There is a
20 communication by the decedent to her conservator,
21 but it doesn't involve the conservator, other than
22 as a witness.

23 So that factor, and also it hasn't been
24 established, and I don't think it can be
25 established, that Lisa Fisher has any present or

1 previous interest which could be affected by the
2 testimony.

3 And so I think it lacks those two
4 elements of the four necessary elements for the
5 dead man statute to apply, Your Honor.

6 THE COURT: I appreciate your position
7 and I stand by what I -- my ruling.

8 Bring the jury in.

9 (Jury in, 11:47 a.m.)

10 THE COURT: We have the jury back with
11 us.

12 You may continue to examine the
13 witness.

14 MR. COOPER: Thank you, Your Honor.

15 BY MR. COOPER:

16 Q. You were -- you found out about Alice
17 Shaw Baker's situation with regard to the
18 conservatorship back in August of 2008, I believe.
19 Tell the jury, if you would, approximately how many
20 months you spent visiting Alice after that before
21 she passed away?

22 A. It was approximately six months.

23 Q. Okay. And during that time you stayed
24 in her home?

25 A. No, I didn't stay in her home. I came

1 and I visited her. I came, I took her to the
2 doctor. I came and I tried to, you know, get her
3 to go out. I was able to get her to go out
4 January 1st. I visited her during the day in her
5 home, but --

6 Q. Right. You were familiar with her
7 home?

8 A. Oh, yes.

9 Q. And the contents?

10 A. I knew everything about her home.

11 Q. And is it fair to say there's a lot of
12 indications of her affections for animals and dogs?

13 A. Yes. The entire house has pictures of
14 dogs, pictures of animal memorabilia. She had
15 photo albums in her -- I don't know, her office, a
16 room she used as her office. She had photo albums,
17 approximately between 15 and 20 photo albums. I
18 opened them; they were pictures only of dogs and
19 dog memorabilia in her house. Her -- on her car
20 she had a license plate that had her dog's names on
21 them. She had -- in the backyard, she had graves
22 for her dogs where she had, I think it's an angel
23 on one, and I think the other one has a chihuahua,
24 and it had little name.

25 MR. WILLIS: Your Honor, I would just

1 like to put another objection on it for relevance.

2 THE COURT: What relevance is that, if
3 any, to the issue?

4 MR. COOPER: It shows her intent and
5 the actions that will be testified to, Your Honor.

6 THE COURT: I appreciate your position.
7 I sustain the objection. Ask another question.

8 BY MR. COOPER:

9 Q. All right. Did there come a time when
10 Alice Shaw Baker took action in your presence with
11 regard to her will?

12 A. Yes.

13 Q. And tell the jury about that, please.

14 A. So on January 1, 2009, I went to visit
15 her for the whole day alone. And we went out and
16 we had a good time. And I came back to the house,
17 and at some point she became extremely agitated
18 that -- she was extremely agitated that her monies
19 were not -- agitated and made a decision to start
20 to scratch out the will.

21 And I pulled it away from her because I
22 didn't want her to be upset anymore. And when I
23 pulled it away from her, I folded it up, I set it
24 aside. I thought everything would be okay, calming
25 her down. And she walked over, pulled it away, and

1 tore it up in my presence.

2 And she was very upset, and I attempted
3 to calm her down because she was upset that her
4 intentions -- I don't know how to answer that. She
5 was very upset and she wanted to make sure of that.

6 MR. WILLS: Objection.

7 THE COURT: I haven't heard anything
8 objectionable yet as far as that part is concerned.
9 Go ahead.

10 THE WITNESS: She wanted to make sure
11 that the monies didn't go --

12 MR. WILLS: Objection.

13 THE WITNESS: -- to someone --

14 THE COURT: You can just say she tore
15 it up. Any other questions?

16 MR. COOPER: Yes, Your Honor.

17 BY MR. COOPER:

18 Q. Do you recognize these photographs?

19 MR. WILLS: Objection. Are these
20 pieces of evidence coming in?

21 THE COURT: I don't know. If there's
22 an objection, let me look at them.

23 MR. WILLS: On the basis of relevance.

24 THE COURT: Let me look at them.

25 Members of the jury panel, I need you

1 to go to the jury room, please.

2 (Jury out, 11:54 a.m.)

3 THE COURT: All right. What do you
4 want to say? Why are you offering these?

5 MR. COOPER: Just offering them, Your
6 Honor, to show the way that she had her house
7 decorated, the fact that she had dog graves in the
8 backyard, just visually --

9 THE COURT: What does that have to do
10 with anything as far as the case is concerned?

11 MR. COOPER: Well --

12 THE COURT: As far as whether that was
13 her will or not.

14 MR. COOPER: It shows her intent to
15 revoke.

16 THE COURT: How so?

17 MR. COOPER: Well, it shows her love of
18 dogs and her --

19 THE COURT: Have you all put forth a
20 will that you contend is the will that gives
21 something to the animals or to the animal shelter
22 or anything like that? Do you intend to enter a
23 will that you contend is a will that would send the
24 money to the animal society?

25 MR. COOPER: No, Your Honor.

1 THE COURT: I sustain the objection.

2 Bring the jury in.

3 THE COURT: Give those to the court
4 reporter. She will have to mark them as a non-jury
5 exhibit.

6 MR. COOPER: Judge, for the record, we
7 have 13 or 14 binders.

8 THE COURT: I'm sorry?

9 MR. COOPER: We have 13 or 14 binders
10 and we picked some representative ones.

11 (COURT EXH. 1, Photographs, was marked
12 for identification.)

13 THE COURT: All right. We have the
14 jury back with us. Ask another question.

15 BY MR. COOPER:

16 Q. Now, Ms. Fisher, during your phone
17 calls with Alice Shaw Baker and then on your visits
18 to her, did she ever express to you what her intent
19 was for her estate planning?

20 THE COURT: I sustained the objection
21 to that. I've already sustained the objection
22 along those lines.

23 Ask another question.

24 BY MR. COOPER:

25 Q. Is there anything else that you think

1 is not included that you want to tell the jury?

2 A. Well, during the time that I was her
3 conservator, I was able to take her to the doctors,
4 and I was able to communicate with the doctors, and
5 she was able to communicate to the doctors. She --
6 during one of the court-ordered visits to the
7 doctor, I was required to speak to the doctor and
8 take her for an assessment to see if she -- to see
9 how she was doing.

10 During that period of time, the doctors
11 -- she was evaluated by one of the individuals who
12 gives her certain testing. And during that time, I
13 was required to observe and review her -- the
14 report for the court which indicates whether or not
15 she -- where she was physically, emotionally,
16 mentally; and included in that document, there was
17 a reference to her understanding and knowing what a
18 will was.

19 So in my duties as conservator, I was
20 required to know and assess whether or not she did
21 understand and had the ability to make decisions
22 about her estate planning. So that was the one
23 thing.

24 Furthermore, she was taken to her
25 doctors during the period of time I was her

1 conservator where she was further evaluated. And
2 there was never any testimony, there was never any
3 inclination that could not --

4 MR. WILLS: Objection.

5 THE COURT: I sustain the objection to
6 that testimony. She can't testify about what
7 others maybe said or whatever about it, and if you
8 want to bring them in to testify, bring them in.

9 MR. COOPER: Yes, Your Honor.

10 BY MR. COOPER:

11 Q. Ms. Fisher, I show you now a picture of
12 a credit card. Have you ever seen that before?

13 A. Yes.

14 Q. And where did you see it?

15 A. It was among Alice's belongings.

16 Q. Okay. And as far as you know, is that
17 a copy of her credit card?

18 A. It is. Those were the names of her
19 dogs and the dogs that were buried in her backyard.

20 Q. Precious --

21 A. I'm sorry, Precious, Cujo, and Misty.
22 And she had graves in her backyard, and they had
23 headstones and angels and a little dog on the
24 burial site.

25 MR. COOPER: Thank you. We would offer

1 this into evidence as Plaintiff's Exhibit 1.

2 MR. WILLS: We would object to this
3 going into evidence.

4 THE COURT: Let me look at it.

5 What's your objection?

6 MR. WILLS: Two objections. One is
7 it's irrelevant, and, two, is that it's a credit
8 card number that's not redacted.

9 THE COURT: What's the relevance to her
10 credit card?

11 MR. COOPER: It has the name of her
12 dogs on it.

13 THE COURT: What does that have to do
14 with whether or not that's her will?

15 I sustain the objection. You can mark
16 it as a non-jury exhibit.

17 (COURT EXH. 2, Copy of a credit card,
18 was marked for identification.)

19 MR. COOPER: No further questions at
20 this time.

21 THE COURT: We'll take a little break,
22 about a five-minute recess. Go to the jury room,
23 about a five-minute recess, and then we'll have
24 cross-examination.

25 (Jury out, 12:08 p.m.)

1 (A recess transpired.)

2 THE COURT: Bring the jury in.

3 MS. FISHER: Your Honor, can I be heard
4 before you bring them in?

5 THE COURT: Sure.

6 MS. FISHER: Okay. So at this moment,
7 I have my lawyer hat on. So I'm not talking about
8 a witness. But if the Court precludes us from
9 showing Alice Shaw Baker's intent, her lifelong
10 history regarding her animals, you're precluding --

11 THE COURT: Let me just cut you off.
12 Well, go ahead and finish. I thought about that,
13 but go ahead. I'll hear you.

14 MS. FISHER: So the basis of Alice's
15 desire to revoke the will is completely connected
16 to her love and affection for animals. I don't get
17 any of the money.

18 THE COURT: I'm sorry?

19 MS. FISHER: I don't get any of the
20 money.

21 THE COURT: If you were producing a
22 will that you claim -- that you say redacted her
23 will and it sent the money to the animal society,
24 whatever, that would be one thing, but you're not
25 doing that. You're asking that she be declared

1 intestate, which means your mother inherits.

2 MS. FISHER: Well, my mother is not the
3 only person who will inherit, but the point here --

4 THE COURT: Well, whoever would
5 inherit. The animals wouldn't get it. And I'm not
6 going to let you charade that before the jury as
7 it's a matter of fact of what you're asking to be
8 done is that the animals would get the money.
9 You're not doing that.

10 MS. FISHER: I'm not doing that. I'm
11 saying that was her purpose.

12 THE COURT: No. It doesn't make any
13 difference what her purpose was if you don't
14 produce the will that says that's going to happen.
15 The result is that she died intestate.

16 MS. FISHER: No. The problem with that
17 argument, Your Honor, is that it goes to why she
18 didn't want them to inherit. It's not about who is
19 going to ultimately inherit. They can bring that
20 up. And it can also be brought up, you know, Betty
21 Fisher will give her -- any monies she receives to
22 the animals.

23 THE COURT: I appreciate the position.
24 I stand by what I'm ruling.

25 Bring the jury in.

1 MR. COOPER: Your Honor, with the
2 consent of opposing counsel, I have one more
3 question before cross-examination.

4 THE COURT: All right.

5 MS. FISHER: Your Honor, may I have
6 some of this water here?

7 THE COURT: Sure.

8 (Jury in, 12:22 p.m.)

9 THE COURT: All right. We have the
10 jury back. Mr. Cooper, you have one more question?

11 MR. COOPER: Yes, Your Honor.

12 BY MR. COOPER:

13 Q. I show you now, Ms. Fisher, what's been
14 marked as Defendant's Exhibit Number 1 in evidence.
15 Are you familiar with that document?

16 THE COURT: Do you know what it is?
17 Have you shown it to him? Show it to him. Take it
18 over there and show it to him and see if there's
19 any objection before you answer the question.

20 MR. WILLS: No objection. That's the
21 will that we had admitted at the beginning.

22 THE COURT: All right.

23 THE WITNESS: So I don't believe I have
24 ever seen this document. This, I believe, was what
25 was ever in her safety deposit box, which she never

1 went to again. The documents that she tore up and
2 scratched was a copy in her house; the only will
3 left. It was the only document she saw and she
4 scratched it out and she tore it up. This is --
5 BY MR. COOPER:

6 Q. Does that appear to be a copy of what
7 she tore up?

8 A. Yes.

9 MR. COOPER: No further questions.

10 THE COURT: All right.

11 Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. WILLS:

14 Q. Ms. Fisher, I believe you testified
15 that you were not very close to your grandaunt, is
16 it, Alice?

17 A. Great-aunt, no, that's not what I
18 testified.

19 Q. Did you testify that you had not come
20 to Charleston to visit her very often before --
21 before these proceedings but had talked to her on
22 the telephone?

23 A. Yes.

24 Q. And isn't it true that Alice left
25 California sometime in the '60s?

1 A. Well, my knowledge is that -- I was
2 told by Alice that she left to go in to the Navy.

3 Q. Okay. How many times would you say
4 that you came to Charleston to visit Alice between
5 the time she left California and time that you came
6 to be involved with the conservatorship
7 proceedings?

8 A. Okay. If you're saying it was in the
9 '60s -- I was born in the '60s, so I didn't see her
10 at all as a child.

11 Q. Makes sense.

12 A. So I did not see her physically in
13 person until these proceedings, but I had contact
14 with her before.

15 Q. Let me -- let me make sure that I have
16 it right. You didn't ever see her before the
17 proceedings?

18 A. That's correct.

19 Q. Okay. And I take it then that you --
20 you never met Bessie and Kay either before the
21 proceedings, correct?

22 A. Correct.

23 Q. Okay. So you had no personal knowledge
24 of the relationship between Alice and Bessie and
25 Kay before you came in 2008 to be involved with the

1 conservatorship, correct?

2 A. I had knowledge about what Alice told
3 me.

4 Q. Personal knowledge?

5 A. I understand what you said. So, no, I
6 didn't know them. I still don't know them.

7 Q. You're a lawyer in California, aren't
8 you?

9 A. Yes.

10 Q. Okay. And your practice in California,
11 your law practice involves wills and probate,
12 doesn't it?

13 A. Well, I wouldn't say that that's my
14 practice. My practice deals more with
15 conservatorships and elder abuse and contest that
16 -- in the conservatorship court normally and civil
17 cases. I'm not saying that I have never done
18 probate of a will, but I haven't done a lot of
19 litigation in probate.

20 Q. You and your mother -- your mother is
21 not here, but you are challenging the will that has
22 been submitted to probate; is that correct? In
23 this proceeding?

24 A. Yes.

25 Q. And if I heard your testimony properly

1 earlier, the basis of that challenge is that Alice
2 revoked her will? Is that what I understand, by
3 tearing it up?

4 A. Yes.

5 Q. Now, she didn't tear up the original
6 will, correct? You said it was a copy?

7 A. Yes. She never had access to the
8 original will.

9 Q. When you came -- the first time you
10 came here to be involved with the guardianship --

11 THE COURT: I want to back up and
12 understand. You said she never had access to it.
13 Where was it then?

14 THE WITNESS: It was in her bank.

15 THE COURT: So it was in her bank in
16 her lockbox?

17 THE WITNESS: Right, which she had
18 not --

19 THE COURT: I wanted to make sure that
20 I understand what you were saying.

21 BY MR. WILLS:

22 Q. Your involvement had to do with Alice
23 being incapacitated; isn't that correct?

24 A. Well, that's what conservatorships are
25 about, yes.

1 Q. Okay. And you were appointed
2 conservator, correct?

3 A. Yes.

4 Q. Okay. And you came to a hearing at
5 which you all met in front of a court that makes
6 these designations, and that court appointed you,
7 correct? A conservator?

8 A. Based on Alice's nomination of me, yes.

9 Q. And that court issued an order; did it
10 not? To the effect that appointed you?

11 MR. COOPER: Objection, Your Honor.

12 THE COURT: Do you want to introduce
13 the order?

14 MR. WILLS: I'm going to introduce the
15 order.

16 THE COURT: I need to discuss this with
17 the lawyers. I ask you to go back to the jury room
18 and see if I'm going to let it in or not.

19 (Jury out, 12:30 p.m.)

20 THE COURT: Get it out.

21 MR. WILLS: This is only a copy of it.

22 THE COURT: All right. Now, I'm
23 looking at the order of Judge Curry, Associate
24 Judge Probate, November 19, 2008. And so -- and
25 you're going to want to offer this into evidence,

1 and you object; is that right?

2 MR. COOPER: I'm not sure whether he's
3 going to offer it into evidence, but we object --

4 THE COURT: You're going to offer it
5 into evidence; is that right?

6 MR. WILLS: That's right.

7 MR. COOPER: And we would object, Your
8 Honor. Not only to the entry of the order into
9 evidence, but also to discussion of Judge Curry's
10 language having to do with whether another will
11 could be made.

12 THE COURT: That's in the order.
13 That's what you object to.

14 MR. COOPER: That's correct. But we,
15 also, object to Mr. Wills bringing it up because I
16 think that -- the effect of that language in there,
17 accompanied by language that says, we don't know
18 what her capacity is, we're sending her to an
19 evaluation with Randy Waid, and we want that report
20 back here before we make any further determination.

21 Those two things together are a matter
22 of law for the Court. And that's just totally
23 prejudicial to let the jury hear about that.
24 Mr. Wills is being a good lawyer, and he's trying
25 to show that Lisa Fisher or -- you know, somehow is

1 violating the order or not complying with it, or
2 something.

3 I mean, the legal effect of that is
4 it's a legal matter and should be taken up by the
5 Court outside of the presence of the jury.

6 THE COURT: I appreciate that. Mark
7 that as their exhibit whatever it is.

8 (DFT. EXH. 2, Copy or Court Order, was
9 marked for identification.)

10 THE COURT: I appreciate your position.
11 I overrule your objection and allow it in evidence.

12 (DFT. EXH. 2 in evidence.)

13 THE COURT: Bring the jury back in.
14 You've got to put it in, in front of the jury.

15 (Jury in, 12:31 p.m.)

16 THE COURT: Thank you. You may
17 continue to examine the witness.

18 BY MR. WILLS:

19 Q. Ms. Fisher, you testified earlier that
20 -- that this encounter that you had with Alice
21 where she scratched through some --

22 THE COURT: You were in the process of
23 -- you asked her to look at a document, didn't you?

24 MR. WILLS: I am going to, Your Honor.
25 I need to lay a foundation.

1 THE COURT: Sorry.

2 BY MR. WILLS:

3 Q. You testified that she had scratched
4 through a copy of a will and that that happened in
5 January of 2009; is that correct?

6 A. Yeah.

7 Q. Okay. And we had discussed before the
8 jury went out that you had been appointed
9 conservator of Alice in -- prior to that, correct?
10 In October of 2008; is that correct?

11 A. Yes, I was. I believe I was appointed
12 a little earlier temporary conservator, but, yes.

13 Q. Okay. And the court issued an order,
14 correct? To that effect?

15 A. To the effect of my temporary
16 appointment or my permanent appointment?

17 Q. Permanent appointment.

18 A. Yes.

19 Q. I will hand you what was marked as
20 Defendant's Exhibit 2 and --

21 MR. COOPER: Renew my objection, Your
22 Honor.

23 THE COURT: I'll overrule your
24 objection and I'll allow it.

25 BY MR. WILLS:

1 Q. I would ask you to identify that as
2 being the order that the probate court entered
3 appointing you as guardian and conservator.

4 A. It's been a long time since then, so if
5 I could look at it.

6 Q. Sure.

7 A. Thank you. Okay. Yes, this looks like
8 the order.

9 Q. Okay. And that order was entered, was
10 it not, on November 19th of 2008?

11 A. This -- this is not a --

12 Q. Or signed at least.

13 A. Okay. November 19th, 2008.

14 Q. Okay. And this is the order appointing
15 you guardian, correct? Guardian and conservator?

16 A. Yes.

17 Q. Turn to page 7 of the document, please.

18 A. Uh-huh.

19 Q. Up at the top -- I will read it. Just
20 tell me if I read it correctly. On top of page 7,
21 at number 2, Alice Shaw Baker is an incapacitated
22 person as defined under the South Carolina Code
23 62-5-10, 52-5-101(1); is that -- that's correct,
24 right?

25 A. That's incomplete. I mean, you didn't

1 read the whole thing. It says, due to limited
2 problems with her executive function and memory.

3 Q. Okay. Thank you. Well, if I could get
4 you to go down to the bottom of this page, then, at
5 the order section.

6 A. Sure.

7 Q. And if you could read for the court
8 here where it says, further ordered?

9 A. Do you want me to read the entire
10 section?

11 Q. If you would, please.

12 A. Okay. Further ordered that the
13 contents of Alice Shaw Baker's safety deposit box
14 at Bank of America be turned over to temporary
15 conservator family services. Upon receipt of the
16 contents of said safety deposit box, family
17 services shall promptly file a copy of Alice Shaw
18 Baker's Last Will and Testament with this court.
19 Neither Alice Shaw Baker nor anyone on her behalf
20 may revise or revoke her will or execute a new will
21 unless specifically ordered by this court.

22 Q. Okay. The will that was in the safety
23 deposit box was the will that is Defendant's
24 Exhibit 1; is that correct?

25 A. I don't know.

1 Q. Okay. Did the court thereafter issue
2 any order that allowed the revocation or revised
3 the will that was being probated?

4 A. I don't know, because I don't know how
5 this got in here. This wasn't in the original
6 petition.

7 Q. I'm only asking about your knowledge,
8 whether the court issued an order allowing
9 revocation.

10 A. I don't believe so.

11 Q. Thank you. An act that you claim was a
12 revocation or claim that she -- a copy of the will
13 happened subsequent to this order; is that correct?

14 A. Yes.

15 Q. Okay. Thank you.

16 MR. WILLS: Your Honor, we would tender
17 Defendant's Exhibit 2 into evidence.

18 THE COURT: All right. Over your
19 previously stated objection, I will allow it into
20 evidence.

21 MR. COOPER: Thank you, Your Honor.

22 THE COURT: Hand it over to the court
23 reporter unless you want to look at it some more.

24 BY MR. WILLS:

25 Q. You testified that you hadn't been here

1 in Charleston until this conservatorship was
2 happening. So you don't have any personal
3 knowledge about the state of Alice Shaw Baker, the
4 state of her mind in May of 2001, do you?

5 A. I'm sure. I spoke to her on the phone,
6 and I think that was -- may have been sometime near
7 the time the woman wrote me a letter and I
8 contacted her.

9 Q. In May of 2001, when you --

10 A. Oh, I'm sorry, May 2001. I thought you
11 said 2008. 2001, no, I have no personal knowledge
12 of her condition.

13 Q. Do you have any personal knowledge --
14 well, you don't -- if you didn't have any contact
15 with her, you didn't have any personal knowledge of
16 the circumstances under which she made this will
17 that is Defendant's Exhibit 1, did you?

18 A. Well, let me think back, because I was
19 here one time with my mother.

20 Q. I'll rephrase it. You didn't help make
21 this will, did you?

22 A. No. No, I didn't.

23 Q. You weren't in the room when she signed
24 it, were you?

25 A. No.

1 Q. You didn't see the witnesses who
2 witnessed her -- witnessed the will, did you?

3 A. No.

4 Q. Okay. And since you'd never met Bessie
5 and Kay, you didn't know anything about their
6 relationship with Alice at that time, did you?

7 A. No.

8 Q. Okay. And you don't have to offer here
9 today any other will that was -- that left any of
10 Alice's estate to dog charities, do you?

11 A. Well, I don't think that's correct.

12 Q. Do you have a document to present today
13 that is a will signed by Alice that leaves anything
14 to dogs -- that leaves everything to dog charities?

15 A. Right. Well, there are documents which
16 referenced the will which may --

17 Q. That's not my question.

18 THE COURT: Answer the question. Do
19 you have another will you want to present to the
20 court?

21 THE WITNESS: I have other documents
22 that reference the will that may be included under
23 the code as an adjacent writing.

24 BY MR. WILLS:

25 Q. So you have no other valid will to

1 present today?

2 A. Well, that -- if you're asking for my
3 conclusion, I don't believe that's a valid will,
4 so...

5 Q. Ms. Fisher, you're a lawyer. You're
6 asking the Court to make a determination that this
7 will here that's been -- that's Defendant's Exhibit
8 1 is invalid; is that correct?

9 A. I'm one of the Plaintiffs asking that,
10 yes.

11 Q. And if this will -- this jury
12 invalidates this will, isn't it true that any
13 monies that were in Alice Shaw Baker's estate do
14 not go to animal charities?

15 A. I can't say that either.

16 Q. It would result in an intestacy, right?

17 A. Possibly. It could also be considered
18 an equitable deviation. There are other ways that
19 the Court can meet that as part of the petition.
20 So I'm not really sure what you're asking me,
21 Counsel.

22 Q. If this will is invalid and Alice Shaw
23 Baker is intestate, your mother inherits?

24 A. Well, my mother is not the only family
25 member. So, no, my mother is not the only person

1 that would inherit.

2 Q. And Bessie Huckabee and Kay would not
3 inherit, correct?

4 A. As was Alice's desire.

5 MR. WILLS: Objection; move to strike.

6 THE COURT: Ask another question.

7 MR. WILLS: That's all I have, Your
8 Honor.

9 THE COURT: Any other questions on
10 redirect?

11 MR. COOPER: Yes, just a few.

12 REDIRECT EXAMINATION

13 BY MR. COOPER:

14 Q. Ms. Fisher, as conservator and guardian
15 of Alice Shaw Baker, did you have occasion to see
16 any other documents that were prepared in 2001 by
17 -- presumably by attorneys for Alice Shaw Baker?

18 A. There were other documents, yes. Is
19 that what you were asking me?

20 Q. Yes.

21 A. Okay.

22 Q. Do you remember what they were?

23 A. There were several wills. I think at
24 one point it was supposed to go to her brother and
25 her mother when she was alive. So there were

1 several wills.

2 Q. But in 2001, when the will at issue
3 here was prepared, were there any other powers of
4 attorney, anything like that that were prepared
5 that you were aware of?

6 A. Yes, there was a power of attorney.
7 There was a power of attorney naming Bessie
8 Huckabee as the agent under the power of attorney.
9 I think there was a power of attorney for
10 healthcare naming Bessie Huckabee, agent under the
11 power of attorney for healthcare.

12 Q. And did you ever have any discussions
13 with Alice Shaw Baker about those documents?

14 A. Yes. At the time that there -- was at
15 the conservatorship proceeding, yes.

16 Q. And did you take any action based on,
17 you know, her comments at that time?

18 A. Well, sure. That's the whole purpose
19 of why the conservatorship was appointed. She
20 nominated me and she wanted me appointed rather
21 than fight --

22 MR. WILLS: Objection; hearsay.

23 THE COURT: Sustain the objection. Ask
24 another question.

25 BY MR. COOPER:

1 Q. Based on your review of the documents,
2 did the general durable power of attorney for
3 Bessie Huckabee allow her to handle any of Alice
4 Shaw Baker's financial matters?

5 A. Yes.

6 Q. Okay. And did the healthcare power of
7 attorney give her the right to make healthcare
8 decisions for her?

9 A. Yes.

10 Q. Okay. And, to your knowledge, did
11 Bessie Huckabee have anything to do with Alice Shaw
12 Baker being brought into probate court for
13 conservatorship/guardianship proceedings?

14 MR. WILLS: Objection; relevance.

15 THE COURT: Well, I'll allow that
16 question.

17 THE WITNESS: Yes.

18 BY MR. COOPER:

19 Q. And what did she have to do with that,
20 as far as you know?

21 A. They testified that they turned her
22 into the animal -- sorry, to the family services
23 protective supervision section of Charleston.

24 Q. Okay. And was that something that
25 Alice ever did anything about? Did she take any

1 actions with regard to that?

2 A. Well --

3 MR. WILLS: Objection.

4 THE COURT: I will sustain that. It
5 doesn't have anything to do whether that's the will
6 or not. I'll sustain the objection.

7 MR. COOPER: Thank you, Your Honor. No
8 further questions.

9 THE COURT: Thank you very much.
10 Anything else you have after that?

11 MR. WILLS: Nothing further.

12 THE COURT: Thank you very much. You
13 can return to your place in the courtroom.

14 In looking at the time, we'll take a
15 lunch break at this time. So I will let you go to
16 lunch. Leave your notepads in the jury room. Be
17 back at 2:15. Have a nice lunch. 2:15.

18 (Jury out, 12:47 p.m.)

19 THE COURT: The clerk has informed me
20 that the original will has been located and has
21 been delivered to the probate court. So I'm going
22 to tell them to bring it over at 2:00. Do you want
23 to witness the official delivery of what we say,
24 what is said, the original will to this Court which
25 would be admitted into evidence in place of the

1 copy. We'll do that at 2:00.

2 (A luncheon recess transpired,
3 12:54 p.m. - 2:11 p.m.)

4 THE COURT: All right. Before we bring
5 the jury back in, I've been informed this young
6 lady over here has told me she is Allison Atwood,
7 and she's the clerk of court for the probate court,
8 the State division.

9 She tells me she brought with her an
10 envelope from the probate court which contains the
11 original will that was given to the probate court
12 in this matter, and so she prepared delivery to me
13 to -- to us today, and I would intend to then
14 substitute that for the copy that I let into
15 evidence as Defendant's Exhibit 1.

16 This would be Defendant's Exhibit
17 whatever the next number is, but it will be to
18 replace that of the -- or supplement what was
19 Defendant's Exhibit 1. So that's what I intend to
20 do. Anybody got any objection to that?

21 MR. WILLS: No objection. No objection
22 from the Defendant, Your Honor.

23 MS. FISHER: Your Honor, to the extent
24 that you've made a declaration this is a valid
25 will, we continue to raise objections on the

1 record.

2 THE COURT: All right. All right.
3 Thank you. Whenever we get the jury here then --
4 do you want to go tell them?

5 THE CLERK: They're not here yet.

6 THE COURT: All right. We'll wait
7 until we get everybody here.

8 (A recess transpired.)

9 THE CLERK: Your Honor, we typically
10 keep the original and all of our secured wills in
11 the records center. So this is indeed our
12 original.

13 THE COURT: We're going to put the
14 original in. We can withdraw it later on at such
15 time is appropriate, or whatever, but we're going
16 to put the original in at this point. If you want
17 me to sign anything saying I'm taking that from
18 you, I'll be glad to.

19 THE CLERK: Yes, sir. Yes, sir, we
20 will have to return something to the records
21 center.

22 THE COURT: Okay. What I have written
23 here, assuming that everything goes like I think it
24 is, I have written this and I'm giving you this as
25 a receipt, basically. I took the original will of

1 Alice Shaw Baker of May 21, 2001, on this day,
2 October 24, 2017, and placed it into evidence in
3 Case 2009-GS-10-0378, also known as
4 2009-CP-10-1310, that's our case, during the trial.
5 And I've signed it. So you can take that with you
6 as your receipt.

7 MS. ATWOOD: Yes, sir.

8 THE COURT: And we will do this in
9 front of a jury, too.

10 MS. ATWOOD: Yes, sir.

11 THE COURT: And I will give this back
12 to you so you can present it officially in front of
13 the jury.

14 MS. ATWOOD: Oh, yes, sir.

15 (A recess transpired.)

16 (Jury in, 2:18 p.m.)

17 THE COURT: All right. We have the
18 jury back with us now. I hope you had a nice
19 lunch. Appreciate you being on time. All right.
20 Come around and swear this witness.

21 ALLISON ATWOOD,
22 being first duly sworn, testified as follows:

23 THE CLERK: Please state your full name
24 for the record and spell your last.

25 THE WITNESS: My name is Allison Vaughn

1 Atwood, A-T-W-O-O-D.

2 EXAMINATION

3 BY THE COURT:

4 Q. Mrs. Atwood, tell me what your job is.

5 A. I'm the clerk of court for the Estate
6 Division of Probate Court of Charleston County.

7 Q. Okay. Is that the court organization
8 that normally handles probate of wills and handles
9 estates?

10 A. Yes, sir.

11 Q. Okay. And at my request you brought
12 with you something today. Tell me what it is that
13 you brought with you.

14 A. I brought the original Last Will and
15 Testament that was presented to the court upon
16 opening of the estate file.

17 Q. Of Alice Shaw Baker?

18 A. Of Alice Shaw Baker, yes, sir.

19 Q. It's in that envelope?

20 A. Yes, sir.

21 Q. If you would take it out then and give
22 it to the court reporter. That's now Defendant's
23 Exhibit 3. It's the same of what was the copy,
24 Defendant's Exhibit 1, but now we have the original
25 as Defendant's Exhibit 3.

1 (DFT. EXH. 3, Original will, was marked
2 for identification.)

3 All right. Any questions either of you
4 all want to ask her?

5 MR. COOPER: None from the Plaintiff.

6 MR. WILLS: None from the Defendant.

7 THE COURT: Thank you for coming. You
8 are free to go. I have given you an official
9 receipt for that.

10 THE WITNESS: Yes, sir.

11 (COURT'S EXH. 3 in evidence.)

12 THE COURT: Anything else from the
13 Plaintiff?

14 MR. COOPER: Yes, Your Honor. We have
15 two witnesses here now, and I would like to ask for
16 a brief recess so we can talk with one of them.

17 THE COURT: How much time do you want?

18 MR. COOPER: Ten minutes.

19 THE COURT: All right. Members of the
20 jury panel, you can go into the jury room for ten
21 minutes.

22 (Jury out, 2:27 p.m.)

23 (A recess transpired.)

24 THE COURT: All right. Are you ready?

25 MR. COOPER: Yes, Your Honor.

1 THE COURT: Bring the jury in.

2 (Jury in, 2:37 p.m.)

3 THE BAILIFF: All jurors are present,
4 Your Honor.

5 THE COURT: All right. Good. No,
6 they're not. Who escaped? We've got 12 and 1
7 alternate. Thank you. Had us worried for a
8 minute.

9 We will continue now. Call the next
10 witness.

11 MR. COOPER: Yes, Your Honor. The
12 Plaintiff calls Carol Linville to the stand.

13 THE COURT: Come right over here.
14 Right over there.

15 CAROL LINVILLE,
16 being first duly sworn, testified as follows:

17 THE CLERK: Please state your full name
18 for the record and spell your last.

19 THE WITNESS: Carol L. Linville,
20 L-I-N-V-I-L-L-E.

21 DIRECT EXAMINATION

22 BY MR. COOPER:

23 Q. Mrs. Linville?

24 A. Yes, sir.

25 Q. John Hughes Cooper. I represent Betty

1 Fisher and Lisa Fisher in this case, and I'll be
2 asking you a few questions. First, a little bit of
3 background. I think many in the community know of
4 your work. If you would explain briefly to the
5 jury what it is that you've been doing for the
6 past --

7 A. 40 years? Well, I'm the founder of Pet
8 Helpers Rescue and Adoption, a shelter on James
9 Island and serving the Lowcountry. And my work
10 over the 40 years has involved rescue and animal
11 cruelty and sheltering of animals and leading --
12 working on behalf of medical welfare throughout the
13 community.

14 We have a full animal rescue and
15 adoption center based on James Island, and we house
16 about 150 animals on a daily basis. And I continue
17 my work as the president and founder, and we've
18 been active in the community through these many
19 years on cruelty and legislation and rescue and
20 adoption.

21 Q. Thank you. We're here today in a case
22 involving the contested will of Alice Shaw Baker.
23 And I want to ask you now, did you know Alice Shaw
24 Baker?

25 A. I did.

1 Q. Tell the jury how you know Alice Shaw
2 Baker.

3 A. Alice and I go back to the late '80s
4 and '90s, back when I was starting Pet Helpers and
5 working with animals. And she met me through our
6 work with animal welfare. And Alice would call me
7 about her little dogs and discuss their behavior
8 issues and what she would do.

9 And as we do with many people in animal
10 welfare, you develop relationships, and that's how
11 I knew Alice.

12 Q. How many years would you say you knew
13 her?

14 A. Oh, my gosh. Time is flying by for me
15 now. Fifteen, 20 years at least. I go back to the
16 late '80s, if we start doing the math.

17 Q. How often would you see Alice during
18 those years?

19 A. We talked more than saw each other,
20 but, my gosh, it could be a couple of times a
21 month; it could be maybe several months. It could
22 be six months, or it could be every week. I mean,
23 it just depended on -- my last conversation with
24 her was about her little sick dog and her
25 veterinarian.

1 MR. WILLIS: Your Honor, I hate to
2 interrupt.

3 THE WITNESS: Yes, sir.

4 MR. WILLIS: I have a matter of law I
5 would like to take up, Your Honor.

6 THE COURT: Members of the jury panel,
7 please go to the jury room.

8 (Jury out, 2:41 p.m.)

9 THE COURT: What do you want to say?

10 MR. WILLIS: I apologize for the
11 interruption.

12 THE COURT: No, go ahead.

13 MR. WILLIS: We have been through this
14 before, and I believe Mrs. Linville is here to
15 offer testimony that Alice Shaw Baker told her she
16 wanted to leave all of her estate to animal
17 charities. They have not presented a will that had
18 anything to do with leaving any -- any of her
19 estate to animal charities, and so it's the same
20 situation we've run into already before.

21 If they haven't presented a will that
22 has -- separate from the one that's in probate,
23 that says that any estate is going to animal
24 charities, then testimony is prejudicial --

25 THE COURT: Go ahead, and let's listen

1 to her testimony, and I'll make a decision as to
2 whether it's admissible or not.

3 MR. COOPER: Thank you, Your Honor.

4 BY MR. COOPER:

5 Q. Mrs. Linville, did you ever have any
6 discussions with Alice Shaw Baker in which she made
7 a statement about her intent as it related to her
8 will?

9 A. Yes, sir.

10 Q. And what was -- what was her statement?

11 A. Her statement was consistently when she
12 would talk with me, thank you, Carol, for helping
13 me. Pet Helpers, I'm going to remember them in my
14 will, and animal welfare is where I want my funds
15 to go.

16 Q. Was this on more than one occasion?

17 A. It would be not every time we talked,
18 but it would come up from time to time depending on
19 -- I mean, we're going back a lot of years, but
20 Alice wanted what she had at that time, when she
21 talked with me, her assets, whatever they may have
22 been, to go to animal welfare, animal charity, be
23 it Pet Helpers or somebody else.

24 Q. Did she ever indicate an intent to you
25 to let her assets go anywhere else?

1 It was a little dog and it was very
2 old. And I remember saying, Alice, I don't know if
3 there's much more that can be done, but at least we
4 could try because I -- well, I'm not a
5 veterinarian. I just gave her my best advice that
6 I could give because of our -- or my value to her
7 as someone she trusted maybe. So it could have
8 been less than 12 years, Your Honor. I'm
9 ball-parking. We're talking --

10 THE COURT: 12 years ago is -- tell me
11 again what you're saying that is. Approximately,
12 what are you saying happened 12 years ago?

13 THE WITNESS: Well, the last time I
14 talked to Alice 10 or 12 years ago, we talked about
15 her little dog and her little dog was very sick and
16 what she should do, and I gave her advice and that
17 was -- and we talked at length, and she talked
18 about animal welfare and what she -- if something
19 happened to her, what she wanted to have happen to
20 her funds, including Pet Helpers. So I said, thank
21 you.

22 THE COURT: I understand. Anything
23 else?

24 THE WITNESS: No, I just --

25 THE COURT: No. I'm talking to him.

1 MR. COOPER: No, Your Honor.

2 THE COURT: Okay. Do you want to state
3 a position?

4 MR. WILLS: Yeah. Our position is that
5 her testimony is being offered to support the
6 position that instead of the estate assets going to
7 the beneficiaries, they were supposed to go to dog
8 charities. And that has already been established
9 that's not the case. It's going to give the jury
10 the idea that -- that -- that it was -- it has the
11 clear result of giving the jury the idea that it
12 was her -- Alice's intention to leave all of her
13 money to dog charities. And that's not even an
14 issue.

15 THE COURT: Well, that may have been
16 the intent, what she said at the time; but as far
17 as whether or not that's relevant in the issue as
18 far as whether the will that we have in contest is
19 a valid will or not, it doesn't have any bearing on
20 that as far as I can see, so I will sustain the
21 objection to this testimony.

22 MR. COOPER: Your Honor, may I be
23 heard?

24 THE COURT: Sure.

25 MR. COOPER: I would just say that her

1 lifelong expression of the intent --

2 THE COURT: Well, it's not going to go
3 to Pet Helpers. If there was a will that said it
4 went to Pet Helpers, that's one thing, but it's not
5 going to Pet Helpers.

6 MR. COOPER: One of the -- I would
7 point out, Your Honor, if you look at the verified
8 Complaint, one of the Defendants in this case has
9 been given permission by Judge Jefferson not to
10 attend the trial, but the Attorney General of South
11 Carolina is a party Defendant to take care of
12 animal charities.

13 And they have taken the position they
14 are not going to attend the trial, but they will be
15 sure that if the will is -- was revoked and if
16 that's the finding, that animal charities will --

17 THE COURT: Well, I'll cross that
18 bridge later, but that's not going to influence
19 this case.

20 MS. FISHER: Your Honor, if I could be
21 heard.

22 THE COURT: Sure.

23 MS. FISHER: At this point, you are
24 saying that a person doesn't have a motivation as
25 to why they revoke a will. That's what you're

1 essentially doing. Oh, she revoked a will, but
2 there's absolutely no reason for it, so the
3 prejudice that you're putting on them, you're --
4 you have now transferred to us so that we can't
5 establish that there was a motivation.

6 So maybe Alice didn't want the property
7 -- maybe we can't establish that she had it go to
8 animal charities, but what we can establish is that
9 once she learned Kay Slade was not part of an
10 animal charity, that she revoked it because she
11 didn't want a person who deceived her into stating
12 that she had this charity when she didn't.

13 I mean, Your Honor, you have to allow
14 us to show the jury that she had a purpose in
15 revocation.

16 THE COURT: I appreciate the position.
17 I sustain the objection to the testimony.

18 THE COURT: Bring the jury back in.

19 (Jury in, 2:51 p.m.)

20 THE COURT: All right. We have the
21 jury back with us. All right. I sustain the
22 objection. Any other questions for this witness?

23 MR. COOPER: No, Your Honor.

24 THE COURT: Any questions over here?

25 MR. WILLS: No questions.

1 jury out now. You can ask the questions however
2 you want to do it. Let's see what she has to say.

3 BY MR. COOPER:

4 Q. Ms. Rickborn, did Alice Shaw Baker
5 during the time that you knew her, ever express to
6 you her intention about the terms of her will?

7 A. Alice was very clear --

8 THE COURT: I'm sorry?

9 THE WITNESS: Mrs. Baker was clear that
10 they were just involved for the money. She said
11 that very often.

12 THE COURT: I'm sorry, I couldn't
13 understand you.

14 THE WITNESS: She said that they were
15 just after her money, that they just wanted her
16 money.

17 BY MR. COOPER:

18 Q. And who is they that she was referring
19 to?

20 A. Bessie and Kay.

21 Q. And how many times did she say that?

22 A. She was over a great deal of distress
23 over her estate, and so she was very upset that she
24 was not able to change her will. That was
25 definitely something she was very upset with.

1 So then she spoke up on more than one
2 occasion and she was just distraught that
3 everything she had was going to be fought over.

4 THE COURT: You say that she was very
5 distraught that everything she had was going to be
6 fought over?

7 THE WITNESS: Yes, sir. And not left
8 to animal welfare. It was definitely a huge part
9 of her life.

10 BY MR. COOPER:

11 Q. Did she express any intent to try to
12 take any actions with regard to her will?

13 A. None that I remember, no, sir.

14 Q. Was it her intent to benefit Kay Slade
15 and Bessie Huckabee?

16 A. I mean, she never spoke directly of
17 them very often. It was just the matter of her --
18 the animals and so -- I mean, honestly they were
19 never really like present for them to be spoken of.
20 It was just whenever it came up, she was just very
21 distressed over her --

22 THE COURT: Who brought it up?

23 THE WITNESS: She would, for sure.

24 BY MR. COOPER:

25 Q. She would bring it up of her own

1 A. They were very insistent that she go
2 and she pass on and that she go be with her dogs.

3 Q. Did they say that?

4 A. They did. She said, go be your dogs.
5 Bessie said that on more than one occasion.

6 Q. At the hospital?

7 A. At the hospital.

8 Q. In Alice Shaw Baker's presence?

9 A. In her presence, in her unconscious
10 presence.

11 Q. She wasn't conscious?

12 A. Not that I know of, no, sir.

13 Q. All right. And do you have any
14 knowledge as to whether or not Alice Shaw Baker
15 revoked her will?

16 A. I do not know, no, sir.

17 Q. If she revoked the will, would that be
18 consistent with the intentions she expressed to
19 you?

20 A. Yes.

21 Q. And explain to the Court why that would
22 be.

23 A. I think that Alice just felt very
24 betrayed by her friends, and I think that she --
25 she was very upset. I mean, as anyone would be and

1 so -- I'm sorry, can you restate the question?

2 It's been a while, so...

3 Q. Well, I was just asking why it would be
4 consistent with changing the will.

5 A. Yeah. And so just because she brought
6 up the fact that she was not able to change it. I
7 mean, she consciously told me they would not let
8 her change her will and that it -- obviously,
9 everything about her emotional state and physical
10 state, like, you could see her emotions present
11 throughout her physical state. It was something
12 that caused her a lot of distress.

13 Q. When did she tell you she was not
14 allowed to change her will?

15 A. It came up on more than one occasion.
16 I'm not sure. Never at the hospital; always at her
17 home. In the beginning, when I first began working
18 with her. And, also, it's just -- it was very
19 clear to her that, like -- you know, she spoke of
20 her animals very endearingly. So they were
21 definitely a part of her family, a part of her
22 life.

23 She talked about all of the things she
24 had did with them all her entire life as far as,
25 like, agility training, like, horses, and just,

1 like, the best dog show. Things you'd see, like,
2 that she actually participated in those things.
3 Her home was just definitely a remnant of what she
4 was passionate about and what mattered to her.

5 It was definitely her passion. And so
6 you couldn't see that and not realize how upset she
7 was about her will.

8 Q. Now, with regard to Ms. Slade and
9 Huckabee, did they have a falling out or something
10 with Alice Shaw Baker?

11 A. I don't really know specific details,
12 and if I did, I don't remember them. But I know
13 there was like -- it was almost as if in the
14 beginning when I first started working there, I had
15 no knowledge of them whatsoever. And so -- and
16 then towards, like, the remaining few weeks, it was
17 almost as if Alice didn't want them at all.

18 And so after listening, you know, to
19 more and more conversations with her, I was able to
20 kind of piece and put people together. And so,
21 yeah, they were definitely like -- I don't think
22 there was any desire to be a part of her life, and
23 I don't think that she had any desire for them to
24 be.

25 Q. Other than at the hospital when they

1 (The following proceedings were had
2 October 25, 2017, Charleston County Common Pleas,
3 9:52 a.m.)

4 (PLF EXH. 1, Report of Randy Waid, was
5 marked for identification.)

6 THE COURT: Bring the jury in.

7 MS. FISHER: Your Honor.

8 THE COURT: Yes.

9 MS. FISHER: Before the jury comes in,
10 there is a brief that I filed that I would ask the
11 Court to consider regarding --

12 THE COURT: I don't have it.

13 MS. FISHER: I'm sorry, yes, I have it.
14 Shall I submit it to your --

15 THE COURT: Sure. Give it to me.

16 MR. WILLS: If I may respond to that,
17 Your Honor.

18 THE COURT: Well, let me read it first.
19 I haven't had a chance to read it.

20 MR. WILLS: All right.

21 THE COURT: I haven't got it all. I've
22 read most of it. Let me see what else you've got.

23 All right. I received this and I'll
24 finish reading it. Actually, I've been thinking
25 about this for the last day or so, and I haven't

1 made a decision with regard to it, but I will
2 certainly think about it and study about it and
3 consider everything that you've written here before
4 charging the jury. This really has to do with the
5 jury charge more than anything else, so we'll
6 proceed with the trial.

7 Bring the jury in.

8 MR. COOPER: Your Honor, I have three
9 motions.

10 THE COURT: Okay. What motion?

11 MR. COOPER: And I would hand up
12 Dr. Randolph L. Waid's report that was given to the
13 probate court at the probate court's direction.
14 It's been marked as Plaintiff's Exhibit Number 1.

15 And my first motion, Your Honor, is --

16 THE COURT: This hadn't been introduced
17 into evidence. Do you want to do something about
18 this now?

19 MR. COOPER: Yes, Your Honor. It has
20 to do --

21 THE COURT: This is not in evidence,
22 right?

23 MR. COOPER: Not in evidence.

24 THE COURT: You want to put it in
25 sometime later on?

1 MR. COOPER: Potentially, but it may
2 just relate to Your Honor's ruling on the law with
3 regard to the order, Defendant's Exhibit Number 2
4 --

5 THE COURT: Okay. Go ahead.

6 MR. COOPER: At any rate, the order,
7 Defendant's Number 2, is the order that was issued
8 by the probate court that had language on page 7
9 that was read out yesterday to the jury. Neither
10 Alice Shaw Baker nor anyone on her behalf may
11 revise or revoke her will or execute a new will
12 unless specifically ordered by --

13 THE COURT: What is your motion? What
14 do you want me to do?

15 MR. COOPER: I have three motions.

16 THE COURT: Tell me what you want me to
17 do.

18 MR. COOPER: The first motion is based
19 on this -- Dr. Waid's report which was ordered by
20 the Court --

21 THE COURT: What do you want me to do?

22 MR. COOPER: I would like you to make a
23 finding at this time that Alice Shaw Baker had the
24 capacity to make or revoke a will at the time of
25 January 1, 2009.

1 THE COURT: I deny that motion.

2 MR. COOPER: Thank you, Your Honor.

3 The second motion is to suspend the
4 portion of the order concerning the will that I
5 just read nunc pro tunc, based on two things. One
6 is Dr. Waid's report that says she had the capacity
7 at the time the report issued, eight days after she
8 revoked, and also 52-5-408 --

9 THE COURT: Wait a minute. Okay.
10 Suspended based on Dr. Waid's letter, whatever it
11 is, report that's not in evidence yet.

12 What else?

13 MR. COOPER: South Carolina Code
14 62-5-408, which prohibits the Court -- allows the
15 Court to do certain things after a hearing and
16 determination except to effect the power to make a
17 will. So we would -- we would say that the part of
18 the order from the probate court --

19 THE COURT: Wait just a second. That
20 has to do with -- 62-3-408 has to do with the
21 effect of a final order in another jurisdiction.

22 MR. COOPER: 62-5-408 --

23 THE COURT: Five?

24 MR. COOPER: Yes, Your Honor.

25 THE COURT: Excuse me, let me look at

1 that. Maybe I'm reading the wrong section;
2 62-5-408 is who may be appointed as conservator.

3 MR. COOPER: The Court is limited to
4 the following types of order --

5 THE COURT: You're not looking at the
6 same section I'm looking at.

7 MS. FISHER: I'm going to double check
8 and make sure I put the right number down. Give me
9 one second.

10 Your Honor, you're at 62-5-410. If you
11 go back to 62-5-408 --

12 THE COURT: 65-410, is that what you
13 want me to look at?

14 MS. FISHER: No. I want you to look at
15 62-5-408.

16 THE COURT: I have looked at 62-5-408,
17 and that has to do with who made the conservator.

18 MS. FISHER: We're looking for the code
19 that says permissible court orders.

20 THE COURT: But, anyway, that has to do
21 with something -- if you want to deal with it later
22 on before it goes to the jury, that's fine.
23 There's nothing I'm going to do about that now. If
24 you want to bring it up in regard to anything as
25 far as charging the jury is concerned, I would be

1 glad to do that. I'm not going to do anything
2 about it now. It's like these other two things
3 that you were talking about.

4 MR. COOPER: Well, Your Honor, my third
5 motion, then, and I'm assuming from that that
6 you're denying my motion --

7 THE COURT: Well, I don't see anything
8 that what you cited to me has anything to do with
9 what you're talking about.

10 MR. COOPER: Well, Your Honor, 62-5-408

11 --

12 THE COURT: That has to do with who may
13 be appointed conservator.

14 MR. COOPER: No, Your Honor, it has to
15 do --

16 THE COURT: Come here and read it.

17 MS. FISHER: Maybe that has changed.
18 I'm trying to see if it's been put somewhere else.

19 MR. COOPER: You're reading it
20 correctly in that book.

21 MS. FISHER: Your Honor, just for
22 clarity --

23 THE COURT: You have time to do it
24 later on.

25 MS. FISHER: Sure. Is that 2017?

1 THE COURT: '17.

2 MS. FISHER: I'll find it. Thank you,
3 Your Honor.

4 MR. COOPER: Our last motion has to do
5 with -- with Your Honor's rulings on relevance
6 yesterday. As Your Honor knows, Rules of Evidence
7 401 has a definition of relevant evidence.
8 Relevant evidence means evidence having any
9 tendency to make the existence of any fact as a
10 consequence the determination of the action more
11 probable or less probable than it would be without
12 the evidence.

13 Our position, Your Honor, is the
14 evidence that we offered --

15 THE COURT: What do you want me to do?

16 MR. COOPER: I would like you to allow
17 us to put witnesses back on the stand and ask them
18 about statements that Alice Shaw Baker made about
19 her intent to benefit animal charities or not to
20 benefit Mrs. Huckabee and Mrs. Slade.

21 THE COURT: I appreciate that, but the
22 effect of this case is not going to benefit an
23 animal charity. If that was something that could
24 happen as a result of this case, it might be
25 relevant, but it would just confuse the jury as to

1 the issues involved in this case.

2 I thought about that and I've thought
3 about it in terms of the balancing rule. That's
4 what a lot of my rulings in regard to that have
5 been because of the balancing that I have done as
6 far as whether it's relevant to anything versus
7 potential for unfair prejudice. In my opinion, it
8 will confuse the jury as to what the ultimate
9 issues are in this case.

10 Thank you very much. Bring the jury
11 in.

12 (Jury in, 9:59 a.m.)

13 THE BAILIFF: All jurors are present.

14 THE COURT: Good. Thank you. And I
15 appreciate your efforts in regards to getting here
16 this morning. I know that there's some traffic
17 difficulties out there and perhaps some parking
18 problems and so forth, but I appreciate your
19 efforts to be here. As I said, we can't start
20 without you, and we've got, and everybody is here
21 now, the parties are here, along with their
22 attorneys, and we will proceed now with the trial.

23 All right. Who do you want to call
24 now?

25 MR. COOPER: The Plaintiff calls Bessie

1 Huckabee.

2 THE COURT: All right. Come on up. I
3 believe that you were sworn on Monday of this week
4 to testify in this case. You are still under oath.

5 THE WITNESS: Yes, sir.

6 BESSIE HUCKABEE,
7 being previously duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. COOPER:

10 Q. Morning, Mrs. Huckabee. You were not
11 related to Alice Shaw Baker, were you?

12 A. No, sir, I was not.

13 Q. Okay. Do you know who her relatives
14 were?

15 A. No, sir. I knew that she had a
16 brother, who was in California, and her mother. I
17 did not know them, but I did not know any of her
18 relatives.

19 Q. You and she had a relationship as
20 friends?

21 A. Yes, sir. Once she come to work at
22 Charleston Memorial Hospital, she and I developed a
23 friendship.

24 Q. And how long did she work there?

25 A. I retired in September of '90. Alice

1 retired in '91 or '92. She come there somewhere in
2 19 -- 1966 to 1970. I'm not sure of the date that
3 she actually come to work there.

4 Q. Okay. And after you retired from
5 Charleston Memorial Hospital, did you continue to
6 be friends with Alice Shaw Baker?

7 A. Yes, sir.

8 Q. And you knew that she was devoted to
9 animals, her dogs in particular?

10 A. She was crazy about her dogs, yes, sir.

11 Q. And did she ever talk to you about her
12 intention to give her property and so forth to
13 animal charities?

14 A. No, sir. I'm the one that -- I like
15 dogs, but I'm not the dog person. So talking about
16 dogs was not our conversation.

17 Q. So you and she didn't share the same
18 affection for dogs?

19 A. No, sir.

20 Q. And so what -- you say you were
21 friends. What were the things, the interests that
22 you shared?

23 A. Well, we went to Broadway plays at the
24 municipal auditorium; we went camping together; she
25 was in our home; she come to everything; she met my

1 family; she come to Christmas, Easter, New Year's.
2 When there was -- all holidays because she was here
3 by herself, had no family.

4 She also come when there was
5 hurricanes, she and her dogs. So she was in and
6 out of our life a lot. We rode bikes around the
7 city of Charleston. We were -- we went to movies,
8 bowled on a league. She and I took a trip to New
9 Orleans on a Thanksgiving holiday.

10 Q. This was after you retired?

11 A. No, sir. This was in the time that I
12 knew her.

13 Q. Okay. So some of it was before you
14 retired?

15 A. Yes.

16 Q. And so that's how many years
17 approximately?

18 A. From '67 until she died.

19 Q. Okay. All right. You say that she was
20 often a visitor in your home?

21 A. Yes, sir.

22 Q. Did you visit her in her home?

23 A. Oh, yes, sir.

24 Q. Okay.

25 (PLF EXH. 2, Copy of photograph, was

1 marked for identification.)

2 THE COURT: Show it to him before you
3 introduce it.

4 MR. WILLS: Your Honor, I've got --
5 I've got --

6 THE COURT: Objection? Is that the
7 word you were looking for?

8 MR. WILLS: I think I have a point of
9 law.

10 THE COURT: Members of the jury panel,
11 I need you to go to the jury room, please.

12 (Jury out, 10:05 a.m.)

13 MR. WILLS: Your Honor, from what I can
14 tell, these are the exact exhibits that were
15 excluded by the Court yesterday as being
16 irrelevant, and now they're trying to put them in
17 again through a different method.

18 THE COURT: Okay. So what is it? The
19 picture of the car, I presume, is the deceased's
20 car parked in her driveway with the dog on the
21 front where the license would otherwise be on the
22 front of the car. Does that accurately describe
23 what it is?

24 MR. COOPER: That's what I believe it
25 to be --

1 THE COURT: So what's the relevance of
2 that?

3 MR. COOPER: The relevance is, if she's
4 saying she's a great friend with Alice Shaw Baker
5 and knew all about her house and been there and so
6 forth, I want to show her these pictures and ask
7 her if this is how it was when she was over there.
8 And she's saying --

9 THE COURT: What relevance is that to
10 the issues as far as the case is concerned?

11 MR. COOPER: Well, Your Honor, this is
12 -- this is a witness that has already testified to
13 -- well, the relevance, Your Honor, has to do with
14 impeachment of Mrs. Huckabee. She says she knows
15 over there -- maybe she doesn't know.

16 THE COURT: Do you want to ask her
17 about that? Go ahead and ask her about that if
18 you're going to impeachment her with something.

19 BY MR. COOPER:

20 Q. I show you now, Ms. Huckabee, what's
21 been marked as Plaintiff's Exhibit Number 2. Do
22 you recognize the subject of that photograph?

23 A. It's just a picture of her car that was
24 in front of her house. She had a circular drive
25 and she parked there near the door.

1 Q. Right. And that accurately shows that
2 part of her home?

3 A. Yes, sir.

4 Q. And accurately shows her car?

5 A. Yes, it does.

6 THE COURT: All of those are things I
7 excluded yesterday because they weren't relevant to
8 the issue, correct?

9 MR. COOPER: Correct.

10 THE COURT: What are you going to
11 impeach her on? It's my understanding that's what
12 you want to do with it, impeach her on something.

13 MR. COOPER: Well, she may not
14 recognize some of these and they are accurate
15 photographs of --

16 THE COURT: Go ahead. If that's what
17 you claim you want to do.

18 (PLF EXH. 3, Photograph, was marked for
19 identification.)

20 BY MR. COOPER:

21 Q. I show you now Plaintiff's Exhibit 3.
22 Do you recognize that?

23 A. Yes, sir, I do. It was in her living
24 room.

25 Q. All right. Is that the way it looked

1 when you were a visitor over there?

2 A. There was dogs everywhere, stuffed,
3 ceramic. Any kind of dog fixture she could get.

4 THE COURT: Just give them to her all
5 at one time.

6 MR. COOPER: Okay.

7 (PLF EXH. 4 - 22, Photographs, were
8 marked for identification.)

9 BY MR. COOPER:

10 Q. Mrs. Huckabee, I show you Plaintiff's
11 Exhibit 4 --

12 THE COURT: Just give them all to her
13 and ask her to look at all of them and ask her any
14 questions that you have about the group.

15 MR. COOPER: All right.

16 THE COURT: Do you recognize those as
17 being pictures from her home, Ms. Shaw Baker's
18 home?

19 THE WITNESS: Yes, sir.

20 THE COURT: Any other questions?

21 MR. COOPER: Yes, Your Honor.

22 THE COURT: Are you trying to impeach
23 her with those?

24 MR. COOPER: I'm going to try.

25 THE COURT: Okay.

1 BY MR. COOPER:

2 Q. Mrs. Huckabee, those photos --

3 THE COURT: That means you're going to
4 try to say that that's not right, that they are not
5 the pictures from her home.

6 MR. COOPER: Well, I'm going to try to
7 impeach her --

8 THE COURT: Using the photographs.
9 That's what you said you were going to try to do.

10 MR. COOPER: That's what I'm trying to
11 do.

12 THE COURT: Keep it on track.

13 MR. COOPER: I'm going to try, Your
14 Honor.

15 BY MR. COOPER:

16 Q. Mrs. Huckabee, those photographs, do
17 they accurately portray Alice Shaw Baker's home and
18 her car and her dogs and the graves in the
19 backyard?

20 A. Yes, sir, they do.

21 Q. Okay. You've seen all of those things
22 on multiple occasions?

23 A. Yes, sir.

24 Q. When was the last time you visited her
25 in her home?

1 A. Kay Passailaigue and I went over one
2 afternoon, and she was in the kitchen with the
3 other caretaker, Katherine Magwood. She was trying
4 to get her to drink some white liquid because Lisa
5 was coming to take her to the doctor. That was
6 probably after Christmas or so.

7 Q. After Christmas of which year?

8 A. Of '08. Of '08.

9 Q. And before that time, when was the last
10 time that you had visited her?

11 A. Alice -- according to Alice, her dogs
12 were very nervous and we upset them. She did not
13 let us in her house. We visited her in her
14 backyard or front yard or took a walk around the
15 park, around the block. So to tell you what the
16 last time I visited her, I don't know. Kay and I
17 started going to Alice's house together.

18 Q. Okay. And --

19 THE COURT: Are you through trying to
20 impeach her with those photographs?

21 MR. COOPER: No, Your Honor. I'm still
22 working.

23 BY MR. COOPER:

24 Q. Mrs. Huckabee, when was -- when was the
25 last time that you saw the dogs alive? Do you know

1 when they passed away?

2 A. I don't know the exact date,
3 Mr. Cooper. We bought caskets when the dogs died.
4 We went to a place in Goose Creek who sold animal
5 stuff. We dug holes to put them in it in the
6 caskets, so I've known her dogs.

7 Q. Do you remember when the last one
8 passed away?

9 A. No, sir, I do not.

10 Q. Do you remember the names of the dogs?

11 A. Yeah, Precious, Cujo, Missy. One time
12 she had Peeks when I first met her. I don't
13 remember all the dogs. I do know when one of them
14 passed away, I was the one that took her to find
15 another one.

16 THE COURT: Mr. Cooper, you said you
17 were going to try to impeach her testimony in some
18 way with these photographs.

19 MR. COOPER: And I'm going to.

20 THE COURT: You've had plenty of
21 opportunity. I haven't heard anything that would
22 be construed in any way as an impeachment of
23 anything that she said or testified to by the use
24 of those photographs, so no more.

25 You're offering those into evidence,

1 right? For impeachment?

2 MR. COOPER: I would offer them into
3 evidence, but I would also like to examine
4 Mrs. Huckabee as to the dates -- at least the years
5 in which the dogs passed away.

6 THE COURT: Why does that have anything
7 to do with any issue in the case?

8 MR. COOPER: Well, because she's just
9 testified that she couldn't come over there when
10 the dogs were alive.

11 THE COURT: What does that have
12 anything to do with the case?

13 MR. COOPER: Well, it has to do with
14 how good of a friend she was with Alice Shaw Baker.

15 THE COURT: As far as those photographs
16 are concerned, I sustain the objection to the
17 introduction of those photographs. Give them to
18 the court reporter. They're not in evidence.

19 MS. FISHER: Your Honor, I would like
20 to interject that the pictures may be relevant at a
21 later time to demonstrate --

22 THE COURT: Well, if you want to offer
23 them at another time, you can do that.

24 MS. FISHER: Okay. As long as we're
25 not foreclosing introducing them. Thank you.

1 THE COURT: Anything else?

2 Bring the jury in.

3 (Jury in, 10:10 a.m.)

4 THE COURT: You may continue to examine
5 the witness.

6 MR. COOPER: Thank you, Your Honor.

7 BY MR. COOPER:

8 Q. Mrs. Huckabee, when was the last time
9 that you visited Alice Shaw Baker in her house?

10 A. When we went one afternoon, Kay
11 Passailaigue and I, to visit her, and she was in
12 the kitchen. Katherine Magwood, one of the
13 caregivers was trying to get her to drink some
14 white liquid. She was going to have some tests
15 run.

16 She was expecting Ms. Fisher to come
17 and get her and take her to the doctor. We visited
18 for a while. Katherine was having a problem to get
19 her to drink the stuff.

20 THE COURT: He asked when was that.

21 THE WITNESS: I don't know. It most
22 probably was -- it was January somewhere. It was
23 after Christmas.

24 THE COURT: Okay. Preceding her death?

25 THE WITNESS: Oh, yes, sir.

1 THE COURT: January preceding her
2 death, which I believe was February --

3 THE WITNESS: 25.

4 THE COURT: -- 25th.

5 BY MR. COOPER:

6 Q. And didn't you previously testify out
7 of the presence of the jury --

8 THE COURT: No. Ask any questions you
9 want to ask her in the presence of the jury.

10 MR. COOPER: Right. Didn't --

11 THE COURT: Ask her about the question
12 in the presence of the jury.

13 MR. COOPER: Yes, Your Honor.

14 BY MR. COOPER:

15 Q. Are you sure that it was January of
16 2009, rather than December of 2008?

17 A. I'm not sure it was December. I think
18 it was in January. I'm not sure.

19 Q. Okay. And the time -- that was while
20 Alice was under the conservatorship?

21 A. Yes, sir, it was.

22 Q. Now, in terms of the conservatorship,
23 who reported her as needing to be conserved to the
24 Charleston elder abuse line?

25 A. Kay Passailaigue and I and Sandra Byrd,

1 who is deceased, saw a difference in Alice. We
2 knew that there -- you know, what was wrong. We
3 was concerned about her, and we didn't know where
4 to turn, we didn't know who to ask questions for.

5 Kay Passailaigue found information
6 about Elizabeth Spencer who was doing elder care
7 through the police department. Kay called
8 Elizabeth Spencer.

9 Q. After discussing it with you?

10 A. Yeah. She told me she found her and we
11 needed some advice from somebody. We wanted Alice
12 to stay in her house as long as she could.

13 Q. She wanted that, didn't she?

14 A. Yes, she did. Very much so, and we
15 wanted it for her.

16 Q. Okay. And the --

17 THE COURT: So is the answer to his
18 question -- try to listen to the question and
19 answer the question that he asked. You know, you
20 gave us a lot of stuff there, but I think the
21 question was who reported to elder abuse, or
22 something. And your answer would be you and Miss
23 -- the other lady; is that correct?

24 THE WITNESS: Kay Passailaigue.

25 THE COURT: I have a hard time

1 pronouncing the last name.

2 THE WITNESS: Okay.

3 THE COURT: Is that your answer?

4 THE WITNESS: Yes, sir.

5 THE COURT: Ask another question.

6 BY MR. COOPER:

7 Q. All right. At the time that Kay
8 Passailaigue reported to the elder support line or
9 elder abuse line, whatever it is, you had discussed
10 it with her as the proper thing to do?

11 A. Yes, sir.

12 Q. And you agreed with that decision?

13 A. Yes, sir. With her reporting it, yes,
14 sir.

15 Q. And at the time that you did that, you
16 held the healthcare power of attorney for Alice
17 Shaw Baker?

18 A. I didn't know at that time that I had
19 it, but I learned later. She did not give me a
20 copy. The copy I got was from Kay Passailaigue
21 when she -- I think she mixed up her copies of her
22 wills and stuff. I did not get that until later.

23 Q. But you didn't dispute there was a
24 healthcare of power of authority?

25 A. Yes, sir.

1 Q. And you had the responsibility under
2 that to make healthcare decisions --

3 A. Yes, sir, I did.

4 Q. And also you had a general durable
5 power of attorney, a power of attorney that allowed
6 you to make financial and other decisions for her?

7 A. There is no way I could have made
8 financial decisions for her. She was a very smart
9 lady and she -- no.

10 Q. So you're denying that you had a power
11 of attorney from her naming you as her power of
12 attorney?

13 A. Oh, no. I had it, yes. I'm sorry,
14 yes.

15 Q. Okay. So you had the legal authority
16 to make the decisions, but --

17 A. I never made any.

18 Q. Okay. But you did have the legal
19 authority?

20 A. Yes, sir, I did.

21 Q. All right. And you, I think, testified
22 that she had a brother named John?

23 A. Yes, sir, she did.

24 Q. And he died?

25 A. Yes, he's deceased.

1 Q. Do you remember which year that was?

2 A. No, sir, I don't. John come -- moved
3 from California to Charleston and moved in with
4 Alice, and I don't remember. I never met John. I
5 saw John; I knew who John was.

6 THE COURT: So was it before or after
7 her death?

8 THE WITNESS: It was before, sir.

9 BY MR. COOPER:

10 Q. With regard to John, he had an estate
11 here, correct?

12 A. I don't know anything about that, sir.

13 Q. Okay. So you had a relationship with
14 Alice Shaw Baker where you weren't kept up to date
15 on her brother, John?

16 A. Alice told you what she wanted you to
17 know, and she didn't tell you anything that she
18 didn't want you to know. She was a very private
19 person.

20 Q. And my question to you is, did she tell
21 you that her brother had died?

22 A. Yes.

23 Q. And did you go to the funeral?

24 A. I don't know whether there was a
25 funeral.

1 Q. Okay. In terms of her brother, you say
2 you never met him?

3 A. No, sir, I did not.

4 Q. Even though he was living with her?

5 A. Yes, sir.

6 Q. And that was for some time, wasn't it?

7 A. Until she could get him out of there.

8 She didn't want him in her home.

9 Q. But he passed away. That's how he got
10 out?

11 A. No, sir, he did not. He was -- he
12 moved to North Charleston and lived in a trailer.
13 He did not die in Alice's home.

14 Q. But he was there for a while --

15 A. Yes, he was there for a while.

16 Q. Did you visit during that time?

17 A. No, I did not. She was -- she was
18 scared that he was going to hurt her dogs. She
19 kind of, for a while, slacked off with the
20 friendship and stuff. Not very long. We talked on
21 the telephone, but she was scared to leave home.
22 Her life kind of quit for a while.

23 Q. Well, she -- he lived with her for over
24 a year, didn't he?

25 A. I'm not sure how long he lived with

1 her. I know that he lived with her.

2 Q. And during that time, you didn't visit?

3 A. No, sir. Not that I remember.

4 Q. Okay. And during that time, the
5 friendship kind of died off?

6 A. No. We talked on the telephone; we
7 would meet for lunch; we would go places. It
8 didn't die off.

9 Q. Right. Now, you said that you spent
10 some holidays with Alice Shaw Baker and that she
11 came to your home?

12 A. Yes, she did.

13 Q. How many times in, let's just say, from
14 2005 up through the time of her death in 2009,
15 during those years how many of those holidays did
16 she spend with you?

17 A. I'm not sure, but she had diabetes and
18 she was very concerned about her diet and
19 everything. And she quit coming to our house.

20 Q. Do you remember when she quit coming?

21 A. Maybe 2006 or '7. 2006 or so.

22 Q. And do you remember when her last dog
23 died?

24 A. No, sir, I don't remember the date it
25 died.

1 Q. Okay. Now, you're friends as well with
2 Mrs. Passailaigue Slade, correct?

3 A. Yes, sir, I am.

4 Q. And she was more of a dog person than
5 you?

6 A. Very much so.

7 Q. Did you ever accompany Ms. Alice Shaw
8 Baker to her appointments at the vet, the
9 veterinarian?

10 A. I took her to the vet several times.

11 Q. Okay. Do you remember which vet it
12 was?

13 A. I know that I went to the vet,
14 Dr. Horace. I don't know his last name, across the
15 Ashley a couple of times.

16 THE COURT: Is that something that
17 you're going to offer in evidence?

18 MR. COOPER: Well, not at this time. I
19 will ask her about it first.

20 THE COURT: If he offers them in
21 evidence, do you have any objection?

22 MR. WILLS: In that form, we do, Your
23 Honor.

24 THE COURT: Members of the jury panel,
25 you need to go to the jury room.

1 (Jury out, 10:36 a.m.)

2 THE COURT: What is it, Mr. Cooper?

3 MR. COOPER: Well, these are account
4 history for Alice Shaw Baker that shows records at
5 the Charlestown Vet Clinic from 2000 to 2007.

6 We're just going to ask her -- first, ask her if
7 this is the vet she took her to.

8 THE COURT: What comes next?

9 MR. COOPER: Well, if this is the vet
10 she took her to, maybe she would remember --

11 THE COURT: What is the relevancy of
12 any of that?

13 MR. COOPER: We're trying to establish,
14 Your Honor, how good of a friend she was --

15 THE COURT: I appreciate that, but I've
16 sustained the objection to relevancy. Give it to
17 the court reporter.

18 MR. COOPER: Can I just ask her about
19 if this is the right vet?

20 THE COURT: Sure. Go ahead.

21 BY MR. COOPER:

22 Q. I show you what has been marked as
23 Plaintiff's Exhibit 23. Ask you if that appears to
24 be the same vet clinic you took her to?

25 A. No, sir, I did not take her to this. I

1 took her to the emergency clinic on Montague Avenue
2 several times during the middle of the night.

3 Q. And you have never taken her to
4 Charlestown Veterinary Clinic?

5 A. No, sir, I have not.

6 THE COURT: Give it to the court
7 reporter. I sustained the objection on the grounds
8 of relevancy.

9 Bring the jury in.

10 Do you have some more documents? What
11 are these?

12 MR. COOPER: This is the durable
13 healthcare power of attorney.

14 THE COURT: All right. So we have the
15 durable power of attorney, and you want to
16 introduce that into evidence. What is the purpose
17 of introducing that into evidence?

18 MR. COOPER: Well, to show that -- that
19 --

20 MS. FISHER: Your Honor, while
21 Mr. Cooper is looking that up, the power of
22 attorney are relevant because Bessie Huckabee
23 failed to keep her word to Alice and help her
24 during the times of need as she had promised and
25 which was part of the estate plan. The purpose --

1 the reason that Alice Shaw Baker left Bessie
2 Huckabee in charge of these things was to prevent
3 the very thing that happened, including reference
4 to Elizabeth Spencer.

5 So it is very relevant to understand
6 why and how Alice would have determined that her
7 conduct was a betrayal and improper and why she
8 would revoke. So it goes to that issue.

9 THE COURT: I appreciate the position.
10 I sustain the objection. Anything else?

11 MS. FISHER: Your Honor, the power of
12 attorney establishes the fiduciary. And to
13 preclude that information from the Court is to take
14 away the sum and substance of her responsibilities
15 and duties to Alice. You're making it impossible
16 to take any action to demonstrate that this woman,
17 who made a promise to be the agent under a power of
18 attorney and failed to fulfill those requirements,
19 now somehow is okay for her to be executor, and
20 that's not a common duty.

21 Alice Shaw Baker had an estate plan,
22 and if you're going to allow that estate plan in,
23 which you have, then you have to allow us to attack
24 and impeach the reasons she was given that role.

25 THE COURT: I appreciate your position.

1 I sustain the objection.

2 Anything else before we bring the jury
3 in that you're going to want to introduce?

4 MR. COOPER: Yes, Your Honor.

5 THE COURT: Take this back.

6 THE COURT REPORTER: Do you want this
7 marked?

8 THE COURT: Make that a nonjury
9 exhibit.

10 What else?

11 MR. COOPER: Well, we have the general
12 durable power of attorney, Your Honor.

13 THE COURT REPORTER: Did you want this
14 marked?

15 MR. COOPER: Yes.

16 THE COURT: There's a healthcare power
17 of attorney and then the general durable power of
18 attorney.

19 MR. COOPER: Correct.

20 THE COURT: Give it to the court
21 reporter. I sustain the objection on that.

22 MS. FISHER: Your Honor --

23 THE COURT REPORTER: Hold on.

24 (PLF EXH. 25, Copy of General Power of
25 Attorney, was marked for identification.)

1 THE COURT: Give that back to the court
2 reporter. I sustain the objection.

3 MS. FISHER: Your Honor, I repeat my
4 request that the power of attorney be allowed in.
5 It gives foundation and background to why -- and
6 Mrs. Huckabee's authority in this case.

7 THE COURT: I appreciate that.
8 Anything else?

9 MR. COOPER: Not with regard to these
10 documents.

11 THE COURT: Any other documents you
12 want to put in through this witness?

13 MS. FISHER: One last question, Your
14 Honor, with regard to --

15 THE COURT: Are you asking the question
16 to her or to me?

17 MS. FISHER: I'm sorry, to you. Not a
18 question, one last point to reference. Will we be
19 allowed to inquire into the power of attorney
20 rather than introduce the documents?

21 THE COURT: If an objection comes, I'll
22 rule on the objection, but I don't see how any
23 questions about this are relevant myself, but, you
24 know, if they don't object maybe.

25 MS. FISHER: Well --

1 THE COURT: You're losing all
2 credibility, you and Mr. Cooper, both, as far as
3 I'm concerned.

4 Bring the jury in.

5 MR. COOPER: Your Honor, you asked if
6 there were other documents.

7 THE COURT: You have some more? Okay.

8 MS. FISHER: I'm not sure the Court can
9 make a determination that we're losing credibility
10 when you're not allowing us to introduce documents.

11 THE COURT: I have seen what the
12 documents are, and for you to make the argument
13 that those are somehow relevant and should be
14 considered by the jury in regard to the issues that
15 the jury has to decide lacks any credibility as far
16 as I'm concerned.

17 MS. FISHER: Well, why would --

18 THE COURT: You asked me why --

19 MS. FISHER: -- and I --

20 THE COURT: -- it lacks credibility,
21 and I'm telling you why.

22 MS. FISHER: I appreciate that, but a
23 revocation has to have some reason, or it's just
24 somebody tearing up a will, Your Honor. There has
25 to be a reason that a person revokes a will. And

1 you're limiting and preventing us from establishing
2 to the jury that there was a reason. If you're --
3 you're indicating that that creates a problem of
4 credibility for us. You know, that's a -- that's a
5 -- a pretty prejudicial statement.

6 THE COURT: I'm not making that
7 statement in front of the jury.

8 MS. FISHER: You're not, but you're
9 showing, at least to us, that there's nothing that
10 we can do to establish the intent of Alice Shaw
11 Baker.

12 THE COURT: Well, to stretch it and to
13 think that somehow or another those documents would
14 play into her possibly revoking her will is
15 straining credibility --

16 MS. FISHER: Well, Your Honor --

17 THE COURT: -- and it's to the extreme.

18 MS. FISHER: If I ask somebody to be my
19 power of attorney, to prevent the very thing that
20 happened from happening, to ensure that I will be
21 safe and have people who I love or have decent
22 friends who are going to do the right thing, if
23 they deny those powers, if they reject me and leave
24 me to the wolves, why wouldn't I revoke?

25 If this Court has a clerk and that

1 clerk doesn't do her job, does that -- doesn't that
2 have relevance in why you might fire the clerk.

3 THE COURT: I appreciate your position.

4 MS. FISHER: Okay.

5 THE COURT: Do you have any more
6 documents you want to present?

7 MR. COOPER: Yes, Your Honor. I have
8 three.

9 THE COURT: What are they?

10 MR. COOPER: One is a Final Wish
11 Planner, Physician's Life Insurance Company. It
12 was filled out apparently by Alice Shaw Baker in
13 her handwriting.

14 THE COURT: All right. I've looked
15 over this. What is the relevance of any of this?

16 MR. COOPER: I want to know if she's
17 ever -- if she's ever seen that, whether or not
18 Alice Shaw Baker shared that information with her
19 if they were such good friends. It does say in
20 there where the will is kept and various other
21 documents, including the power of attorney and
22 healthcare power of attorney, I believe.

23 It just -- it's a -- it's a document
24 that might have been shown to a friend. And she's
25 claiming that she's such a good friend that she

1 should inherit from her, I think it's relevant.

2 THE COURT: All right.

3 MR. WILLS: There's nothing --

4 THE COURT: You object on the grounds
5 of?

6 MR. WILLS: I object. There's no date
7 on it.

8 THE COURT: I sustain the objection to
9 this. This is Plaintiff's Exhibit 26.

10 What's next?

11 MR. COOPER: 27, your order granting
12 modification of the temporary restraining order.

13 MR. WILLS: We have no objection to
14 your order, but this was done after she had died.
15 We don't see the relevance.

16 MR. COOPER: The relevance, Your
17 Honor --

18 THE COURT: Let me look at it and see
19 what it is. If this is the one I think, it was
20 basically consented to; at least, that's the way it
21 was presented to me.

22 All right. What's the purpose of
23 offering this?

24 MR. COOPER: First of all, just for the
25 record, it was not consented to. The purpose of

1 offering it is that you order --

2 THE COURT: I'm not sure, you know. If
3 there was a court record in regard to it these
4 lawyers were present in -- the consent may have
5 been on the record. So I don't know that it was
6 not consented to. It doesn't say it on the face of
7 the order, that it lists the lawyers that are there
8 and -- as I say, I stand by what the record would
9 show from the court reporter.

10 MR. COOPER: Correct, Your Honor. I
11 just wanted to note for the record it was not
12 consented to. The last paragraph of that, I
13 believe, orders Bessie Huckabee as the personal
14 representative to obtain a bond one and a half
15 times, and I just want to ask her whether or not
16 she ever got that bond.

17 THE COURT: What difference does that
18 make as far as this case is concerned?

19 MR. COOPER: Because it goes to her
20 credibility. If she's ordered to get a bond in
21 hundreds of thousands of dollars --

22 THE COURT: Do you know the answer to
23 that? Do you remember anything about that?

24 THE WITNESS: Mr. Kouten, who I was
25 talking to as my lawyer at that time, we tried

1 several places to get a bond. Why I was denied a
2 bond, I do not know.

3 THE COURT: Okay. What's the relevance
4 of that?

5 MS. FISHER: Your Honor.

6 THE COURT: Who is going to speak? One
7 lawyer speak.

8 MR. COOPER: Your Honor, the relevance
9 is she's been court ordered by Your Honor to get a
10 bond; she didn't get the bond; it's been eight
11 years; she hasn't notified the Court of the
12 problem, and I think that reflects on her
13 credibility and her -- I certainly think it's
14 proper for impeachment.

15 THE COURT: I sustain the objection.

16 MS. FISHER: Your Honor, I re --

17 THE COURT: One lawyer.

18 MS. FISHER: Yes, Your Honor.

19 THE COURT: Keep talking. Are you
20 talking about something else?

21 MS. FISHER: Yes, about that.

22 THE COURT: No, not that. What else?

23 MS. FISHER: Your Honor, it goes to
24 standing. She doesn't have standing as personal
25 representative. They have represented to this

1 Court that she is personal representative. Without
2 a bond, she is not personal representative. We
3 have a right to have that on the record.

4 We have a right to have an instruction
5 to the jury on that. We have a right to tell the
6 Court she could not get a bond, did not get a bond
7 and obey the Court's order.

8 THE COURT: I appreciate your position.
9 I deny your motion to do anything about that to let
10 that in.

11 Anything else?

12 MR. COOPER: Yes, Your Honor; affidavit
13 of Donald J. Budman, which was already filed with
14 the Court.

15 THE COURT: You want to put the
16 affidavit in?

17 MR. COOPER: Well, I want to examine
18 her about it. It doesn't have to --

19 THE COURT: What do you want to examine
20 her about this affidavit from this other person,
21 Donald Budman.

22 MR. COOPER: Well, Don Budman is an
23 attorney in good standing in the Charleston County
24 Bar, and he says that the will that is in evidence
25 here is two pages long, and the one that we have in

1 here is three pages. And this is an affidavit
2 submitted by counsel for defense.

3 And I want to ask Bessie Huckabee if
4 she had any part in knowing about that affidavit
5 and why she testified that the will was three pages
6 when the attorney says it's two pages.

7 THE COURT: And that's the purpose of
8 this affidavit is to ask her about that?

9 MR. COOPER: Yes, Your Honor.

10 THE COURT: I sustain the objection.
11 Give it to the court reporter.

12 MR. COOPER: May I examine her about
13 it, give it to her and show it to her?

14 THE COURT: I assume everything that
15 you said is true. Do you have any objection?

16 MR. WILLS: She has no personal
17 knowledge whatsoever of what Donald Budman put in
18 his --

19 THE COURT: I agree. If he says it was
20 two, and it turned out to be three, do you have any
21 argument with that?

22 THE WITNESS: No, sir.

23 THE COURT: Anything else?

24 MR. WILLS: There is nothing in the
25 affidavit that says that the will is two pages

1 anyway.

2 THE COURT: Give it to the court
3 reporter.

4 MR. COOPER: Well, Your Honor, I have a
5 question.

6 THE COURT: All right.

7 BY MR. COOPER:

8 Q. The judge asked you if it was two and
9 you said it was three, could that be true. My
10 question to you is, if it were two -- if it were
11 three and you say -- and that says it's two, do you
12 know which it was? Do you know if it was two or
13 three?

14 A. It was three. I do not even know who
15 this person is.

16 Q. Okay. So you're saying it's three.
17 Have you ever seen that affidavit before?

18 A. No, sir.

19 Q. Okay. And you're sure that the will
20 was three pages long?

21 A. Yes, sir.

22 Q. Okay. Did your -- and how do you know
23 the will was three pages long?

24 A. I had copies of the wills.

25 Q. Oh, you had copies?

1 A. Yes, I did. Every time she redone it,
2 she asked for the envelope back that she give me
3 and gave me a new envelope.

4 Q. What was the last time she gave you an
5 envelope with the will in it?

6 A. January of 2009.

7 Q. In January of 2009?

8 A. Somewhere in there, yeah.

9 THE COURT: Okay. Remember to ask her
10 about that when the jury is out here. Give that
11 document to the court reporter. I sustain that
12 objection to the document. Remember to ask her
13 about that.

14 Bring the jury in.

15 (Jury in, 10:48 a.m.)

16 THE COURT: Thank you. All right. Do
17 you have any other questions for this witness?

18 MR. COOPER: Yes, Your Honor.

19 BY MR. COOPER:

20 Q. Now, Mrs. Huckabee, did you have
21 anything to do with taking Alice Shaw Baker to the
22 attorneys when she was going to change her will?

23 A. No, sir.

24 Q. Okay. And do you know when -- strike
25 that.

1 You have seen the -- both the general
2 durable power of attorney?

3 A. Yes, sir, I have.

4 Q. And the healthcare power of attorney?

5 A. Yes, sir, I have.

6 MR. WILLS: Objection; relevance.

7 THE COURT: Let's see what the next
8 question is.

9 BY MR. COOPER:

10 Q. Both of those were executed at the time
11 of her 2009 -- 2001 will; is that correct?

12 A. I believe so. I'm not sure.

13 Q. They both name you as power of attorney
14 for Alice Shaw Baker?

15 A. Yes, they did.

16 Q. And she imposed a lot of trust in you,
17 didn't she?

18 A. Yes, sir.

19 Q. And she had a lot of confidence that
20 you would do what she wanted?

21 A. I would do it to the best of my
22 ability, yes, sir.

23 Q. What did you do to try to keep her in
24 home once you turned her in to the elder abuse
25 line?

1 MR. WILLIS: Objection; relevance and
2 mischaracterization of the --

3 THE COURT: I appreciate that. I will
4 allow the question.

5 Do you understand the question? Do you
6 want to answer it?

7 THE WITNESS: Repeat that, please.

8 BY MR. COOPER:

9 Q. Yeah. You've testified that Alice Shaw
10 Baker wanted to stay in her home, and then you and
11 Mrs. Slade together made the decision that
12 Mrs. Slade would call the elder abuse people and
13 get her put into a conservatorship. What did you
14 do after that to ensure that she was able to stay
15 in her home?

16 A. The people from the elder care
17 contacted me and when we -- when you all come to
18 court with this, we were in the court. We never
19 were called to the stand, but we were here.

20 Q. And what did you do -- my question is,
21 what did you do to try to keep her in her home?
22 You know that the -- Jane Orenstein and the people
23 that were in charge at that time wanted to put her
24 in a nursing home.

25 A. I just wanted her to stay where she

1 wanted to stay, sir. I didn't do anything in her
2 house. I did go over and try to help her clean out
3 some papers one time, because she called me -- to
4 say that I had done anything? No, I didn't go out
5 and do anything physically.

6 Q. And when you cleaned out the papers,
7 was that sometime during the conservatorship --

8 A. No, sir. Before.

9 Q. Well, before that. What I'm talking
10 about is you and Mrs. Slade made the decision to
11 call in Elizabeth Spencer and the elder abuse
12 people in August of 2008. And my question is, did
13 you do anything to try to keep her in her home,
14 because the elder abuse people were trying to get
15 her in a nursing home during that time?

16 A. I felt like it had been taken out of my
17 hands once the elder people come in.

18 Q. Now, you were appointed as personal
19 representative in the probate court informally in
20 the estate of Alice Shaw Baker, correct?

21 A. Yes, sir, I was.

22 Q. And as personal representative, you
23 received the proceeds of the Wells Fargo account,
24 correct?

25 A. Yes, sir, I did.

1 Q. And how much money was that?

2 A. 16,500, or something like that.

3 Q. Okay. And where did you put that
4 money?

5 A. Mr. Kouten and I went to Wells Fargo
6 and opened an account in her estate for Alice Shaw
7 Baker. It's been there ever since then.

8 Q. Okay. And at the time that -- you're
9 aware that the Court ordered you to get a bond?

10 THE COURT: I sustained the objection
11 to that line of questioning, and I sustain it
12 again.

13 MR. COOPER: Yes, Your Honor.

14 BY MR. COOPER:

15 Q. Do you know where Alice Shaw Baker kept
16 the will, other than the copy that she gave to you?

17 A. From my understanding, it was in the
18 lock box at the bank.

19 Q. And what you had was a copy; is that
20 correct?

21 A. Yes, sir. Everything I had was copies.

22 Q. Okay. And so your understanding was
23 that it was in the lock box in the bank; is that
24 right?

25 A. Yes, sir.

1 Q. Okay. And did you ever have a key to
2 the lock box?

3 A. Yes, sir. It was on a string of keys,
4 but I never used them.

5 Q. But you did have a key to the lock box?

6 A. Yes, sir, it was among them. I can't
7 tell you which one it is.

8 Q. Do you know whether Alice Shaw Baker
9 had a key?

10 A. I would assume she did.

11 Q. We can assume, but I'm asking you --

12 A. I don't know --

13 Q. Okay.

14 A. -- what she had.

15 Q. Thank you. Now, when was the first
16 time that you called Mr. Kouten to ask him to
17 represent you?

18 A. It was a day or so after her death,
19 26th or 27th of February.

20 Q. You had discussions with Mr. Kouten
21 before she passed away, correct?

22 A. No, sir, not concerning that. I had
23 met Mr. Kouten at the hospital when he was visiting
24 that day.

25 Q. Okay. And so you were talking to him

1 at the hospital while Alice Shaw Baker was a
2 patient at the hospital?

3 A. Not about him representing me, no, sir.
4 It was just a friendly conversation.

5 Q. Okay. All right. And do you remember
6 anything that you said to Alice Shaw Baker on the
7 day that she passed away?

8 A. I don't remember what I said. I do
9 know that Kay and I were talking. I do know we --
10 I don't know whether Kay or, I either one, said go
11 on, go home and go be with your mother and your
12 relatives, your loved ones. And I'm sure that Kay
13 said, go be with your dogs. Dogs was not the first
14 item on my list.

15 Q. You didn't tell her in a derogatory
16 manner to go to your dogs?

17 A. No, sir, I did not.

18 Q. Okay. Now what about the keys to the
19 house? How long was it after Alice Shaw Baker
20 passed that you went and demanded the keys?

21 A. I didn't demand the keys.

22 Q. Oh, you didn't?

23 A. Candy wanted to go get her stuff and
24 get rid of the keys. I told them that I had been
25 at the hospital all day and I could not go to

1 Alice's house. I had no plans to go to Alice's
2 house. I went home.

3 The keys were given to Denise Ferguson
4 and Katherine Magwood, two of her other workers.

5 Q. Okay. So you're denying that you
6 demanded the keys from Candace?

7 A. Yes, sir, I am. Very much so.

8 Q. Wasn't there a time at the hospital
9 when Alice was there as a patient that a nurse
10 asked you and Kay to leave?

11 A. No nurse asked us to leave. I don't
12 remember a nurse asking us to leave. Ms. Fisher
13 asked me to leave the room that afternoon.

14 Q. But days before that a nurse didn't ask
15 you to leave the room?

16 A. The first we heard about Alice being in
17 the hospital, one of the coworkers told us she was
18 in the hospital, and we went down there and she was
19 in the cancer unit. The nurses would not let us go
20 in there because she had been pitching a fit, and
21 they were just getting her settled down, and we
22 could not visit her that morning very early. I
23 left and went home. Kay left and went to work.

24 Q. Do you remember a time while Alice was
25 in the hospital, not the day she passed away, but

1 before then when Candace Rickborn, you, and
2 Mrs. Slade were all in the room, and the nurses had
3 to ask you to leave?

4 A. No, sir, that did not happen.

5 Q. In terms of the keys to the house, why
6 didn't you ask Lisa Fisher for the keys since she
7 was the --

8 A. I had had no correspondence with Lisa
9 Fisher.

10 Q. You don't get along with her, do you?

11 A. I don't know her. How can I get along
12 with her? I don't know her.

13 Q. You knew that she was the conservator
14 for Alice?

15 A. Oh, yes, sir.

16 Q. And you knew that while Alice was alive
17 that she was in charge of the keys to the house and
18 everything?

19 A. Yes, sir.

20 Q. Okay. And why didn't you ask her for
21 the keys to the house?

22 A. Because she had the right to have -- I
23 figured she had the right to have the keys to the
24 house. She was the conservator.

25 Q. Okay. And but it's true, though,

1 shortly after Alice passed you demanded keys from
2 Candace Rickborn?

3 A. No, sir.

4 MR. WILLS: Asked and answered.

5 BY MR. COOPER:

6 Q. On the same day that Alice passed away,
7 you did call Peter Kouten and make an appointment?

8 A. I did not.

9 Q. You're sure of that?

10 A. I'm almost positive of it.

11 Q. So how long after Alice passed --

12 A. It was a couple of days, 26th, 27th.
13 Maybe 27 or the 28th of February before I could.

14 Q. Okay. Ultimately, you retained
15 Mr. Kouten to be your attorney in this matter?

16 A. Yes, sir, I did.

17 Q. And you and he opened a joint account
18 or estate account for the Wells Fargo money?

19 A. It's in my name, and, yes, we did. He
20 was there at the bank --

21 THE COURT: When you say it's in your
22 name. The estate account, right?

23 THE WITNESS: Yes. It was an estate
24 account of Alice Shaw Baker.

25 BY MR. COOPER:

1 Q. And do you remember when you were made
2 personal representative?

3 A. Not really. I don't know the exact
4 date.

5 Q. Okay. It's true that you haven't
6 fulfilled all the conditions to be personal
7 representative?

8 THE COURT: I've sustained the
9 objection to that question twice already.
10 BY MR. COOPER:

11 Q. Did Alice ever talk to you about her
12 planning for the time of her death?

13 A. She had made -- she told me she had
14 made arrangements for her funeral. Later on, she
15 told me she wanted to be cremated, but as far as
16 saying this is -- no.

17 Q. She didn't share further details with
18 you?

19 A. No. Alice shared with me what she
20 wanted me to know.

21 Q. How far did you live back at the time
22 of Alice's conservatorship up to the time of her
23 passing, how far was it from your residence to her
24 residence?

25 A. I live out near the airbase off of

1 Dorchester Road. Alice lived on Cassina Street
2 over in West Ashley. I don't know how far that is.

3 THE COURT: On a normal day driving,
4 how long would it take you to get there?

5 THE WITNESS: Maybe 20, 25 minutes.

6 BY MR. COOPER:

7 Q. Okay. Did you ever know either of
8 Alice Shaw Baker's husbands?

9 A. I didn't know -- I didn't know that
10 Alice was married until the second husband until
11 Jane Orenstein told us the day when we were here in
12 court for the conservator. I didn't know her first
13 husband, no, sir.

14 Q. You didn't know her second husband --

15 A. I don't know who he was.

16 Q. Right. So during, let's just say, from
17 about 2005 to 2009, the last four years or so of
18 her life, three or four years, how many times do
19 you think you visited Alice Shaw Baker at or in the
20 yard of her residence?

21 A. Tried to see Alice her month or so,
22 talked to her two or three times a week, but I
23 don't know, sir. We had -- we talked, we visited
24 her. Kay and I went together over there.

25 Q. Did you ever have any discussion with

1 her neighbor, John David Smoak?

2 A. I don't know who John David Smoak is.

3 Q. All right. Did you have any
4 discussions with Alice Shaw Baker about the
5 beneficiaries on her life insurance and her
6 retirement plans and so forth?

7 MR. WILLS: Objection; relevance.

8 THE COURT: Do you want to be heard?

9 MR. COOPER: Yes, Your Honor.

10 THE COURT: Members of the jury panel,
11 go to the jury room, please.

12 (Jury out, 11:54 a.m.)

13 THE COURT: I believe the question was,
14 did you ever have any discussion with her regarding
15 life insurance beneficiaries, retirement
16 beneficiaries, retirement account beneficiaries; is
17 that what you're asking?

18 MR. COOPER: Yes, Your Honor, just
19 whether she had any.

20 THE COURT: Why is that relevant?

21 MR. COOPER: She is claiming --

22 THE COURT: What's the answer, first of
23 all?

24 THE WITNESS: No, sir. She never
25 discussed her insurance and retirement stuff with

1 me.

2 THE COURT: Do you object to that?

3 MR. WILLS: I don't object to that. I
4 think we're getting into a line of questioning that
5 has to do with nonprobate assets.

6 THE COURT: I agree with that.

7 MS. FISHER: Well, Your Honor, they're
8 not necessarily nonprobate assets. That's why the
9 inquiry is relevant. The documents which are
10 business records include reference that those are
11 -- those -- those items are to be handled --

12 THE COURT: Do you want the answer from
13 her that she did not discuss those with her? Is
14 that right? You want that answer in?

15 MR. COOPER: Yes, Your Honor.

16 THE COURT: Bring the jury in.

17 MS. FISHER: For the record, I object
18 that the Court wouldn't let me finish my argument.

19 THE COURT: I'm letting it in. Isn't
20 that what you want?

21 MS. FISHER: Well, that's not all I
22 want, but, you know --

23 THE COURT: Sit down.

24 MS. FISHER: Thank you.

25 (Jury in, 11:13 p.m.)

1 THE COURT: All right. I believe the
2 question you -- he asked you, did you have any
3 discussion with the lady, Alice Shaw Baker, about
4 her life insurance beneficiary or retirement
5 account beneficiary. What's the answer to that?

6 THE WITNESS: No, sir, she did not
7 discuss those with me.

8 BY MR. COOPER:

9 Q. Okay. Do you know whether she
10 discussed those with Mrs. Passailaigue Slade?

11 A. I have no idea.

12 Q. Okay. Well, that's what I wanted to
13 know about that.

14 You say you don't remember when Alice's
15 dogs died?

16 A. I don't remember the dates they died.

17 Q. Do you remember the years?

18 A. No, sir.

19 Q. Okay. Do you remember when the last
20 one died?

21 A. No, sir, I do not.

22 Q. Would you say that -- well, you have
23 testified, haven't you, that your visits over to
24 her home was -- were in the yard, but not in the
25 house while the dogs were alive; is that right?

1 A. Yes, sir, it got to that point.

2 Q. And there was a time as well when her
3 brother, John, was living with her in her house,
4 correct?

5 A. Yes, sir.

6 Q. Okay. And that was when the dogs were
7 still alive, right?

8 A. Yes, sir.

9 Q. Okay. And at that time your
10 relationship with Alice Shaw Baker sort of
11 diminished?

12 A. I wouldn't say it diminished. I did
13 not go in her house. I did not -- I would meet her
14 for lunch every once in a while. But, no. No, I
15 did not know her brother. I did not go into her
16 house.

17 Q. And you didn't actually ever meet her
18 brother?

19 A. No, I did not.

20 Q. Okay. Now when Alice's dogs died, do
21 you know whether or not you said -- I believe you
22 testified earlier that you purchased a casket?

23 A. Yes, sir, I did.

24 Q. Okay. And who dug the hole?

25 A. Kay and I tried to dig one; we didn't

1 have much luck at it. Sandra Byrd's husband come
2 and dug the holes for her most of the time.

3 Q. There was a time when her brother,
4 John, was living with her when he dug one of the
5 holes; is that not true?

6 A. I don't know that. I have no idea.

7 Q. How many -- how many of the dogs were
8 you there when they died?

9 A. I was never at her house when a dog
10 died, the time the dog died. I found out about it
11 later when she called me crying and everything.

12 Q. Okay. And how many times were you
13 there when they were digging the graves in the
14 backyard?

15 A. I was there a couple of times, and
16 there was a time I was not there.

17 Q. And the time you weren't there was when
18 the last dog passed away, correct?

19 A. Sure, uh-huh.

20 Q. And that was about 2006, 2005,
21 somewhere in there?

22 A. Somewhere in there. I would think in
23 there, yeah.

24 Q. Okay. And since that time, from 2006
25 to the time that she was put into the

1 conservatorship in 2008, how many times do you
2 think you visited Alice at her home?

3 A. I don't know the exact number. I know
4 that I went maybe once a month, every six weeks,
5 talked to her on the telephone, but I did not go to
6 the home. In the wintertime, it's kind of chilly
7 to stand out in the cold and talk.

8 Q. She wouldn't let you in her house?

9 A. No, sir, she would not.

10 Q. Even after the dogs passed away?

11 A. No, sir, she would not.

12 Q. Why was that?

13 A. I have no idea. I don't know her
14 reasoning.

15 Q. It's true that Alice wanted to stay in
16 her house?

17 A. Yes, sir.

18 Q. And it's true that she imposed a lot of
19 trust in you to help her stay in her house?

20 A. She asked me to come and help her go
21 through some papers. That did not progress very
22 well. It was newspapers, magazines, old envelopes,
23 notepads. That did not go very well.

24 Q. That was sometime before the
25 conservatorship?

1 A. Yes, sir.

2 Q. Okay. But she -- when she gave you the
3 general durable power of attorney and healthcare
4 power of attorney, she was relying on you to help
5 her try to stay in her home, correct?

6 MR. WILLS: Objection.

7 THE COURT: I will sustain that
8 question. Ask another question.

9 BY MR. COOPER:

10 Q. Did Alice ever discuss with you that
11 she wanted you to be executor or personal
12 representative under her will?

13 A. She asked me to be and I told her I
14 would be -- do the best that I possibly could.

15 Q. And when did she discuss that with you?

16 A. I don't know a date, Mr. Cooper.

17 Q. Do you remember a year?

18 A. No, because it was -- I have known
19 Alice for, what? 40 years or so. I don't know
20 exactly the date or years. It's been a long time.

21 THE COURT: Was this one time she
22 discussed it with you or more? Or what?

23 THE WITNESS: She -- she talked about
24 it several times. Not to worry, I have taken care
25 of everything, it can go -- you do not have to

1 involve a lawyer, it can be over and done with,
2 I've got everything in line. And that was the
3 extent of it. She told me that several times.

4 BY MR. COOPER:

5 Q. And you don't remember when --

6 A. No, sir, I do not.

7 Q. Okay. Now, the will does provide that
8 you are to receive money under the will, correct?

9 A. Yes, sir.

10 Q. Did you make any promises to her in
11 exchange for those bequests under the will?

12 A. No, I did not make any promises to her.

13 Q. You didn't tell her that you would try
14 to be sure she stayed in her home during her
15 lifetime?

16 A. I wanted her to stay in her home as
17 long as she possibly could.

18 Q. And you told her that?

19 A. Yes, I did.

20 Q. And you also told her that you would
21 try to make sure that her dogs would be taken care
22 of, if they were still alive?

23 A. No, sir. That's Ms. Passailaigue's
24 department.

25 Q. Okay. So you didn't have anything to

1 do with that. Were you aware that Ms. Shaw Baker
2 prepared a deed to her home and tried to deliver it
3 and give the property to the SPCA?

4 A. I heard about it. She did not discuss
5 that with me, but I heard that she had.

6 Q. And who did you hear it from?

7 A. It was in the course of conversation
8 when a bunch of us was together at one time. I
9 don't know if Kay was there or not. It was prior
10 to her sickness and death. And they did not want
11 it, because they would not take her real estate.

12 Q. They were concerned about -- she wanted
13 to retain a life estate?

14 A. Yes, sir.

15 Q. And live there in her home until her
16 passing?

17 A. That was between her and
18 Ms. Passailaigue, that kind of conversation and
19 things.

20 Q. Okay. You didn't hear about the deed
21 from Alice?

22 A. Not to my knowledge.

23 MR. WILLS: Objection; assumes evidence
24 not -- facts not in evidence.

25 THE COURT: Ask another question.

1 BY MR. COOPER:

2 Q. In your opinion, did Alice expect you
3 to do certain things for her since she left --
4 named you in her will?

5 A. No, sir, she did not expect. She may
6 have asked me to come and help her with this, or
7 she may have asked me to come take her to the vet,
8 or something like that, but, no, she never expected
9 me or come out and said to do this or that.

10 Q. Did Alice tell you what she wanted done
11 with the personal property?

12 A. No, sir.

13 Q. Nothing about her car?

14 A. No.

15 Q. Nothing about her money?

16 A. No, sir. She did not discuss it with
17 me.

18 Q. And nothing about the real estate?

19 A. No.

20 Q. Did you ever charge her for your
21 services? Anything that you did for her?

22 A. No, sir, I did not.

23 Q. Okay. And what did you say when she
24 told you that she was going to name you in her
25 will?

1 A. Just what I told her. I told her that
2 I would try to do the best I could. If that's what
3 she -- if that was her wish. And that's the only
4 promise I made to her.

5 Q. Did she tell you she wanted to give any
6 property to Ms. Passailaigue Slade in her will?

7 A. She didn't tell me that. Only what was
8 in the will, that Kay would get the remaining.

9 Q. She told you that?

10 A. It was in the will that Kay would get
11 whatever after --

12 Q. That's not my question. My question
13 is, did she ever tell you?

14 A. No. She didn't tell me.

15 Q. When she would give you a copy of the
16 will, you would look at it?

17 A. Sometimes I would glance at it. Most
18 of the times not. I knew that I would have to have
19 some help with it, but I did not -- she was young.
20 She wasn't anything -- I say young, at this day and
21 time. I didn't sit down and study her will from
22 the front to the back.

23 Q. No. But when she gave you the will in
24 2001 that has been identified and entered into
25 evidence here and you say is the will, you did look

1 at it?

2 A. Yes, sir, I did. I glanced at it. I
3 glanced at all of them, at a glance, but I didn't
4 study them and --

5 Q. Well, you knew you were going to
6 inherit?

7 A. Yes, sir, I did.

8 Q. You read that part?

9 A. And other parts, yes, I glanced at
10 them.

11 Q. Right. And you glanced at the part
12 that said Ms. Passailaigue Slade was going to
13 inherit?

14 A. Yeah.

15 Q. Okay. In looking at the will, you saw
16 that Mrs. Byrd also was -- there was a bequest to
17 Mrs. Byrd?

18 A. Yes, sir, there was.

19 Q. And did Alice have any discussions with
20 you about that bequest?

21 A. No.

22 Q. What can you tell us about Alice's
23 business ability?

24 A. Alice Shaw Baker was a very smart
25 woman. Alice Shaw Baker worked on Broad Street for

1 years. She worked for Henry Yassick, the Jewish
2 fellow that had an agency down there. And when
3 Alice come to the hospital, she was the accountant
4 there. She requested that I join her and be under
5 her. She was my boss.

6 Other than that, I can't tell you all
7 about her jobs that she had prior to then.

8 Q. Okay. But she was a very capable
9 person in business?

10 A. Yes, sir. Anybody that worked under
11 her learned something from her.

12 Q. Okay. And was there a time when Alice
13 Shaw Baker's mental faculties declined?

14 A. They began to, yes, sir.

15 Q. Okay. And when did you notice it?

16 A. In 2005 or 2006, she began to decline a
17 little bit. I didn't know exactly to what extent,
18 I'm not a medical person, but I noticed. My mother
19 died of Alzheimer's, and that's -- she had -- Alice
20 began to have some of those same routines, effects,
21 speech.

22 Q. Okay. And once this started, this
23 decline started, did she have any problems taking
24 care of herself?

25 A. Not at first, no, she didn't.

1 Q. But eventually she did?

2 A. Yes, sir, she did. Or she appeared to
3 have because she began to not take care of her
4 personal stuff, her personal self like she was;
5 very neat lady, very well-dressed, very particular.

6 Q. Okay. And at that time you held the
7 healthcare power of attorney, did you make any
8 suggestions to her or make any appointments for her
9 to be evaluated or anything like that?

10 A. No, sir, I did not. I asked Alice
11 plenty of times if I could go to the doctor with
12 her when this stuff got to the advance. She would
13 not. At that point in time, Alice was treating me
14 like I was her employee again.

15 Q. Okay. So you didn't make any effort to
16 get her to see anybody about this mental decline?

17 A. We were trying to get information who
18 to contact and who to ask. That's why Elizabeth
19 Spencer contacted. We didn't know exactly what we
20 could do. We were not legal people. We didn't
21 know.

22 Q. Well, you had the healthcare power of
23 attorney --

24 A. Yes, sir, I did.

25 Q. And you can read?

1 A. Yes, sir, I can. But it didn't say
2 that I could make her doctors appointments or
3 anything, to my knowledge.

4 Q. I believe that's what it says.

5 A. Well, she wouldn't let me. She would
6 let me go to the doctor with her. She wouldn't let
7 me do anything that I wanted to do, so...

8 Q. Did she ever ask for your help with
9 regard to that?

10 A. To the doctor?

11 Q. Yes.

12 A. No, sir. She didn't ask me. She said
13 -- you did one time after the conservatorship.

14 Q. All right. Did you ever specifically
15 talk to Alice about what was going to happen to her
16 house?

17 A. No, sir.

18 Q. She never discussed that with you?

19 A. No, sir. Like I said before, she told
20 me what she wanted me to know.

21 Q. Did Mrs. Passailaigue Slade ever tell
22 you what Alice's plans were for her house?

23 A. Not for a long time; I didn't know
24 about the house. I mean, it was later on in the
25 2000s that -- no, she did not.

1 Q. Eventually, you knew that she tried to
2 give it to the SPCA?

3 A. Yes.

4 MR. WILLS: Objection. She testified
5 that she didn't know anything about it, about what
6 the will contained, and what Alice's intent was
7 with regard to her house.

8 THE COURT: Any other questions?

9 MR. COOPER: Just one minute, Your
10 Honor. I think I have forgotten my question.

11 BY MR. COOPER:

12 Q. I asked you whether or not you found
13 out about her attempt to give the house -- her
14 house to the SPCA, and you told me --

15 MR. WILLS: Same objection, Your Honor.

16 THE COURT: What's your question?

17 MR. COOPER: I'm trying to get to it,
18 but I want to confirm what she's already testified
19 to --

20 THE COURT: Ask her a question.

21 BY MR. COOPER:

22 Q. All right. Did anyone else -- you say
23 that Alice Shaw Baker did not tell you about her
24 intent for her house, but did anybody else tell you
25 what she intended to happen to her house?

1 A. No.

2 Q. Mrs. Slade didn't tell you?

3 A. No, not off the bat. I found out later
4 on that Alice did -- house was not specifically
5 mentioned. What was left to her estate went to Kay
6 Passailaigue Slade. That -- no.

7 Kay and I knew each other through work
8 and we were friends also, but Kay and I were not in
9 each other's lives on the outside.

10 Q. Well, it's true, though, isn't it, that
11 eventually you found out that Alice Shaw Baker
12 wanted her house to go to --

13 THE COURT: Tried to execute a will to
14 give it to the animal society; is that what you
15 want to ask?

16 MR. COOPER: I want -- I was asking if
17 she wanted her house that she tried to -- that she
18 executed a deed to the SPCA, whether she wanted
19 that to go to animal charities.

20 THE COURT: Did you know about a
21 deed --

22 THE WITNESS: No, sir.

23 THE COURT: -- where she tried to do
24 that?

25 THE WITNESS: No, sir, I did not.

1 BY MR. COOPER:

2 Q. Well, you testified that Mrs. Slade
3 told you about that?

4 A. She told me that the house was to come
5 to her -- it was later on. I did not know when the
6 deed went through or when she actually contacted
7 the people at the animal society.

8 Q. But Mrs. Passailaigue Slade was the
9 animal lover?

10 A. Yes, sir.

11 Q. Okay. And she knew that Alice Shaw
12 Baker wanted her house to go to animal charities?

13 A. I don't know.

14 MR. WILLS: Objection.

15 BY MR. COOPER:

16 Q. Well, if you don't know, that's the
17 answer.

18 Did anyone else ever tell you that?

19 A. No.

20 Q. Did Alice ever tell you what she wanted
21 to happen to her personal property? Not the real
22 estate, but the personal property?

23 A. There was a list that she had attached
24 to one of the wills, stuff that she wanted here to
25 go and perhaps who she wanted to be a pallbearer, a

1 plaque that she wanted put on her dog's plot, but
2 it was in her handwriting.

3 Q. Weren't plaques already on her dogs'
4 plots?

5 A. Yes, sir, there was, but she wanted a
6 memorial-type plaque made up.

7 Q. And put in the backyard on the dogs'
8 graves?

9 A. Yes, sir, that's where, I guess, she
10 was going to put it.

11 Q. Well, you say you've seen the writing.
12 What did it say?

13 A. I'm not sure. I don't remember it. It
14 was in the -- the -- it was a memorial to her dogs.
15 I don't know exactly what it said at this point.

16 Q. Right. And what else did that document
17 say?

18 A. It said how much money to pay the
19 priest, and -- or the two priests, I think. It
20 said how much money -- and I don't know the lady's
21 name -- I think it was a lady's name that was
22 playing the organ, had a price there. Like I said,
23 it had listed who she wanted to be her pallbearers.
24 And it had some things that went to me. All the
25 dog stuff, I think, went to Kay Passailaigue. I

1 don't remember word for word.

2 THE COURT: How long ago was it the
3 last time you saw that?

4 THE WITNESS: Until this past weekend,
5 it had been a long time.

6 BY MR. COOPER:

7 Q. Do you know what year it was when you
8 last saw it?

9 A. No, sir, I do not know what year.

10 Q. Would it have been during the time that
11 Alice Shaw Baker was in conservatorship?

12 A. No, sir, it was prior.

13 Q. Prior to that?

14 A. (Nodding head.)

15 MR. COOPER: (Indicating.)

16 THE COURT: Do you have an objection to
17 that?

18 MR. WILLS: I think that -- I think
19 that we've already ruled on that objection.

20 THE COURT: I don't know what it is.
21 Let me look at it.

22 I sustained the objection to this
23 earlier. Do you want to offer it again?

24 MR. COOPER: I just want to ask her if
25 she's seen it.

1 THE COURT: I sustained the objection
2 to that. It doesn't have any relevance to the
3 issue in this case. Give it back to the court
4 reporter.

5 MR. COOPER: Your Honor, could we have
6 a short break?

7 THE COURT: Finish your examination of
8 this witness.

9 BY MR. COOPER:

10 Q. Did you go to Alice's funeral?

11 A. Yes, I did.

12 Q. And where was it held?

13 A. At the Catholic cemetery off of --
14 across the Ashley at -- on Fort Johnson Road.

15 Q. Okay. Do you remember what her grave
16 stone looks like?

17 MR. WILLS: Objection; relevance.

18 THE COURT: What's the relevance of
19 that to the issue in this case?

20 MR. COOPER: Well, Mrs. Huckabee is a
21 self-claimed good friend of Alice Shaw Baker. I
22 want to know if she knows what's on the grave.

23 THE COURT: Have you been back to see
24 the --

25 THE WITNESS: I have not been back to

1 the cemetery, sir.

2 BY MR. COOPER:

3 Q. Mrs. Huckabee, it's true that -- it's
4 true, isn't it, that you knew when Alice Shaw Baker
5 got mad with the SPCA, and she didn't like the man,
6 and they said they couldn't have anything if they
7 didn't want to take the house? Do you remember
8 that?

9 MR. WILLS: That assumes facts not in
10 evidence. Objection.

11 THE COURT: Do you want to be heard in
12 regard to that question?

13 MR. COOPER: No, Your Honor. I'm
14 reading out --

15 THE COURT: Do you want to be heard in
16 regard to asking that question now? There's an
17 objection to the relevancy of it. Do you want to
18 be heard on it, or I'm going to sustain the
19 objection?

20 MR. COOPER: I have to be heard on it.

21 THE COURT: Members of the jury panel,
22 go to the jury room, please.

23 (Jury out, 11:34 a.m.)

24 THE COURT: What was your question
25 again?

1 MR. COOPER: Well, I'm asking her
2 about --

3 THE COURT: Ask the question again.

4 BY MR. COOPER:

5 Q. Well, it's true, isn't it, that in your
6 deposition, even though today you said you didn't
7 know anything about the deed to the SPCA and her
8 desire for her home to go to animal charities, and
9 yet in your deposition you testified that you did
10 know about those things?

11 A. I heard talk of it. I didn't get it
12 directly from Alice or -- I heard her talk about
13 it, but not to me she did not. If I did put in
14 there, I made a mistake with it.

15 Q. Okay.

16 THE COURT: You got the deposition? Do
17 you want to show it to her to see what she says?

18 MR. COOPER: I do.

19 THE COURT: Go ahead and open it. Go
20 ahead and open it.

21 MR. WILLS: Would it be permissible for
22 Ms. Passailaigue to use the facilities?

23 THE COURT: Sure.

24 THE COURT: This is a copy of your
25 deposition. Do you remember when you gave the

1 MR. COOPER: Well, I'm asking her
2 about --

3 THE COURT: Ask the question again.
4 BY MR. COOPER:

5 Q. Well, it's true, isn't it, that in your
6 deposition, even though today you said you didn't
7 know anything about the deed to the SPCA and her
8 desire for her home to go to animal charities, and
9 yet in your deposition you testified that you did
10 know about those things?

11 A. I heard talk of it. I didn't get it
12 directly from Alice or -- I heard her talk about
13 it, but not to me she did not. If I did put in
14 there, I made a mistake with it.

15 Q. Okay.

16 THE COURT: You got the deposition? Do
17 you want to show it to her to see what she says?

18 MR. COOPER: I do.

19 THE COURT: Go ahead and open it. Go
20 ahead and open it.

21 MR. WILLS: Would it be permissible for
22 Ms. Passailaigue to use the facilities?

23 THE COURT: Sure.

24 THE COURT: This is a copy of your
25 deposition. Do you remember when you gave the

1 deposition, Mrs. Huckabee?

2 THE WITNESS: I'm not exactly sure of
3 the date, sir.

4 THE COURT: You remember --

5 THE WITNESS: It's been a long time.

6 THE COURT: You remember when they took
7 the deposition with a court reporter?

8 THE WITNESS: Yes, sir.

9 THE COURT: He wants to ask you about a
10 question that they asked you and you answered it.
11 What page and line? What page and line do you want
12 her to look at?

13 BY MR. COOPER:

14 Q. Page 24, starting at line -- page 22,
15 beginning at line 14.

16 A. Wait just a minute, please, sir.

17 Q. I'm waiting for you.

18 A. Line what, sir?

19 Q. All right. It's, I believe, page 22,
20 beginning at line 14.

21 Question: Did you ever have any
22 discussions with Alice Shaw Baker about what was to
23 happen with her house after she died?

24 Answer -- your answer: Well, yes, I
25 guess she did. She said that because Kay was

1 getting the dogs, the house was going to Kay, and
2 that was the reason, because she wanted her dogs
3 taken care of. Her dogs were one of her main
4 concerns.

5 A. That's correct, sir. I agree with
6 this. I most probably did say that.

7 THE COURT: All right. We'll take a
8 short break now.

9 Give that back to him now. If he wants
10 to have you read that in front of the jury, he can.

11 (A recess transpired.)

12 THE COURT: Bring the jury in.

13 (Jury in, 11:48 a.m.)

14 THE COURT: All right. You may
15 continue to examine the witness.

16 MR. COOPER: Thank you, Your Honor.

17 BY MR. COOPER:

18 Q. Mrs. Huckabee, do you remember giving a
19 deposition in this case?

20 A. Yes, sir, I do.

21 Q. And you have the transcript there
22 before you?

23 A. Yes, sir.

24 Q. And that was October 16th of 2009?

25 A. Uh-huh.

1 Q. 10:00 a.m.?

2 A. Yes, sir.

3 Q. Okay. And that was -- the location was
4 Clark and Associates Court Reporters?

5 A. Yes, sir.

6 Q. All right. I'll ask you to turn with
7 me over to page 16 of your deposition.

8 A. Yes.

9 Q. And during this deposition, you were
10 sworn to tell the truth; were you not?

11 A. Yes, sir, I was.

12 Q. And you did to the best of your
13 ability?

14 A. Yes, I did.

15 Q. Okay. And I have several excerpts
16 here. One is starting on page 16, at line 3 --

17 THE COURT: You're supposed to use it
18 only for the purposes of impeachment of something
19 she said here today. Not read from the deposition
20 just whatever you want to read. Only if you've
21 asked her a question and you want to impeach her
22 today about her answer that you can do that. Now
23 what's the question you want to impeach her on?

24 MR. COOPER: Well, the answer that she
25 gave is that she at some period of time, I'm not

1 sure it was specified, she was not allowed to go
2 into Alice Shaw Baker's house but would meet in the
3 front yard or the backyard. Said she always met in
4 the driveway.

5 THE COURT: Okay. Read the question
6 and let her read her answer.

7 BY MR. COOPER:

8 Q. Okay. Question: Okay. Did she -- did
9 there come a time -- we had some testimony
10 yesterday back probably just prior to the year
11 2000, '99, or 2000, somewhere in there, did there
12 come a time when Alice Shaw Baker would not let you
13 come inside her house?

14 THE COURT: And he wants you to read
15 your answer from the deposition.

16 THE WITNESS: Her dog had seizures.
17 She did not go -- we did not go in her house. Now,
18 exactly when that happened, it's been several
19 years. We always met in the driveway.

20 BY MR. COOPER:

21 Q. Okay. And that was the truth?

22 A. Yes, sir.

23 Q. Okay. Now, let's go to page 22.

24 A. Yes, sir.

25 Q. Starting at line 14.

1 Question: Did you ever have any
2 discussions with Alice Shaw Baker about what was to
3 happen with her house after she died?

4 A. Well, yes, I guess she did. She said
5 that because Kay was getting the dogs, the house
6 was going to Kay, and that was the reason, because
7 she wanted her dogs taken care of. Her dogs were
8 her number one main concern.

9 Q. All right. And then on page 23 --

10 A. What page, sir?

11 Q. Page 23.

12 A. Uh-huh.

13 Q. And beginning at line 11.

14 The question was: And did Alice Shaw
15 Baker ever mention to you that she wanted any part
16 of her estate to go to the SPCA?

17 A. She talked about giving them some money
18 and stuff, but it was never -- I don't know when
19 this was, and it was a long time ago, nothing
20 recent. But that was her money, her dogs, her
21 house. I mean, you know, so what -- so that's the
22 only -- no deep discussion with me.

23 Q. Okay. And then on page 24 -- page 24,
24 beginning at line 14.

25 The question: Did -- she did over the

1 years mention giving some of her estate upon her
2 death to dog charities?

3 A. Until she got mad with the SPCA. She
4 didn't like the man and then she said they couldn't
5 have anything. If they didn't want her house, they
6 wasn't getting her money.

7 Q. All right. And on page 33, line 20.

8 A. Yes, sir.

9 Q. Question: Did Kay Passailaigue ever
10 tell you she promised Alice she would take care of
11 her dogs?

12 A. Not coming out and telling me -- she
13 talked about taking care of the dogs. The dogs
14 would be taken care of, but, no, it wasn't a
15 conversation that she and I carried on just to have
16 a conversation or anything, no.

17 THE COURT: Did she have any dogs alive
18 at the time she died?

19 THE WITNESS: No, sir.

20 BY MR. COOPER:

21 Q. And finally on page 86.

22 A. Yes, sir.

23 Q. All right. Beginning at line 20: Did
24 Alice ever tell you what she wanted done with her
25 -- all of her personal property?

1 A. Only what was written on the
2 handwritten stuff -- stuff. She was supposed to
3 have a list at her death was my understanding from
4 her, that she was going to have a list other than
5 what she gave me in her desk when anything
6 happened. Was it in her desk? I do not know.

7 Q. Thank you. After Alice passed you went
8 to her house?

9 A. No, sir, I did not.

10 Q. Never did?

11 A. No, sir, I did not.

12 Q. Okay. Did you, before her death, ever
13 go in her house and see where she kept this list?

14 A. No, sir.

15 Q. Previously, you testified that you told
16 Alice that you would do the best that you possibly
17 could under the terms of the powers of attorney; is
18 that right?

19 A. Yes, sir.

20 Q. Okay. And what did you mean by that,
21 do the best you possibly could? In what sense?

22 A. I would do what she wanted me to do the
23 best that I could.

24 Q. Okay. And you knew that she loved
25 dogs?

1 A. There was no other thing better than a
2 dog.

3 Q. Okay. And you knew that she wanted to
4 stay in her house until she passed away?

5 A. I knew she wanted to stay in her house.
6 Until she passed away never come to that. She
7 wanted to be in her home.

8 Q. Okay. And she still want to be in her
9 home when she was in conservatorship, correct?

10 A. Yes, she did.

11 Q. And you didn't do anything to help keep
12 her in her home?

13 A. We wanted her to stay in her home as
14 long as we possibly could.

15 Q. Did Alice ever tell you why you were to
16 serve as personal representative?

17 MR. WILLS: Objection.

18 THE COURT: I'll allow it. Did she
19 ever tell you why she wanted you to serve --

20 THE WITNESS: No, sir. She had no
21 family or relatives here. I was the closest thing
22 as far as friends was concerned, things she wanted
23 me to know, but, no, she did not.

24 BY MR. COOPER:

25 Q. Did Alice ever tell you directly or

1 indicate that the money that she left and the
2 property that she left when she died was supposed
3 to go to support animal charities?

4 A. No, sir, she did not. Not to me.

5 Q. Do you know whether or not she ever
6 told Mrs. Slade that?

7 A. I don't know. You'll have to ask
8 Mrs. Slade.

9 Q. Okay. Do you know why Mrs. Slade
10 received greater bequests under the will than you
11 did?

12 A. No, sir. Only account of the dogs that
13 I would think, but she never said why.

14 MR. COOPER: Okay. I think that's all
15 I have. Thank you.

16 THE WITNESS: You're welcome.

17 THE COURT: All right. Any
18 examination?

19 CROSS-EXAMINATION

20 BY MR. WILLS:

21 Q. In the beginning of Mr. Cooper's
22 questions, you indicated that --

23 MR. COOPER: Could I have a moment to
24 collect my papers so I can make some notes?

25 THE COURT: Sure.

1 BY MR. WILLS:

2 Q. You indicated that you had noticed some
3 changes in Alice. And let me frame this up a
4 little bit. In response to a question Mr. Cooper
5 had for you about calling elder services, I believe
6 is the characterization. Is that service that you
7 all called -- first of all, it's elder services.
8 It's not elder abuse, correct?

9 A. It's elder services. That's what she
10 does through the police department.

11 Q. In answering the question Mr. Cooper
12 had for you, you said that you and Kay called elder
13 services because you had noticed some changes in
14 Alice?

15 A. Uh-huh.

16 Q. You didn't call elder services with Kay
17 to be mean to Alice, did you?

18 A. I didn't call -- I didn't call, no,
19 sir, not with that. I wasn't being mean. I wanted
20 her to be safe.)

21 Q. Okay. What -- could you tell the jury
22 a little bit about what kind of changes did you
23 notice? Describe a little bit what was happening.

24 A. It was in her personal appearance. She
25 wore clothes day after day, sometimes they were

1 dirty. And her hair, she just let it go and not
2 take care of it. She was a very -- a person that
3 took care of herself, was always dressed and
4 everything. She just didn't look like the Alice
5 that we knew.

6 Q. How about, was she doing things that
7 were dangerous to herself?

8 A. I really don't know. Anything that I
9 know is people that around her -- one of her
10 neighbors that is deceased, Doris Theese, said that
11 she was --

12 MR. COOPER: Objection.

13 THE COURT: Hold on just a second. You
14 can't go into what somebody may told you.

15 THE WITNESS: I know.

16 THE COURT: You can tell us anything
17 that you saw or --

18 THE WITNESS: Just in her.

19 BY MR. WILLS:

20 Q. Let me ask you, did you call -- was one
21 of the things you called about was Alice wandering
22 around the streets at night?

23 A. Yes.

24 Q. Did that cause you concern?

25 A. I was scared of her running around by

1 herself. I was scared she might set fire to her
2 house. I was scared for her being in and out.

3 Q. You called elder service because you
4 didn't know else what to do; is that right?

5 A. That's right. Ms. Passailaigue called.

6 Q. And elder services are the ones that
7 eventually had Ms. Alice put before the
8 commitment --

9 A. Yes, sir.

10 Q. It wasn't you?

11 A. No, sir, I did not.

12 Q. You just called to have her helped out
13 some?

14 A. I wanted her safety.

15 MR. WILLIS: Thank you. That's all the
16 questions I have. Thank you.

17 THE COURT: Let me ask you a question.
18 I think there was at some point, somebody testified
19 yesterday, I believe, that Ms. Shaw Baker had made
20 six wills over a period of the last few years of
21 her life.

22 THE WITNESS: There was a lot of wills
23 made, Your Honor.

24 THE COURT: When she would make another
25 will, would she give a copy to you?

1 THE WITNESS: She would ask for the
2 copy back that we had in the safe, to bring that to
3 her, and she would give me the new one.

4 THE COURT: Okay. And she would give
5 you a new copy?

6 THE WITNESS: She would give me a new
7 envelope supposed with the new will in it.

8 THE COURT: And were you named in those
9 other wills also?

10 THE WITNESS: Yes, sir.

11 THE COURT: Thank you very much. You
12 can return to your place in the courtroom.

13 MR. COOPER: Your Honor, redirect?

14 THE COURT: Okay. He wants to ask you
15 another question now.

16 REDIRECT EXAMINATION

17 BY MR. COOPER:

18 Q. Mrs. Huckabee, you testified that you
19 did have a visit with Alice toward the end of her
20 life.

21 A. Yes.

22 Q. Not in the hospital, but --

23 A. Yeah.

24 Q. Okay. And at that time did she know
25 what was going on?

1 A. I don't think she fully knew what was
2 going on. No, I don't.

3 Q. So you would say she would have
4 diminished understanding?

5 A. She had some, yes.

6 Q. But you can't say that she didn't have
7 any capacity to understand?

8 A. I'm not in a position to say she had
9 it.

10 Q. But she knew who you were?

11 A. Yes, sir, she knew who I was and she
12 never forgot my telephone number.

13 Q. Now, when you went to see her this last
14 time before the hospital, and this is during the
15 conservatorship, she looked better than she had in
16 terms of her clothing and hair and dress?

17 A. Her house was better looking too.

18 Q. And at that time she knew that her
19 great niece, Lisa Fisher, was her attorney?

20 A. I don't know that for a fact. I don't
21 know if she knew or not.

22 Q. Okay. She certainly knew that Lisa was
23 helping her with her doctors' appointments?

24 A. I can't say yay or nay, because I don't
25 know.

1 Q. Well, you were there when -- you were
2 there -- I think you testified that Ms. Magwood was
3 giving her a white liquid so that she could go to
4 the doctors' appointment with Lisa Fisher?

5 A. She was trying to, yes, she was, sir,
6 but I don't know whether she comprehended what was
7 happening. I have no earthly idea. She looked a
8 lot better, and she was trying to give her a white
9 liquid to have a test run.

10 Q. Okay. And did she understand that Lisa
11 was coming to get her to take her to the doctor?

12 A. I don't know if she knew Lisa was
13 coming or not.

14 Q. You were there. Did you see anything
15 or hear anything --

16 A. She was sitting there playing in an
17 ashtray with cigarette butts. Alice was a
18 continuous smoker for years. She --

19 Q. Excuse me.

20 A. She said hi to us and a few
21 conversations, and Ms. Magwood was trying to get
22 her to do it. We tried to encourage her to drink
23 the liquid and it didn't work.

24 Q. You don't remember how long you stayed
25 on that occasion?

1 A. That day?

2 Q. Yeah.

3 A. We didn't know because Ms. Magwood was
4 trying to get her to swallow it, to drink the
5 stuff. Kay and I did not stay very long because we
6 knew -- she said Lisa Fisher was coming after her.
7 And I do not know when she was coming after her or
8 anything else. We did not stay very long. We
9 stayed and had a merry conversation with her for a
10 little bit. How much she took in, I do not know.

11 MR. COOPER: Thank you. No further
12 questions.

13 THE COURT: Thank you very much. You
14 may return to your place in the courtroom. Call
15 your next witness.

16 MR. COOPER: Your Honor, at this time
17 we would ask the Court's permission to read
18 excerpts from the deposition of the neighbor, John
19 David Smoak III Third.

20 THE COURT: Do you have any objection?

21 MR. WILLS: I have got observations.

22 THE COURT: Members of the jury panel,
23 you need to go to the jury room, please.

24 (Jury out, 12:08 p.m.)

25 THE COURT: What is it that you want to

1 requirements of Rule 32.

2 MR. COOPER: Which portion of Rule 32,
3 Your Honor?

4 THE COURT: I'm just going to say it
5 doesn't comply with Rule 32.

6 MR. COOPER: We would ask Your Honor to
7 give us --

8 THE COURT: That's all I'm going to
9 say. Anything else?

10 MR. COOPER: Well, for the record, we
11 do object to your exclusion of that testimony.

12 THE COURT: Okay. That's fine.

13 MR. COOPER: And, Your Honor, we would
14 ask that the original be a Court's exhibit.

15 THE COURT: Court's Exhibit 4.

16 (COURT EXH. 4, Transcript, was marked
17 for identification.)

18 THE COURT: All right. What's next?

19 MR. COOPER: Your Honor, we call Kay
20 Passailaigue Slade to the stand.

21 THE COURT: Bring the jury in.

22 MR. COOPER: Your Honor, the testimony
23 is going to be fairly lengthy.

24 THE COURT: We'll get started with it.

25 MR. COOPER: Thank you.

1 (Jury in, 12:20 p.m.)

2 THE COURT: Call your next witness.

3 MR. COOPER: Your Honor, the Plaintiff
4 calls Kay Passailaigue Slade to the stand.

5 KAY PASSAILAIGUE SLADE,
6 being first duly sworn, testified as follows:

7 THE CLERK: Please state your full name
8 for the record and spell your last.

9 THE WITNESS: Kay Elizabeth
10 Passailaigue Slade, Passailaigue is
11 P-A-S-S-A-I-L-A-I-G-U-E, Slade is S-L-A-D-E.

12 DIRECT EXAMINATION

13 BY MR. COOPER:

14 Q. Thank you. Do you go by
15 Ms. Passailaigue Slade?

16 A. Sometimes. Usually it's Kay
17 Passailaigue.

18 Q. Okay. All right. Ms. Passailaigue,
19 where do you live?

20 A. In North Charleston, South Carolina.

21 Q. Okay. And do you own your own home?

22 A. No, I don't.

23 Q. Are you married?

24 A. I'm a widow.

25 Q. Okay. And do you have children?

1 A. No, sir.

2 Q. Are you currently working?

3 A. Yes, sir.

4 Q. And where do you work?

5 A. Medical University South Carolina
6 Hospital Authority.

7 Q. Okay. And going to the meat of this
8 case, when did you first meet Alice Shaw Baker?

9 A. When I started at Charleston Memorial
10 in 1974.

11 Q. Okay. And when you started, was Alice
12 Shaw Baker already working there?

13 A. Yes, sir.

14 Q. And what was her position?

15 A. She was an accountant.

16 Q. All right. And what was your position?

17 A. Patient accounting. Different
18 department.

19 Q. And how would you describe your
20 relationship with Alice Shaw Baker?

21 A. It was a working relationship. Several
22 times a bunch of us would go out and eat. It was
23 not a close friendship in those days.

24 Q. And did it eventually become a close
25 relationship?

1 A. Yes, sir.

2 Q. And when was that?

3 A. We talked a lot before she retired, and
4 it was after she retired.

5 Q. Okay. And do you remember what year
6 she retired?

7 A. No, sir.

8 Q. About 1990?

9 A. No.

10 Q. '92?

11 A. That sounds about right.

12 Q. How long did you work at the Charleston
13 Memorial hospital?

14 A. Twenty-five years.

15 Q. When did you retire?

16 A. I have not retired. I'm still working.
17 It was bought out by Medical University.

18 Q. Okay. So you are still working?

19 A. Yes, sir.

20 Q. In the successor organization?

21 A. In the what?

22 Q. The successor hospital?

23 A. That's correct.

24 Q. Okay. She retired in 1990, and did
25 your relationship become closer after that?

1 A. Yes.

2 Q. And what were your common interests?

3 A. Dogs; we did obedience class and
4 agility classes. She didn't drive at night, so I
5 would go get her, and we talked on the phone quite
6 a bit about everything.

7 Q. Okay. And how far away from Alice Shaw
8 Baker's residence did you live?

9 A. Probably 20, 25 minutes.

10 Q. You lived at that time in North
11 Charleston?

12 A. Uh-huh.

13 Q. And during her life when you knew her,
14 did Alice Shaw Baker always live at 306 Cassina?

15 A. Correct.

16 Q. And did she ever talk to you about
17 wanting to stay in her house?

18 A. Yes, sir.

19 Q. She was pretty adamant about that?

20 A. We didn't talk about that a lot in
21 those days because there was -- it wasn't a reason
22 to discuss it.

23 Q. Okay. Did any other person ever live
24 with Alice Shaw Baker during the time that you knew
25 her?

1 A. Her brother came and stayed for a short
2 time.

3 Q. That's her brother John?

4 A. Yes, sir.

5 Q. Did you know either of her husbands?

6 A. No, sir. I didn't know about the
7 second one. I'd only heard that she was married
8 once before.

9 Q. Okay. Did Alice ever ask you to take
10 her on errands to the store?

11 A. No, sir.

12 Q. Did you ever -- you-all had a common
13 interest in animals and dogs in particular?

14 A. Yes, sir.

15 Q. Did you ever own a dog rescue?

16 A. No, sir.

17 Q. Did you ever work at a dog rescue?

18 A. Yes, sir.

19 Q. Which one?

20 A. I worked with Coastal Jack Russell
21 Rescue, the Jack Russell Terrier Club of America,
22 Lowcountry Animal Rescue.

23 Q. And the Coastal Jack Russell -- what
24 was it? Coastal --

25 A. Rescue.

1 Q. Rescue. Okay. And what did you do
2 with Coastal Jack Russell Rescue?

3 A. I did the Website at the time. I
4 fostered a lot of orthopedic dogs because my vet
5 did orthopedic work. I did -- I took in a lot of
6 sick dogs and fostered them. I would do adoption
7 days and that sort of thing.

8 Q. And how long do you think you worked at
9 Coastal Jack Russell Rescue?

10 A. I started out as a representative for
11 the Jack Russell Terrier. I've been doing it off
12 and on for probably about 20 years.

13 Q. All right. My question, though, is
14 specifically with regard to Coastal --

15 A. I do not remember. It was quite
16 awhile, but I don't know a time frame.

17 Q. Years?

18 A. Yes, years.

19 Q. Okay. And when you stopped working
20 with Coastal Jack Russell Rescue, did you tell
21 Alice about that?

22 A. Oh, yes, I did.

23 Q. And did you go -- then you worked for
24 Jack Russell Terrier --

25 A. I did different things. Worked for,

1 you know, small groups, worked with -- you know, I
2 would have people call me and want a dog and I knew
3 people. That sort of thing.

4 Q. Did you ever give a dog to Alice Shaw
5 Baker?

6 A. No.

7 Q. Do you remember when you started
8 working with Lowcountry Rescue?

9 A. I worked with them off and on for
10 years.

11 Q. Were you paid?

12 A. Oh, no, sir. It's all volunteer.

13 Q. It's a volunteer situation. Did you
14 tell Alice Shaw Baker that you were working with
15 Lowcountry Animal Rescue?

16 A. I believe I started working with them
17 after she passed away. She knew. She knew all
18 about what I did as far as volunteering with dogs.

19 Q. All right. And then you mentioned
20 another organization, National Jack Russell
21 Terrier?

22 A. That's where I started. I was a state
23 representative.

24 Q. Okay. And was that before 1990?

25 A. It was after 1990.

1 Q. After 1990. Do you know how long you
2 worked with them?

3 A. No, sir. Dates -- I'm messed up with
4 dates.

5 Q. Okay. And did you tell Alice Shaw
6 Baker that you were working with the Jack Russell
7 Terrier --

8 THE COURT: Does that have anything to
9 do with whether or not her will -- or whether she
10 revoked her will?

11 MR. COOPER: I believe it does, Your
12 Honor.

13 THE COURT: Go ahead.

14 THE WITNESS: Oh, yes, she knew that.

15 BY MR. COOPER:

16 Q. Okay. So she knew when you started
17 roughly, and you probably mentioned it to her when
18 you finished?

19 A. I mean, always been there for Jack
20 Russell. I even did Humane as their treasurer.

21 Q. My question is: How much of what you
22 were doing with Jack Russell would you communicate
23 that --

24 A. We talked about it all the time, yes.

25 Q. Okay. And do you know if you

1 specifically told her when you stopped working for
2 Jack Russell?

3 A. I never have stopped working.

4 Q. Okay. Did Alice Shaw Baker ever ask
5 you to help her with her house?

6 A. No, sir.

7 Q. Did Alice Shaw Baker ever invite you
8 into her house?

9 A. Yes.

10 Q. And when did she do that? And how
11 often would you go over there?

12 A. Well, I worked full-time. I did not go
13 a lot, but I went over. I was one of the few
14 people that her Chihuahua liked, but then one of
15 them ended up having seizures and we couldn't go in
16 the house.

17 Q. And that was about 1990?

18 A. I used to go -- like I said, I would
19 pick her up and we'd go to dog class. I didn't go
20 in; I would pull up, we'd get in the car, take her,
21 and I'd bring her back. We'd meet places that had
22 dog functions, that sort of thing.

23 Q. Okay.

24 A. We talked on the phone a lot.

25 Q. Okay. But after her dog started having

1 seizures back in the '90s, you were not allowed in
2 the house?

3 A. And I don't want to say a date because
4 I don't remember that time frame, but that's
5 correct. And I did see the dog have a seizure, and
6 it did upset her when people came in..

7 Q. All right. And, you know, even though
8 you didn't go in her house, do you know how often
9 you went to visit Alice Shaw Baker?

10 A. No. It was usually holidays.

11 Q. And when -- which holidays would those
12 be?

13 A. Christmas, birthdays.

14 Q. And you would go to her house?

15 A. Uh-huh.

16 Q. Okay.

17 A. Or we would go to dinner.

18 Q. And so it would be whose birthday would
19 --

20 A. My birthday, Alice's birthday. She
21 asked me one time to come and get something for
22 Sandra Byrd.

23 Q. And why would you come and get
24 something for Sandra Byrd?

25 A. Sandra was in the hospital, and I was

1 going to go see Sandra.

2 Q. She requested that you come by to get a
3 gift for her?

4 A. Uh-huh.

5 Q. So birthdays and Christmas that you
6 would go to her house?

7 A. Yeah, we would go by and see her.
8 Uh-huh.

9 Q. And by, we --

10 A. Well, sometimes it was just me and
11 sometimes it was Bessie and I.

12 Q. Did you ever have any business
13 relationships with Alice other than working?

14 A. No, sir.

15 Q. With her at the hospital?

16 A. No, sir.

17 Q. Did you ever have any written
18 communication with Alice, or were your
19 communications either in person or on the phone?

20 A. Written?

21 Q. Yeah. Did you write her letters?

22 A. Oh, no, not that I remember.

23 Q. Okay. And did you -- I'm assuming you
24 did have telephone conversations with her?

25 A. Yes.

1 Q. And how often was that?

2 A. Usually two or three times a week.

3 Q. And did that continue even after all
4 her dogs passed away?

5 A. Yes, sir.

6 Q. And did that continue after her
7 conservatorship?

8 A. Yes, sir.

9 Q. You are sure that you called her two or
10 three times per week during the conservatorship?

11 A. It may not have been as often because
12 Alice was -- would get upset, but, yes, I called
13 her about two or three times a week and talked to
14 the sitters.

15 Q. Do you have any pictures of Alice Shaw
16 Baker?

17 A. I have a few, uh-huh.

18 Q. And do you have any pictures of her
19 with her dogs?

20 A. I have a few pictures of her dogs that
21 she sent me or gave me.

22 Q. Did you ever take any pictures of her
23 dogs when you were visiting?

24 A. I don't believe so.

25 Q. Did Alice Shaw Baker become dependent

1 on you when she retired?

2 A. No, sir.

3 Q. Do you know whether Alice Shaw Baker
4 was a notary public?

5 A. No, sir, I don't know.

6 Q. Okay. Did you contact any family
7 members when -- well, let me back up. Did there
8 come a time in the mid 2000s that you noticed that
9 Alice's mental functions were declining?

10 A. Yes, sir.

11 Q. Do you remember when approximately that
12 was?

13 A. No, I do not. I would say '07 maybe.
14 Just the fact that she would repeat herself and --

15 Q. Okay. And did you contact any of her
16 family members?

17 A. I didn't know she had any family.

18 Q. Did you ever ask her if she had any
19 family?

20 A.) Oh, yes. We -- we knew she had
21 relatives, but the only one we ever discussed was
22 her brother. But, no, she didn't -- she indicated
23 to me that she had no family.

24 Q. And did you ever meet her brother?

25 A. Yes, I did.

1 Q. And under what circumstances did you
2 meet him?

3 A. If I recall it was a brief -- at his
4 house, I went by there for something, and she
5 introduced me.

6 Q. And that was when John was living with
7 her?

8 A. Yes, sir.

9 Q. And were you invited in that time?

10 A. Yes, sir. She didn't have the seizure
11 dog at that time.

12 Q. Okay. Now, did you contact any
13 authorities when you saw that Alice Shaw Baker was
14 declining mentally?

15 A. Yes, sir.

16 Q. Who did you contact?

17 A. I contacted Elizabeth Spencer at elder
18 care.

19 Q. And do you know what Elizabeth
20 Spencer's job was?

21 A. I called her to -- because I was
22 worried about Alice and some of the stories Alice
23 was telling me. And I just contacted her to find
24 out what we could do. I wasn't -- I wasn't even
25 sure of Alice's true mental capacity at the time.

1 Q. Okay. And what stories was Alice Shaw
2 Baker telling you?

3 A. That strange people would come in and
4 people she didn't know, and just -- she couldn't
5 find things, that sort of stuff. She was just real
6 worried about -- she would lose something and I
7 would say, well, let us come over and help you.
8 And, of course, she wanted none of that.

9 Q. Okay. And when you called Elizabeth
10 Spencer and elder assistance, elder abuse, whatever
11 it is, that organization, their response was to
12 file a petition in --

13 A. No, sir. When I called Elizabeth
14 Spencer, I wouldn't tell her -- I said, I just
15 wanted information. Elizabeth and I kept talking,
16 and eventually she asked me who it was. And she
17 said that she was working a case in that
18 neighborhood -- she knew Alice from her brother
19 John. And she would go by and talk to her.

20 And it was months later that Elizabeth
21 got back in touch and she thought that Alice had a
22 problem. We were not allowed in Alice's house
23 during that time. So it was months after I called
24 her before anything was done. And when Elizabeth
25 called me -- well, I guess I can't say that. Never

1 mind.

2 Q. But eventually Elizabeth Spencer
3 initiated whatever the procedures are to the
4 probate court --

5 A. That's correct.

6 Q. And it was your call that started all
7 that?

8 A. I'm not sure. My understanding is I
9 wasn't the only one that had called.

10 Q. And when did you first learn that you
11 were beneficiary under her will?

12 A. She had given me a copy of the will. I
13 had three wills and I was in each one.

14 Q. Okay. And what was the date of the
15 last one?

16 A. I believe it was 2001.

17 Q. Okay. And did -- how did you find out
18 that you were a -- you were a beneficiary? She
19 gave it to you, or she told you you were?

20 A. She gave me a copy of the will.

21 Q. Okay. And she gave you a copy of three
22 separate wills?

23 A. Yes, sir.

24 Q. And in the first one you were a
25 beneficiary?

1 A. Yes, sir.

2 Q. And in the second one you were a
3 beneficiary?

4 A. Yes, sir.

5 Q. And in the last one, 2001, you were a
6 beneficiary?

7 A. Yes, sir.

8 Q. And during that whole time you both
9 shared an interest in dog rescue?

10 A. And dogs. Alice wasn't into rescue
11 like I was into dog rescue.

12 Q. She was into her dogs?

13 A. She was into her dogs.

14 Q. Did you accompany her to the attorneys
15 to have the will made?

16 A. No, sir.

17 Q. Did she discuss it with you before she
18 had it made?

19 A. No, sir.

20 Q. Just after it was made, she gave it to
21 you?

22 A. That's correct.

23 Q. Okay. Is any person in your family
24 employed in the legal profession?

25 A. No.

1 Q. Did she ever ask you to ensure that her
2 money went to animals?

3 A. No, sir.

4 Q. She did, though, ask you to take care
5 of her dogs --

6 A. I offered to take care of her dogs.

7 Q. And she agreed that you should do that?

8 A. Eventually. When she retired, we took
9 up a collection to give her money to buy a dog.
10 She was worried about what would happen to it if
11 she passed away. And I said -- I promise you they
12 can come live with me. What's one more in my
13 house?

14 THE COURT: Did she have any dogs when
15 she died?

16 THE WITNESS: She had one that had just
17 passed away. And we gave her money to buy a dog
18 when she retired.

19 THE COURT: Talking about when she
20 died.

21 THE WITNESS: No, sir.

22 BY MR. COOPER:

23 Q. And do you know when the last of her
24 dogs passed away?

25 A. 2008.

1 Q. 2008. And did you ever -- did you ever
2 discuss with Alice Shaw Baker her attempt to deed
3 her home to the SPCA?

4 A. Yes, sir.

5 Q. Okay. And did she ever tell you that
6 she had tried to do that, but the SPCA had rejected
7 her?

8 A. She wanted me to live in the house
9 until me and my husband died, and they rejected it.
10 And that's what she told me.

11 Q. Okay. But she did want to give her
12 house -- after she and you and your husband had
13 passed away, she wanted it to go --

14 A. At that time she did.

15 Q. Okay. And they rejected it?

16 A. That's correct. And then she decided
17 -- she said she wanted me to have it.

18 Q. And did she make any promises to you --
19 not any promises. If she were to give you the
20 property, did you have to assure her that you would
21 provide any of those monies, funds, houses for the
22 purpose of animal charities?

23 A. No, sir.

24 Q. You never discussed that?

25 A. We didn't discuss that's what I would

1 do with the money.

2 Q. Okay. Did she ever discuss that that
3 was her intent?

4 A. No, sir. No.

5 Q. Did she ever discuss with you why she
6 wanted Bessie Huckabee to be personal
7 representative under her will?

8 A. Just they were very good friends.

9 Q. But she did discuss it with you?

10 A. Just that Bessie was the executor of
11 the will. That was it. She told me that. Well, I
12 knew that from the will.

13 Q. Did Alice Shaw Baker make any -- any
14 written notes that you know of about where she
15 wanted her property to go when she passed away?

16 A. Not that I know of.

17 Q. Did Alice Shaw Baker give you copies of
18 her power of attorney?

19 A. I don't remember. I thought I had a
20 copy.

21 Q. Of the power of attorney?

22 A. Yeah.

23 Q. Do you know who was named as the power
24 of attorney?

25 A. I believe it was Bessie Huckabee.

1 Q. Were you ever given a copy of the
2 healthcare power of attorney?

3 A. I may have. It was in the envelope,
4 and I do believe I had it. I don't believe I ever
5 read it.

6 Q. Well, you did not know then you were
7 the alternate --

8 A. No.

9 Q. You had the alternate healthcare
10 power --

11 A. No.

12 Q. Did Alice Shaw Baker ever turn to you
13 for financial advice?

14 A. No.

15 Q. Did Alice Shaw Baker expect you to help
16 her if she became incapacitated?

17 A. No, sir.

18 THE COURT: You shook your head no; is
19 that correct?

20 THE WITNESS: That's correct.

21 BY MR. COOPER:

22 Q. You knew that she didn't want to go
23 into a nursing home?

24 A. She never -- that wasn't something we
25 discussed. I assumed she didn't. Who would?

1 Q. And yet that was the plan that --
2 during the early months of conservatorship, that
3 was the plan, to put her in assisted living, wasn't
4 it?

5 A. That was not my plan. I told them I
6 wasn't sure what would be best for Alice. I wanted
7 what was best for her. I had no idea of her
8 finances whether she could afford care. I was
9 thrilled when they brought in care for her
10 full-time.

11 Q. Okay. But it's true, though, that the
12 plan of Jane Orensby and First Guardians and
13 Conservators was to put her in the assisted living?

14 A. I'm not sure.

15 Q. You're not sure, even though --

16 A. Well, Jane had mentioned putting her in
17 a place. At that time, I knew that Lisa was coming
18 in. I didn't know what would happen.

19 Q. Okay. Well, Lisa Fisher was officially
20 appointed to be in November. All of this started
21 in August --

22 A. Right. They weren't sure -- I believe
23 you had showed up and they had sitters with her.
24 Jane did mention that she was thinking of putting
25 her in a plan. I didn't know if she -- I knew she

1 had an insurance policy for long-term care.

2 Q. Okay. And did you do anything to try
3 to be sure that she was able to stay in her home?

4 A. No. I mean, I don't know what I would
5 have done. I didn't think that was something that
6 I could do.

7 Q. Did Alice Shaw Baker ever tell you that
8 she was going to make you the beneficiary of her
9 life insurance policy?

10 A. No.

11 Q. Did she ever tell you she was going to
12 make you beneficiary of the deferred compensation
13 --

14 A. No.

15 Q. -- pension plan?

16 A. No, sir.

17 Q. Did Alice ever discuss with you her
18 final arrangements, funeral and that sort of thing?

19 A. I knew she had it planned out, that she
20 had got her grave marker and that sort of thing.

21 Q. And did she ever show you any documents
22 that had her --

23 A. No, sir.

24 Q. Did Alice Shaw Baker ever talk to you
25 about anything to be done for the dogs while they

1 were living if she passed away or the dogs' graves
2 once the dogs passed away?

3 A. Well, if the dogs were living, they
4 were coming to live with me. No, the graves I
5 thought were taken care of when they died.

6 Q. Okay. And do you know the names of
7 Alice Shaw Baker's dogs?

8 A. Yes, sir.

9 Q. And?

10 A. It was -- Precious was the first one
11 followed by Cujo, and then Missy was the one that
12 had seizures. Before that she had a Chihuahua
13 named Pretty Girl that I never met.

14 Q. Okay. And which ones were involved in
15 the agility training and --

16 A. I believe Precious -- we started with
17 -- she never really took her to agility. We went
18 to an obedience and agility class.

19 THE COURT: We're going to finish this
20 examination before we go to lunch one way or the
21 other. You can ask relevant questions or not
22 relevant questions. We're going to finish before
23 we go to lunch.

24 MR. COOPER: Thank you, Your Honor.

25 BY MR. COOPER:

1 Q. Did Alice Shaw Baker ever express to
2 you any concern about growing older?

3 A. No, sir.

4 Q. Did she ever express to you any concern
5 about her mental capabilities?

6 A. No, sir.

7 Q. And you did notice, though, in about
8 2006 --

9 A. Seven.

10 Q. That she began declining mentally?

11 A. Yes.

12 Q. But she still recognized you?

13 A. She always recognized me.

14 Q. And she would recognize Mrs. Huckabee?

15 A. Correct.

16 Q. And did you know -- well, strike that.
17 When was the first time that you talked to Pete
18 Kouten about representing you in this case?

19 A. I believe it was maybe -- well,
20 whenever our first appointment was which was, I
21 would say, maybe a week or two after Alice passed
22 away.

23 Q. Okay. You saw Peter Kouten at the
24 hospital before Alice passed away?

25 A. He walked by.

1 Q. You didn't speak to him?

2 A. No. I think he stuck his head in the
3 room. I wasn't there all day.

4 Q. But you were there when he stuck his
5 head in the room?

6 A. Just briefly. I saw him walk by, and
7 he walked to the end of the hallway.

8 Q. And was he there to see Alice Shaw
9 Baker?

10 A. Alice was unconscious. I'm not sure
11 why he was there.

12 Q. Okay. And do you know how long Alice
13 was in the hospital?

14 A. No.

15 Q. Well, during the time some have said
16 maybe several weeks, but during whatever time it
17 was that Alice Shaw Baker was in the hospital, did
18 you -- how many times did you go to visit her?

19 A. I do not recall. I know she was in the
20 cancer ward. We weren't told she was in the
21 hospital right away. We had no idea she was there.
22 I went to see her in ICU and then we, Bessie and I,
23 went on a Saturday and then the day she passed away
24 I was there that morning.

25 Q. So approximately three times?

1 A. Three or four.

2 Q. Okay. And during those times, was
3 Alice Shaw Baker always unconscious or was she
4 conscious?

5 A. She was conscious.

6 Q. The whole time?

7 A. Uh-huh.

8 Q. Was Alice Shaw Baker conscious on the
9 day she passed away?

10 A. No, sir.

11 Q. She wasn't conscious?

12 A. She was not conscious the last day.

13 Q. Okay. But all the rest of the time --

14 A. She was.

15 Q. -- she was conscious. Were you and
16 Bessie Huckabee asked to leave the room by a nurse?

17 A. No, sir.

18 Q. Were you asked to leave the room by
19 Lisa Fisher?

20 A. No, sir.

21 Q. Okay.

22 A. I wasn't there all day. I had to go to
23 work.

24 Q. At MUSC?

25 A. Yes, sir.

1 Q. Did Alice Shaw Baker offer you any
2 money to take care of the dogs if she passed away?

3 A. No, sir.

4 Q. But she did put you in the will?

5 A. Yes, sir.

6 Q. There was a provision in the will that
7 said you were to take care of the dogs, wasn't
8 there?

9 A. That I what?

10 Q. That you were to take care of the dogs?

11 A. Yes, sir, I would have.

12 Q. But I know you would have, but it's in
13 the Will that you should --

14 A. That's correct. The dogs come to me.

15 Q. Okay. And the death of her dogs was
16 pretty devastating to Alice Shaw Baker?

17 A. Yes, it was.

18 Q. And you saw Alice Shaw Baker after the
19 conservatorship had been granted, but before she
20 passed away? You saw her in her home?

21 A. Yes, sir.

22 Q. And her appearance then was better than
23 it had been previously?

24 A. It was.

25 Q. In terms of her clothing and hair?

1 A. Yes.

2 Q. Grooming, that sort of thing?

3 A. Yes, sir.

4 Q. She seemed to be doing better?

5 A. She looked better.

6 Q. Okay. Did she ever tell you that she
7 was having problems remembering?

8 A. No, sir.

9 Q. Did you ever notice that she would have
10 problems remembering?

11 A. Yes, sir.

12 Q. And when did that start happening,
13 about 2007?

14 A. I would be guessing. Yes.

15 Q. That seems about right maybe before?

16 A. Maybe. Yeah. I really am not sure of
17 the exact dates.

18 Q. Okay. Did she ever ask you for any
19 help with her memory?

20 A. With her what?

21 Q. With her problem with memory.

22 A. No.

23 Q. Ask you to make arrangements for a
24 doctor's appointment?

25 A. No, sir.

1 Q. Okay. Do you know anything about the
2 keys to Alice Shaw Baker's house, what happened to
3 those and how they changed hands after her death?

4 A. No, sir.

5 I need to change that. Yes, I did. I
6 knew of the keys going -- that Candy had the keys
7 and that she didn't want them, but Bessie did not
8 ask her for the keys. Who picked them up or
9 anything, I don't have any knowledge of who got the
10 keys.

11 Bessie and I followed each other. We
12 live not far from each other. We followed each
13 other home pretty much after that day.

14 Q. And when you say, Candy, you're talking
15 about Candace Rickborn?

16 A. Correct, Candace Rickborn. She had the
17 keys.

18 Q. Okay. And did Bessie Huckabee, after
19 Alice's death, shortly thereafter, approach Candace
20 Rickborn and tell her she was in charge and she
21 should hand over the keys?

22 A. No, sir.

23 Q. And you were there?

24 A. I was there.

25 Q. And did Bessie Huckabee at that time

1 have a discussion with Candace Rickborn at the
2 hospital?

3 A. We were all talking, but it wasn't
4 anything about being in charge. We were just
5 generally talking.

6 Q. Okay. You're sure that Bessie Huckabee
7 didn't say, I'm in charge, let me have the keys?

8 A. I'm sure.

9 Q. I show you now the original transcript
10 of the deposition. Do you remember giving a
11 deposition in this case?

12 A. Vaguely.

13 Q. Okay. And on the front of that, it
14 says your deposition was October 15th of 2009 at
15 1:30 p.m.?

16 A. Yes, sir.

17 Q. Taken at Clark and Associates Court
18 Reporters?

19 A. Yes, sir.

20 Q. And you were sworn to tell the truth?

21 A. Yes, sir.

22 Q. And you told the truth as best you
23 could?

24 A. As best I could remember it.

25 Q. Right. Okay. And I will ask you to

1 turn to page 97.

2 A. Okay.

3 Q. All right. And ask you to look at line
4 14.

5 A. Okay.

6 Q. Question is: Okay. Did she ever talk
7 to you -- and we're talking about Alice Shaw Baker.
8 Did she ever talk to you about any of her
9 charitable intent or wishes that she had for after
10 -- when she died?

11 THE COURT: He wants you to read your
12 answer.

13 THE WITNESS: We talked about the
14 Charleston Animal Society, and they did not want to
15 agree to her wishes and how that really upset her.
16 Other than that, because I work with some rescue,
17 she one time told me that as far as she was
18 concerned, I could sell her house and buy land and
19 that way I could bring in -- have all the dogs I
20 wanted.

21 BY MR. COOPER:

22 Q. Next question: Did she ever express to
23 you or talk to you about what you -- what --
24 anything she left to you, what that will be used
25 for?

1 A. Well, like I said, she told me she
2 would hope that I would get land and that way I
3 could have all the dogs I wanted. She could only
4 have three dogs where she lived, but she did know
5 that I would take in dogs and have surgery or
6 whatever needed to be done and find them homes and
7 keep them, yes, sir.

8 THE COURT: Anything else you want her
9 to read?

10 MR. COOPER: Nothing from the
11 deposition, Your Honor. If I could have a minute
12 to talk to co-counsel.

13 THE COURT: Court's Exhibit 4.

14 (COURT'S EXH. 5, Deposition
15 transcription, was marked for identification.)

16 MR. COOPER: No further questions.

17 THE COURT: Thank you very much. We'll
18 take our lunch break now at this time.

19 You can go on back to your place in the
20 courtroom. We'll let the jury go to lunch. Leave
21 the notepads with the bailiff and everything.
22 Bring them back with you after lunch. Be back at
23 2:15. Have a nice lunch.

24 (Jury out, 1:07 p.m.)

25 MR. WILLS: We have discussed this,

1 that Mrs. Fisher was going to be a Plaintiff in
2 this case, no witness. And that she was going to
3 participate only outside of the presence of the
4 jury. So for counsel to categorize her as
5 co-counsel and discuss litigation tactics in the
6 presence of the jury is improper.

7 THE COURT: I don't know. I didn't do
8 anything about ruling in connection with that, so I
9 don't know what you're talking about. Anything
10 else? Don't let anybody out until the jury gets
11 out and gone.

12 MR. COOPER: Your Honor, we would ask
13 that the deposition, the original deposition be --

14 THE COURT: Give the deposition or
15 anything that you read from, give it to the court
16 reporter.

17 THE COURT: That's for nonjury exhibit.

18 MR. COOPER: Correct.

19 (A luncheon recess transpired, 1:08
20 p.m. - 2:23 p.m.)

21 THE COURT: Bring the jury in.

22 (Jury in, 2:25 p.m.)

23 THE COURT: Good to have the jury back
24 with us. Call the next witness.

25 MR. WILLS: Your Honor, we have --

1 THE COURT: Oh, excuse me, I'm sorry.
2 I forgot where we were. She was still on the
3 stand. You're still under oath. Thank you.

4 MR. WILLS: Your Honor, we don't have
5 any questions for Ms. Passailaigue.

6 THE COURT: Thank you very much. You
7 can return to your place in the courtroom, please.
8 Call your next witness.

9 MR. COOPER: May I further examine her
10 one question?

11 THE COURT: All right.

12 REDIRECT EXAMINATION

13 BY MR. COOPER:

14 Q. Ms. Passailaigue, did you ever give
15 Alice Shaw Baker your social security number for
16 any reason?

17 A. I'm not sure. I don't recall it.

18 Q. It does show up on some of the
19 beneficiary --

20 A. Then I would have had to give it to
21 her.

22 Q. She wouldn't know it any other way?

23 A. No.

24 MR. COOPER: Thank you.

25 THE COURT: Thank you very much. You

1 can return to your place in the courtroom.

2 Call your next witness.

3 MR. COOPER: Your Honor, at this time,
4 we would like to offer the testimony of Jane
5 Jacobs.

6 THE COURT: Are you calling the person
7 as a witness?

8 MR. COOPER: No, they are not here.
9 Your Honor, this is a deposition. We would like to
10 read excerpts of the deposition.

11 THE COURT: Members of the jury panel,
12 I need you to go to the jury room, please.

13 (Jury out, 2:27 p.m.)

14 THE COURT: What is it? Who is it and
15 what is it?

16 MR. COOPER: Your Honor, the deposition
17 of Jeannie Jacobs, excerpts from --

18 THE COURT: Jacobs?

19 MR. COOPER: It's page 4, line 6,
20 through page 21, line 20.

21 THE COURT: Page 4, line 6, through
22 what?

23 MR. COOPER: Page 21, line 20.

24 THE COURT: Okay.

25 MR. COOPER: Line 20. And, also, the

1 under the rules of business records.

2 MR. WILLS: They haven't been proven
3 under the rules of business records. They were
4 produced and made in anticipation of litigation, et
5 cetera, et cetera.

6 THE COURT: All right. That's a
7 nonjury exhibit.

8 (COURT EXH. 8, Retirement records, was
9 marked for identification.)

10 MS. FISHER: Under 803, Section 6, this
11 is Records of a Regularly Conducted Activity. This
12 is a solution -- an exception, pardon me, of the
13 hearsay documents, and so I'm not sure that I'm
14 clear as to why you would not allow --

15 THE COURT: What does it say? Read it.

16 MS. FISHER: Okay. Section -- Section
17 6, a memorandum, report, record, or data
18 compilation in any form, a record of an act, event,
19 condition, or diagnosis made at or near the time by
20 -- or from information transmitted by -- a person
21 with knowledge; if kept in the course of a
22 regularly conducted business activity; and if it
23 was the regular business practice of that business
24 activity to make the memorandum, report, record, or
25 data compilation all as shown by the testimony of

1 LISA FISHER,

2 being previously duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. COOPER:

5 Q. Ms. Fisher, you previously testified
6 that you were appointed by the probate court as
7 guardian and conservator for Alice Shaw Baker?

8 A. Yes.

9 (PLF. EXH. 29, Certificate of
10 appointment, was marked for identification.)

11 BY MR. COOPER:

12 Q. I show you now, Ms. Fisher, what's been
13 marked Exhibit 29. Do you recognize that document?

14 A. Yes. This is the letter appointing me
15 as Alice's conservator on -- signed by the judge on
16 November 19, 2008.

17 Q. Okay. Thank you. That appears to be a
18 true and correct copy of the appointment?

19 A. Yes.

20 Q. Okay. And does it indicate on there
21 any restrictions?

22 THE COURT: You want it admitted into
23 evidence?

24 MR. COOPER: I'm going to offer it in a
25 minute.

1 THE COURT: Any objections?

2 MR. WILLS: No objection.

3 THE COURT: All right. We'll put it
4 into evidence.

5 (PLF. EXH. 29 in evidence.)

6 THE WITNESS: No, there's no
7 restrictions on there.

8 BY MR. COOPER:

9 Q. I show you what was marked as
10 Defendant's Exhibit 2 and entered into evidence in
11 this case. Do you recognize that document?

12 A. Yes. This is the order appointing me
13 as the conservator.

14 Q. All right. And --

15 A. And this was also dated November 19th.
16 This is the corresponding document with my letters.

17 Q. Okay. Under -- under that -- under
18 that order, does it require Alice Shaw Baker to be
19 evaluated as to her mental condition?

20 A. Yes.

21 Q. And did you take steps to have that
22 evaluation done?

23 A. Yes. So there's --

24 THE COURT: That's the answer.

25 Next question.

1 BY MR. COOPER:

2 Q. Okay. And who did the evaluation for
3 the probate court?

4 A. Randolph Waid, PhD.

5 Q. Was he selected by the probate court?

6 A. Yes.

7 Q. Okay. And so you took Alice Shaw Baker
8 to be evaluated by Dr. Waid?

9 A. I did.

10 Q. And did he submit a report --

11 THE COURT: Members of the jury panel,
12 I need you to go to the jury room, please.

13 (Jury out, 2:49 p.m.)

14 THE COURT: I presume that now you're
15 going to want to offer the report from Dr. Waid
16 that's been marked as Plaintiff's Exhibit 1 through
17 this witness?

18 MR. COOPER: Well, Your Honor, I might
19 want to do that. First, I just want to ask her
20 when they received the report from Dr. Waid.

21 THE COURT: Well, if you're not going
22 to put it in, it doesn't make any difference when
23 they were received.

24 MR. COOPER: Well, I think it might
25 make some difference.

1 THE COURT: Well, you wanted to get in
2 the fact that you have a report. Are you going to
3 put all the report in or not?

4 MR. COOPER: I'll offer it.

5 THE COURT: Well, then offer it, if you
6 want to offer it, but it's not coming in.

7 BY MR. COOPER:

8 Q. Ms. Fisher, I show you Plaintiff's
9 Exhibit Number 1 marked for identification. Do you
10 recognize that?

11 THE COURT: Can you really make the
12 assertion that you think that's admissible at this
13 point under the Rules of Evidence? Can you really
14 make that assertion?

15 MR. COOPER: Well, I disagree with Your
16 Honor on the relevant issue, but with regards --

17 THE COURT: I didn't say anything about
18 relevance at this point.

19 MR. COOPER: But with regard --

20 THE COURT: That the report from the
21 doctor can come in through this witness at this
22 point?

23 MR. COOPER: Well, Your Honor, the
24 document can come in with, I believe, no -- with no
25 foundation as an 803(3) then existing mental,

1 emotional, or physical condition. A statement of
2 the declarant's then existing state of mind,
3 emotions, sensation, or physical condition -- oh,
4 excuse me, 803(4), I'm sorry.

5 I'm mixed up. Statement for the
6 purpose of medical diagnosis or treatment.
7 Statement made for the purpose of medical diagnosis
8 or treatment, and describing the medical history,
9 past or present symptoms, pain or sensations, or
10 their inception, or the general character of the
11 cause thereof insofar as reasonably pertinent to
12 diagnosis or treatment.

13 THE COURT: If that person is present
14 and offers it that it was made to, but it's not.
15 The doctor is not here to say that's what was done.

16 MR. COOPER: Well, Your Honor, we did
17 -- at the beginning of the trial we did say that we
18 intended to bring Dr. Randy Waid, and he's not
19 available today. He's not available until Monday
20 morning. And we would ask that Your Honor allow
21 him to testify Monday morning at 9:00.

22 THE COURT: I appreciate that, but
23 that's not what we're going to do.

24 Anything else?

25 MR. COOPER: I would like to mark that.

1 (PLF EXH. 30, Letter, for
2 identification.)

3 THE COURT: Do you have a copy of that
4 for me? This is a letter from Lisa Fisher to
5 Doris Theese, January 2, 2008. And you want to
6 offer this?

7 MR. COOPER: Yes, Your Honor.

8 THE COURT: For what purpose?

9 MR. COOPER: I want to offer it to show
10 when Lisa Fisher contacted the neighbor, Doris, in
11 response to communication that she got from her.
12 She previously testified --

13 THE COURT: To what issue that's in
14 this case?

15 MR. COOPER: I think it goes to -- I
16 think it goes to whether or not it's credible that
17 Alice Shaw Baker revoked her will on January 1,
18 2009.

19 THE COURT: I appreciate that, but it's
20 not. Give it to the court reporter.)

21 (PLF EXH. 31, Statement of Dr. Honney,
22 for identification.)

23 THE COURT: All right. What do you
24 want to say about this? This is -- apparently,
25 it's Plaintiff's Exhibit Number 31. It purports to

1 MR. WILLIS: I look better on the record
2 than I actually sound.

3 THE COURT: Don't be so sure of that.
4 So do you object to that or not?

5 MR. WILLIS: I have no objection to it.

6 THE COURT: All right. Give it to the
7 court reporter. When the jury is out here, you're
8 going to get that in. Offer it when the jury is
9 out here.

10 MR. COOPER: I understand, Your Honor.

11 THE COURT: Is there anything else?

12 MR. COOPER: I'm trying to have this
13 marked.

14 (PLF EXH. 33, Petition, was marked for
15 identification.)

16 MR. COOPER: Exhibit 33, Your Honor,
17 is --

18 THE COURT: Let me see what it is.

19 MR. COOPER: All right.

20 THE COURT: You ought to know what it
21 is. What is it?

22 MR. COOPER: This is the informal
23 petition filed by Mr. Kouten for the Defendant in
24 probate.

25 THE COURT: For what?

1 THE COURT: Well, I appreciate that;
2 this case has been set for trial since June. Any
3 other witnesses at this time?

4 MR. COOPER: None at this time, Your
5 Honor.

6 THE COURT: Members of the jury panel,
7 that finishes all of the testimony, the evidence
8 that the contestant and the -- the Plaintiff wish
9 you to consider in this case. Now we're going to
10 switch. Do you-all have anything to offer?

11 MR. WILLS: We have some -- some points
12 of law that we would like --

13 THE COURT: Do you have any -- do you
14 want to make motions now?

15 MR. WILLS: We are going to make
16 motions.

17 THE COURT: Members of the jury panel,
18 I need you to go to the jury room for a while.

19 (Jury out, 3:28 p.m.)

20 MR. WILLS: Your Honor, at this time we
21 move for a directed verdict with regard to the
22 entire Complaint, but specifically with regard to
23 the issue of undue influence for which there has
24 been no evidence or testimony whatsoever that the
25 Defendants exercised some kind of undue influence

1 over Alice Shaw Baker.

2 THE COURT: All right. What do you
3 have to say in response to that, any evidence of
4 undue influence?

5 MR. COOPER: Well, there is some, Your
6 Honor, and I would say that that, at this time, is
7 not proof to the clear and convincing evidence that
8 is required; however, it's --

9 THE COURT: So you're conceding --

10 MR. COOPER: No. No. No. Your Honor,
11 let me finish, please. Mr. Wills' motion was to
12 bifurcate and try only the will contest.

13 THE COURT: That's what we're trying
14 and that's the challenge to the will, undue
15 influence. Are you contending that there is
16 evidence to support undue influence?

17 MR. COOPER: Your Honor, there is some
18 in the record --

19 THE COURT: What?

20 MR. COOPER: We did not concede that,
21 because we contest your rulings with regard to the
22 evidence. The record as it stands now would agree
23 -- doesn't likely -- likely doesn't meet the clear
24 and unmistakable evidence that is required to prove
25 undue influence; however, as Your Honor knows, we

1 have spent several days here, and Your Honor has
2 precluded a lot of evidence that would have gone to
3 undue influence. And we can't concede it.

4 THE COURT: All right. I appreciate
5 that. As it stands now, I don't think there's any
6 inference of undue influence, so I grant that
7 portion of your motion.

8 Anything else?

9 MR. WILLS: Yes, Your Honor. Next, we
10 would go and move for -- with regard to the element
11 of the execution of the will, which was a portion
12 of the Complaint. They said there was -- that they
13 alleged there had been insufficient execution
14 formalities.

15 I think Your Honor had decided as a
16 matter of law at the beginning that --

17 THE COURT: Well, I'm going to tell the
18 jury -- of course, they don't agree with it, but
19 I'm going to tell the jury that the will was
20 admitted, and it's been a valid will and complies
21 with all of the requirements of the law to be a
22 valid will, and it's been admitted into the
23 evidence. That's the will.

24 Now, they have to decide if it was
25 revoked or not. That's the only issue they have to

1 decide.

2 MR. WILLS: Correct. And so the next
3 aspects that we'd move for a directed verdict with
4 regard to revocation of the will, that the only --
5 that the only evidence or testimony that was
6 submitted with regard to a revocation had to do
7 with one purported instance of a -- an act that
8 occurred after the court had found specifically
9 that Alice Shaw Baker no longer had capacity to
10 revoke her will.

11 And I specifically asked if there were
12 any other instances, and the only evidence was the
13 fact that there was one instance subsequent to that
14 order. As a matter of law, she did not have
15 capacity to revoke and, therefore, we'd move for a
16 directed verdict as to that aspect.

17 THE COURT: I appreciate that. I've
18 thought about it for the last couple of days, and I
19 don't think I should grant that motion. You know,
20 it's an interesting question and it hasn't been
21 decided directly on appeal, and I think that I have
22 to leave it open at this point as far as whether
23 that testimony in regard to tearing up the will
24 constitutes a revocation.

25 I'm going to charge all the law in

1 regards to how you go about revoking a will and so
2 forth and so on. It will be up to the jury to
3 decide whether she revoked it by tearing it up, if
4 they believe she tore it up.

5 MR. WILLS: Correct.

6 THE COURT: She has to have mental
7 capacity and so forth, and in connection with that,
8 I'm going to charge all that, but I don't think I
9 can direct a verdict on that issue.

10 MR. WILLS: Okay. Your Honor, the last
11 one is whether we can direct verdict as to a
12 subsequent will. I believe the testimony was --

13 THE COURT: There is no evidence of any
14 subsequent will.

15 MR. WILLS: Correct. So we move for a
16 directed verdict.

17 THE COURT: That's not an issue. The
18 only issue is whether or not she revoked it.

19 MS. FISHER: I'm sorry, Your Honor,
20 would it be appropriate for me to speak at this
21 point on that issue?

22 THE COURT: I'm sorry?

23 MS. FISHER: Pardon me, would it be
24 appropriate for me to speak on that issue?

25 THE COURT: On what issue?

1 MS. FISHER: The issue of the
2 subsequent will.

3 THE COURT: Is there any evidence of
4 that?

5 MS. FISHER: There is evidence that you
6 have not admitted. So I want to make sure that the
7 Court understands our position with regard to the
8 records from ING, from the records from PEBA, the
9 South Carolina retirement system -- and what was
10 the other one -- MCIS.

11 THE COURT: You think there's evidence
12 of another will in there somewhere?

13 MS. FISHER: There's evidence -- Your
14 Honor, there's ambiguity -- let me start over. And
15 I would ask the Court to allow me to brief this.
16 If there's ambiguity in the will, we believe that
17 we can introduce extrinsic evidence.

18 We believe that those documents which
19 have Alice's signature on them, which reference the
20 dog rescue, which also have other statements which
21 demonstrate that those monies -- we're speaking
22 specifically of those monies which she indicated
23 were part of her estate -- are truly -- fit into
24 the confines of a subsequent will. And so --

25 THE COURT: You contend that those are

1 a will?

2 MS. FISHER: I contend that those are
3 extrinsic evidence which support either -- either
4 support for the ambiguity of the will, or could be
5 in certain circumstances considered a holographic
6 will, although South Carolina doesn't recognize --

7 THE COURT: Then why are you even
8 talking about it?

9 MS. FISHER: I'm talking about it
10 because it talks to the ambiguity and also the
11 support under law in some of --

12 THE COURT: I'm going to have to
13 research, you know, as far as your waste of time of
14 the Court in this case. Making arguments like that
15 are just wasting the time of me and the jury.

16 MS. FISHER: I'm not here at all to
17 waste your time.

18 THE COURT: Well, you are.

19 MS. FISHER: I tried -- I'm making a
20 record because you have not admitted documents
21 which are pertinent to this case. I have always
22 been respectful to this Court in my intent and the
23 way that I've tried to treat the Court.

24 THE COURT: I appreciate that.

25 MS. FISHER: I cannot let the record be

1 incomplete because the Court doesn't either like my
2 demeanor or argument.

3 THE COURT: It's not the demeanor or
4 argument. It's the position you advance is what I
5 have trouble with. They're incredible.

6 MS. FISHER: I don't know how that's
7 incredible, Your Honor. It says on that document
8 that it's -- my estate goes to charity. That's an
9 extrinsic document which goes to support the will.
10 It goes to support --

11 THE COURT: Where is the will?

12 MS. FISHER: It goes to support our
13 reading of the will. So if this Court were to say
14 -- if this Court were to say, and could say under
15 certain circumstances, that the will -- if they --
16 if the Court didn't accept my revocation argument,
17 the will was proper.

18 It, also, by looking at those documents
19 which this Court has precluded, could say that the
20 will was supposed to say, to Kay Passailaigue on
21 behalf of animal charities. So that's what I'm
22 arguing, and I'm doing it for the record.

23 The Court has already indicated that
24 it's going to allow determination on the revocation
25 of the will. I'm only preserving the argument.

1 Thank you, Your Honor.

2 THE COURT: Anything else?

3 MR. WILLS: One final thing. Directed
4 verdict -- we would request directed verdict with
5 regard to their cause of action for constructive
6 trust that has to do with the nonprobate assets.

7 THE COURT: Well, that doesn't have
8 anything to do with what we're trying here today.
9 I don't know if that's going to be another issue
10 later on, but we're not dealing with that issue
11 today.

12 From the start, we're only dealing with
13 the issue of the will, whether or not it was
14 revoked or not.

15 MR. WILLS: Okay. Your Honor, one
16 final one with regard to their cause of action for
17 fraud. To the extent that they allege there was
18 any fraud involved with the execution of the will.

19 THE COURT: You're not claiming there's
20 any in regard to the execution, are you?

21 MS. FISHER: Not at this time, Your
22 Honor.

23 THE COURT: All right. Anything else?

24 MR. WILLS: That's all.

25 THE COURT: The only thing we're

1 talking about is whether or not the will was
2 revoked or not. Okay. That's the only issue that
3 is going to go to the jury. And if you want to put
4 up anything else now --

5 MR. WILLIS: If I could have five
6 minutes just to check that out and maybe --

7 THE COURT: Talk with your counsel and
8 your clients there, whatever.

9 MR. WILLIS: Thank you.

10 MR. COOPER: Can we have a short break?

11 THE COURT: Yeah, five minutes.

12 (A recess transpired.)

13 MR. WILLIS: I believe the defense is
14 going to rest.

15 THE COURT: We'll let you do that in
16 front of the jury.

17 Bring the jury in.

18 (Jury in, 3:44 p.m.)

19 THE COURT: We have the jury back with
20 us. So that now finishes all the testimony and
21 evidence -- you-all sit down. That finishes all
22 the testimony and evidence from the Plaintiff or
23 the contestants to the will.

24 Now we switch to the other side, and
25 the Defendant, or those seeking to uphold the will,

1 (The following proceedings were had
2 October 26, 2017, Charleston County Common Pleas,
3 9:17 a.m.)

4 THE COURT: We are with the lawyers,
5 and both sides have given me some instructions or
6 requests. And both of you have given me something
7 having to do with clear and convincing evidence,
8 and all. I've had that question in my mind.
9 Somebody mentioned that in their opening statement,
10 and it caught me by surprise at that point. I have
11 looked at that.

12 Where are you getting that from? Where
13 are you getting that from, clear and convincing
14 evidence? Where are you getting that from.

15 MR. WILLS: Well, I got it from the
16 case law -- and regarding the different ways to --
17 that exist to invalidate a will and those -- those
18 ways having to be proved by clear and convincing
19 evidence. That would be fraud, undue influence --

20 THE COURT: I'm looking at the statute.

21 MR. WILLS: I'll point to the case law
22 here. Certainly --

23 THE COURT: Let me look. I'm looking
24 at 62-2-506, revocation by writing on the act. In
25 regard to the general provision of proving a will

1 or disproving a will, the statute says that the
2 party claiming something has the burden of proof of
3 proving it.

4 And that's generally by the greater
5 weight or preponderance of the evidence, but you
6 have both given me request to charge in regard to
7 clear and convincing evidence. I don't see where
8 that comes from.

9 MR. WILLS: Again --

10 MS. CROWLEY: Your Honor, the case law
11 concerning revocation of a will uses the clear and
12 convincing evidence.

13 THE COURT: Do you have something that
14 you would you want me to read?

15 MS. CROWLEY: Let me make sure.

16 THE COURT: Do you-all agree with that?
17 What is your position? You gave me something in
18 regard to clear and convincing evidence also.

19 MS. FISHER: I'm sorry, Your Honor, I
20 thought I gave you both; preponderance of the
21 evidence --

22 THE COURT: You may have. You've given
23 me something in regard to clear and convincing.

24 MS. FISHER: Right.

25 MR. WILLS: Your Honor --

1 MR. COOPER: Your Honor, my
2 understanding is that if the will is revoked, that
3 that's the preponderance of the evidence standard
4 according to the statute. And then if you're going
5 to try to do some way that's not statutory, undue
6 influence or fraud or one of these other things,
7 then you have to have clear and convincing,
8 unmistakable evidence.

9 THE COURT: I thought that would be
10 your position like that. Anyway, that's what I've
11 -- I'm asking the clerk to look up that case when I
12 decide it and everything and all, but as far as the
13 statute in regard to proving the will -- and I
14 can't put my fingers on it right now. Let me look.

15 MR. WILLS: I'll wait.

16 THE COURT: Go ahead, I'm listening.

17 MR. WILLS: For example, in re Estate
18 Tallister, this is analogous to our situation.
19 They describe not a revocation of a will by an act,
20 but a revocation of a will by having -- by virtue
21 of having lost the will and not being able to --
22 and it says that the burden -- that, in fact,
23 mistakenly lost or destroyed will by another bears
24 the burden of presenting clear and convincing
25 evidence to rebut the presumption that the testator

1 destroyed the will with the intent to revoke.

2 In that analogy that there was a
3 revocation of the will, which -- which had the
4 effect of voiding the will. The reasoning behind
5 that is clear, because if it were of a
6 preponderance of the evidence standard, obviously,
7 there's -- all of this is based on circumstantial
8 evidence, but it would allow somebody who -- who --
9 it would allow somebody who would like to make the
10 case that the will was revoked to step up and say,
11 they saw the person revoke the will. And --

12 THE COURT: Well, that's what we have
13 here.

14 MR. WILLS: Exactly. In that case, you
15 know, they would have -- if nobody else was there,
16 they'd have the preponderance of the evidence and
17 they'd have their case won.

18 THE COURT: Not necessarily. Still the
19 jury has to believe that there is no question about
20 that.

21 MR. COOPER: Can I be heard on that?

22 THE COURT: I want to look at the
23 cases. Do you have the case you want me to read?

24 MS. CROWLEY: Well, the problem that we
25 have here, this is a novel issue where the

1 allegation is that a copy of the will was
2 destroyed. So there's no case law on point where
3 you're trying to prove a copy. Do you know what
4 I'm saying?

5 Like, all of the case law regarding
6 revocation is a missing original will. We have the
7 original will. Their allegation is a copy of the
8 will was --

9 THE COURT: I understand that and that
10 was with the intent to revoke the original.

11 MS. CROWLEY: All of the case law
12 regarding revocation in those situations is clear
13 and convincing standard. It's just not exactly on
14 point because it becomes the burden of the people
15 trying to prove the revocation didn't happen.

16 THE COURT: What you've given to me
17 doesn't really speak to the issue of what -- the
18 standard that the jury should apply in judging
19 whether -- the party making a proposition claiming
20 something, whether the burden of proof is by a
21 preponderance of the evidence or by clear and
22 convincing evidence.

23 MS. CROWLEY: I have --

24 MR. WILLS: Let me add this as well.
25 Your Honor, in the elements that they talk about in

1 the code --

2 THE COURT: What is the code section
3 that says that? I haven't found it. Let me see,
4 62-3-101, let's see if that's it.

5 MS. FISHER: That's not it, Your Honor.

6 MR. COOPER: Plaintiff's request to
7 charge Number 1 is the code for revocation.
8 62-2-506, Your Honor.

9 THE COURT: Okay.

10 MS. FISHER: Your Honor, there's also
11 some discussion in Calhoun v. Calhoun 277 SC 527,
12 which indicates that the contestants continue to
13 bear the burden of proof throughout the will
14 contest.

15 THE COURT: Let's look -- I agree with
16 that. I'm trying to figure out what the burden of
17 proof is, whether it's by preponderance of the
18 evidence or clear and convincing evidence.

19 MS. FISHER: In determining whether the
20 contestants sustain such burden, the evidence has
21 to be viewed in the light most favorable to the
22 contestants.

23 THE COURT: I can't put my hand on the
24 statute, but it's the general one talking about how
25 you go about proving the will.

1 MS. CROWLEY: Are you saying as to the
2 elements of a --

3 THE COURT: Where it talks about how
4 you go about proving the will. The one code
5 section that I looked at last night, I can't put my
6 hands on it right now. It talks about how you go
7 about proving the will -- the revocation --

8 MS. FISHER: Self-proofing will, I
9 believe it's 62 --

10 THE COURT: Not the requirement for the
11 self-proofing will, but it's the other one that
12 comes right after that.

13 MS. FISHER: I believe it may be
14 62-3-407, Your Honor.

15 THE COURT: Well, that's it. That's
16 the one I was looking for. Thank you. Let me read
17 it again. Just hold on.

18 (Brief pause.)

19 THE COURT: That's the one that I was
20 looking for. That seems to -- that seems to set
21 out what the burden of proof is in regard to wills
22 contest; general burden of proof in regard to wills
23 contest. And if you follow that section of the
24 code, it's -- you know, the burden of proof is on
25 the party making the claim by the greater weight or

1 preponderance of the evidence is the way I see it.

2 Where do you think the clear and
3 convincing standard comes in?

4 MS. CROWLEY: Your Honor, if you turn
5 the page and look at the reporter's notes.

6 THE COURT: Yes.

7 MS. CROWLEY: Under Number 3. Again,
8 we're in a situation --

9 THE COURT: I'm looking trying to find
10 where you're talking about. All right. I'm
11 looking. Okay. Let me read what you want me to
12 read first.

13 All right. I read that note, but I'm
14 looking at the one that's drawn from the case of
15 the estate of Tallister, I believe. Is that what
16 you're talking about?

17 MS. CROWLEY: Yes, Your Honor. And
18 we're in a unique situation where we have the
19 original will.

20 THE COURT: Right.

21 MS. CROWLEY: But the analogous cases
22 concerning revocation, which is an in re Tallister
23 issue, placed the burden at clear and convincing
24 evidence. As to the remainder of the various ways
25 to invalidate a will listed in 62-3-407, undue

1 influence, fraud, duress, mistake, revocation, or
2 lack of capacity. I believe, the case law pretty
3 consistently shows clear and convincing standard.

4 MR. WILLS I believe it is absolute that
5 it's clear and convincing for undue influence and
6 fraud and --

7 THE COURT: Well, I know it is in
8 regard to those other -- there's language in regard
9 to that, but as far as proving that the will was
10 revoked.

11 MR. WILLS: That's in the list with the
12 other ones, Your Honor. We believe that all of
13 them must be under clear and convincing evidence
14 for the same reasons.

15 THE COURT: Let me think about it and
16 read it again.

17 (Brief pause.)

18 All right. I appreciate your position,
19 but I don't agree with the Defendant's position in
20 regard to the burden of proof. You know, I think
21 the burden of proof to prove that it is revoked is
22 by the greater weight or preponderance of the
23 evidence.

24 If I'm mistaken in regard to that, it
25 may be something that you want to -- anyway,

1 depending on what the jury does and what you want
2 to do about it. But, anyway, I think the burden of
3 proof is by clear and convincing evidence that it
4 would revoke. I'll explain all that, what it takes
5 to revoke a will and everything. I think that's
6 the burden of proof.

7 MR. WILLS: I'm sorry, Your Honor, did
8 you say clear and convincing evidence?

9 THE COURT: No. The burden of proof is
10 by the greater weight or the preponderance of the
11 evidence.

12 MR. WILLS: I thought you just misspoke
13 and said clear and convincing at that last second,
14 so I wanted to clear that up.

15 THE COURT: No, I did not. I think the
16 burden of proof is by the greater weight, the
17 preponderance of the evidence. So if your argument
18 was otherwise, you need to change it.

19 MR. WILLS: Well, we will change it,
20 obviously, but we will put our objection to that on
21 the record.

22 THE COURT: Okay. You can object. I'm
23 telling you now as we're going over the charge, and
24 you object to it. Now, as far as I'm concerned,
25 your objection carries forward.

1 All right. I think that's the big
2 issue we had. I've looked over all of your -- the
3 Defendant's requests, and all, and I think -- I'm
4 going to cover everything -- I'm not -- I may not
5 -- that doesn't mean that I'm going to give exactly
6 what you've given me here, but I'm going to cover
7 the principles of law that you've given me in your
8 requests to charge in my charge.

9 The only one that I'm not going to give
10 that I will give to the court reporter, and all, is
11 that you want the clear and convincing evidence
12 standard charge. And I told you I'm not going to
13 charge that.

14 MR. WILLS: Okay.

15 THE COURT: Everything else I'm going
16 to cover in my charges one way or another. And I'm
17 looking at the Plaintiff's request to charge. The
18 preliminary stuff, I've already given that, and
19 I'll give them some more as far as preliminary --
20 what their duties and responsibilities are, and so
21 forth, in the case. I'll cover all of that stuff,
22 all of those things that I've already covered it as
23 far as those instructions.

24 I'm looking down to -- and I'll cover
25 what I think I should cover as far as the general

1 instructions are concerned and not -- of course,
2 you-all gave me one on clear and convincing
3 evidence, but I'm not going to give that. You
4 don't object to that, do you?

5 MS. FISHER: No, Your Honor.

6 THE COURT: I'll give a directed
7 circumstantial evidence charge. I'm not going to
8 give -- I have a shorter version that I'll give.
9 And I've already told them what a deposition is and
10 everything. So, again, I'll tell them something
11 about the deposition. There has been nobody
12 testify as an expert witness in the case, so I'm
13 not going to give an expert witness charge.

14 MS. FISHER: I apologize. That was
15 supposed to be excluded.

16 THE COURT: That's all right.

17 And you have -- the last one about
18 stipulations. There hasn't been any stipulations,
19 has there?

20 MS. FISHER: No.

21 THE COURT: I don't need to say
22 anything about that.

23 MS. FISHER: Thank you.

24 THE COURT: Okay. So I think I've
25 covered everything, as I've said here that are in

1 these, and I'll give these to the court reporter,
2 and all, to have a record of what you've asked me
3 to do. And if I haven't covered it in my charge,
4 you can take exception to it at the end of it and
5 let me know that you don't think that I covered
6 something that you wanted me to cover in my
7 instructions.

8 MS. FISHER: Your Honor, did you get
9 our other requested -- special requests?

10 THE COURT: I haven't gotten anything
11 except what you gave me this morning.

12 MS. FISHER: We had a general, and
13 there should have been a separate one. So let me
14 get that one for you.

15 THE COURT: I'm going to tell them --
16 this request here about a will may be freely
17 modified or revoked by a mentally competent
18 testator acting on the testator's own volition
19 until the testator's death. I'm going to say -- I
20 don't know that I'll say it exactly in those terms
21 and everything and all, but I'm going to tell them,
22 essentially, that one way or another.

23 All right. Anything else?

24 MR. COOPER: Well, for clarity, is Your
25 Honor going to charge the essence of our request to

1 charge Number 5? That has to do with the copy.

2 THE COURT: I'm sorry?

3 MR. COOPER: The copy of the will.

4 THE COURT: I'm trying to find what
5 you're talking about.

6 MR. COOPER: It's a single page,
7 request Number 5.

8 MR. WILLS: We would object to that
9 charge, as well as to charge Number 3.

10 THE COURT: Well, let me look and see
11 what this says.

12 You may have to give me something --
13 apparently, I have a different code section than
14 you do as far as 62-3-303. Do you have a copy of
15 that, 62-3-303?

16 MR. COOPER: That's the first part of
17 that. The second part is by implication.

18 THE COURT: What is it that -- I'm
19 looking at 62-3-303. I don't see whatever it is
20 that you're talking about in there.

21 MR. COOPER: Your Honor, it -- I think
22 it's authority, that informal testacy or
23 appointment preceding to starting the probate copy
24 of the will, rather than having to have the
25 original.

1 And so what we're saying is, by
2 implication, if you can -- a copy of a will is
3 good enough to be admitted, you know, in lieu of
4 the original, then to revoke, if what you have in
5 hand is the copy, then we think under the right
6 circumstances that it could be found by the jury
7 that that was a revocation, even though she didn't
8 have in her hand the original will which was in
9 the --

10 THE COURT: Well, I agree that -- I
11 agree with that. That's what this case is about,
12 is whether she did tear it up and whether she had
13 the necessary testament and capacity to do that.
14 But I don't see anything in the code section that
15 you have given me that speaks to that.

16 MR. COOPER: No. That --

17 THE COURT: Okay. So this request that
18 you gave me -- whatever number it is, six, I'm not
19 going to give because I don't think that's the law.

20 MR. WILLS: Is it five or six?

21 MR. COOPER: It's request Number 5.

22 THE COURT: I'm not going to charge
23 that.

24 MR. WILLS: Right. Okay. We don't
25 take exception to charge Number 3 we believe as not

1 being a correct statement of law, particularly in
2 this case. This came out of a case. It's --

3 THE COURT: Let me get to it. Just a
4 second.

5 MR. COOPER: Your Honor, it's Number 3.

6 THE COURT: I'm not going to give
7 Number 3. That's clear and convincing is what I've
8 got --

9 MR. WILLS: This is a different -- I'm
10 sorry, Your Honor, may be a different -- different
11 -- this is Plaintiff's Number 3.

12 THE COURT: Well, I'm looking at
13 Plaintiff's. I don't know what you're talking
14 about.

15 MR. WILLS: The one that I have here
16 they have given me starts out with, a person is not
17 incompetent to make a will because he's been
18 adjudicated of unsound mind or insane.

19 MR. COOPER: This is three, Your Honor.

20 THE COURT: Well, I'm going to cover
21 that in some shape or fashion. I'm not going to
22 say exactly all this maybe, but I will cover that
23 as far as, you know, considering all the
24 circumstances, but I'm going to talk about the
25 finding of the Court. I'll going to tell you that,

1 too.

2 I'm going to talk about the probate
3 court and the order, and what it says in there, and
4 everything and all, as far as her being incompetent
5 and she's not supposed to -- she can't make a will.

6 You-all can argue that that doesn't
7 bind you and, technically, it doesn't bind you, but
8 I'm not going to say it. That -- I'm not going to
9 give this request to charge that you have given to
10 me here in this fashion. I'll give it to the court
11 reporter. I'm going to charge about that, but I'm
12 not going to charge it in the fashion that you
13 requested it. I'm going to cover that subject.

14 MS. FISHER: Thank you, Your Honor. I
15 just wanted to let the Court know that is actually
16 out of the case --

17 THE COURT: I understand that.

18 MS. FISHER: Okay.

19 THE COURT: The facts are different.

20 MS. FISHER: Yes, of course. So I also
21 wanted to just bring to the Court's attention,
22 because I did file a motion the other day regarding
23 -- it wasn't a motion, it was a brief. And I
24 wanted to make sure that you had it before you
25 ruled on the request in the brief that I gave you

1 yesterday. So -- and it has the different codes --

2 THE COURT: I don't know what you're
3 talking about. What are you talking about?

4 MS. FISHER: I gave you a brief, a
5 legal brief --

6 MR. COOPER: Plaintiff's trial brief --

7 THE COURT: Well, tell me what you're
8 talking about.

9 MS. FISHER: Your Honor, it's regarding
10 the language of the code -- regarding the language
11 in the order which said it was -- she couldn't
12 revoke. If you recall, there was some dispute
13 about the code, it was a different code in your
14 book than our book.

15 And we informed you that the code that
16 we provided in that brief is the actual law at this
17 time until January 2019. So I wanted to make
18 sure --

19 THE COURT: I'll tell the jury that,
20 you know, that the probate court found what it
21 found in that order, but that, nevertheless, if she
22 was lucid and knew what she was doing, knew all the
23 things she had to know to make a will at a later
24 date, she can revoke it and all. But she has to do
25 all that in spite of the fact that the Court made

1 that finding.

2 MS. FISHER: Thank you, Your Honor.

3 THE COURT: All right. I need to take
4 care of one other little thing back here, and we'll
5 be ready to argue and charge. So now the argument
6 is the contestants go first and then you get your
7 argument and then a brief reply at the end. One
8 lawyer over here, one lawyer over here.
9 (Indicating.)

10 MR. WILLS: Under Rule 43, the
11 Defendant didn't put up any evidence; we would like
12 to request the ability to close.

13 THE COURT: Let me see what the Rules
14 says. Rule 43? I'll look at that while I'm back
15 here.

16 MS. FISHER: Can we have ten minutes?

17 THE COURT: Sure. Sure.

18 (A recess transpired.)

19 THE COURT: All right. I've looked at
20 Rule 43. I don't agree with you. I think the
21 order of argument, as I said, is that the
22 contestant, the Plaintiffs, go first, argue fully
23 concerning the facts and law; then you have the
24 opportunity to argue fully concerning the facts and
25 the law; they can make a brief reply argument if

1 they so desire.

2 So that's the way we're going to do it.

3 MR. COOPER: Your Honor, before we
4 bring the jury in, I have two motions.

5 THE COURT: All right. What is it?

6 MR. COOPER: Your Honor, the first
7 motion is a motion to modify the probate court
8 order, Defendant's Exhibit Number 2, which is in
9 evidence. To suspend the prohibition on page 7
10 against revocation of the will, and then based on
11 Dr. Waid's report, which is Court's Exhibit here,
12 but it was also filed with the probate court on
13 January 9th, eight days after the -- what we say is
14 a revocation of the will.

15 And Dr. Waid's report clearly indicates
16 that Alice Shaw Baker at the time that he examined
17 her had the capacity --

18 THE COURT: It does not. It just says
19 that she knows what a will is basically.

20 Anything else?

21 MR. COOPER: Your Honor, we have a
22 motion to amend --

23 THE COURT: And it's not in evidence by
24 the way, but go ahead.

25 MR. COOPER: It's not in evidence, Your

1 Honor, but it is in the probate court file, and the
2 order itself contemplates that -- the order clearly
3 mandates the evaluation of Alice Shaw Baker by
4 Dr. Waid clearly implies that the order should be
5 modified as appropriate, based upon Dr. Waid's
6 report, which was filed with the probate court, and
7 Alice Shaw Baker died before the court took any
8 action on the issue. And the probate file is over
9 here in this court now and we think it's --

10 THE COURT: And we may just bring that
11 file over here. I was looking at it, and
12 everything. I may bring it over here as an exhibit
13 in this case.

14 Go get her to bring it back over here.
15 Anything else?

16 MR. COOPER: Your Honor, yes. We have
17 Plaintiff's motion to amend the complaint to
18 conform to the evidence at trial.

19 THE COURT: What do you mean by that?

20 MR. COOPER: I would ask Ms. Fisher to
21 explain it.

22 MS. FISHER: Your Honor, just for
23 preservation of issues, I wanted to make sure --

24 THE COURT: No. You're asking me to do
25 something. Tell me what you're asking me to do.

1 MS. FISHER: I'm asking you to allow us
2 under Rule 15 to amend the complaint to conform to
3 the evidence at trial to show that, under the
4 current state of law, we can amend the complaint to
5 include a cause of action for declaratory judgment
6 regarding reformation under Code 62-2-601 which
7 indicates that notwithstanding Subsection (a), the
8 court may reform the terms of a will even if
9 unambiguous, to conform the terms to the testator's
10 intention if it is proved by clear and convincing
11 evidence that the testator's intent and the terms
12 of the will were affected by mistake of fact or
13 law, whether in expression or inducement.

14 Based on the testimony of Kay Slade,
15 where there was an indication that Alice Shaw Baker
16 believed that her money would be used for the
17 purchase of land for a rescue. We want to make
18 sure that was on the record.

19 THE COURT: Okay. I appreciate that.
20 I deny your motion.

21 MS. FISHER: Thank you, Your Honor.

22 THE CLERK: She is in transit.

23 THE COURT: Ask her to have a seat back
24 in my office with those files.

25 THE CLERK: All right.

1 THE COURT: All right. Bring the jury
2 in.

3 Here's the verdict form. Come up and
4 get a copy.

5 MR. COOPER: Your Honor, the Plaintiff
6 has no objection to the verdict form, except --

7 THE COURT: You can make that objection
8 later on.

9 MR. COOPER: Yes, Your Honor.

10 THE COURT: Come up here and tell me
11 now whatever you want, and I'll put it on the
12 record.

13 (Off-the-record conference.)

14 (Jury in, 10:19 a.m.)

15 THE BAILIFF: All jurors are present.

16 THE COURT: We have the jury with us.
17 I appreciate you being on time. And, also, I have
18 a note here from Juror No. 191. I'm not sure who
19 that is. No. 191?

20 JUROR NUMBER 191: Me.

21 THE COURT: About an appointment, and
22 all. We're anticipating being done with the trial
23 today so you won't have any problem going with the
24 appointment tomorrow. Okay.

25 Of course, that depends on what you do,

1 how long you take to make your decision, but I
2 don't think you will have a problem. I told you
3 yesterday we have finished with all the testimony
4 and evidence in this case, and now we get to the
5 part where the attorneys can summarize and argue to
6 you.

7 These will be true arguments in which
8 they try to persuade you as what version or view
9 you should take of the facts of this case and how
10 those facts may fit into the law. The way we go
11 about hearing from the attorneys is, first of all,
12 Mr. Cooper. You're going to argue?

13 MR. COOPER: Yes.

14 THE COURT: Wait a minute, sit down.
15 He's going to argue first and then we'll switch to
16 the other side, and Mr. Wills -- I think that's
17 interesting that his last name is Wills and we're
18 talking about a wills contest case -- Mr. Wills is
19 going to argue fully to you concerning the facts
20 and the law.

21 And then the rules do allow for the
22 Plaintiff attorney, since they have the burden of
23 proof, the rules do allow for the Plaintiff
24 attorney to make a brief reply argument, that is
25 replying to matters raised by the defense during

1 the argument of the case.

2 I remind you that the issue that you're
3 going to have to decide is whether or not Exhibit
4 Number 3, which was admitted into evidence, the
5 Last Will and Testament of Mrs. Alice Shaw Baker is
6 admitted into evidence, Exhibit Number 3, whether
7 that was her Last Will and Testament at the time
8 she died, or whether it was revoked in some shape
9 or fashion before her death.

10 That's the issue that you have to
11 decide. Whether that was her Last Will and
12 Testament. There's no question under the facts and
13 the law that that was a valid will that she made
14 and brought in and presented to the Court. That
15 was their legal issue that was decided, it was a
16 valid will.

17 The only issue is whether or not she in
18 some fashion -- shape, form, or fashion -- and I'll
19 tell you about what would have to be proven in
20 regard to that before I let you start talking about
21 this case, whether or not she revoked that will or
22 not. That's what you have to decide. Keep that in
23 mind.

24 All right. Arguments.

25 MR. COOPER: Ladies and gentlemen, you

1 have heard several days of testimony about Alice
2 Shaw Baker. We all know she was an animal lover.
3 We all know she loved her dogs dearly. We know
4 that she knew her property and she knew, you know,
5 her loved ones and what she wanted to happen with
6 that.

7 You heard testimony from -- from Kay
8 Passailaigue out of her deposition. You heard her
9 testify a number of times that she didn't have any
10 specific instructions or any kind of -- she didn't
11 make any promises to Alice Shaw Baker about what
12 would happen with the property that she would
13 inherit from her, but then when she was shown her
14 deposition, she testified differently.

15 And I'm reading from page 97, line 14,
16 where we did yesterday. The question was: Okay.
17 Did she, meaning Alice Shaw Baker, ever talk to you
18 about any of her charitable intent or wishes that
19 she had for after when she died?

20 Answer: We talked about Charleston
21 Animal Society and that they did not want to agree
22 to her wishes and how that really upset her. Other
23 than that, because I work with some rescue, she one
24 time told that me as far as she was concerned, I
25 could sell her house -- she would get the house and

1 she would sell it -- and buy land. And that way I
2 could bring in and have all the dogs I wanted.

3 Did she ever express to you -- the next
4 question: Did she ever express to you or talk to
5 you about you -- anything she left to you, what
6 that would be used for?

7 Answer: Well, like I said, she told me
8 that she would hope that I would get land and that
9 way I could have all the dogs I wanted. She could
10 only have three dogs where she lived. She did know
11 that I would take in dogs and have surgery or
12 whatever needed to be done and find them homes or
13 keep them.

14 It's very clear, Ms. Passailaigue
15 Slade at first wouldn't admit it, but she testified
16 under oath right after Alice Shaw Baker died, at
17 the time of the deposition, that Alice told her: I
18 want you to have my house and all this other stuff.
19 And the reason is because I want to have a dog
20 rescue. I want that -- the animal charities
21 benefit. I want you to be the animal charity. I
22 want you to take my house and sell it, because you
23 can only have three dogs in West Ashley. They have
24 a regulation on how many dogs you can have, I
25 guess.

1 But she wanted her to sell the property
2 and go somewhere where there was more land and have
3 a dog rescue. And that was her object in naming
4 Ms. Passailaigue Slade as beneficiary of her will.

5 And so -- you know, so what did she do
6 about it? There is testimony that Bessie Huckabee
7 and Kay Slade visited Alice Shaw Baker numerous
8 times. They testified they did, but they also had
9 to admit that as time went on after the mid 2000s,
10 after the dogs had passed away, that, you know,
11 they didn't visit as often.

12 And you heard the testimony about what
13 the visits were. They were very short, didn't seem
14 like they were -- seems like the friendship had
15 cooled off, to say the least, with both of them.

16 And I'm not saying anybody is at fault
17 for that, but Alice Shaw Baker had three wills, and
18 the one that is in evidence here is the third will.
19 So she had changed her will before. She knew how
20 to do it. His Honor is going to charge you on the
21 law, and the law in South Carolina is that all
22 citizens are presumed to know what the law is.

23 And there is a code section that His
24 Honor will instruct you on which specifies how, if
25 you have a will and you want to revoke it, you can

1 do that. And there are various ways that you can
2 do it, and he'll instruct you on that.

3 One of those ways is to tear it up, or
4 deface it, or to tell somebody else in your
5 presence to do that if you're unable to do it. And
6 so that's an issue in this case. You've heard the
7 testimony from Lisa Fisher, the only testimony
8 about revocation.

9 While she was there as conservator on
10 January 1, 2009, her great-aunt was talking about,
11 oh, all my stuff is going to go to animal
12 charities. And there's testimony that when she
13 found out that wasn't true, she got the will and
14 she started, I guess, marking it out with a pen or
15 a pencil.

16 There's testimony that Ms. Fisher got
17 the will and folded it up and put it over there and
18 tried to calm Alice Shaw Baker down, but the
19 testimony is that in a few minutes she was back up
20 there again and had the paper again and she tore it
21 up.

22 Now what you have to decide is when
23 she's agitated like that, whether or not she's
24 intending by tearing up the will to revoke it, to
25 revoke the effectiveness of it.

1 Now, there's testimony that Bessie
2 Huckabee had the key to the safe deposit box where
3 the original will was. Now, there's no testimony
4 -- nobody knew whether Alice Shaw Baker had one of
5 those keys to the safe deposit box. We know that
6 she did have a copy of the will and a copy of this
7 will that is right here.

8 And we have heard testimony that she
9 became agitated when she discovered what the
10 provisions were in the will not including animal
11 charities, and she tore it up.

12 And we contend that that is a valid
13 revocation under statute. I'm not going to tell
14 you the exact wording of the law, but, basically,
15 you have to have the intent. It can't be an
16 accident. If you're opening up the envelope and
17 you tear the will by mistake, that is not intent to
18 revoke. If you don't have the intent, you can tear
19 it and it's not a revocation.

20 If you intend by tearing it to revoke
21 to, you know, do away with the will to cancel it
22 out, then, you know, that's one of the ways in
23 South Carolina under the statute that, you know, a
24 will can be revoked.

25 And it's our contention that that is

1 exactly what happened here. She was unhappy with
2 Bessie and Kay because they weren't coming over as
3 often. She didn't have the same kind of
4 relationship with them that she had in the past.
5 Will was done in 2001, this is 2009.

6 So during the eight years, they -- we
7 don't know exactly. The relationship, the
8 feelings, you know, declined. And I think that's
9 just a fair interpretation of what the testimony
10 is.

11 The other thing is that -- is that --
12 I've lost it. Sorry. But -- well, let me say,
13 this is a good time to talk about the burden of
14 proof that we have to prove is greater weight or
15 preponderance of the evidence. It's not a criminal
16 case where we have to prove a burden of proof of
17 beyond a reasonable doubt, 99 percent, 44 100ths
18 percent. This is a slightly more than 50 percent.

19 So if the scales are even, we haven't
20 proven our case. If we proved just a little more,
21 we have done it. So 51 percent is what some people
22 say.

23 But the only evidence about revocation,
24 and the only issue in the case is revocation, and
25 the only evidence about it is what you heard from

1 the witness stand under oath by Lisa Fisher who was
2 there when Alice Shaw Baker tore up the will and --
3 with the intent. She was agitated and she intended
4 to revoke.

5 And so, you know, under South Carolina
6 law, all citizens are presumed to know what the law
7 is and they're presumed to know if they tear up
8 their will with the intent to revoke, that's
9 effective, and that's one way to do it.

10 There are cases where people are way
11 more incapacitated and they have to instruct
12 somebody else to do it; that would be another way.
13 But, at any rate, for your purposes, if she tore it
14 up with the capacity to revoke and did it with the
15 intent to revoke, then that is an effective
16 revocation.

17 Now, you know, it's clear that back in
18 2001, when she made this will, she also at the same
19 time made out what is called a durable power of
20 attorney. And she made Bessie Huckabee her power
21 of attorney so that she could take any legal action
22 that was -- that was necessary or appropriate to
23 try to help her at that time.

24 And there was also a healthcare power
25 of attorney, and I'm not sure whether you know what

1 it is, but it basically gives -- she gave Bessie
2 Huckabee the power to make healthcare decisions.
3 If she had to have an operation or something and
4 she was under anesthesia, do we do the operation?
5 Do we not do the operation?

6 This is something that you typically
7 give to a family member. And she clearly felt she
8 had a good relationship with Bessie Huckabee, and
9 also with Kay Slade because the animal rescue
10 operation back in 2001.

11 But it seems to me that the testimony
12 -- the only conclusion to really reach from the
13 testimony is that those relationships cooled off
14 and, certainly, by the time the conservatorship,
15 Bessie and Kay were not visiting her anymore. They
16 were calling, but they were talking to the sitters.
17 They were not talking to Alice Shaw Baker.

18 At any rate, I think it just dawned on
19 Alice that, you know, what she really wanted was to
20 stay in her house. And Ms. Kay Passailaigue Slade
21 is the one that turned her in to the elder
22 services. What the elder services do is they come
23 and take you out of your house and put you in
24 assisted living. They protect you by taking you
25 out of your house. And Bessie agreed to that.

1 And, you know, a report to elder
2 services can be an appropriate action under the
3 right circumstances, but after Alice Shaw Baker was
4 brought into probate court, neither Kay nor Bessie
5 took any action to try to help her stay in her
6 house.

7 Lisa Fisher came from California,
8 cleaned up all the clutter, ripped out all the
9 flammable carpet and put in retardant carpet, put
10 sprinkler systems in the ceiling. We did
11 everything we could to make it so she could stay
12 there. And the court ordered she had to smoke
13 outside on the back patio unless it was raining and
14 then she could come into a pantry room which had a
15 cement floor. And we had smoke alarms and the
16 little pendant that you pressed on -- I can't
17 remember what that is, but anyhow, if you fall or
18 have an emergency, you can press that and someone
19 will come.

20 So we took -- Lisa Fisher took all of
21 these steps as the conservator and guardian. A
22 guardian takes care of the physical well-being of
23 an incapacitated person and a conservator takes
24 care of the financial and those types of things.
25 Well, she was appointed as both, and she kept her

1 in her own house, allowed her to stay there through
2 the end of her life. Kay Passailaigue Slade and
3 Bessie Huckabee didn't do that. And that was
4 another reason that Alice Shaw Baker was quite
5 upset with them.

6 And then when she found out her will
7 was in the estate with them, she revoked. And
8 that's -- that's the motivation.

9 You heard the testimony of Bessie
10 Huckabee. On page 22, line 14: Did you ever have
11 any discussions with Alice Shaw Baker about what
12 was to happen with her house after she died?

13 And you remember it was many times that
14 she testified, oh, no, we had no discussions about
15 that. That was all to do with Kay, she didn't talk
16 to me about the house. And then in her deposition
17 the answer to the question was, well, yes, I guess
18 she did.

19 You know, this was under oath in her
20 deposition, October 15, 2009, right after Alice
21 Shaw Baker died. And this is more reliable than
22 her denials that she was able to tell about the
23 house during the trial. So what she says is, well,
24 yes, I guess she did. She said that because Kay
25 was getting the dogs, the house was going to Kay.

1 She said Alice Shaw Baker never talked to me about
2 the house.

3 And here, under oath, she said she did.
4 And I think this is more credible because this is
5 right when everything was fresh in her mind. Kay
6 was getting the dogs, the house was going to Kay,
7 and that was the reason because she wanted her dogs
8 taken care of. The dogs were one of her main
9 concerns.

10 You remember that Bessie Huckabee
11 denied having any knowledge about the SPCA and the
12 deed that she did of her house to the SPCA, but,
13 then, if you look back at her sworn testimony from
14 2009, in the deposition, did Alice Shaw Baker ever
15 mention to you that she wanted any part of her
16 estate to go to the SPCA?

17 Answer: She talked about giving them
18 some money and stuff, but it was never -- I don't
19 know when this was, and a long time ago, nothing
20 recent, but that was her money, her dogs and her
21 house. I mean, you know, that's the only -- no
22 deep discussions with me.

23 Maybe no deep discussions, but she did
24 talk to her about it according to this. This is
25 her sworn testimony from 2009.

1 And then again on page 24, line 14, the
2 question is: She did over the years mention giving
3 some of her estate upon her death to dog charities?

4 Answer: Until she got mad with the
5 SPCA. She didn't like the man, and then she said
6 they couldn't have anything. If they didn't want
7 her house, they wasn't having her money.

8 So it indicates that she had talked to
9 Alice Shaw Baker about this. She's testifying here
10 back in 2009, that she had these conversations with
11 Alice. And then during the trial here, she's
12 trying to say that she didn't have any discussions
13 at all.

14 So, you know, I submit you have to
15 weigh the evidence, and you have to weigh what the
16 -- you know, what really happened. And the
17 testimony under oath, same oath that she took here
18 today, she testified differently back in 2009.

19 So between the testimony that she had
20 -- she'd actually signed a deed and tried to give
21 her house to the SPCA, that coupled with the sworn
22 testimony of Kay Passailaigue Slade, that she
23 talked with Alice and Alice wanted her to have her
24 house -- remember, Mrs. Slade and her husband don't
25 own a house. I guess they rent, I don't know, but

1 she said they don't own one.

2 But Bessie wanted to give her one, and
3 not just for her and husband. It was to serve as a
4 means to sell it and get the money and go to some
5 place where you could get more land and you could
6 run a dog rescue operation.

7 Kay testified that she had been doing
8 that for many, many years with multiple different
9 Jack Russell rescue operations both nationally and
10 locally. And so this was Alice Shaw Baker's way of
11 trying to, you know, provide for animal charities,
12 at any rate, for whatever reason.

13 And there's been -- you know, because
14 of the -- because of the rules of evidence, we
15 haven't been able to tell you everything about what
16 people remember about the reasons for that, but
17 what we can say here today for sure is that Alice
18 Shaw Baker was very agitated on January 1, 2009;
19 she, not by accident, but intentionally first tried
20 to obliterate the will with a pen or pencil. And
21 then after it was put away, she went and got it
22 again; she was still agitated and she tore it up.

23 And that act of tearing it up was her
24 attempt to revoke the will, to, you know, have it
25 no longer valid to transfer, you know, her

1 property. Thank you very much.

2 THE COURT: Mr. Wills.

3 MR. WILLS: People have a basic right
4 to provide for where their property and their money
5 is going to go when they die. They do that in a
6 will; that's what a will is for.

7 We have a will that you will have in
8 evidence with you and a copy of a will, but we have
9 the original will of Alice Shaw Baker from 2001, in
10 which she named her best friends, Kay and Bessie
11 and Sandra Byrd, who is no longer with us, as the
12 beneficiaries of the will. It's clear as day.

13 The testimony has been that that's not
14 the only will that's been in existence. That there
15 have been several wills going back to the '90s.
16 And in each one of those wills, Kay, Bessie and
17 Sandra are named.

18 The Plaintiff is not named in any of
19 those wills. The testimony has been -- I'm sure
20 you will recall the testimony, that Kay and Bessie
21 were friends for -- of hers for 40 years. I think
22 Kay a little bit less. 40 years they were like
23 family. You heard the testimony of the things they
24 did together. They spent the holidays together.
25 They spent Christmases, vacations, Easter,

1 Thanksgiving. Bessie listed them out for you.

2 This was her family.

3 Her passion, dogs, yes. Kay's passion,
4 dogs. That was their connection. That's why they
5 were best friends. It made sense. You will also
6 recall the testimony that Ms. Plaintiff here had
7 not even met Alice Shaw Baker until she came from
8 her incapacity hearing in 2008, from California.

9 This is a -- this is a family that is
10 nonexistent, was nonexistent in Alice Shaw Baker's
11 life. They turned up at the moment of Alice Shaw
12 Baker's incapacity. The moment that the court is
13 saying, we need to put somebody in place to take
14 care of Alice Shaw Baker affairs because she is not
15 able to do it anymore. That's the first we hear
16 from these Plaintiffs.

17 And they turn up -- when do they turn
18 up? They turn up in 2008. Well, it's 2017 today.
19 2017. You may be wondering why we're all sitting
20 in here 2017, when this happened in 2008. Well, I
21 can guarantee you that it's not because it takes
22 that long to get on the trial roster and be able to
23 present our case to you today.

24 No. Bessie and Kay have been in the
25 will since 2001, and now we're 2016. (Sic) And we

1 have some folks coming in to challenge the will who
2 don't know Alice Shaw Baker from Joe and want to
3 come in and talk about Alice Shaw Baker's desires,
4 all the things that Alice Shaw Baker loved, and
5 then they have the nerve to act like Bessie and Kay
6 may not even really be friends after all.

7 Well, you can be sure that that
8 testimony did come from the Plaintiff here.

9 Unfortunately, Alice Shaw Baker is no longer with
10 us so she couldn't give us that testimony herself;
11 otherwise, it may be believable. But that's not
12 the case.

13 Now, on this caption here of the case,
14 you may have recognized as well that the Plaintiffs
15 are Betty Fisher and Lisa Fisher, mother and
16 daughter. While they filed this will contest in
17 2009, nearly eight or nine years ago, and we've
18 been through this entire process now before you,
19 you will notice that Betty Fisher didn't bother to
20 show up here at trial.

21 Now, perhaps that's, you know, an
22 indication of what she thinks about that -- about
23 their case. We're all here. The Defendants are
24 hear here, nine years later. When I spoke to you
25 in the beginning, I indicated that I had every

1 confidence that you would be able to sort through
2 the irrelevant material and just focus on the
3 issues that are relevant to this case.

4 One smoke screen that we have here is
5 Alice Shaw Baker loved animals. Of course she
6 loved animals, big smoke screen. Alice Shaw
7 Baker's intent was to leave her -- all of her
8 estate to animal charities and that's -- that's
9 what the Plaintiffs are asking you to believe.
10 That we should -- we should invalidate her will,
11 that you'll have in front of you, because her
12 intention was to leave all of her money and her
13 assets and her house to a dog charity.

14 This is the Plaintiff coming in and
15 telling you this, but we heard -- we heard Lisa
16 Fisher -- and the judge will instruct you on this
17 later. They're asking you to invalidate this will
18 and find that it was revoked. And then the effect
19 of that is not that any money or asset or any of
20 the estate goes to dog charities. It goes to them,
21 because Alice Shaw Baker will then be intestate.

22 So when you're evaluating the testimony
23 of the Plaintiff, you can keep that in mind when
24 you're making a determination about how credible
25 this is. This allegation that despite the fact

1 that the will was made in 2001, and Alice Shaw
2 Baker was deemed to be incapacitated by the court
3 after a thorough evaluation, by medical examiners,
4 and by psychologists, and the court said this woman
5 is not of sound mind, she does not have capacity to
6 run her affairs.

7 And we'll talk a little bit more about
8 what she didn't have capacity to do, but that was
9 in 2008. She made the will in 2001. She had every
10 opportunity to change it if she wanted to between
11 2001 and the time she was incapacitated. Did she?
12 No, she didn't.

13 Now, the testimony that we've heard
14 from Ms. Lisa Fisher is that she became the
15 guardian of Alice Shaw Baker. That means that she
16 is going to handle the affairs. She is going to be
17 the one that makes sure that everything in Alice
18 Shaw Baker's life is taken care of when Alice Shaw
19 Baker doesn't have capacity to do it.

20 I won't bother you talking about all
21 the things the -- whether or not -- whether or not
22 -- whether or not Bessie or Kay came to visit Alice
23 in the driveway or in the backyard nine years ago,
24 but I will tell you about this.

25 The one person who stands -- the

1 Plaintiff who stands to benefit if this will is
2 revoked, got on the stand and gave testimony to you
3 that during the time that Alice Shaw Baker was
4 incapacitated and had full-time care with, I
5 believe -- you will remember the testimony -- of
6 upwards of six caretakers, medical professionals,
7 at the doctors, at the hospital, somehow
8 miraculously during a time when the Plaintiff here
9 was alone with Alice Shaw Baker and nobody else was
10 around, she saw her do something to the will, which
11 she said that's a revocation of the will.

12 It must have been her intent to give
13 all her money to dog charities because she -- well,
14 she scratched the will out and then she ripped it
15 up. Nobody else saw this.

16 They didn't bring anybody here to
17 testify that they also witnessed this. You get to
18 decide if that's credible or not. You will have no
19 physical evidence of any torn-up copy of a will.
20 Keep in mind, this is a copy of the will they even
21 alleged, if it even happened.

22 We're talking about if it happened,
23 they allege it was a copy of the will. They don't
24 have the torn-up copy here or a scratched-out copy.
25 The only testimony you have is from the person who

1 is going to benefit if the will is revoked. You
2 will get to decide if that's believable.

3 Perhaps the most important thing,
4 however, is that the only testimony that there was
5 and the only evidence is that this alleged
6 revocation of the will that occurred on January 1st
7 of 2009. When -- you will have in evidence with
8 you, a court order from the probate court that had
9 to do with the -- with the hearing at which the
10 Plaintiff -- at which the Plaintiff attended, which
11 the Plaintiff was a part of, which the very purpose
12 of why the Plaintiff was here was to become the
13 guardian of the person who was becoming
14 incapacitated.

15 But in the very order, specifically,
16 you will have it, you will have it, you will be
17 able to read it, it says that Alice Shaw Baker does
18 not have capacity to manage her affairs, and it
19 lists out things she can't do.

20 And then separately and specifically it
21 says, Alice Shaw Baker and nobody on her behalf may
22 make a new will, modify her will or revoke her
23 will. That's the purpose of putting that in the
24 order so that we can avoid the chicanery of
25 somebody coming in while she does not have

1 testamentary capacity and say, oh, (indicating) she
2 ripped up the will, I get all the money.

3 That's the purpose of why that's in
4 that order so that we, nine years later, aren't
5 here today. I think the testimony was that all
6 Alice Shaw Baker wanted was to not have lawyers
7 involved; one, two, three, four.

8 Let's talk about Alice Shaw Baker's
9 intent. What did she want? It's not this. Alice
10 Shaw Baker made her wishes clear and she put them
11 in writing and she had them witnessed, properly
12 done with a lawyer so that her -- so that we would
13 seal the deal on what her wishes were.

14 And you'll see -- and the wishes of
15 Alice Shaw Baker in this will that you will have
16 with you are consistent with what they had been in
17 previous wills she had made.

18 So I will ask you all as you go back to
19 deliberate to see through the smoke that's caused
20 by the animal charity. Animal charities, the love
21 for animals, of course she loved animals, but her
22 money was not going to animal charities. If the
23 will is revoked, it's going to the very people who
24 she did not name in the will.

25 And so we have to ask, we have to look

1 at that and ask, is that Alice Shaw Baker's intent?
2 But we're not really just looking at intent. We're
3 looking at whether or not she revoked this will.
4 And I think the evidence is clear. Your common
5 sense will tell you that the -- that there was no
6 revocation of this will under the facts and
7 testimony that we heard. You'll be able to decide
8 that for yourselves.

9 I have every confidence that you will
10 look at this evidence and testimony that you heard
11 and evaluate it for credibility, for probability,
12 for proof, and come to the conclusion that -- and
13 hope that you will find that the will is valid, in
14 place, Alice Shaw Baker's Last -- Last Will as she
15 had it and uphold the will. Thank you.

16 THE COURT: Any brief reply?

17 MR. COOPER: Yes, Your Honor.

18 Ladies and gentlemen, I'm just going to
19 respond to some of the things Mr. Wills said. I'm
20 not going to go over all -- in part what I was
21 saying before. I just want to highlight a few
22 things that he said that certainly I don't agree
23 with, and I think you may not agree with, based on
24 the testimony and documents that you will have to
25 look at in the jury room.

1 We know that she named her best friends
2 in her will in 2001, but I think the evidence is
3 very clear that her best friends in 2009 and 2008
4 were different than what was in the will in 2001.
5 Certainly, she had changed her will several times
6 before. She was a person that, you know, kept --
7 kept changing what she wanted to happen, and some
8 people are like that.

9 Now, Mr. Brook Wills said this
10 Plaintiff is not named in any will, meaning Lisa
11 Fisher and Betty Fisher, and that's true. They are
12 not in a position where they need to inherit from
13 Alice Shaw Baker. They just want her wishes
14 honored.

15 Now, he made a comment that Betty
16 Fisher, 81 years old, lives in California, is not
17 here. I think that comment is unfair, but you can
18 take whatever view of that you want to. She was
19 not able to be here for reasons I'm not going to go
20 into, but Alice Shaw Baker intended that her monies
21 go to animal charities.

22 She tried to give her house by deed to
23 the SPCA, and they wouldn't take it. You heard the
24 testimony not of my client but of Ms. Passailaigue
25 Slade about what Alice Shaw Baker told her. I want

1 you to have the house; I want you to sell it; I
2 want you to go out and get a place, more land where
3 you can have a dog rescue. She knew that for
4 40 years Kay had been doing that.

5 And so what we would ask you to do is
6 just honor Alice Shaw Baker's wishes. We don't
7 know all the details, but we know January 1, 2009,
8 she was agitated. While was agitated, she defaced
9 and then tore up a copy of her will. And we think
10 that's clear and convincing evidence that, you
11 know, she didn't want that will to be in effect.

12 Now, whether she wanted it to go to
13 animal charities or to her family or for something
14 else to happen, in South Carolina if you revoke the
15 only will that you have, then it goes by the
16 intestacy statute. And there are all sorts of laws
17 there about what happens to it, but, at any rate,
18 there's nothing to keep -- whoever gets it.

19 And, by the way, Ms. Fisher is a
20 Plaintiff, but she is not an inheriter at all of
21 Alice Shaw Baker. Her mother, Betty Fisher, who is
22 not here, is, but any of those people, they get --
23 any of those relatives that get it can donate it to
24 animal charities if they want to.

25 And like I say, there is -- the law

1 provides what happens to it if the will is revoked.
2 And our only purpose here today is to prove to you
3 that the will was revoked by Alice Shaw Baker, not
4 by -- and she tore it up, and it wasn't by accident
5 while she was opening an envelope, that she
6 intended to destroy it.

7 Mr. Wills commented on Defendant's
8 Exhibit Number 2, but you'll have that in the jury
9 room. On page 7 it does say that Alice Shaw Baker
10 -- this is November 19th of 2008. It says, Alice
11 Shaw Baker needs some help and appointed Lisa
12 Fisher as conservator and guardian.

13 And in the meantime we're sending Alice
14 Shaw Baker -- it mentions that she will be
15 evaluated by Dr. Randolph Waid, PhD, who is a local
16 doctor here, who does these types of evaluations to
17 determine what people's mental capacities are, what
18 their memory issue is and all these different
19 things. They have a huge battery of tests that
20 takes a long time to administer and this is his
21 practice.

22 The courts have relied on him for many
23 years, he's very competent, and attorneys, like
24 myself, have relied on his ability to evaluate her.
25 The order specifically says that she is to go to

1 him and be evaluated. So the courts is not saying
2 she doesn't have capacity. They're saying we want
3 to find out what is her capacity, and that's in the
4 order right here. That she should go to the
5 evaluation.

6 And it also says, in the meantime,
7 she's not supposed to make another will or
8 anything. However, on January 1st she tears up the
9 will. She's at least trying to revoke it. And,
10 you know, it's -- Dr. Waid's report comes back into
11 the probate court before any actions can be taken
12 by anybody, she passes away.

13 So, you know, if it were clear from
14 this order that this was not a revocation, then the
15 Court could not -- this Court, including you as the
16 jury, could not find that she had capacity and so
17 forth, this wouldn't be in front of you. If it was
18 open and shut because of this order, His Honor
19 would not allow it to go to the jury.

20 It's just something that you're going
21 to have to determine after looking at this order.
22 It specifically says that she is to go and be
23 evaluated. It doesn't say she doesn't have the
24 capacity to make a will. It says that she doesn't
25 have the right to do some other things, but -- and

1 you can read it. But it does say she is supposed
2 to go to this evaluation to determine what her
3 mental capacity is. And, you know, that was done.

4 Unfortunately, the report didn't come
5 in until after she had taken this action to tear up
6 the copy of the will.

7 And I would just tell you that based on
8 the testimony -- based on the testimony in full, it
9 appears that Alice Shaw Baker, while not having all
10 her mental capacities, she was a very smart person
11 and she understood -- she understood what she had
12 to understand in order to make a will in South
13 Carolina, which is the nature and extent of her
14 bounty, is what the law calls it. The nature of
15 what kind of assets you have, the extent of them,
16 and who you want to give it to. She had that
17 capacity, and it was just a fact that,
18 unfortunately, before the probate court could rule
19 on it, Alice Shaw Baker passed away.

20 Thank you very much.

21 THE COURT: All right. Anybody want to
22 stand up and stretch your legs before I get started
23 talking with you and discussing this with you?
24 Please do so.

25 (Brief pause.)

1 THE COURT: This case has been brought
2 before you, and me, for you to determine if the
3 exhibit -- I think it's Exhibit Number 3 -- is the
4 Last Will and Testament of Alice Shaw Baker.
5 That's what this case is all about, is
6 Exhibit Number 3, which has been admitted into
7 evidence in this case. Is that the Last Will and
8 Testament of Alice Shaw Baker?

9 Betty Fisher and Lisa Fisher claim that
10 it's not. That that's not her Last Will and
11 Testament because they say she revoked that will,
12 based on the testimony and evidence that you've
13 heard in this case. That's what you have to decide
14 in this case. You have to decide, was that the
15 Last Will and Testament of this lady, or did she do
16 something, as you heard them claim here in this
17 case, the claim is made in this case, revoked that
18 will.

19 What is a will? In South Carolina a
20 will is a declaration in writing executed in
21 accordance with the laws of this state, and I tell
22 you that that document, Number 3, was executed in
23 accordance with the laws of this state, and that's
24 why I let it into evidence in this case.

25 It has all the things that are

1 necessary under the law. The witnesses, the notary
2 public, all those things that the statute, the law
3 that's passed by the general assembly of this state
4 says has to be done for there to be a will, all
5 those things were done. And that's why it's in
6 evidence. All of the things that were necessary
7 for her to make that will at that time were done,
8 and that's why it's in evidence in this case.

9 The only question is, as I said later
10 on is they claim the -- contestants claim in this
11 case that she did something later on to revoke that
12 will. And a person does have the right to revoke a
13 will up to the time of death if they have their
14 mental faculties. If they are capable of making
15 another will. That's what the law is.

16 If you make a will, you can certainly
17 revoke it if you're capable of making another will.
18 If you have your mental faculties about you, if you
19 know the natural objects of your affection, if you
20 know what your estate is, if you know what you're
21 doing, in other words, you can revoke a will and
22 make another will, or make no will at all.

23 That's what you have to decide in this,
24 when you boil it all down, that's what you have to
25 decide in this case.

1 If a will is challenged for some
2 reason, that's what's happened in this case,
3 there's a challenge to this will, it's contested.
4 And the person who makes the challenge is the
5 contestant. As I said, every person of sound mind
6 has the right to dispose of her property as she
7 sees fit, whether for a good reason or for a bad
8 reason or for no reason at all.

9 She may give her property to whoever
10 she wants to give it to and in the manner she wants
11 to give it to them. The very essence of the right
12 to make a will is the right to dispose of one's
13 property at your pleasure.

14 A will is a testator's wishes that the
15 person has at that time when they lawfully executed
16 the will. The opinions of others cannot in any way
17 deny her the power to do what she wants to do with
18 her property. Claims of relatives, or whoever,
19 can't defeat what a person wants to do if they are
20 of sound mind and know what they're doing and they
21 do it.

22 Your role in this proceeding is to
23 decide solely whether or not this will was revoked
24 by a person of sound mind at the time she did it.
25 That's what you have to decide. Now, you have --

1 there's been reference to an order that was entered
2 by the probate court.

3 You can look at it and see exactly what
4 Judge Curry said on that occasion as far as what
5 she found to be what she should do on that
6 occasion, based on what was before her at that
7 time.

8 Which I'm not sure of the date of it, I
9 believe it's in November, or whatever; you will
10 have that and you can look at it and see when it
11 was. You can see what she said in that order, and
12 you can presume that she had good reason to say
13 that. She had good reason to do what she did when
14 she put it in writing and filed in the probate
15 court. You can presume that, that she was not able
16 to make a will at that time.

17 Now, the law does provide that if a
18 person can prove by the greater weight or
19 preponderance of the evidence -- and I'll talk
20 about that later -- that after that she regained
21 her sound mind, she got better, she knew what she
22 was doing, she knew what her estate was, she knew
23 how she wanted it to be distributed, that she tore
24 up the other will because of that; the burden of
25 proof on that is on the party making that claim.

1 The burden of proof is on the person
2 making the claim that somehow or another between
3 when that order was made and when she supposedly
4 tore up the will intended to revoke it. She
5 regained mental capacity. She knew what she was
6 doing on that day. She knew the objects of her
7 affection. She knew what her property was.

8 She knew everything that was going on
9 around her, and she tore up her will because she
10 didn't want it to be her will anymore. She wanted
11 it to go under the laws of intestacy, which means
12 that her next of kin, those next of kin which
13 includes the Plaintiff in this case, and others,
14 would inherit her property.

15 That's what you have to decide, whether
16 or not -- if she tore it up, you have to decide
17 that, of course, too. If she tore it up, did she
18 know what she was doing, was she of sound mind and
19 able to do that? Because if she wasn't, the will
20 that she made that's in evidence is her last valid
21 legal will. That's what you have to decide in this
22 case.

23 Now, as I said, burden of proof is on
24 the people contesting the will to prove what they
25 claim. The burden of proof is what we call the

1 greater weight or preponderance of the evidence.
2 This is not a criminal case where the State has to
3 prove someone guilty of a crime beyond a reasonable
4 doubt. This is a civil case, and in a civil case
5 the burden of proof on the person making the claim
6 is by the greater weight or preponderance of the
7 evidence.

8 What do we mean when we use those
9 words, by the greater weight or preponderance of
10 the evidence? I first heard those words used back
11 when I was a student in law school, 50 years or
12 more ago. And I didn't come up with this. I
13 adopted it from others as far as the best way to
14 explain that to you.

15 The best way that I know is to ask you
16 to imagine a traditional set of scales. You have a
17 pan on one side of the scales, you have a pan on
18 the other side of the scales, there's a balance
19 point midway between.

20 Before this case began, there wasn't
21 anything on either side of the scales. There
22 wasn't anything on the Plaintiff's side of the
23 scale supporting the claim that she revoked this
24 will, validly revoked this will, that she knew what
25 she was doing. She intended to revoke it and she

1 knew the objects of her affection, all of those
2 things that a person has to have, mentally capable,
3 mentally competent to make a will or to revoke a
4 will.

5 She was in full capacity of those
6 things at that time, and then she tore it up. And
7 that's what she intended to do. She intended for
8 her property to go under the laws of intestacy at
9 that time.

10 The burden of proof is on the Plaintiff
11 to prove to you by the greater weight or
12 preponderance of the evidence those things that
13 they claim. Again, a set of scales. You put the
14 things in support of that claim on one side of the
15 scales; you put the things in contrary to those
16 claims on other side of the scales.

17 If the scales remain exactly even, the
18 Plaintiff has failed to meet the burden of proof in
19 regard to that claim. If the scales should tilt
20 even slightly in favor of the Defendant's position,
21 that this is her last will, a valid last will,
22 then, again, the Plaintiff has failed to meet the
23 burden of proof.

24 But, on the other hand, if the scale
25 tips even slightly in favor of the Plaintiff's

1 claim that she revoked it legally on that day by
2 tearing up a copy of it, then the Plaintiff would
3 have met the burden of proof of proving that claim
4 by the greater weight or preponderance of the
5 evidence.

6 So a slight tipping of the scales in
7 favor of a claim made by the Plaintiff in this case
8 is all that's necessary for her to have met the
9 burden of proof of proving that claim by the
10 greater weight or preponderance of the evidence.

11 As I said, on the other hand, if the
12 scales should remain exactly even or tilt even
13 slightly in favor of the Defendant's position in
14 regard to this, then the Plaintiff has failed to
15 meet the burden of proof or proving that claim by
16 the greater weight or preponderance of the
17 evidence.

18 Now, under our constitution and code of
19 laws, you are the sole judges of the facts of this
20 case. I've tried to emphasize that to you at the
21 start of this case, what your role was going to be.
22 You are to determine the facts in this case based
23 on the testimony and the evidence that's been
24 presented to you from the witness stand and my
25 instruction to you on the law.

1 You have to apply the law as I explain
2 it to be the correct law. You should not be
3 concerned with what you may think the law should
4 be, but only with what the law is.

5 Now, to determine the facts in this
6 case, it's necessary for you to evaluate
7 credibility, which means believability of the
8 witnesses who have testified. Some of the things
9 you may want to consider as you determine whether
10 or not to believe a particular witness's testimony
11 about a particular fact or matter that's involved
12 in this case are such things as -- and this is by
13 no means an exhaustive list, but you are to really
14 apply your common sense.

15 You and I have to decide every day
16 whether to believe what someone tells us. It's so
17 much a part of everyday life that we oftentimes
18 don't think about a mental process that we may go
19 through in deciding to believe someone, but you do
20 it every day whether on your job, on the street, at
21 home, wherever.

22 When someone comes up and makes a
23 factual statement to you, when somebody says, such
24 and such just happened, or such and such is about
25 to happen, or you should do this because of it, or

1 you should do that because of it, when a person
2 makes that type of statement to you, you have to
3 decide do I believe that what that person tells me?
4 How much trust, how much faith do I put in what
5 that person tells me?

6 As I said, I suggest you go about
7 deciding who and what to believe in regard to the
8 testimony and evidence in this case, in much the
9 same way that you decide that issue in your
10 everyday life.

11 Some of the things -- and this is by no
12 means an exhaustive list, but some of the things
13 you may want to consider are such things as what
14 was the manner and appearance of the witness who
15 testified? Was he or she straightforward or
16 hesitant in answering? Was the testimony of a
17 witness consistent or inconsistent? How did the
18 witness come to know the facts that he or she
19 testified to? What was her ability or his ability
20 to know the facts? Is there some reason a witness
21 won't give testimony that would help or hurt one
22 side or the other; in other words, was the witness
23 biased or prejudiced in some way? Was the
24 testimony of a witness strengthened or weakened by
25 other testimony or evidence presented?

1 You can believe as much or as little of
2 each witness's testimony as you think proper. You
3 may believe the testimony of a single witness
4 against that of many witnesses, or just the
5 opposite.

6 You certainly do not determine truth or
7 credibility or believability merely by counting the
8 number of witnesses who may have testified for one
9 side or the other, or who may have testified
10 concerning a particular point or fact that may be
11 involved in the trial of this case. Throughout
12 this entire process, you have but one goal really,
13 and that is to seek the truth regardless of its
14 source.

15 Now, as I said, for a person to revoke
16 a will, that person has to have the same
17 testamentary capacity as a person making a will
18 has. What do I mean by that? In order for it to
19 be a sufficient legal revocation, she must know
20 what her estate or property is at that time; she
21 must know what she owns; she must recall the
22 natural objects of her affection and their
23 relationship to her; and she must know how she
24 wishes to dispose of her property. That's the
25 mental capacity that the person has to have in

1 order to make a will or in order to revoke a will.

2 A person who is capable of making a
3 will understands what she is doing, and she's doing
4 it with the intent, as I said, to revoke the will,
5 to have her property go under the laws of
6 intestacy, that is, to her next of kin, rather than
7 how she provided for it earlier in her Last Will
8 and Testament, which was in evidence in this case.

9 A will cannot be set aside merely
10 because the person was old and feeble, peculiar,
11 eccentric, unreasonable -- and I'm not saying she
12 was. I'm just reading you the rules that apply in
13 situations like that -- or because the will might
14 be considered unjust or foolish. Unless, as I
15 said, it has further been shown that at the time
16 she tore it up, if she did tear it up, she did it
17 with sufficient mental capacity to know what she
18 was doing an with the intent to do that, that is,
19 revoke that will.

20 Of course, if a person has the
21 sufficient legal capacity -- mental capacity, as I
22 said, and I've described it to you, then tearing up
23 a copy of a will could, under certain
24 circumstances, as I have described it, be enough to
25 have revoked a will, but it's up to you to decide,

1 as I said, whether or not there was any tearing up
2 of a copy of the will, and whether if it was torn
3 up did she have mental capacity that she needed to
4 have in order to revoke the will on that occasion.
5 You have to decide all that. That's why you are
6 here today.

7 You have no friends to reward or
8 enemies to pitch. Your job is to do what you said
9 you would do at the start, and that is to decide
10 this case based on the evidence and testimony that
11 was presented to you from the witness stand and my
12 instructions to you on the law. When you do that,
13 no one will have the right to criticize your
14 verdict, regardless of what your verdict may be.

15 Your verdict must be unanimous; all 12
16 of you must agree on what the verdict is before you
17 can come back in the courtroom and tell us you've
18 reached a verdict in regards to this case.

19 You will have with you in the jury room
20 this verdict form, Madame Forelady. And I ask that
21 you use it to let us know what the verdict is in
22 regards to this case. And I put the case heading
23 and the number up here at the top and the word
24 verdict. And there are two possible verdict forms
25 for you to use. The first one says, we find that

1 Exhibit 3 is the Last Will and Testament of Alice
2 Shaw Baker. Place for you to sign.

3 The other possible verdict is, we find
4 that Exhibit 3 is not the Last Will and Testament
5 of Alice Shaw Baker since it was revoked by tearing
6 up a copy of this with her intention to thereby
7 revoke it and she died without a will; therefore,
8 Betty Fisher and other next of kin shall inherit
9 her estate.

10 Those are the two possible verdicts for
11 you to reach in this verdict. As I said, your
12 verdict must be unanimous. All 12 of you must
13 agree.

14 Now, as you can tell, I've been looking
15 at my notes and so forth while I've been discussing
16 this case with you. I need to look over my notes
17 and make sure that I told you everything that I
18 need to tell you before you start your
19 deliberations.

20 I'm going to send you to your jury
21 room, let me look over my notes and make sure I've
22 told you everything I need to tell you. If I have,
23 I'll send the verdict form, along with the physical
24 evidence that was introduced, that you will have in
25 the jury room that you can look at and examine and

1 decide what all it means and how to apply it in
2 this case, and you will know at that time you can
3 begin your deliberations.

4 If I have overlooked something, I will
5 bring you back out and tell you what I've
6 overlooked before I let you start your
7 deliberations. If you will go to the jury room,
8 please.

9 (Jury out, 11:27 a.m.)

10 THE COURT: All right. Jury is out and
11 the door closed. Any exception to the charge from
12 the Plaintiff?

13 MR. COOPER: Yes, Your Honor. We would
14 like Your Honor to -- well, Your Honor, charged on
15 sound mind presumed not able to make a will, and
16 full capacity to make a will. I think that the
17 jury needs to know that the capacity necessary to
18 make a will is something less than the capacity to
19 make a contract. It's not full mental capability;
20 it's a lower standard. And I'm sure that Your
21 Honor --

22 THE COURT: I think I covered the
23 elements that were necessary on that.

24 All right. Anything else?

25 MR. COOPER: Well, Your Honor, with

1 respect, I don't think you covered that it's less
2 than what --

3 THE COURT: I don't have to say that.
4 I told them what was necessary.

5 MR. COOPER: Your Honor, I don't think
6 there is anything in the conservatorship order that
7 presumes that she's not able to make a will.

8 THE COURT: I think it is. And I just
9 remembered something else I'm going to tell them.
10 I'm going to bring them out and tell them one more
11 thing that was argued and bring them back and clear
12 up one thing about it.

13 But I think the order is that they can
14 presume based on that order that she was not able
15 to make a will, and I told them that. There has to
16 be evidence to show that she changed somehow or
17 another from that time to the time that you say she
18 revoked the will, in my opinion.

19 MS. FISHER: Well, Your Honor, for
20 clarity, the order does say it's a limited
21 guardian.

22 THE COURT: I'm sorry?

23 MS. FISHER: The order does say it's
24 for limited guardianship. So -- and also if the
25 Court recalls, there was -- when you look at the

1 petition that was filed, the petition doesn't ask
2 for any powers related to a will.

3 THE COURT: You may think that makes a
4 difference, but I don't.

5 MS. FISHER: Okay. I understand, but
6 just for clarity, Your Honor.

7 THE COURT: All right.

8 Bring the jury back. I want to tell
9 them one more thing.

10 (Jury in, 11:25 a.m.)

11 THE COURT: We have the jury with us
12 here, and there is one other thing that I want to
13 tell you that I meant to mention to you. Don't
14 think that this has any greater importance in
15 regard to what I was -- I was explaining the case
16 to you than anything else that I said here before,
17 but I wanted to because there was some arguments
18 made in regard to some evidence, or lack of
19 evidence, or however you want to phrase it, I
20 wanted to be sure that you were clear in regard to
21 this.

22 And by the way, if I have said or done
23 anything to you in the course of the trial that you
24 interpreted in any way as an opinion that I may
25 have about the facts, or how you should decide this

1 case, please disregard it. I have intended to be
2 fair and impartial to both sides in this case.

3 I keep with me -- I'm going to show you
4 this now. This is a sign that I have in my office
5 back here that I look at. I look at it every day.
6 And what it says is, we serve no client. Our
7 commission is to do what is right, what the law
8 requires and what is just.

9 And that's what you're supposed to do
10 in this case. You don't have any friends to reward
11 or enemies to punish. I keep this in mind and
12 where I can see it every day. I wanted to show you
13 that and tell you that's what you are today in this
14 case.

15 But there was some argument made in
16 regard to Dr. Waid and an evaluation that was
17 mentioned in the order. Either side could have
18 brought Dr. Waid in if they wanted him to come in
19 and testify what he knew about this case in any
20 way. Subpoena power of this Court if anybody
21 wanted me to get Dr. Waid here, I could have gotten
22 him here.

23 They have the opportunity to get a
24 Subpoena and bring him here if they want to. I
25 don't know why they didn't, why either side didn't,

1 By the way, any posttrial motions you
2 have, if there are any posttrial motions -- and I'm
3 not saying that you have to file any, certainly.
4 Anyway, any posttrial motions, you have ten days to
5 do any posttrial motions.

6 Make any of those motions in writing,
7 file them with the Clerk of Court, but send me a
8 copy directly, also. Don't just assume because you
9 filed it with the Clerk that I've gotten anything.
10 So ten days for any posttrial motion, file them and
11 send them to me.

12 Bring the jury in.

13 (Jury in, 12:30 p.m.)

14 THE COURT: Give the verdict to the
15 bailiff, and she will bring it over to me.

16 We have the jury with us and the
17 parties are present.

18 And the jury has found: We find that
19 Exhibit 3 is the Last Will of Alice Shaw Baker.
20 That's the verdict of the jury.

21 Anything prior to the discharging of
22 the jury from the Plaintiffs, contestants? Prior
23 to discharge, anything else?

24 MR. COOPER: Yes, Your Honor. I would
25 like to poll the jury.

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Charleston

3
4 Case No. 2009-CP-1003010

5 Berty Fisher, et al,

6 Plaintiff(s),

7 vs.

Transcript of Record

8 Bessie Huckabee, et al

9 Defendant(s).

10

11

12

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14

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February 27, 2018

16

Beaufort, South Carolina

17

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20

21 BEFORE:

22

The Honorable Judge Hughston

23

24

25

1 THE COURT: 9:30.

2 MR. WILLS: And Your Honor is going to
3 decide on the motions for summary judgement
4 later?

5 THE COURT: Any motions will -- I'll tell
6 you what I'll do with those prior to trial.

7 MR. WILLS: Okay. Thank you, Your Honor.

8 MR. COOPER: Your Honor, before you leave
9 you had ordered us to bring all of the
10 discovery and I have it.

11 THE COURT: Okay. Good. So if the court
12 reporter would enter these.

13 You can just give it to me.

14 MR. COOPER: I'll let you see what we have
15 got. I won't go through it page by page, but
16 clump by clump.

17 All right. The first is a subpoena that
18 the we sent to South Carolina Public Employees
19 Benefit Authority to Steven Camp. And his
20 response and all of the documents that they
21 produced. And that is in 2016.

22 And then we have the Defendant's state
23 budget and control board, South Carolina
24 retirement system's responses to Plaintiff's
25 first request for production with all the

1 documents attached to that.

2 And then we have Defendant National Life
3 Insurance Company's responses to Plaintiff's
4 first request for production and all documents
5 that they have produced.

6 And we have ING and South Carolina
7 deferred compensation commission's consolidated
8 responses to the Plaintiff's first request for
9 production and the documents that they
10 produced.

11 And this is the files of L. Randolph Wade,
12 Ph.D.

13 A copy after an American Kennel Club
14 credit card.

15 West Ashley Veterinary Clinic records, two
16 pages.

17 A letter from the Kouten law firm
18 producing, number one, durable power of
19 attorney for health care. number two general
20 durable power of attorney. Three, last will
21 and testament, 1996. Four, last will and
22 testament, 2001. Five, last will and
23 testament, 2001. And number six, last will and
24 testament, 1993. These are the Peter Kouten
25 documents.

1 And then we have Wells Fargo Bank, NA, May
2 the 21st, 2010. And Wells Fargo Bank April 14,
3 2010.

4 And then Charles Pelham Veterinary Clinic
5 records.

6 A copy of the Plaintiff's first request
7 for production to Defendants.

8 A copy of the Plaintiff's first
9 interrogatories to Defendants and second
10 request for production to Defendants.

11 Notice to take depositions of Sandra Byrd,
12 Kay Dassailaigue and Bessie Huckabee.

13 Notice to take deposition of John Smoak.

14 Plaintiff's discovery request to Huckabee
15 and Slade, served September 2nd, 2009.

16 Amended notice to take deposition of John
17 Smoak.

18 Amended notice to take depositions. It is
19 a letter to Mr. Smoak with a subpoena.

20 Bessie Huckabee's answers to Plaintiff's
21 first interrogatories and second request for
22 production.

23 Sandra Byrd's answers to Plaintiff's first
24 interrogatories and second request for
25 production.

1 Kay Dassailaigue Slade's answers to
2 Plaintiff's first interrogatories and second
3 request for production.

4 Bessie Huckabee's answers to Plaintiff's
5 discovery requests to Huckabee and Slade served
6 September 2nd, 2009.

7 Kay Dassailaigue Slade's answers to
8 Plaintiff's discovery request to Huckabee and
9 Slade, served September 7th, 2009.

10 Communications from Peter Houten to me
11 about a supplementary discovery response.
12 Defendant Bessie Huckabee's first
13 interrogatories to Plaintiff Betty Fisher.

14 Defendant Bessie Huckabee's first request
15 to admit to the Plaintiff Betty Fisher.

16 Defendant Bessie Huckabee's first request
17 to produce to Plaintiff Betty Fisher.

18 It looks like defendant Bessie Huckabee's
19 first interrogatories to Plaintiff Lisa Fisher.

20 Defendant Bessie Huckabee's first request
21 to admit to Plaintiff Lisa Fisher.

22 Defendant Bessie Huckabee's first request
23 for production to Plaintiff Lisa Fisher.

24 Lisa Fisher's responses to request to
25 admit.

1 Betty Fisher's responses to request for
2 admissions.

3 Betty Fisher's discovery responses.

4 Lisa Fisher's discovery responses.

5 A copy of a subpoena to Dennis A. Fineberg
6 (phonetic), DVM.

7 Copy of a subpoena to MUSC, attention
8 records department.

9 Copy of a subpoena to West Ashley
10 veterinarian.

11 Copy of a subpoena to Wells Fargo advisor,
12 attention state processing.

13 Copy of a subpoena to Wells Fargo Bank NA.

14 Copy of a subpoena to Great West Life and
15 Annuity Insurance Company of South Carolina.

16 Copy of a subpoena to National Life
17 Insurance Company.

18 It is a letter and a subpoena to A.
19 Bernard Solomon, Esquire.

20 It is a copy of a subpoena to L. Randolph
21 Wade.

22 Copy of a subpoena to Charleston Animal
23 Society, John Ancrum, SPCA.

24 Copy of a subpoena to Pet Helpers.

25 This is a letter of October 18th 2017

1 from Mr. Wills. It says, Please allow this
2 letter to serve as Defendant's first supplement
3 to Defendant's responses to interrogatories.

4 Notice to take depositions of Jenny
5 Jacobs, Lucy Parker and PEBA records custodian.

6 Here is a request for admission of
7 authenticity served February 9th of this year.

8 And a copy of your order, Your Honor.

9 THE COURT: All right. Well, I appreciate
10 you bringing that and giving it to me and I'll
11 certainly read it. If there's nothing
12 further -- is there something else you want to
13 say?

14 MR. WILLS: Yes, Your Honor, thank you.
15 Well, two more. We submitted our the -- I
16 think that they are duplicative by now, but the
17 discovery, we submitted it to you by email as
18 well, so that is in your inbox, I believe.

19 THE COURT: Okay.

20 MR. WILLS: The other thing that I will
21 ask the Court's direction on, is in your order
22 that you had sent out you had told the
23 Plaintiffs to be prepared to turn over all of
24 the assets today.

25 THE COURT: Well, what happened in the

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 2009-CP-10-3010

3
4 ALICE SHAW BAKER, ET.)
AL.,)
5) Transcript of Record
Plaintiffs,)
6)
vs.)
7) Date: March 12, 2018
BESSIE HUCKABEE, ET.)
8 AL,) March 13, 2018
9 Defendants.

10 * * * * *

11

12

13 B E F O R E:

14 The Honorable Thomas L. Hughston

15

16

17 * * * * *

18

19 Denise J. Lauder, RPR

20 Ninth Judicial Circuit

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1 (The following proceedings were had
2 March 12, 2018, Charleston County Common Pleas
3 Court, 9:40 a.m., in re Baker v. Huckabee.)

4 THE COURT: All right. Ready to
5 proceed with the trial of the case that we have set
6 for trial today? Case Number 2009-3010, Alice Shaw
7 Baker, et cetera, against Bessie Huckabee, et
8 cetera. Any pretrial matters from the plaintiff?

9 MR. COOPER: Yes, Your Honor, two
10 pretrial matters. First, we would --

11 THE COURT: Speak up.

12 MR. COOPER: First, as to whether -- to
13 inquire whether the Court plans to rule on our
14 motion for a new trial from the will contest at
15 this time or whether that would be --

16 THE COURT: That would be in my order
17 at the conclusion of the case.

18 MR. COOPER: Thank you, Your Honor.

19 The second pretrial matter is that we
20 have pled undue influence, and as set out in our
21 trial brief on page 9, it's admitted that Alice
22 Shaw Baker executed in 1996 a general durable power
23 of attorney appointing Bessie Huckabee as her
24 attorney in fact.

25 The written power of attorney provides

1 explicitly that this creates a fiduciary duty
2 between Bessie Huckabee and Alice Shaw Baker.

3 Also, Your Honor, in the pleadings it
4 is admitted that Ms. Shaw Baker placed considerable
5 trust and confidence in Bessie Huckabee and Kay
6 Passailaigue Slade. That's in the Complaint and
7 Answer, paragraph 25 and 27.

8 And these confidential relationships
9 and fiduciary duty relationships, when those are
10 present, South Carolina case law is -- is very
11 explicit that when a confidential relationship
12 exists between testator and beneficiary, the
13 presumption of invalidity of the will on the basis
14 of undue influence arises.

15 The existence of confidential
16 relationship shifts the burden of proof to the
17 defendant to show that absence of undue influence.

18 So I think in the threshold matter, the
19 burden is on the defendants to show if there was
20 not undue influence, even though these confidential
21 and fiduciary relationships existed, and they are
22 beneficiaries not only in the will but also life
23 insurance, the deferred compensation plan, pension
24 plan, so forth and so on.

25 So, at this time, it's the defendants'

1 burden to go forward and show lack of undue
2 influence.

3 THE COURT: I appreciate that, but I'm
4 not going to proceed that way. Go ahead.

5 MR. WILLS: Your Honor, may I respond
6 to that point quickly?

7 THE COURT: Sure.

8 MR. WILLS: Just because we're on the
9 topic of undue influence. Undue influence was pled
10 and was tried in the first part of this trial and
11 that claim had been abandoned. And we moved for a
12 directed verdict on undue influence at the close of
13 Plaintiffs' evidence and believe the Court granted
14 that and sent only the matter of the revocation of
15 the will to the jury. So undue influence, we
16 claim, is not before the Court here.

17 Thank you.

18 THE COURT: All right. I will reserve
19 my ruling in regard to that.

20 Call your first witness. Any other
21 motions or any other pretrial matters from the
22 plaintiff?

23 MR. COOPER: Your Honor, there is one
24 thing that was set out in our pretrial brief and we
25 did not get to at the pretrial hearing, but we had

1 THE COURT: All right. Go ahead.

2 MR. WILLS: So we have outstanding at
3 this point a motion for summary judgment -- a
4 renewed motion for summary judgment, and the Court
5 has not yet ruled on that. The bases of our motion
6 for summary judgment don't have to do with the
7 facts of the case and don't have to do with the
8 development of the evidence. They are based on a
9 threshold issue of standing.

10 The -- the remaining cause of actions
11 before the Court are promissory estoppel, unjust
12 enrichment, and the remedy of a constructive trust
13 that the plaintiffs are asking to put on the
14 nonprobate assets that remained at issue as a means
15 of -- of -- of making sure that none of the assets
16 are distributed because of their claims for
17 promissory estoppel and undue influence.

18 The remedy that they seek are either
19 under the promissory estoppel claim that any funds
20 that the defendants received, that they be required
21 to pay them back into the estate or, secondly,
22 under the undue influence, that -- or the
23 promissory estoppel claim is that Kay Passailaigue
24 be required to pay all of the money that she has
25 not yet received but could receive directly to

1 animal charities through a theory of specific
2 performance.

3 They don't allege to have had suffered
4 any damage themselves. They haven't suffered any
5 damage themselves. They don't have standing as
6 third parties to allege equitable claims on behalf
7 of either the estate, which was confirmed by the
8 Supreme Court decision that just came down this
9 month that said they have no standing as third
10 parties or as real representatives to bring any
11 claims on behalf of the estate in addition to the
12 personal representative, but, more importantly,
13 they have no damages and they're asking for relief
14 based on somebody else's damages, allegedly -- the
15 alleged damages.

16 And, of course, South Carolina law says
17 that a plaintiff cannot obtain standing by alleging
18 that he's acting in another's interest.

19 THE COURT: I appreciate your position
20 -- I don't want to cut you off -- I thought about
21 that and everything, and I certainly think it's
22 proper for you to raise that, but I prefer -- as I
23 indicated to you-all in correspondence recently,
24 that I prefer to proceed and have a trial that lets
25 everybody have a chance to put in what they want to

1 put in as far as evidence concerning any issue that
2 may be involved in this case at this point in time
3 and proceed like that.

4 So I appreciate your position, but I'm
5 not going to grant that at this time.

6 MR. WILLS: Thank you, Your Honor. May
7 I present the next one?

8 THE COURT: Sure.

9 MR. WILLS: Okay. As I mentioned
10 before, the plaintiffs presented evidence and had
11 an opportunity to litigate certain legal causes of
12 action in the first part of the trial.

13 THE COURT: Really I thought the only
14 thing we litigated was the validity of the will.

15 MR. WILLS: Correct. Well, they've
16 alleged fraud and undue influence.

17 THE COURT: I agree with that as far as
18 if that was -- if that was part and parcel of that
19 that was tried at that time, you know. That's -- I
20 agree with you.

21 MR. WILLS: And, at that time, they had
22 an opportunity to produce evidence.

23 THE COURT: And the record of that
24 proceeding is a part of this proceeding now. This
25 is still one case, and everything that was said and

1 done during the course of that trial is in the
2 record and part of this case.

3 MR. WILLS: Correct. Correct. So the
4 point being that at the -- at the close of their
5 evidence we moved for a directed verdict on this
6 because they presented no evidence to fraud or
7 undue influence.

8 Now, the promissory estoppel claim and
9 the undue enrichment claim they are presenting in
10 this part of the case are based on the exact same
11 allegations and facts as those that were alleged
12 for the fraud in the last part of the case for
13 which they presented absolutely no evidence and we
14 moved for a directed verdict on that.

15 We would submit that they are
16 collaterally estopped from relitigating this issue.

17 THE COURT: I appreciate your position,
18 but I -- again, I prefer to proceed, and let's have
19 all the testimony so we will have a complete
20 record.

21 MR. WILLS: Okay. In that case, I will
22 move on to my next one.

23 THE COURT: All right.

24 MR. WILLS: The issues that are before
25 the Court right now involve the nonprobate assets.

1 The estate assets had been dealt with in the first
2 part of the trial, and those are the retirement
3 fund, the deferred compensation, the life insurance
4 policy. The only named beneficiaries or
5 beneficiary on those assets is Kay Passailaigue.

6 The plaintiffs have alleged that there
7 is promissory estoppel and undue enrichment with
8 regard to those assets, so we would move that --
9 they're only concerning Kay Passailaigue -- that we
10 would move to dismiss the other defendants, Bessie
11 Huckabee and Sandra Byrd from these --

12 THE COURT: Well, if that's
13 appropriate, I can do that at the appropriate time.

14 MR. WILLS: Okay. Finally, this isn't
15 a jury trial, Your Honor, but we have a motion in
16 limine that we would like to propose in order to
17 streamline the trial and to prevent any
18 inconveniences to any witnesses that may be called
19 and eliminate unnecessary presentation of evidence,
20 and that is, the cause of action before the Court,
21 promissory estoppel.

22 Undue influence is based on promissory
23 estoppel -- I mean, not the undue influence, Your
24 Honor. The unjust enrichment.

25 So, essentially, what we're going to be

1 talking about is a promise that was made and terms
2 of that promise and whether or not that promise was
3 kept. We would move that because that is going to
4 be the issue before the Court, that the Court
5 disallow any evidence, testimony, or argument
6 regarding Alice Shaw Baker's intent with regard to
7 making these contracts that are going to be life
8 insurance and retirement fund, et cetera, that any
9 evidence that she loved the dogs and it was her
10 intent to give her estate and the bounty of her
11 person to -- to dog charities based on her love of
12 dogs.

13 We submit that that is irrelevant to
14 the issue of whether a promise was made by the
15 defendants, and that to bring a bunch of witnesses
16 up to testify that she loved her dogs, we would
17 certainly stipulate that she loved dogs; but to
18 show it was her intent to leave her estate through
19 the will or her retirement benefits is irrelevant
20 to the issue and we'd move that there be no
21 argument --

22 THE COURT: I appreciate that, but I'm
23 not going to do anything about that. I -- again,
24 my feeling, my position in regard to those matters
25 is that this is a nonjury trial, and I'm going to

1 let it in for what it's worth. It may be worth
2 zero.

3 MR. WILLIS: So I've said my piece and
4 those are the motions that we have. Thank you,
5 Your Honor.

6 THE COURT: Call the first witness.

7 MS. FISHER: Your Honor, one last thing
8 before we go. We subpoenaed a witness, Peter
9 Kouten, and we wanted to make sure that -- he's not
10 present today, whether or not arrangements have
11 been made to have him be present and if that could
12 be inquired into.

13 THE COURT: I haven't made any
14 arrangements.

15 MS. FISHER: I understand that, Your
16 Honor, but --

17 THE COURT: Do you know if he's coming
18 or not?

19 MR. WILLIS: He's here, Your Honor.
20 We'd move to quash that subpoena however.

21 THE COURT: I'll take that up later.

22 MR. WILLIS: He's --

23 THE COURT: Let's get started with the
24 witnesses.

25 MR. WILLIS: If I may, just with regard

1 BESSIE HUCKABEE,

2 being first duly sworn, testified as follows:

3 THE CLERK: Please have a seat.

4 State your full name for the record and
5 spell your last name and speak into that
6 microphone.

7 THE WITNESS: My name is Bessie Wyndham
8 Huckabee, H-U-C-K-A-B-E-E.

9 DIRECT EXAMINATION

10 BY MS. FISHER:

11 Q. Morning, Ms. Huckabee. My name is Lisa
12 Fisher. I'll be asking you questions today
13 regarding Alice Shaw Baker.

14 Just to regroup, how do you know Alice
15 Shaw Baker?

16 A. Alice and I worked together at
17 Charleston Memorial Hospital and we became friends.
18 I worked -- I eventually worked for her in the
19 accounting office.

20 Q. And how long did you work for her?

21 A. I worked from '65 to '90 at the
22 hospital. She had come in the early '70s, and I
23 left her at the hospital because she did not retire
24 until the next year.

25 Q. And at what point were you employed as

1 her assistant?

2 A. I can't tell you that date; I don't
3 know.

4 Q. Okay. But there was a period of time
5 where you were her one and only assistant, would
6 that be --

7 A. I was in the office with her and
8 another girl.

9 Q. Okay. And would you consider yourself
10 the person that Alice trusted more?

11 A. Yes, I do. At that point, yeah. We
12 trusted each other. We were friends. Alice had no
13 family here.

14 Q. And at some point you were -- at some
15 point did Alice talk to you about becoming her
16 power of attorney under a healthcare --

17 A. Alice asked me to be the administrator
18 of her will, and I told her I would.

19 Q. When did she first ask you that?

20 A. I can't give you a specific date. I
21 guess it was in the '80s sometime.

22 Q. What was the context of your
23 conversation about that, about becoming the
24 administrator of her will?

25 A. She just asked me could she use me as

1 the administrator of her will. And I said, yes, if
2 that's what she wanted.

3 Q. Did you ask her what your duties would
4 be?

5 A. No, I did not. She did not discuss any
6 of that with me.

7 Q. Let me ask you, was Alice the type of
8 person who would ask you to perform a duty and tell
9 you exactly what you needed to do on a normal
10 basis?

11 A. In the office, yeah, plenty, but not on
12 the outside.

13 Q. In your dealings with Alice, do you
14 believe that Alice -- that her communications with
15 her people were usually direct where she would
16 explain exactly what she wanted?

17 MR. WILLS: Objection; calls for
18 speculation.

19 THE COURT: I think it does.

20 BY MS. FISHER:

21 Q. Okay. In your observation of Alice,
22 did you ever see her communicate her wishes in the
23 workplace with other individuals?

24 A. In the workplace, yeah.

25 Q. Sure. And during those periods of time

1 when she would communicate her desires, did she
2 usually -- was she vague in the way that she
3 directed individuals?

4 A. She told them how she wanted it done.

5 Q. And did she expect it to be done?

6 A. Yes, she did.

7 Q. When she told you that she wanted you
8 to be administrator of her will, did she give you
9 any kind of indication of what you would be
10 required to do at any time?

11 A. No.

12 Q. And you didn't ask her?

13 A. No.

14 Q. What the duties would be?

15 A. No. She had the will and said this is
16 what I'm -- what you go by. And that's the only
17 thing we ever discussed.

18 Q. Okay. So you had this one discussion,
19 or did you have other discussions about being her
20 administrator?

21 A. Not to my knowledge, no.

22 Q. Okay. Let me clear that up. I'm a
23 little confused at your answer. So at some point
24 you -- strike that.

25 So when did you have the first

1 discussion?

2 A. It would have been in the '80s, around
3 there.

4 Q. So at no other time did Alice talk to
5 you about being her administrator of her trust?

6 A. No.

7 Q. At other times did she talk to you
8 about changes in her will?

9 A. Yeah. She made changes in her will and
10 she'd always give me a copy.

11 Q. So during those conversations, did you
12 ever talk to her and say, am I still administrator
13 of your will?

14 A. No.

15 Q. So you didn't actually know when she
16 gave you the will that you would be administrator
17 in those wills, in a subsequent will?

18 A. I had the will.

19 Q. Right. Did you review the will?

20 A. I read parts of it. At that point we
21 were young, having fun and everything else, and I
22 didn't think to go into it at that point.

23 MS. FISHER: One moment, Your Honor.

24 I'm sorry, Your Honor. I believe there
25 is a book up there with exhibits. Thank you.

1 Plaintiff's Exhibit 21, we would like
2 to have marked and entered into evidence. I'm
3 sorry, I think it's actually 20, the first one.

4 THE COURT: Talking about the will of
5 April 5, 1996?

6 MS. FISHER: Thank you, Your Honor,
7 yes.

8 THE COURT: So that's going to be
9 Plaintiff's Exhibit what?

10 MS. FISHER: Exhibit No. 20.

11 THE COURT REPORTER: I haven't marked
12 anything.

13 THE COURT: Give it to the court
14 reporter.

15 THE COURT REPORTER: It will be Number
16 1, Judge.

17 (PLAINTIFFS' EXH. 1, Copy of will dated
18 April 5, 1996, was marked for
19 identification.)

20 BY MS. FISHER:

21 Q. So I assume that you had -- let me
22 rephrase it. Do you have in front of you something
23 that states in the corner Plaintiff's Exhibit 20
24 that we've marked as Exhibit 1, Last Will and
25 Testament of Alice Shaw Baker? Do you see that?

1 A. Yeah, I see where it's marked 20.

2 Q. Have you seen this will before?

3 A. Yes, I have.

4 Q. And do you remember when was the first
5 time that you saw it?

6 A. Most probably in '96, after she had it
7 done.

8 Q. Would that have been the first time
9 that you spoke to her about being executor, or do
10 you know --

11 A. No, it was before that. Before she
12 ever drew this up.

13 Q. And did she talk to you about the name
14 of the attorney that she went to to have this
15 drafted?

16 A. No. I don't know the name of the
17 attorney.

18 Q. Did you have any conversation with her
19 about what the terms of the will were?

20 A. I'm sorry, I didn't hear you.

21 Q. Sorry. Did you have any discussion
22 with her about the terms of the will?

23 A. Not at that time, no. And not after
24 either.

25 Q. Did you ever have any conversation with

1 Alice regarding her intention of what she wanted to
2 happen to her monies, assets at that time in 1996?

3 A. No, I did not.

4 Q. Did you ever have any discussion with
5 Alice Shaw Baker at any time regarding her
6 intentions that she wanted her monies to go to
7 animal charities?

8 A. No.

9 MR. WILLS: Objection; calls for facts
10 not --

11 THE COURT: I'll allow it. Go ahead.

12 THE WITNESS: No.

13 BY MS. FISHER:

14 Q. All right. And if I could direct you
15 to the next exhibit. It's marked in the book as
16 21, but we'll mark that -- we're going to ask the
17 Court to mark that as Exhibit 2.

18 MS. FISHER: If we need to get more
19 copies, we'll do that, Your Honor.

20 (PLAINTIFFS' EXH. 2, Copy of nine-page
21 document, attorney's card attached, was
22 marked for identification.)

23 BY MS. FISHER:

24 Q. So this is a document which has an
25 attorney's card and it's a nine-page document.

1 Have you seen that document before?

2 A. I have never seen his card, but I have
3 seen the sheets that she has written her
4 handwriting on.

5 Q. Okay. The second page you see it says,
6 instructions at the top? Do you see that?

7 A. Yeah.

8 Q. Okay. And do you remember when you
9 first saw that document?

10 A. I don't remember the exact date.

11 Q. Those are very detailed instructions on
12 that document, would you say?

13 A. Yes, it is.

14 Q. Is that consistent with what Alice Shaw
15 Baker did in her previous dealings with you?

16 A. I'm sorry?

17 Q. Is it consistent with the way she would
18 instruct you --

19 A. Oh, yeah. She would tell you what she
20 wanted and how she wanted it done.

21 Q. Okay. Thank you. If you could do me a
22 favor and let me finish my question before -- I
23 would appreciate that.

24 So in this document did Alice ever give
25 you any verbal instructions as to what the document

1 was for?

2 A. It was her wishes that she wanted --
3 how she wanted things done, and that's the only
4 instructions.

5 Q. Did she go over the documents with you
6 at some point?

7 A. Not in detail, no.

8 Q. Did she give you a copy of the
9 documents?

10 A. Yes, I (sic) did.

11 Q. Did she tell you that the document was
12 something that you were to keep for -- in safe
13 keeping for her?

14 A. Not in safe keeping. She just told me
15 to keep it with the will.

16 Q. Okay. At some point, I believe it's on
17 the -- it says, have to read, three pages further.
18 It says, in memory of Princess. Do you see that
19 page? I think it's the fourth page.

20 A. Oh, yeah.

21 Q. Have you seen that document before?

22 A. Yeah.

23 Q. I'm sorry, what did you say?

24 A. Yeah. All of these papers right here
25 come together stapled.

1 Q. Okay. And that document there, did
2 Alice talk to you about what that was for?

3 A. She wanted it for her dogs. She had --
4 she had a pet cemetery in the backyard.

5 Q. Okay. And was it your understanding
6 that that was to go in her backyard, or was that
7 supposed to be done through some other
8 organization?

9 A. I really don't know. I assumed it was
10 the backyard.

11 Q. But did she tell you why she wanted
12 that document or why she wanted that plaque?

13 A. Just in memory of her animals.

14 Q. Okay. Was that consistent with the
15 manner that Alice treated her -- strike that.

16 Tell me how Alice --

17 THE COURT: You don't have to say
18 strike that, because it's not stricken.

19 MS. FISHER: Okay. I'm sorry. I
20 apologize, Your Honor. It's different --

21 THE COURT: Just go ahead with anything
22 relevant.

23 MS. FISHER: Thank you.

24 BY MS. FISHER:

25 Q. In your conversations with Alice, how

1 often did she talk to you about her animals?

2 A. She talked about animals all the time.
3 The animals were her children.

4 Q. And was it your understanding that --
5 was it your understanding that all of the things
6 that are set forth in this document were to benefit
7 the animals?

8 A. No, not really.

9 Q. Was there some information in this
10 document which led you to believe it was to benefit
11 animals?

12 A. No, she did not.

13 Q. So on the page -- the next page over,
14 it's dated 1/26/93 on the bottom, and it's entitled
15 -- it starts out, Bessie. Is that a letter to
16 you?

17 A. That was a note that she had and what
18 certain things in her home she wanted to go to
19 certain people.

20 Q. And did you read that letter at that
21 time?

22 A. Not at that time, but I did eventually
23 read it.

24 Q. When did you read it?

25 A. I can't tell you a date on that. I

1 don't know the date. It's been nine years. I
2 mean, and this was before then, so...

3 Q. Okay. So did you read it one time or
4 did you read it more than one time?

5 A. I read it several times.

6 Q. And so it was your understanding that
7 part of the instructions were that you were to call
8 Pet Helpers regarding the plaque?

9 A. She never asked me to call Pet Helpers.

10 Q. On that page that starts, Bessie, if
11 you could look at the bottom --

12 THE COURT: The last line says that.
13 Move on.

14 MS. FISHER: Okay. Thank you, Your
15 Honor.

16 BY MS. FISHER:

17 Q. So as part of the package, the last
18 page is dated 10/19 -- sorry, that's the commission
19 date.

20 MS. FISHER: One moment, Your Honor.

21 BY MS. FISHER:

22 Q. The second to the last page, this is a
23 Last Will and Testament of Alice E. Shaw Baker. Do
24 you see the second to the last page? It has
25 Alice's signature there.

1 A. On the 7th of January? Is that the
2 page that you're talking about?

3 Q. Yes.

4 A. Yes.

5 Q. That's part of a will dated the 7th of
6 January, 1993. Have you seen that document before?

7 A. I can't say yes or no, because I'm not
8 sure I had it.

9 Q. But that is Alice Shaw Baker's
10 signature?

11 A. Yes, ma'am.

12 Q. And you saw her signature throughout
13 your time working with her; is that correct?

14 A. Lots of times.

15 Q. Thank you. So if you could go to the
16 next page -- the next exhibit rather. It's marked
17 22 in the book, and we will mark it as -- ask the
18 Court to mark it as Exhibit 3.

19 MS. FISHER: I'm going to skip that
20 exhibit.

21 THE COURT: The unexecuted will. Go
22 ahead.

23 BY MS. FISHER:

24 Q. If you could go to Exhibit 23, we'll
25 mark that as Exhibit 3.

1 (PLAINTIFFS' EXH. 3, Copy of document
2 dated February 23, 2001, was marked for
3 identification.)

4 BY MS. FISHER:

5 Q. Do you see that document?

6 THE COURT: Talking about 23.

7 THE WITNESS: Yes, I had seen this.

8 BY MS. FISHER:

9 Q. Do you recall if you had ever received
10 a copy of this document from Alice?

11 A. I'm sure I did. But when, I don't
12 know.

13 Q. So this is dated February 13th, 2001.
14 If you could go to the next document. It's marked
15 at the bottom as Plaintiff's Exhibit 24. We'll
16 mark that as Exhibit 4.

17 (PLAINTIFFS' EXH. 4, Document dated May
18 21, 2001, was marked for
19 identification.)

20 BY MS. FISHER:

21 Q. So have you seen this document before,
22 Mrs. Huckabee?

23 A. Yes.

24 Q. Okay. And this was dated May 21, 2001.

25 And is that Alice's signature?

1 A. Yes.

2 Q. Okay. And do you know why Alice
3 executed this document?

4 A. No, ma'am.

5 Q. Did Alice talk to you at all about
6 continuing to act as her administrator?

7 A. No, she didn't ask me again. No, she
8 didn't. She give me a copy of this.

9 Q. Okay. And so I would like to go back
10 to Exhibit 18.

11 (PLAINTIFFS' EXH. 5, Copy of Durable
12 Power of Attorney for Healthcare, was
13 marked for identification.)

14 BY MS. FISHER:

15 Q. This document is entitled, Durable
16 Power of Attorney for Healthcare.

17 A. Uh-huh.

18 Q. And if you go to the last page, it's
19 dated April 5, 1996. And if you go to page 8,
20 there's a signature of Alice Shaw Baker. Do you
21 see that document?

22 A. Yes.

23 Q. Is that Alice's signature?

24 A. Yes, it is.

25 Q. Thank you. Is that Alice's signature?

1 A. Okay. Yeah.

2 Q. Thank you. Have you seen that document
3 before?

4 A. Yes, I've seen it before.

5 Q. Okay. When was the first time that you
6 saw it?

7 A. Alice did not give me a copy of this.
8 To be honest with you, she put it in Kay
9 Passailaigue's folder she gave her, and I got it
10 after she got sick.

11 Q. Did Alice talk to you about acting on
12 her behalf for -- for healthcare decisions?

13 A. No. She was very secret about her
14 illnesses and stuff.

15 Q. So she didn't tell you if she was ever
16 in need of having someone make medical decisions --

17 A. No.

18 Q. -- that she wanted you to make those
19 decisions?

20 A. She asked me not to let them put her on
21 life support. That's the only thing she ever asked
22 me.

23 Q. And what was your response to that?

24 A. I would see that she wasn't put on life
25 support.

1 Q. So if you didn't have knowledge of this
2 advanced healthcare directive, how were you going
3 to accomplish that?

4 A. After Alice began to fail, Kay said I
5 had this. And she give me a copy of this.

6 Q. Okay. And so did you ever make any
7 effort to try to utilize the healthcare directive?

8 A. I begged her to let me go to the
9 doctors with her. Her answer was no.

10 Q. Okay. So I don't think that's
11 responding to my question.

12 Did you ever ask her to utilize -- or
13 did you ever make any attempt to utilize that
14 document during her lifetime?

15 A. Yes. At the hospital the day that she
16 was deceased, I said, there is a medical thing and
17 she is not to be put on life support.

18 Q. Did you let them know that you had no
19 decision-making power at that time?

20 A. Yes, I did. I got a call from Roper
21 Hospital at 4:00 in the morning and she wanted to
22 know what to be done. And I told her I did not
23 have the authority, she would have to contact
24 Ms. Fisher who lived in California.

25 Q. So why did you tell them there was a

1 power of attorney for healthcare?

2 A. It was after I got to the hospital.

3 Q. Again, why did you tell them about the
4 power of attorney if you had no power under it?

5 A. Well, why not? I mean, you know.

6 Q. Okay. If you could go to the next
7 exhibit, Exhibit 19.

8 (PLAINTIFFS' EXH. 6, Copy of General
9 Durable Power of Attorney, was marked
10 for identification.)

11 BY MS. FISHER:

12 Q. Have you seen that document before?
13 It's entitled General Durable Power of Attorney.

14 A. Yes.

15 Q. Okay. If you go to page 8 of that
16 document, at the top it has Alice's signature. Is
17 that her signature?

18 A. Yes, it is.

19 Q. Do you recall the first time that you
20 saw the document?

21 A. Probably not long after it was drawn
22 up.

23 Q. Okay. And did you have any discussion
24 about this document?

25 A. No, I did not.

1 Q. Did Alice ask you before she had this
2 document signed whether or not you would act as her
3 power of attorney?

4 A. No, she did not ask me about that. She
5 just give me these papers. No.

6 Q. So had you indicated that you would
7 help her with finances at any time?

8 A. No, ma'am, I did not.

9 Q. Did Alice ask you at any time to help
10 keep her out of a nursing home?

11 A. Alice only wanted to stay in her home
12 as long as possible, and that was conversation.
13 She did not ask me to do anything.

14 Q. Okay. So Alice gave you this document
15 at some point that designated you on the first page
16 as her agent under a power of attorney. And did
17 you have a conversation with her about whether or
18 not you were willing to do that?

19 A. I don't think so, no.

20 Q. Okay. Did you have any concerns that
21 you were being put under an obligation to assist
22 her under a power of attorney?

23 A. No, I didn't feel like --

24 MR. WILLIS: Judge, objection.

25 THE COURT: That's all right. It's all

1 right.

2 BY MS. FISHER:

3 Q. Okay. Did you read the document to see
4 what your duties were as an agent under the power
5 of attorney?

6 A. Most probably not until after
7 everything when she got sick and you took over.

8 Q. So if you go to page 3, right above
9 paragraph 8, it includes a declaration. I do
10 hereby declare between me and my power of attorney
11 a fiduciary relationship exists.

12 At any time did you know that that's
13 what being an agent under the power of attorney
14 would require you --

15 THE COURT: Do you know what a
16 fiduciary relationship is?

17 THE WITNESS: No, sir.

18 BY MS. FISHER:

19 Q. Okay. Was it your understanding that
20 Alice had trust and confidence in you?

21 A. Yes.

22 Q. So in having you appointed as her power
23 of attorney under -- power of attorney for
24 finances, she had an expectation -- do you believe
25 she had expectations that you would help her handle

1 her finances if she ever could not handle them?

2 A. No, I did not. No.

3 Q. Did you ever have discussions with her
4 that if -- let me ask the question a different way.

5 After the State of South Carolina
6 initiated conservatorship proceedings, did Alice
7 ever direct you to look at these documents and
8 assist her to avoid being conserved?

9 A. No, she did not.

10 Q. So when Alice gave you her will and
11 this power of attorney and you later found out
12 about -- about the advanced healthcare power of
13 attorney, did you ever have any kind of discussion
14 with Alice about why she was giving you these
15 powers?

16 A. No. The only thing is, Alice said that
17 everything was cut and dry and she wanted it to be
18 taken care as quick as possible.

19 Q. And so since it was cut and dry, what
20 did she tell you was cut and dry.

21 A. She didn't want any lawyers involved in
22 it.

23 Q. And did she tell you that she believed
24 that having this will meant there would be no
25 lawyers involved?

1 A. Yeah. When she first -- yeah, that's
2 what she wanted. She didn't want any lawyers
3 involved.

4 Q. Why didn't she want lawyers involved?

5 A. I don't know.

6 THE COURT: They charge money.

7 MS. FISHER: Well, yes, Your Honor.

8 Thank you.

9 BY MS. FISHER:

10 Q. So at some point Alice, who you have
11 indicated was very private, asked you to help her
12 with her taxes; is that correct?

13 A. I don't do my own taxes. I couldn't
14 help her with her taxes. She was the accountant.

15 Q. So you never attempted to assist her in
16 getting her paperwork available for taxes?

17 A. One time she asked me to come pick up
18 papers. We never got them together.

19 Q. When was that? Do you recall the date
20 that you had -- that you went to assist her?

21 A. No. It was before elder care come into
22 the picture.

23 Q. Can you estimate how long before elder
24 care got involved that you did that?

25 A. I don't know. I really don't know the

1 date. I can't give you a date.

2 Q. Okay. So let me ask you regarding
3 certain dates. Approximately 2001, Alice executed
4 that one trust in May of 2001. The one that you
5 identified earlier, correct?

6 A. Yeah.

7 Q. And do you recall any event at that
8 time which led up to her executing that will?

9 A. No, I do not.

10 Q. Do you recall when her brother John was
11 living in South Carolina?

12 A. I knew that her brother John had come
13 to South Carolina and he was in her home.

14 Q. And do you know if -- do you know,
15 approximately, when he died?

16 A. No. Never met the guy.

17 Q. Do you recall -- you never met John?

18 A. No, I did not. When John come, she
19 kind of leveled off a little.

20 THE COURT: She did what?

21 THE WITNESS: She leveled -- the
22 friendship didn't decrease or anything; we met
23 somewhere else. We would go to lunch and stuff
24 like that.

25 THE COURT: I still didn't quite

1 understand what you just said, the last thing you
2 said.

3 THE WITNESS: We would go to lunch or
4 meet somewhere else.

5 THE COURT: That's what it was.

6 THE WITNESS: I never met John.

7 THE COURT: Don? Or was it John?

8 THE WITNESS: I thought his name was
9 John.

10 MS. FISHER: It was John. John Lucas.

11 THE COURT: J-O-H-N.

12 MS. FISHER: Yes, Your Honor.

13 BY MS. FISHER:

14 Q. So do you recall -- strike that.

15 So when John came you stopped seeing
16 Alice on a regular basis at her home; is that
17 correct?

18 A. That's right.

19 Q. And after his death, was there a period
20 of time when you started going to the house more
21 frequently?

22 A. John moved out of her home.

23 Q. Okay.

24 A. And then she and I would see each
25 other. Kay would be there sometimes, and sometimes

1 she wouldn't.

2 Q. Where would you see her?

3 A. We would upset her dogs when we'd come,
4 and she would not let us in her home. We always
5 saw her in the driveway or in the backyard in that
6 little gazebo thing back there.

7 Q. Do you know when that started? When
8 she stopped -- when she stopped having you come
9 into the home, do you know approximately when that
10 took place?

11 A. No, I can't give you a date on that.

12 Q. Okay. So can you give me an estimate
13 of how many years before elder care became involved
14 that you were not allowed into the house?

15 A. No.

16 Q. Okay. So about 2008, did you ever have
17 any discussions with Alice about having you help
18 her avoid elder care?

19 A. No. No.

20 Q. I'm going to come back to that. Let me
21 ask you this: Was it your understanding that Kay
22 Passailaigue Slade was -- worked with Jack Russell
23 -- a Jack Russell dog rescue?

24 A. I knew Kay had dogs, I knew she had
25 Jack Russells, but I didn't know the extent of what

1 her involvement was.

2 Q. There were times that you took Alice to
3 the rescue and watched some dog runs; is that
4 correct?

5 A. Yeah. I would take Alice over to see
6 Kay's dog run, but I didn't know it was a rescue.

7 Q. Okay. So was it your understanding
8 that Alice believed that Kay -- I'm going to call
9 her Ms. Slade for convenience.

10 THE COURT: Did she ever tell you
11 anything about that, what she thought about this
12 other lady, whoever it is she's talking about?

13 THE WITNESS: No.

14 THE COURT: Ask another question.

15 MS. FISHER: Okay. Well, Your Honor --

16 THE COURT: Ask another question.

17 MS. FISHER: Thank you, Your Honor.

18 Yes.

19 BY MS. FISHER:

20 Q. Who is Kay Slade?

21 A. Kay Passailaigue Slade is a lady that
22 worked in the computer room, did payroll, all that
23 kind of stuff pertaining to Charleston Memorial
24 Hospital when we all worked there together.

25 Q. Is she a defendant in this case?

1 A. Yeah.

2 Q. And is it your understanding she is to
3 inherit all of the -- all of the monies and
4 property of Alice?

5 A. I knew she was supposed to get the
6 house, but anything else I did not know about.

7 Q. How do you know she was supposed to get
8 the house?

9 A. Because Alice said Kay was getting the
10 house and that she was hoping she would move in
11 there. And that was the extent of it.

12 Q. You were Alice's best friend. Would
13 that be accurate?

14 A. I thought I was.

15 Q. So didn't you inquire of Alice why the
16 house was going to Kay Slade and not you?

17 A. That's Alice's house. She could have
18 done whatever she wanted to with it.

19 Q. But what I'm asking you is, did you
20 ask --

21 THE COURT: Did you ask her?

22 THE WITNESS: No, sir, I did not.

23 THE COURT: Next question.

24 BY MS. FISHER:

25 Q. Would it be accurate to say that every

1 conversation you had with Alice included
2 conversations about her dogs?

3 A. No, not every conversation.

4 MS. FISHER: One moment, Your Honor.

5 MR. COOPER: Your Honor, during the
6 will contest I think we handed up the deposition --
7 the original transcript of the deposition of Bessie
8 Huckabee. We ask if the Court has that?

9 THE COURT: I don't have it.

10 THE CLERK: It would be in the evidence
11 locker, Your Honor. I can go get it real quick.

12 MS. FISHER: Can we take a break for
13 five minutes?

14 THE COURT: Do you want it for some
15 reason?

16 MS. FISHER: Yes.

17 THE COURT: Do you have a copy of it?

18 MS. FISHER: Yes, I have a copy.

19 THE COURT: Proceed with the copy.

20 MS. FISHER: Okay. Thank you, Your
21 Honor.

22 May I approach the witness?

23 THE COURT: Go ahead.

24 Why don't you just read -- if it's for
25 impeachment, read the question and then read her

1 answer, and ask her if that's right.

2 MS. FISHER: Okay. Thank you, Your
3 Honor. I will do it that way.

4 THE COURT: Tell her where you're
5 reading from.

6 MS. FISHER: Yes, Your Honor, I will.
7 I read the sentence in her format, Your
8 Honor, so I'm trying to locate --

9 THE COURT: I can't understand your
10 mumbling.

11 MS. FISHER: Excuse me. I read it in a
12 different format so I'm trying to find the page.
13 Thank you.

14 BY MS. FISHER:

15 Q. So do you recall being deposed in this
16 matter?

17 A. Yes.

18 Q. Okay. Do you remember stating that --

19 THE COURT: Read the question and read
20 the answer.

21 She wants to know if you remember this
22 and if it's accurate. If you remember saying this.

23 BY MS. FISHER:

24 Q. There was a question asked, an interest
25 in dogs was one of her main interests.

1 Your answer was: It was almost her
2 life in a way.

3 A. Yes, I said that.

4 Q. Okay. And then on page 22 of the
5 deposition, line 17 through 21.

6 Did you ever have -- this starts 14 --
7 did you ever have any discussions with Alice Shaw
8 Baker about what was to happen with the house after
9 she died.

10 Well, yes, I guess, she did. She said
11 that because Kay was getting the dogs, the house
12 was going to Kay, and that was the reason because
13 she wanted her dogs taken care of. Her dogs was
14 one of her main concerns.

15 Do you recall that?

16 A. Yep. Yep, I said that.

17 Q. Okay. So when you indicated that you
18 didn't know why Alice was leaving it to Kay, that
19 wasn't accurate; is that right?

20 A. Alice told me she was leaving it to
21 Kay. That's what I said a while ago.

22 Q. Right. But you knew the reason --

23 THE COURT: And all of her dogs were
24 dead when she died.

25 MS. FISHER: Yes, Your Honor.

1 THE WITNESS: Yes, sir.

2 THE COURT: Move on.

3 BY MS. FISHER:

4 Q. At some point there was a question:
5 And did Alice Shaw Baker ever mention to you she
6 wanted any part of her estate to go to the SPCA?

7 And your response was: She talked
8 about giving them some money and stuff, but it was
9 never -- I don't know when this was and it was a
10 long time ago, nothing recent. But that was her
11 money, her dogs, her house. I mean, you know,
12 she's the one. No deep discussions with me.

13 THE COURT: Is that what you said?

14 THE WITNESS: Yes, sir.

15 MS. FISHER: Thank you, Your Honor.

16 BY MS. FISHER:

17 Q. At some point you were questioned: She
18 did over the years mention giving some of her
19 estate over -- sorry, giving some of her estate
20 upon her death to dog charities?

21 Your answer: Until she got mad with
22 SPCA. She didn't like the man and then she said
23 they couldn't have anything. If they didn't want
24 her house, they wasn't having the money.

25 Is that accurate?

1 A. That's accurate.

2 THE COURT: So how does that impeach
3 what she said today?

4 MS. FISHER: Well, Your Honor, she said
5 she didn't talk to Alice about it.

6 THE COURT: Move on.

7 MS. FISHER: Okay. I was trying to
8 answer your question.

9 THE COURT: I didn't hear any
10 impeachment.

11 MS. FISHER: Thank you.

12 BY MS. FISHER:

13 Q. So on page 37 -- okay. On page -- let
14 me ask you this: Did Kay ever tell you that she
15 had promised Alice that she would take care of her
16 dogs?

17 A. She would take care of any dogs that
18 Alice had at that time.

19 Q. Okay. Did she say that verbally to
20 you?

21 A. It was in the course of a conversation
22 that was most probably with more than just me
23 there.

24 Q. Do you recall the conversation?

25 A. No. They talked about their dogs all

1 the time.

2 Q. Okay. So I'm asking you, was this a
3 conversation that Alice had with you or was this a
4 conversation that Kay had with you, Kay
5 Passailaigue Slade?

6 A. I think it was Alice.

7 Q. Okay. So, again, did Kay ever tell you
8 that she promised Alice that she would take care of
9 her dogs?

10 THE COURT: She didn't have any dogs
11 when she died. It's not relevant. Move on to
12 something else.

13 MS. FISHER: Your Honor, it's not
14 just --

15 THE COURT: Move on to something else.

16 MS. FISHER: Your Honor, for the
17 record, it's not just about whether she had dogs.
18 It's about how the rest of the money would be used,
19 so it is relevant to show how Alice was going to --
20 what promises were made. So I am asking to be
21 allowed to ask that question.

22 THE COURT: Go ahead.

23 MS. FISHER: Thank you.

24 BY MS. FISHER:

25 Q. So did Kay Passailaigue ever tell you

1 that she had promised Alice she would take care of
2 her dogs?

3 A. Yeah. Kay said she would take care of
4 her dogs, if she had any at that point.

5 Q. So you had that conversation with Kay?

6 A. Yeah. In the course of a conversation,
7 yeah.

8 Q. So at your deposition you were asked
9 the same question and you answered: Not verbally
10 coming out and telling me that she talked about
11 taking care of the dogs. The dogs would be taken
12 care of, but, no, it wasn't a conversation that she
13 and I carried on just to have conversation or
14 anything.

15 A. It wasn't a conversation just to have a
16 conversation. No. It come up in the course of
17 talking and --

18 Q. So you were talking about Alice's
19 intentions about what would happen to her money; is
20 that right?

21 A. No. I didn't talk to her. It was in
22 the will what she wanted done with it. I didn't
23 talk to her about her money.

24 Q. So did Alice believe that Kay worked
25 with the Jack Russell rescue?

1 A. I have no earthly idea. No, I don't
2 know.

3 Q. So at your deposition, there was an
4 inquiry: Okay. Did there ever come a time when
5 Kay -- when Alice told you that Kay was no longer
6 working with Jack Russell rescue?

7 Answer: I didn't know that Kay was no
8 longer working with the Jack Russells. I knew that
9 due to her husband's illness that she didn't take
10 an active part in it at this point, but I don't
11 know that she's not still doing something with it.

12 So was it your understanding that Kay
13 represented that she worked with the rescue?

14 A. Yeah, at one time she did. Yeah.

15 Q. Is it your understanding whether or not
16 she's still active working with the Jack Russell
17 rescue?

18 A. I don't know.

19 Q. So you testified --

20 MS. FISHER: I'm sorry, Your Honor, I
21 need a moment.

22 BY MS. FISHER:

23 Q. Okay. On page 38, but other than her
24 husband's health issues, as far as you know, she's
25 still active with the Jack Russells?

1 Your answer: To some extent, yeah, but
2 as far as I know, yes. I mean, I don't know what
3 extent she's involved. I have no idea.

4 So is it your understanding whether or
5 not she is involved with any kind of rescue at this
6 point?

7 A. I don't know how involved or if she is
8 or not, no.

9 Q. Okay. So was there ever a time when
10 Alice -- when you told Alice Shaw Baker that you
11 and Kay turned her into elder care?

12 A. Repeat that again.

13 Q. Was there ever a time that you told
14 Alice Shaw Baker that you and Kay turned her into
15 elder care?

16 A. No.

17 Q. Why didn't you tell her?

18 A. When Kay contacted elder care, we were
19 trying to get some answers. Now anything that went
20 on with the conversation with Kay and the lady at
21 elder care, you have to ask her.

22 Q. But you knew that you -- you spoke with
23 individuals from elder care; is that right?

24 A. I spoke with Elizabeth Spencer when she
25 called me one time about it.

1 Q. And you spoke to Alice about elder care
2 being involved; is that right?

3 A. Alice -- I didn't talk to Alice about
4 elder care.

5 Q. At some point didn't Alice tell you
6 that they were involved and they were trying to
7 have her conserved?

8 A. She said that some lady come to her
9 house. She never said who she was to me.

10 Q. Okay. But you knew she was upset about
11 that?

12 A. Yeah. I'm sure she would be.

13 Q. Uh-huh. And did you tell Alice that
14 you had -- you had made an inquiry or that Kay made
15 an inquiry with elder care to have her investigated
16 by the agency?

17 A. No. I never told her anything else
18 like that.

19 Q. Well, is that what you did?

20 A. No.

21 Q. What did you do with regard to elder
22 care?

23 A. I talked to Elizabeth Spencer about
24 what steps we should take, where to go about it.
25 And you would have to ask Kay how she got involved

1 with it.

2 Q. Was there a reason you didn't tell
3 Alice that Kay got her involved with elder care?

4 MR. WILLS: Asked and answered.

5 THE COURT: I'm not sure if you want to
6 -- go ahead, if you want to answer it.

7 THE WITNESS: No.

8 MS. FISHER: I'm sorry, I misunderstand
9 your ruling. Are you not going to have her answer
10 the question?

11 THE COURT: I'm not sure what the
12 question was. Do you want to reask it again?

13 BY MS. FISHER:

14 Q. Let me ask it a different way. So if
15 Alice had known that --

16 THE COURT: She would have been upset,
17 right?

18 THE WITNESS: She would to some extent.
19 Yes, she'd be upset.

20 THE COURT: All right. Move on.

21 MS. FISHER: Your Honor, if I could
22 have a five-minute break.

23 THE COURT: No. Move on. Finish up.

24 BY MS. FISHER:

25 Q. Okay. So during your testimony at the

1 last trial, you indicated that Alice came to your
2 house for holidays?

3 A. Yes.

4 Q. But at the time you didn't testify that
5 that wasn't from 2001 to 2008, that that was in the
6 '80s and '90s. Is it accurate that Alice did not
7 share the holidays from 2001 to 2008?

8 A. No, it's not accurate. Alice come --
9 Alice was there when the hurricanes come in '89,
10 when Hugo come through. Alice was there at
11 Christmas, Easter, Thanksgiving --

12 THE COURT: Up to when?

13 THE WITNESS: Sir?

14 THE COURT: Up until when?

15 THE WITNESS: I guess when John come,
16 whenever he come.

17 BY MS. FISHER:

18 Q. Okay. At some point did Alice tell you
19 to get the papers and give them to -- at some point
20 was there a time when Alice told you to get papers
21 to avoid the elder care problem?

22 A. No.

23 Q. Okay. So earlier you testified that
24 you didn't know the extent that Kay worked with --
25 Kay Passailaigue Slade worked with the Jack

1 Russells. And at your deposition you testified, I
2 knew Kay rescued Jack Russells. I knew she worked
3 at that thing. We had been to runs to see her Jack
4 Russells dig in the ground.

5 So you actually did know she worked for
6 the dog rescue; is that correct?

7 A. She took in dogs, I knew that, every
8 now and then, but to what extent she worked with
9 them I do not know.

10 MS. FISHER: Okay. Nothing further.

11 THE COURT: Anything on
12 cross-examination?

13 MR. WILLS: Yes, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. WILLS:

16 Q. Miss Huckabee, did you ever act under
17 your power of attorney during Alice's life?

18 A. No, I did not.

19 Q. Did you ever make any promises to Alice
20 to get her to put you in her will?

21 A. No.

22 MR. WILLS: That's all the questions I
23 have, Your Honor.

24 THE COURT: Thank you very much. You
25 can return to your place in the courtroom. We will

1 take a short break, about five minutes. Five
2 minutes.

3 (A recess transpired.)

4 THE COURT: All right. Call the next
5 witness.

6 MR. COOPER: The plaintiff calls Peter
7 Kouten.

8 THE COURT: Come on up.

9 PETER KOUTEN,
10 being first duly sworn, testified as follows:

11 THE CLERK: Have a seat, sir. Once you
12 get situated, speak into the microphone, and state
13 your full name for the record. Spell your last
14 name.

15 THE WITNESS: Peter Kouten,
16 K-O-U-T-E-N.

17 DIRECT EXAMINATION

18 BY MR. COOPER:

19 Q. Mr. Kouten, do you remember back in
20 2008 when you were pointed guardian ad litem for
21 Alice Shaw Baker?

22 A. Yes.

23 Q. And during those proceedings, Judge
24 Curry asked you to make regular visits to Alice
25 Shaw Baker?

1 A. She did, yes.

2 Q. And you did that?

3 A. Yes.

4 Q. And I want to show you now Number 5
5 which I think we will mark as the next Plaintiff's
6 Exhibit.

7 (PLAINTIFFS' EXH. 7, Copy of a
8 visitor's report, was marked for identification.)

9 BY MR. COOPER:

10 Q. Does this appear to be a true and
11 accurate copy of a visitor's report that you filed
12 with the court?

13 A. No, it's something else.

14 THE COURT: I didn't understand you.

15 THE WITNESS: It is not, Your Honor.
16 It's a different document.

17 (PLAINTIFFS' EXH. 8, Copy of visitor's
18 report, was marked for identification.)

19 THE WITNESS: You're asking me to
20 identify this?

21 BY MR. COOPER:

22 Q. Yeah. Is that a copy of the visitor's
23 report that you filed with the court concerning
24 Alice Shaw Baker?

25 A. Yes.

1 MR. COOPER: Madame Court Reporter, if
2 you would mark what's been previously marked as 6
3 as the next numbered exhibit?

4 (PLAINTIFFS' EXH. 9, Copy of visitor's
5 report, was marked for identification.)

6 THE WITNESS: I submitted this report
7 as well.

8 BY MR. COOPER:

9 Q. Okay. And this is a monthly visitor
10 report after the conservatorship hearing where you
11 detail your visits to Alice Shaw Baker in November
12 and December of 2008?

13 A. That's my recollection, yes. There was
14 -- there was an appointment hearing, and there was
15 an order by the Court that Alice be examined by
16 Dr. Waid in that interim. The Court asked me to
17 present weekly reports until that examination had
18 occurred.

19 Q. And this was a monthly summary of the
20 weekly visitor reports?

21 A. It appears to be. It's not signed and
22 it's not recorded, but that's what the Court
23 ordered, so that's what it looks like, yeah.

24 Q. And the second page of that Exhibit
25 Number 9 is your notes --

1 A. Correct.

2 Q. -- of your visits?

3 A. That's right.

4 Q. No question about that?

5 A. Yes.

6 (PLAINTIFFS' EXH. 10, Copy of e-mail,
7 was marked for identification.)

8 BY MR. COOPER:

9 Q. This is an e-mail from you to Lisa
10 Fisher and myself dated December 23, 2008?

11 A. Yes.

12 Q. And down in the body there it says at
13 one point, I saw Alice yesterday and she was
14 agitated. Money issues.

15 And this concerns Alice Shaw Baker?

16 A. Well, it certainly concerns Alice Shaw
17 Baker, yes. Although money issues, I have no
18 recollection what that means.

19 Q. Fair enough. Thank you.

20 (PLAINTIFFS' EXH. 11, Copy of e-mail,
21 was marked for identification.)

22 BY MR. COOPER:

23 Q. This is another e-mail from you to Lisa
24 in December of 2008?

25 A. Yes.

1 (PLAINTIFFS' EXH. 12, Three pages, copy
2 of e-mails, was marked for identification.)

3 THE WITNESS: No question as to this,
4 just identification?

5 BY MR. COOPER:

6 Q. Right. Plaintiff's 12 appears to be
7 three pages. The first one, and most of them are
8 -- I guess, all of them are e-mails between you and
9 Lisa Fisher. Going to the second page, looks like
10 Wednesday, January 14, 2009, you were sending us a
11 copy of a visitor's letter to the Court concerning
12 Dr. Waid's evaluation.

13 A. It looks like there was an e-mail from
14 me on Wednesday, January 14, 2009, to you and Lisa
15 Fisher. It had an updated visitor's letter. It
16 looks like this one goes through December 1st, the
17 one that you have marked as Exhibit 9, and then I
18 must have sent another monthly one. So it seems to
19 reference that.

20 And it looks like Dr. Waid's original
21 appointment had not been set since January. The
22 old one said that it was going to be set -- the
23 first report said it was going to be November 20th
24 in Mount Pleasant. This one dated January 14th
25 indicates that she didn't go to see Dr. Waid, for

1 whatever reason, for two months.

2 And then Lisa wrote back indicating she
3 has additional doctors' appointments set. And so
4 -- I mean, I don't recall them, but they do have my
5 e-mail letterhead on there. So they are what they
6 are.

7 (PLAINTIFFS' EXH. 13, Copy of report,
8 was marked for identification.)

9 BY MR. COOPER:

10 Q. Mr. Kouten, Exhibit Number 13 is
11 actually an report that you sent to Elizabeth Sikes
12 at Charleston County Probate Court concerning
13 Dr. Waid's evaluation. Take a minute and look at
14 it.

15 A. Yes.

16 Q. Okay. So at this time, January 14,
17 2009, you are reporting Dr. Waid has evaluated
18 Alice Shaw Baker at that time?

19 A. Yes.

20 (PLAINTIFFS' EXH. 14, Copy of visitor's
21 report, was marked for identification.)

22 BY MR. COOPER:

23 Q. It appears, Mr. Kouten, that
24 Plaintiff's Exhibit 14 is the remainder of your
25 December visitor reports with Alice Shaw Baker?

1 A. Yes.

2 Q. And I see an entry here on December 29,
3 2008, referencing a call from Lisa Fisher
4 concerning a visit to Alice from Jane Orenstein.
5 Did you have occasion to communicate with Jane
6 Orenstein after that e-mail or after that contact?

7 A. My recollection is that I did, yes.
8 (PLAINTIFFS' EXH. 15, Copy of e-mail,
9 was marked for identification.)

10 BY MR. COOPER:

11 Q. Mr. Kouten, Plaintiff's Exhibit Number
12 15 is a copy of a letter -- e-mail that you sent to
13 Jane Orenstein with copies to Lisa Fisher and
14 others?

15 A. Yes.

16 Q. The letter to Ms. Orenstein references
17 a recent conversation regarding Alice Shaw Baker.
18 What do you remember about that conversation, if
19 anything?

20 A. I don't recall the conversation
21 verbatim, but it's detailed in the letter.

22 Q. Consistent with that letter?

23 A. Yes.

24 (PLAINTIFFS' EXH. 16, Copy of e-mail,
25 was marked for identification.)

1 BY MR. COOPER:

2 Q. Plaintiff's 16 is an e-mail from you to
3 Lisa Fisher concerning Jane Orenstein in the
4 letter?

5 A. Yes, sir.

6 Q. Let me ask you, during the times that
7 you visited Alice Shaw Baker, did she ever -- did
8 you ever -- well, let me ask you this: Did she
9 ever ask you about or tell you about her plans to
10 go to California?

11 A. No.

12 Q. You never discussed going to California
13 with Alice Shaw Baker?

14 A. No.

15 Q. Never discussed her going with anybody
16 else to California?

17 A. I know that when Alice Shaw Baker was
18 dying in the hospital there was an order to
19 transport her in her condition out of the state of
20 South Carolina. That order indicated that it was
21 not advisable, but they had somehow signed that
22 order. Of course I have no idea why.

23 Alice was diagnosed with dementia at
24 the time, and so she died before being transported.

25 THE COURT: I never heard anything

1 about that before.

2 THE WITNESS: Well --

3 THE COURT: Anybody have a copy of
4 anything like that?

5 MR. WILLS: Judge, if the witness is
6 referring to a medical order or a judicial order, I
7 don't know.

8 THE COURT: I don't know.

9 THE WITNESS: It was -- and, Your
10 Honor, so the Court understands, I represented
11 Alice Shaw Baker when she was alive. When she had
12 passed away, the will which was presented to the
13 probate court in the guardianship conservatorship
14 division, the Court order upon appointing Lisa
15 Fisher guardian and conservator said, and there's a
16 transcript of this, is there a will? There was.

17 The Court asked that it be filed in the
18 file, which it was. When Alice --

19 THE COURT: I know all that.

20 THE WITNESS: And so -- well, so what
21 happened was, the personal representative of the
22 will asked me if I would help her represent Alice
23 in the estate. And I understood that since she was
24 alive I was helping her, and when she died I was
25 helping stand in her shoes with her representative.

1 And so as attorney for the personal
2 representative, I ordered medical records from the
3 hospital. And there were a stack of medical
4 records that we had to see --

5 THE COURT: So it's in that somewhere?

6 THE WITNESS: Yes, sir.

7 THE COURT: Do you still have that?

8 THE WITNESS: I turned over all the
9 files to counsel when -- when I had to step down in
10 my representation. I didn't know if it was
11 relevant. We ordered --

12 THE COURT: I just had never heard
13 anything about that before.

14 THE WITNESS: We ordered those to see
15 if there was anything that the hospital had done
16 wrong, and that's where those records are.

17 THE COURT: I wonder who initiated
18 that.

19 THE WITNESS: Ms. Fisher initiated
20 that.

21 THE COURT: Be nice to know that for
22 sure. Go ahead.

23 BY MR. COOPER:

24 Q. Did Alice Shaw Baker ever discuss with
25 you going to California?

1 A. No.

2 Q. With Lisa Fisher or anyone else?

3 A. No.

4 Q. You didn't have any conversations with
5 her at all about going to California?

6 A. No.

7 Q. Okay. When did you -- when did you
8 find out that Alice Shaw Baker had passed away?

9 A. I don't recall if I was there, Attorney
10 Cooper. I know that when she was admitted to the
11 hospital, Kay and Bessie were there and the
12 caregivers a lot of the time. And I would go as
13 well.

14 If I was not there, it was not long
15 after that because we were in phone contact. So if
16 it wasn't contemporaneous, it was within an hour or
17 so.

18 Q. You were in phone contact with Bessie
19 Huckabee and Kay Slade?

20 A. They had my phone numbers. If I wasn't
21 there when she passed away, they would have called
22 me. I don't know the answer to that question.

23 Q. You don't remember who contacted you?

24 A. I don't remember if I was there.

25 Q. Okay. And do you remember a phone

1 conversation later in the day on the date that
2 Alice Shaw Baker died with Lisa Fisher?

3 A. No.

4 Q. No memory of that at all?

5 A. No.

6 Q. During your discussion with Alice Shaw
7 Baker when she was alive, she made it clear to you
8 that she did not want to be out in some kind of
9 assistive living or a nursing home?

10 A. Yes. I mean, those conversations --
11 with every elder person I have worked with, that's
12 the conversation; they want to stay in their house.

13 Q. Did she ever have any discussions with
14 you about how that would be accomplished?

15 A. Not with Alice, no.

16 MR. COOPER: One moment, Your Honor.

17 BY MR. COOPER:

18 Q. Alice Shaw Baker when you went to visit
19 her was able to communicate with you clearly?

20 A. Yes.

21 Q. And Alice Shaw Baker was happy with
22 Lisa Fisher's appointment as conservator?

23 A. I would have to disagree with that
24 statement.

25 Q. Okay. Why is that?

1 A. Alice was looking for the least of
2 evils and so she did as all elderly who are in this
3 situation want to, if they can understand what's
4 happening. She understood what was happening. She
5 felt she had a better opportunity with Lisa Fisher
6 than with a court-appointed representative.

7 Q. Okay. She didn't communicate to you
8 any other complaints about Lisa Fisher, anything
9 that she had done or failed to do? It's just that
10 she wanted -- she wanted less court involvement; is
11 that fair to say?

12 A. I mean, there's a couple of questions
13 in there. She did communicate to me various things
14 that Lisa had done or failed to do and she did want
15 to stay in her house.

16 Q. Okay. But your visit reports are
17 accurate in terms of what's expressed in there?

18 A. Contemporaneous from when they were
19 written, they are accurate. It has nothing to do
20 with what I have found to be factual and true
21 subsequent to that. When they were written, they
22 were factual.

23 Q. Okay. Okay. Fair enough. And your
24 memory is not any better today than when you wrote
25 the reports?

1 A. The reports are accurate
2 contemporaneous from when they were written.

3 Q. Okay. Thank you.

4 You knew that Lisa Fisher did not want
5 Alice Shaw Baker to be put on antipsychotic drugs?

6 A. I don't recall that.

7 Q. Okay. Do you recall whether Jane
8 Orenstein wanted Alice to be put on antipsychotic
9 drugs?

10 A. No.

11 MR. WILLIS: I'm going to object to
12 relevance. What does that have to do with
13 anything?

14 THE COURT: Ask another question.

15 BY MR. COOPER:

16 Q. You say you don't remember speaking
17 with Ms. Lisa Fisher later on the day when Alice
18 died?

19 A. That's correct.

20 Q. And it's true, isn't it, that on the
21 day that Alice Shaw Baker died you agreed to
22 represent Bessie Huckabee and Kay Slade?

23 A. I don't recall that. I recall that I
24 was asked by Bessie to represent her after Alice
25 died. I don't think it was the day she died, but

1 it was somewhere subsequent to that.

2 Q. And you don't remember a telephone call
3 where you discussed that with Lisa Fisher later the
4 same day?

5 A. I do not, no. I recall Bessie
6 contacting me -- and I can tell you any time that
7 happens, as an attorney, the conversation is make
8 the arrangements, say your goodbyes, attend the
9 funeral, grieve, and then contact me.

10 This very-next-day-thing just does not
11 seem like a conversation that I had. And what
12 happened was she made the arrangements, went to the
13 funeral, grieved and then contacted me sometime
14 later. That's what I recall because then I called
15 you and I said, we need the original will to file
16 in the court, and so it would be somewhere along
17 that timeline.

18 Q. Okay. Well, just to be clear, my
19 question was about the day she died, not the next
20 day.

21 A. That I don't recall happening.

22 Q. Okay. Mr. Kouten, Exhibit Number 7 is
23 an application for informal probate appointment
24 that you filed in the probate court; is that right?

25 A. Yes.

1 Q. Okay. And the back of it is a --

2 MR. WILLS: Objection; relevance.

3 THE COURT: What's the relevance of it?

4 MR. COOPER: Your Honor, it shows on
5 the front page here that Bessie Huckabee --

6 THE COURT: Is this in your book here
7 so I can look at?

8 MR. COOPER: Yes, Your Honor. It's
9 Plaintiff's Exhibit Number 4 in the book.

10 THE COURT: Okay. What do you want to
11 ask him about it?

12 MR. COOPER: Well, several things.

13 BY MR. COOPER:

14 Q. First, on the first page it lists the
15 relationship to the deceased Bessie Huckabee as
16 friend; Sandra Byrd, friend; Kay Slade, friend; is
17 that correct?

18 A. That's what it is.

19 Q. And then on the second page it lists
20 ten testate heirs who are not devisees, Betty
21 Fisher and Lisa Fisher. In relationship to the
22 decedent is Betty Fisher, the niece, and Lisa
23 Fisher, the grandniece; is that correct?

24 A. That's what it said.

25 Q. And that's the information that you had

1 at that time?

2 A. It's my understanding they were
3 related, unless you know something different.

4 Q. And if this is, in fact, true, then
5 Betty Fisher would be in line potentially to
6 inherit if it was an intestate situation, correct?

7 A. That's right.

8 Q. But her daughter wouldn't inherit?

9 A. Whose daughter?

10 Q. Betty Fisher's daughter, Lisa Fisher.

11 A. It's my understanding the will was
12 deemed invalid, so I'm not sure what the question
13 is.

14 THE COURT: What's the point?

15 THE WITNESS: These are --

16 THE COURT: What's your point?

17 MR. COOPER: I'm getting to it, Your
18 Honor.

19 THE COURT: Go ahead.

20 MR. COOPER: All right. I'm waiting
21 for him to answer the question.

22 BY MR. COOPER:

23 Q. Do you know under South Carolina law if
24 it was determined that the estate were to be
25 intestate, whether the daughter of the niece would

1 inherit?

2 THE COURT: No.

3 Any other questions?

4 THE WITNESS: It doesn't ask --

5 THE COURT: Any other questions?

6 MR. COOPER: Yes, Your Honor.

7 BY MR. COOPER:

8 Q. If Betty Fisher is the -- is the
9 potential intestate heir that would inherit, and
10 Lisa Fisher is not -- and I will ask you to go to
11 the proof of delivery, which is the second to the
12 last page, and ask you why Betty Fisher wasn't
13 served?

14 A. They were mailed to the same address.
15 They live at the same address.

16 Q. Well, this has a P.O. Box.

17 A. And so they have the same mailing
18 address.

19 Q. You list them both up on the petition
20 and then when you go to serve --

21 THE COURT: Are you claiming some sort
22 of lack of notice at this point; is that your
23 point?

24 MR. COOPER: I'm just asking --

25 THE COURT: Is that what your point is?

1 MR. COOPER: Well, it depends on what
2 his answer to the question is.

3 THE WITNESS: My answer is they live at
4 the same address; they're served. They've been
5 served eight or nine years ago.

6 BY MR. COOPER:

7 Q. Now on this, on this petition it
8 indicates that your phone number is 767-5284; is
9 that right?

10 A. I don't recall; it's a prior office.
11 If it's on there, then that's -- I mean, that's
12 what it says.

13 Q. Did you have any other phones at that
14 time?

15 A. Well, I had my cell phone, yeah.

16 Q. Okay. What is the cell phone number?

17 A. This number on the bottom appears to be
18 the number to my office at the time of filing.

19 Q. Right. But at the time of filing you
20 also had a cell phone?

21 A. And I still have the cell phone, and
22 it's the same number as it was then.

23 Q. Which is?

24 THE WITNESS: I'm not sure that's
25 relevant, Judge.

1 THE COURT: Do you want to try an
2 attempt at relevance?

3 MR. COOPER: Yes, Your Honor. There is
4 going to be testimony that Lisa Fisher made a call
5 on the date of Alice Shaw Baker's death to Peter
6 Kouten for six or seven minutes in which -- at
7 which time Mr. Kouten made certain representations
8 to her.

9 THE COURT: What's the point?

10 MR. COOPER: Your Honor, it has to do
11 with Alice Shaw Baker wanting to go to California
12 and has to do with --

13 THE COURT: This is an incompetent
14 person talking about wanting to go to California.

15 MR. COOPER: I'm not sure that's true.

16 THE COURT: Do you have any evidence to
17 the contrary? Have you presented any evidence to
18 the contrary? Are you going to present any
19 evidence to the contrary? We had a court order
20 saying she was incompetent.

21 If you thought that she was not
22 incompetent, you should have gone back to court and
23 asked for something else before you did anything.

24 MR. COOPER: The order, Your Honor,
25 raised questions as to her competence, but then had

1 her sent for evaluation by Dr. Waid.

2 THE COURT: Was there ever an order
3 after the order saying that she was incompetent?

4 MR. COOPER: Well --

5 THE COURT: Was there ever an order
6 saying that she was not incompetent?

7 MR. COOPER: I am not sure there was,
8 Your Honor. On the other hand, I don't agree that
9 she was incompetent or that the Court found that,
10 found that there was --

11 THE COURT: I can't believe that. I
12 can't believe I'm hearing you say that. Ask
13 another question.

14 MR. COOPER: Your Honor, with respect,
15 before we move on from this point, you know, under
16 South Carolina law, as I'm sure Your Honor knows, a
17 person doesn't have to be competent for all
18 purposes in order to have the competency to make or
19 revoke the will.

20 THE COURT: The order said she could
21 not revoke her will.

22 MR. COOPER: Without further --

23 THE COURT: Was there any further court
24 action?

25 MR. COOPER: Well, we're here right

1 now.

2 THE COURT: No. No. No. No. Was
3 there ever any further court action? You know what
4 I'm asking you. You know what I'm asking you.

5 MR. COOPER: Your Honor, there was
6 never any further court order in the probate court;
7 however, she died before that hearing could be had.
8 And a plain reading of the order, Your Honor, says
9 she can't make another will without -- without
10 further order of the court.

11 THE COURT: Was there any further order
12 of the court?

13 MR. COOPER: Not yet.

14 THE COURT: Well, there's not going to
15 be another order of the court concerning her
16 competency.

17 MR. COOPER: Well, Your Honor, let me
18 just -- let me just say that we do have Dr. Waid
19 subpoenaed to come and testify tomorrow morning,
20 and I'm assuming that the Court would be interested
21 in hearing what his take on it was.

22 THE COURT: I would be very interested
23 in hearing what his take on it is with the report
24 that he has already given.

25 MR. COOPER: What that order did say,

1 she could not be removed from the state without a
2 court order.

3 THE COURT: You have five more minutes
4 with this witness.

5 BY MR. COOPER:

6 Q. Mr. Kouten, you were at the hearing on
7 conservatorship?

8 A. Yes.

9 Q. And it's true, isn't it, that the
10 petition for conservatorship did not include a
11 request to deprive Alice of her right to change her
12 will?

13 A. I didn't draft the petition. I don't
14 recall that. What I do recall is the order said
15 that if she wanted to change any of her estate
16 planning documents, she would need another order
17 from the court.

18 What I do recall is that during her
19 lifetime, there was no request to the court to have
20 Alice do subsequent estate planning. Had Alice
21 indicated that she wanted to do subsequent estate
22 planning, as an attorney for her, or anybody else
23 representing her would have run to the court and
24 said, I need an order for a doctor to reevaluate
25 her to do her estate planning.

1 That never happened. There was no
2 petition and there was no subsequent order. The
3 order that said she needed a further court order to
4 change her estate plan was never had. There was no
5 petition.

6 Q. There was an initial petition, and the
7 initial petition for conservatorship did not
8 indicate a request to deprive her of her right to
9 change her will?

10 A. I don't know what to tell you about
11 that. When you go to a hearing in the
12 conservatorship division, you have seven basic
13 rights that the Court has the opportunity to
14 withhold or limit, and that's one of them. And so
15 the Court withheld them and so she was not able to
16 do that.

17 Q. It's true that Alice Shaw Baker
18 consented to Lisa Fisher's appointment as
19 conservator guardian?

20 A. I can't answer that. I don't know. I
21 don't know if she did or not. I know that Alice
22 wanted the least of all evils. And so consent is a
23 pretty strong word. She had objection to any
24 appointment at all.

25 THE COURT: There you go.

1 BY MR. COOPER:

2 Q. Right, but you represented her at the
3 hearing?

4 A. As her guardian ad litem and visitor.

5 Q. Right. And you determined that the
6 least intrusive appointment would be Lisa Fisher?

7 A. I don't believe I was representing her
8 as an attorney. I believe you were.

9 Q. Well, if you remember, Judge Curry made
10 it very clear in the beginning of the hearing
11 either I would represent Alice Shaw Baker or I had
12 to represent Lisa Fisher. And it was determined
13 that you would represent Alice Shaw Baker and I
14 would represent Lisa.

15 A. I do not recall that. So, in the event
16 that I was her attorney, guardian ad litem, and
17 visitor, I had no objection to the appointment. To
18 say that that's consent by Alice -- again, it's the
19 least of all evil.

20 Q. So least intrusive option that the
21 Court might go with?

22 A. The Court appointed Lisa Fisher.

23 MR. COOPER: Thank you.

24 MS. FISHER: No.

25 MR. COOPER: Just a minute, Your Honor.

1 BY MR. COOPER:

2 Q. It's true, isn't it, Mr. Kouten, that
3 the order appointing Lisa Fisher as conservator did
4 find that Alice Shaw Baker had the power to
5 nominate?

6 A. I don't have that order in front of me.

7 Q. Okay. And it was entered into evidence
8 in the last will contest.

9 MR. COOPER: No further questions of
10 this witness.

11 THE COURT: Any cross-examination?

12 MR. WILLS: No, Your Honor.

13 THE COURT: Thank you very much. You
14 can return to your work.

15 THE WITNESS: Thank you, sir.

16 THE COURT: All right. We will take a
17 short five-minute break.

18 (A recess transpired.)

19 MR. COOPER: I have some depositions
20 here.

21 THE COURT: Tell me what it is.

22 MR. COOPER: All right. Well, it's
23 John David Smoak, III, a neighbor of Alice Shaw
24 Baker's. We handed in the original transcript in
25 the will contest trial. It was not admitted into

1 evidence, but Your Honor should have it. We have
2 designated certain lines. If you want the
3 designations I can provide those to the Court or
4 you can just take the whole thing.

5 THE COURT: No. Whatever you want me
6 to consider, you tell me what you want me to
7 consider.

8 MR. COOPER: Yes, Your Honor.

9 THE COURT: If you could limit it, that
10 would be great.

11 MR. COOPER: Yes, Your Honor. I will
12 hand Your Honor a list of designations.

13 (PLAINTIFFS' EXH. 17, Retirement
14 Systems document, was marked for identification.)

15 (PLAINTIFFS' EXH. 18, Change form for
16 retirement, was marked for identification.)

17 (PLAINTIFFS' EXH. 19, National Life
18 Insurance documents, was marked for
19 identification.)

20 MR. WILLS: We have also objections and
21 our own designations in the event that any of this
22 is relevant.

23 THE COURT: Do you have a copy of the
24 deposition that I can use? I don't know if the
25 court reporter has the original with her. I will

1 take one of your copies.

2 MR. COOPER: In these, I have taken a
3 yellow highlighter to mark the parts that we want.
4 Of course, I didn't highlight the parts that
5 Mr. Wills wants.

6 MR. WILLS: I mean, we would stipulate
7 that she liked dogs a lot.

8 THE COURT: I'll give these to my clerk
9 to take charge of.

10 So we have the deposition of Smoak that
11 you want me to look at, read and consider. And who
12 else?

13 MR. COOPER: Jennie Jacobs and Parker,
14 Lucy Parker.

15 THE COURT: Did you give me that?

16 MR. COOPER: Yes, Your Honor. Jacobs
17 and Parker with the South Carolina Retirement
18 Services Public Employees Benefits.

19 THE COURT: Okay.

20 MR. COOPER: I have had the court
21 reporter mark 17, 18, and 19. I will tell you
22 Plaintiff's 17 is four pages which are the exhibits
23 to Parker and Jacobs.

24 THE COURT: Okay.

25 MR. COOPER: You can make a note of

1 will not allow the extrinsic evidence to prove --

2 THE COURT: I will consider that in
3 deciding how to deal with that. I appreciate your
4 position, and you certainly have researched it and
5 done good thinking and interposed the appropriate
6 objection. I will take all of that into
7 consideration as I make my decision about what that
8 means, if anything.

9 Next.

10 MR. COOPER: Yes, Your Honor.

11 Plaintiffs call Betty Fisher to the
12 stand.

13 BETTY FISHER,

14 being first duly sworn, testified as follows:

15 THE CLERK: State your full name and
16 spell your last name.

17 THE WITNESS: Betty Fisher, F as in
18 Frank, I-S-H-E-R.

19 Can I be heard? This is high.

20 THE CLERK: Just push the microphone
21 down towards you.

22 THE WITNESS: Okay.

23 DIRECT EXAMINATION

24 BY MR. COOPER:

25 Q. Ms. Fisher, how are you related to

1 Alice Shaw Baker?

2 A. She was my aunt.

3 Q. All right. And when did you have --
4 you had what you would consider a close
5 relationship with Alice Shaw Baker when she was
6 alive?

7 A. Oh, it wasn't close, but this is the
8 20th century. It was then.

9 THE COURT: I'm sorry, I didn't
10 understand your answer.

11 THE WITNESS: It wasn't close where we
12 lived in the same town. We had a relationship by
13 phone, letters, birthday cards, Christmas cards.
14 That kind of relationship.

15 BY MR. COOPER:

16 Q. So you lived in California and she
17 lived in South Carolina?

18 A. Yes. She was born in San Diego and I
19 was --

20 Q. Okay.

21 A. We were close.

22 Q. The relationship you had then was
23 mostly letters, cards, and telephone calls; is that
24 correct?

25 A. Yes, sir, until the trouble started.

1 Q. Okay. And what was the trouble that
2 you are speaking of?

3 A. People -- these two people here went to
4 her neighbor and told them to go to Alice's house
5 about Christmastime and see what she is doing. And
6 the next thing she was in court because they had
7 reported her having too much food in the freezer
8 and her hair was messed up. She needed a maid.
9 You know, that's all she needed. She could well
10 afford it --

11 Q. So the trouble that you were speaking
12 of --

13 A. -- 2007.

14 Q. -- events that led up to the
15 conservatorship; is that right?

16 A. Yes. It was very bad and harmful to
17 her.

18 THE COURT: What was the last thing you
19 said?

20 THE WITNESS: Harmful to her.

21 THE COURT: When did you come to
22 Charleston to see her?

23 THE WITNESS: In 2000 -- 2008.

24 THE COURT: August of 2008?

25 THE WITNESS: Pardon me?

1 THE COURT: August of 2008.

2 THE WITNESS: No. No. It was --

3 THE COURT: September.

4 THE WITNESS: I'm sorry, I don't know
5 the month. I only know my daughter came first.

6 THE COURT: After the trouble started.

7 THE WITNESS: After the trouble was --

8 THE COURT: When the trouble started
9 was in August.

10 THE WITNESS: Okay. Well, after
11 August, Your Honor. I agree with you.

12 THE COURT: Go ahead.

13 BY MR. COOPER:

14 Q. That was the first time you came; is
15 that right?

16 A. Yes, sir.

17 Q. Did you come to Charleston when her
18 brother John Lucas died?

19 A. No, I didn't.

20 Q. Did you come after John Lucas died with
21 regard to the probate?

22 A. Yes. Oh, I'm sorry, I did come before
23 August. I'm sorry, it was about my Uncle John, her
24 brother. I'm sorry.

25 Q. I see. And he died in the year 2000;

1 is that right?

2 A. Right. And that's when my daughter
3 hired you to represent Alice.

4 Q. And --

5 THE COURT: Wait. Wait. Wait. You
6 were saying she hired him in 2000 to represent
7 Alice?

8 THE WITNESS: Not Alice, my Uncle John.
9 Thank you for correcting me. I'm a little nervous.
10 BY MR. COOPER:

11 Q. At any rate, you came and saw Alice
12 Shaw Baker back in 2000?

13 A. Yes. Yes.

14 Q. And that was in connection with the
15 death of her brother John Lucas?

16 A. Right.

17 Q. Okay. And did you have any
18 conversations with Alice Shaw Baker at that time
19 about her will or about her desires to give her
20 property to anyone?

21 MR. WILLS: Objection.

22 THE COURT: I will let it in. Just --
23 I mean, it's not admissible, you know, but I want
24 to hear what she says.

25 THE WITNESS: Well, it was all about

1 Alice with Alice. Not just dogs. She loved
2 animals. And, I mean, that's about it.

3 BY MR. COOPER:

4 Q. Did she express to you any intention
5 that she had about benefitting animals or animal
6 charities or anybody else?

7 A. Yes. She told me about the SPCA and
8 all of this stuff and what had happened when she
9 couldn't -- she tried to give her house and all
10 this stuff to various ones. And the one guy
11 couldn't take the house, so she got angry. And so
12 she said, I couldn't leave it to them.

13 It wasn't that she didn't like the guy.
14 She just -- she was trying to actually give it to
15 legitimate causes, you know, the lump of it all.
16 She couldn't do it. It just kept backfiring.

17 Q. She expressed to you that she was
18 frustrated that her gifts to the animal charities
19 were not accepted?

20 A. Yes. It wasn't that they weren't
21 accepted, it wasn't being made simple. There was
22 always one little thing, like the one with the
23 house. I mean, to her it was preposterous.

24 She said, well, they could sell the
25 house. She didn't understand why they couldn't

1 take it in some way. So I said, well, maybe you
2 could sell the house. She said, no, no. I just
3 want to -- so it was her money. She could do
4 whatever she wanted.

5 Q. Well, my question is, did she ever
6 express to you at that time around 2000 or 2001
7 what she wanted -- what she wanted to benefit or
8 who she wanted to benefit when she passed away?

9 A. Just animals, the dogs. She loved
10 dogs, I mean. She -- but she wanted to do it
11 herself. That's -- she was a very independent
12 woman and she wanted to choose the organization,
13 chose the thing -- she would work with them. She
14 said she would work with anyone.

15 THE COURT: Has either one of your
16 lawyers told you who would inherit her estate now?

17 THE WITNESS: Today?

18 THE COURT: Yes.

19 THE WITNESS: Did my lawyers tell me --
20 well, those people.

21 THE COURT: No. I'm talking about who
22 your lawyers -- did your lawyers ever tell you if
23 they prevail -- if you prevailed who would inherit
24 everything as far as her estate?

25 THE WITNESS: The animals.

1 THE COURT: Who?

2 THE WITNESS: The animals, sir. She
3 never put down -- she never told me that except at
4 that time. Remember, this all happened --

5 THE COURT: Did they ever tell you that
6 you would inherit it as it presently stands?

7 THE WITNESS: Never came up.

8 THE COURT: So they never told you
9 that, did they?

10 THE WITNESS: The lawyers?

11 THE COURT: Yes.

12 THE WITNESS: No. I don't have any
13 lawyers.

14 THE COURT: That lawyer right there and
15 that lawyer right there represent you. They better
16 represent you.

17 THE WITNESS: Okay.

18 THE COURT: Answer this question: Do
19 you remember signing the contract employing either
20 one of those lawyers to represent you?

21 THE WITNESS: No, sir. I didn't have
22 to sign a contract with my daughter.

23 THE COURT: Yes, you did.

24 THE WITNESS: Okay. Well, then --

25 THE COURT: I want to see it too. Now.

1 I want to see the contract between you and these
2 two lawyers now.

3 THE WITNESS: Well, you know --

4 THE COURT: Hold on.

5 MR. COOPER: Your Honor, I don't think
6 there is a requirement in South Carolina to have --

7 THE COURT: There is.

8 MR. COOPER: -- to have a contract.

9 THE COURT: There is. You have to have
10 a contract with your clients. I want to see it.

11 MR. COOPER: Well, I have a
12 relationship with my two clients --

13 THE COURT: Okay. Bring those
14 contracts in the first chance you get --

15 THE WITNESS: What about a --

16 THE COURT: -- break for lunch and you
17 can go back to your office and get those contracts
18 and bring them in. If you don't have them here,
19 you send for your contracts in California if that's
20 where they are.

21 THE WITNESS: Your Honor, what about a
22 verbal contract?

23 THE COURT: No. A written contract is
24 required.

25 THE WITNESS: Well, that's -- I have no

1 clue.

2 THE COURT: Ask another question.

3 BY MR. COOPER:

4 Q. So you told Ms. Fisher what you
5 remember about Alice Shaw Baker's expressions of
6 intent to you back in the year 2000. Did you have
7 further discussions with her after that time about
8 her intentions?

9 A. It was just all about animals. I mean,
10 when the trouble started, you know, Alice had an
11 attorney, Michael Mitchum. And, suddenly, she has
12 this stupid kind of will to -- fly-by-night place
13 naming these characters as, you know, to get her
14 money.

15 Why didn't Michael help her? He was
16 her attorney. Now the man is dead so we can't get
17 him as a witness. It's ridiculous.

18 Q. Ms. Fisher, do you remember any other
19 discussions after the year 2000 with Alice where
20 she expressed her intentions to you?

21 A. No, I don't. Could you be more
22 specific? I don't know.

23 Q. Well, you say you came here in 2008
24 after the trouble started.

25 A. Oh.

1 Q. During that time, did you have any
2 discussions with Alice about what she wanted to
3 happen to her property when she passed away?

4 A. She wanted it given to animals. She
5 never even mentioned them. She mentioned Bessie
6 Huckabee. She thought she was her friend. She
7 thought these people were her friends. And I -- in
8 my heart I didn't have the heart to say they are
9 not your friends. Just broke my heart. I just
10 couldn't do that.

11 Q. Did Alice Shaw Baker ever express to
12 you what she wanted to happen with her estate and
13 her property?

14 A. I must be saying this wrong, because I
15 don't know, other than the dogs and the place where
16 Carol Linville -- I can't remember the name of it.
17 Pet something.

18 Q. Pet Helpers?

19 A. Pet Helpers, she mentioned that. She
20 did -- she volunteered for Pet Helpers. She did
21 all this stuff. I never heard her say she went
22 shopping and walking with these women. If they
23 were such good friends, she would tell me.

24 I mean, she was alone. She lived in
25 South Carolina. We could fly there. You know,

1 here, where we are. She didn't need her friends
2 fawning all over her. She was a very independent
3 woman. More independent than I am, and I'm 82.
4 And she was very in your face kind of woman, but
5 she was soft-spoken.

6 No matter I -- how mean - somebody said
7 she was rough. They didn't even know her. She was
8 not rough. She was nice and patient, but she was a
9 boss, you know, in her decision. Sometimes bosses
10 need to be a certain way to people under them. I
11 don't know. I don't really know.

12 I just know that this is a farce. This
13 whole thing is make-believe --

14 THE COURT: I'm sorry, what did you
15 say?

16 THE WITNESS: This is make-believe to
17 me.

18 THE COURT: I agree with that.

19 THE WITNESS: Probably for different
20 reasons, but it's like, what are we doing?

21 BY MR. COOPER:

22 Q. Ms. Fisher, do you remember any --
23 anything surrounding the death of her brother John
24 Lucas that bears on her intentions to dispose of
25 her property?

1 A. John's death? You have to be more
2 specific. Oh, wait a minute, I remember. The
3 reason John was out of the house is he got mad one
4 day and kicked her dog, and Alice kicked him out.
5 She got him a trailer to live in, a piece of
6 property over there, but he was gone.

7 He wasn't gone because he left, and he
8 was a nasty guy. He was gone because Alice
9 couldn't -- she said, no. And that was one time.
10 That dog meant that much to her. But he,
11 unfortunately, died before she did in that trailer.
12 And that's how this --

13 Q. Okay. Do you remember anything else
14 that you haven't told us about Alice's expression
15 of her intent to dispose of her property?

16 A. I can't recall at this moment --

17 THE COURT: I'm having trouble hearing
18 you.

19 THE WITNESS: I can't recall at this
20 moment. I'm having a mental block on it for some
21 reason.

22 MR. COOPER: One moment, Your Honor.
23 No further questions. Thank you.

24 THE COURT: Any questions?

25 CROSS-EXAMINATION

1 BY MR. WILLS:

2 Q. Just a few, Your Honor.

3 Ms. Fisher, when you came to Charleston
4 in the year 2000 associated with the brother John
5 and what had happened to him, you didn't see Alice
6 Shaw Baker at that time, did you?

7 A. No, I guess I didn't. When we were
8 leaving, the cab driver said he couldn't find the
9 house.

10 Q. You came to Charleston?

11 A. Specifically, for that, but --

12 Q. But you didn't -- you didn't take it
13 upon yourself to see Alice --

14 A. Oh, yes, we did, but we couldn't get
15 there. We had plane reservations.

16 Q. So that's a no.

17 A. That's a no. It's a poor excuse; we
18 couldn't get a cab.

19 Q. And is it fair to say that you don't
20 have any personal knowledge of Alice's relationship
21 with the defendants Slade and Huckabee?

22 A. I have personal -- what she told me,
23 and it isn't this huggy buggy kind of stuff. She
24 did like Bessie Huckabee. Never heard of Kay Slade
25 until after I came here. She did say she liked

1 Huckabee.

2 Q. And you saw Peter Kouten earlier
3 testify, didn't you?

4 A. Yeah. I heard him testify in court,
5 you mean?

6 Q. Just a little earlier.

7 A. Oh.

8 Q. And did you know Peter Kouten before
9 seeing him here today?

10 A. Yes.

11 Q. And you filed a legal malpractice
12 action against him, didn't you?

13 A. I guess I did.

14 Q. And that legal malpractice action you
15 filed against him was based on the claim that he
16 and these women abused Alice; is that correct?

17 A. Yes.

18 Q. Okay. And you were unsuccessful --

19 A. Well, there's a difference. They
20 didn't do --

21 THE COURT: I know about that, what the
22 result of that was.

23 THE WITNESS: Okay. Well, just because
24 we didn't prevail didn't mean we weren't telling
25 the truth though. I mean, you decide who you want

1 cancer. And I said, she has cancer?

2 So I really wanted to get her to
3 California to make sure that some doctors could
4 check her out and make sure that she was okay.

5 So I skipped a period, so I'll go back.
6 So just to finish this up, and when I got here that
7 day, that morning, it was like 4:30 in the morning.
8 They told me she'd had an episode. And I told
9 them, I still want her to come home to California
10 with me so I can get her treatment in California,
11 so she will be taken care of.

12 And -- sorry, I've lost track.

13 She died that day, so I was unable to
14 bring her back.

15 BY MR. COOPER:

16 Q. Ms. Fisher, let's go back to the time
17 when you were appointed as conservator and guardian
18 for Alice Shaw Baker. Did she indicate to you her
19 intentions about what should be done, disposition
20 of her property upon her death?

21 A. Well --

22 MR. WILLS: Same objection.

23 THE COURT: I'm going to let her
24 testify.

25 THE WITNESS: Yeah. She told me that

1 all of her money was going to animal charities, and
2 that Kay ran an animal charity. And so this goes
3 back to the date of the hearing when I introduced
4 myself to Kay.

5 I said, I hear you run a charity that
6 Alice likes. And she said, oh, no. No, I don't do
7 that anymore, I retired. And I said, what? And I
8 said -- I said, does Alice know? And she said, oh,
9 yeah.

10 So I asked Alice. I said, well -- and
11 at this time I don't even think I knew that the
12 will left things to Kay. I may be mistaken, but I
13 don't think so. And I told Alice -- I said, she
14 doesn't run that charity anymore. And she said,
15 oh, no. No, you misunderstood. I will have to ask
16 her about it. And I said okay.

17 And so during those next few months I
18 talked to Alice; she told me things she wanted to
19 have done. She told me that she wanted money to go
20 to animals. She wanted to -- she wanted me to make
21 arrangements and do things for her. And one of
22 those things was she wanted me to make sure that
23 her mother's grave received flowers.

24 I don't know -- I think it was either
25 on her birthday or every month. So I contacted

1 them and tried to get that arranged for her. She
2 told me that she wanted to, you know, give more
3 money to charities.

4 And I said, well, I can look online and
5 see if there's a local charity or other charities
6 that you want for dog rescue.

7 So we did that and went over a couple
8 of -- not a couple. It was more than a couple. It
9 was several different types of charities. I said,
10 you know, these are charities that you could make
11 contributions that might help you with your tax
12 person, we can find out.

13 And she said, I want to do that. So we
14 arranged to make -- I made some charities to --
15 some payments to the charities.

16 And so in December, I think -- I think
17 that's when I talked to her about giving gifts and
18 the thing with her mother was at Christmastime.
19 And then I found out that the caregivers in January
20 were not going to be available on New Year's Day.
21 And previously, they had not -- they had promised
22 me they would take care of her on Thanksgiving, and
23 they didn't -- they just gave her a plate.

24 I said, you guys said you were going to
25 have a party. I didn't want that to happen again.

1 (A luncheon recess transpired.)

2 THE COURT: Ms. Fisher, come on back up
3 to the stand. You are still under oath.

4 You may resume.

5 MR. COOPER: Madame Court Reporter, can
6 you read back the last question?

7 (Requested portion read.)

8 THE WITNESS: Yes. I -- I told you --
9 anyway, in February of 2008, she told me that --
10 no, that's not right. In January -- January 1,
11 2009, I -- I was visiting here, and she told me she
12 wanted to talk to me about something, and it was
13 giving me directions about what to do and told me
14 that Kay had an animal rescue.

15 And I said, Alice, you know, she
16 doesn't have an animal rescue. She retired from
17 that. And she got very upset and she told me that
18 it was her -- she got very upset. And I said, here
19 -- I don't think I said here.

20 The will was there and she was looking
21 at the will. And I said, she just doesn't have
22 animal charities. I said, you can -- we may be
23 able to go back to court and you can do what you
24 want, but she doesn't work with animal charities.

25 And she got upset and she pulled the --

1 pulled the will from me, started to scratch it off.
2 And I tried to calm her down. Told her, you know,
3 this is okay. You know, don't worry about it.
4 There's something that you can do.

5 And she got upset and told me, no, it's
6 my money, I will do what I want with it. And I
7 thought I had calmed her down. And she picked it
8 up and started tearing it up. And it was a big
9 problem.

10 So I stopped and I took it and I said,
11 no, everything is all right. And at that point, I
12 attempted to contact you to see if there was
13 something that could be done. So -- to ensure that
14 it went to animal charities.

15 Q. Okay. And did you -- this was on
16 January 1st of 2009. Did you also spend Christmas
17 with her before that?

18 A. Yes. That visit was with me and my
19 mom. And at that time I think there was -- there
20 was a short discussion about it, but I didn't want
21 to ruin the holidays. She would get upset if
22 things weren't going exactly the way she wanted
23 them.

24 And I tried to keep her calm and keep
25 her happy because she had gone through such a

1 problem with the conservatorship, and she didn't
2 really want to be conserved, but she was happy with
3 me trying to help her and make things nice.

4 Q. And is there anything else that you
5 remember before Christmas and the New Year where
6 there was some expression by Alice Shaw Baker of
7 her intentions for disposition of her property?

8 A. Well, there were other conversations
9 about it, but they were minor, and I didn't want to
10 make a big problem about it. She would -- she
11 would remind me that, you know, she had estate
12 planning fixed and she wanted -- and it was going
13 to animal charities and I should know that and take
14 care of it and protect it.

15 And so I would say, well, but Kay Slade
16 told me at court she doesn't have this animal
17 charity. And Alice would say, well, I'll have to
18 check it with her. And I would just leave it at
19 that time because there was no reason to upset her
20 and it wasn't a big deal. I didn't expect her to
21 die.

22 It was clear in my mind that that's
23 what she wanted, and there were representations
24 that she told me -- she told everyone that Kay
25 worked for a charity. She told me at one point

1 that all of the Chihuahuas and all of the pet --
2 what are they called? Pet dog -- the dog toys
3 would go to Kay because she ran a dog charity.

4 It just wasn't a big issue at that
5 point, but now I see that Alice was completely
6 under the impression that Kay was going to use her
7 money for animal charity for rescue. And that's
8 what it was being -- that was her intention.

9 Q. Did Alice Shaw Baker ever tell you
10 specifically any statements that Kay Slade made to
11 her about that?

12 A. Well, she told me that Kay worked for a
13 charity. I don't know if it was worked for one or
14 owned one. My recollection is she owned a charity,
15 but she may have used the word ran a charity. I'm
16 not sure. It wasn't anything before the court
17 hearing. I didn't know Ms. Slade.

18 So when she would tell me that her
19 friend ran or owned this charity, I couldn't
20 envision it. So I didn't make much of a deal about
21 it, but I thought it was great. I thought it was
22 great that she had set up a plan where her monies
23 were going to be used for the things she loved, dog
24 charities.

25 Q. Okay. And did Alice Shaw Baker when

1 she tore the will on January 1st of 2009, did she
2 indicate anything about her intentions?

3 A. She said it was her money and if -- she
4 said it was her money.

5 THE COURT: I'm sorry, I didn't hear
6 you testify today that she tore the will. You said
7 she marked it up some. I didn't hear you testify
8 today that she tore it.

9 THE WITNESS: I can testify again if
10 the Court would like, but I believe it's in the
11 court reporter's -- but what would you like me to
12 do that?

13 THE COURT: No. No. Go ahead, if
14 that's what you want to say.

15 THE WITNESS: Yeah. After she
16 scratched it out -- let me clarify. After she
17 scratched it out, I took it from her and I set it
18 aside to try to calm her down. At that point, I
19 turned around and I think I went into the kitchen
20 or the bedroom, I just was walking away and she got
21 it and she tore it up.

22 And I got really upset that she was
23 tearing it up. I didn't have any idea what that
24 meant in South Carolina because I wasn't acting as
25 an attorney. So I didn't know if that would even

1 -- I didn't know what it meant.

2 I just knew it was upsetting her and I
3 knew that she needed to be calm and happy. You
4 know, I was there on a holiday. I didn't want her
5 to be upset. So she tore it up and I took it, and
6 I don't know what I did with it. I must have
7 thrown it away, but that's what she did.

8 THE COURT: Okay.

9 BY MR. COOPER:

10 Q. Okay. No question in her mind she
11 intended to tear up a copy of her will?

12 A. No question.

13 MR. WILLS: Objection.

14 BY MR. COOPER:

15 Q. Did you have any further discussions
16 with Alice Shaw Baker after January 1st of 2009,
17 about her intentions to dispose of her property?

18 A. There was one discussion when she was
19 at the hospital and I was -- not when I was picking
20 her up, but when she first went to the hospital. I
21 had come back from California. I had just been
22 there and I had to -- I think I took a red-eye the
23 next day and went right back to see her.

24 And she was upset because they were
25 giving her different medications. And she said,

1 well, everything is about my house and my house is
2 for animals. My house is -- I don't remember if
3 she said animal charities or dog charities, but
4 that was what she said. And I let it go because
5 she was in the hospital. I wasn't going to have
6 any conversation about that.

7 Q. Okay. Did she mention anything about
8 the defendants, Ms. Slade or Mrs. Huckabee, at that
9 time?

10 A. On January 1st, she was upset with Kay.
11 She was upset that Kay hadn't told her. That was
12 the gist of it. She hadn't told her and that she
13 would have to find out about it, but when I said,
14 really, this is what she told me at the court,
15 that's when she got mad.

16 Prior to that, we'd had conversations,
17 and all she would ever say is that she would remind
18 me that Kay ran a charity, and she would remind me
19 that Kay was getting the money for the charities,
20 and she would remind me that all of the dog toys
21 were supposed to go to charity and that was the
22 conversation. And most of the time I didn't push
23 the conversation.

24 Now, with Bessie Huckabee that's a
25 different story. She was just heartbroken that

1 Bessie wasn't helping her with the conservatorship.
2 And she said she was her best friend and she would
3 start to cry. It was a very bad situation.

4 So I would calm her down, and that's
5 why I attempted as I testified earlier, I thought,
6 well, it would be better if Mrs. Huckabee, you
7 know, kind of had a role here so that she would
8 feel better about it.

9 And when she didn't want to do that, I
10 told Alice, you know, I'll help you. We'll do this
11 together and everything will be fine. And she
12 seemed better with that, and we did get through it.
13 We went to court, and after that I just tried to
14 follow the Court's orders and make sure that she
15 was okay.

16 But the conversations after that, they
17 would only be in reference to her reminding me that
18 she had this charity and that I needed to make sure
19 that, you know, it went to her for the charity and
20 for the animal toys.

21 Q. And just to be clear, Alice Shaw Baker
22 indicated that she wanted her property to go to Kay
23 Slade for animal charities use?

24 A. Right. Because she ran animal
25 charities.

1 more in the one storage room that has boxes and
2 boxes of dog -- dog paraphernalia.

3 Q. Ms. Fisher, is there anything else that
4 you wish to tell the Court about Alice Shaw Baker
5 or her expressed intentions or disposition of her
6 property?

7 A. I would not be here if I didn't truly
8 believe from what Alice told me that her money was
9 supposed to go to charities. It's a hardship and
10 it's been a very difficult nine years and it's been
11 very expensive, but Alice was worth it.

12 She was worth it for me to come here.
13 She was worth it for the Court to consider that
14 what she told me mattered. And she told it to me
15 in 2008, and she mentioned it to me when John
16 Lucas, my great-uncle, died.

17 And it was never for my mother or for
18 me to financially benefit. So the intention that
19 she states, she stated to me repeatedly I should --
20 should be considered, but her life as a whole was
21 about her love for animals, and that also should be
22 a declaration of her intent. Thank you.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25 BY MR. WILLS:

1 THE COURT: Ms. Slade, is that you?

2 THE WITNESS: Yes, sir.

3 THE COURT: Come on up.

4 KAY PASSAILAIGUE SLADE,

5 being first duly sworn, testified as follows:

6 THE CLERK: Speak into the microphone
7 for us and say your full name for the record and
8 spell the last name for us.

9 THE WITNESS: Kay Elizabeth
10 Passailaigue, P-A-S-S-A-I-L-A-I-G-U-E.

11 MS. FISHER: I'm sorry, Your Honor, if
12 you could give me one minute.

13 DIRECT EXAMINATION

14 BY MS. FISHER:

15 Q. Good afternoon. My name is Lisa
16 Fisher.

17 MS. FISHER: Excuse me. Your Honor, I
18 did want to clarify, are you going to be
19 considering the testimony from the prior will
20 contest so that I don't need to repeat that?

21 THE COURT: Yes.

22 MS. FISHER: Okay. So -- excuse me,
23 I'm sorry.

24 BY MS. FISHER:

25 Q. So at the first trial, Ms. Slade, you

1 testified that -- did you ever express -- did she
2 ever express to you or talk to you about anything
3 she left to you and what that would be used for?

4 And then you testified, well, like I
5 said, she told me she would hope that I would get
6 land and that way I could have all the dogs I
7 wanted. She could only have three dogs where she
8 lived, but she did know that I would take in dogs
9 and have surgery and do whatever needed to be done
10 and find them homes and then keep them, yes, sir.

11 So how many times did you have that
12 conversation with Alice?

13 A. I don't remember.

14 Q. Okay.

15 A. She knew what I did rescuewise however.

16 Q. Okay. Do you -- as you sit here today,
17 do you think you had that conversation more than
18 once?

19 A. I'm sure.

20 Q. Okay. And so when you had that
21 conversation and you told Alice that, and when
22 Alice told you that she wanted you to get land and
23 rescue animals, what was your response to her?

24 A. Well, I have seven dogs now. I foster
25 dogs for rescue. She knew that that's what I did,

1 that I spent a fortune on my dogs. I take in dogs
2 that people wouldn't take, I get their vetting, and
3 they live with me.

4 Q. So she knew what you did and you held
5 yourself out as a person who --

6 A. Help rescue. I never said I ran a
7 rescue.

8 Q. But you were affiliated with --

9 A. Oh, of course. Still am.

10 Q. Okay. And so the Coastal Rescue, is
11 that what it is? Called Coastal Jack Rescue?

12 A. Yes, it's no longer in business.

13 Q. If you go online, your name is still
14 listed --

15 A. Mine goes back way back to things I
16 have not been affiliated with in a long time.

17 Q. Okay. But Alice was under the
18 impression that's what you did and that was the
19 life that --

20 A. She knew what I did, yes.

21 Q. Okay. So, again, let's go back to my
22 question. Did you have this conversation back in
23 1996 with Alice?

24 A. Alice knew when I brought in a dog what
25 I did. It wasn't like something we had to have a

1 conversation. We talked about it all the time,
2 about me rescuing and owning dogs.

3 Q. So I want to get a little bit more
4 narrow in this conversation. You stated that Alice
5 said, I want you to purchase property and get land,
6 that way you could have all the dogs that you
7 wanted.

8 A. Well, I have seven now. I think she
9 thought that way I could bring five more in and
10 live comfortably. You have to have places for
11 dogs. You can't live in an apartment.

12 Q. What I'm asking is, do you remember
13 what Alice said about that?

14 A. She didn't say anything. She just told
15 me I could buy land and have all the dogs I wanted.

16 Q. Okay.

17 A. And she did not think that was for me
18 to run a rescue. She knew I could never run a
19 rescue.

20 Q. How did she know that?

21 A. Because I work full-time and she knew
22 the responsibilities of what it took to run a
23 rescue. She also knew that because of what I did
24 and my retirement situation, I would be working for
25 quite a while.

1 Q. But she also knew that she was giving
2 you a large estate. So --

3 A. I didn't have any clue what her estate
4 was.

5 Q. Okay. But she knew, right?

6 A. I guess she did.

7 Q. Correct. So what I'm asking you is,
8 was that conversation, Alice says to you, I would
9 like you -- I would like you to get land and have
10 all the dogs you want, was that just a conversation
11 out of the blue or --

12 A. Well, what it came from was because she
13 had mentioned me living in her house. And I said
14 that might be difficult because the city of
15 Charleston has a three-dog rule. Where I live they
16 don't. I said -- because at the time she had three
17 dogs, I had seven, and seven seems to be my number.
18 That was ten dogs.

19 So I was telling her it would be kind
20 of difficult for me to live in her house and take
21 ten dogs.

22 Q. So this conversation, and you can time
23 it to the time when all of her dogs were alive; is
24 that right?

25 A. Uh-huh.

1 Q. Did you have the conversation later --

2 A. Yeah. She told me this after her dogs
3 had passed away.

4 Q. Okay. After all of them passed away?

5 A. Uh-huh.

6 Q. So this would have been in 2008 when
7 you had the last conversation about the dogs?

8 A. She mentioned it.

9 Q. And was this before elder care was
10 involved?

11 A. I don't remember.

12 Q. And when she made that statement, did
13 you tell her that you were going to buy land?

14 A. No.

15 Q. Did you tell her that you weren't going
16 to buy land?

17 A. No.

18 Q. Did you tell her you weren't going to
19 take any more animals in?

20 A. That would have been a lie. No.

21 Q. But you knew that you were getting a
22 substantially greater gift than Bessie Huckabee for
23 your prior promise to take care of her animals and
24 purchase this land?

25 A. No. Only thing I ever promised Alice,

1 if anything happened to her, her dogs could come
2 and live with me. I did not make that statement
3 for any gain. I had no idea if she would even
4 offer me money to take care of them until she died.

5 Q. And so --

6 A. That's the only thing I ever promised
7 her.

8 Q. When you made that promise, how many
9 dogs did Alice have?

10 A. Three. No, I take that back. She had
11 one. That was when she was going to retire, and we
12 took up a collection for her to buy a dog. And she
13 was afraid to get a dog because she said, what if
14 something happened to me?

15 And I told her they could come and live
16 with me.

17 Q. Okay. So she had a dog. Why did you
18 get a collection to get a new dog?

19 A. Her dog was up in age, and she had
20 indicated she would like another dog.

21 Q. But Alice generally got rescue dogs;
22 isn't that correct?

23 A. No.

24 Q. No. So where did she get her dogs?

25 A. Bessie and her went on a Saturday and

1 she bought it from a breeder, the first one.

2 Q. The first one?

3 A. Uh-huh, Precious.

4 Q. The funds that you took up, where did
5 she purchase that dog?

6 A. I have no idea.

7 Q. So she didn't have to purchase a dog.
8 She could have done anything that she wanted with
9 the money?

10 A. Correct. It was just -- it was a bunch
11 of us that worked with her.

12 Q. Okay. And did Alice ever tell you that
13 she purchased that dog because of your promise to
14 take care of the other dogs?

15 A. No.

16 Q. So did you ever tell Alice, you know,
17 I'm probably not going to purchase any land, so you
18 don't need to leave me any money?

19 A. No. It wasn't -- no, never promised.
20 Never told her that.

21 Q. Did you ever talk to Bessie about this
22 gift of the house by Alice to you?

23 A. I'm sure we did, but nothing stands out
24 in my mind about it. Bessie knew that I was going
25 to take her dogs.

1 Q. So this other requirement that Alice
2 was putting on you that you buy land --

3 A. It wasn't a requirement. It was, I
4 could do it if I wanted to.

5 Q. Tell me how you knew it was, I could do
6 it if I wanted to?

7 A. That's what she said. When I said I
8 didn't know if I could stay in your house because
9 of the limit, she said, well, you can retire, buy
10 land, and have the dogs -- all the dogs you wanted.
11 I think it was just a general statement she made.

12 Q. And did she make that statement to you
13 in 2001?

14 A. I have no idea when it was.

15 Q. Okay. You do know there was a point in
16 time where in 2001, it wasn't just that your -- it
17 wasn't that you were custodian of her pets anymore.
18 It was just your name; is that right?

19 A. I don't understand that question.

20 Q. Okay. So at some point the will --
21 okay. At some point the will was left in your name
22 and you were given a gift.

23 THE COURT: At what point are you
24 talking about? What was the date of the will?

25 MS. FISHER: I'm trying to get you the

1 right will, I apologize. So the first will --

2 THE COURT: Let's talk about the last
3 one, what date was that?

4 MS. FISHER: The last one would have
5 been May 2001.

6 THE COURT: That's what I thought. May
7 21, 2001; is that correct?

8 MS. FISHER: Yes, Your Honor, and I
9 believe it's Exhibit 2.

10 THE COURT: It's an exhibit in the jury
11 trial, I know that. Go ahead.

12 BY MS. FISHER:

13 Q. So I'm trying to clarify. The first
14 will in 1996, you were given a life estate in the
15 house. So did Alice talk to you at all about what
16 that meant?

17 A. She just told me I could live in the
18 house until me and my husband died, and then it
19 would go to the Charleston Animal Society.

20 Q. Was there a further discussion about
21 that -- the Charleston animal shelter not allowing
22 a life estate?

23 A. Later on there was, yeah.

24 Q. And do you know how Alice came to
25 learn --

1 A. I think she talked to Charlie Carrish
2 that worked there.

3 Q. And then in February 2001 -- this is
4 Exhibit 3. It states that the -- that you were
5 given all of her property, including the devise or
6 any dogs that I may own at the time of my death.

7 And was it your understanding that the
8 gift included the animals at that time?

9 A. What do you mean include the animals?

10 Q. That you were going to inherit the
11 animals?

12 A. Her dogs?

13 Q. Yes.

14 A. Oh, of course.

15 Q. Okay. And so go back to the May 2001.
16 At that point, it includes the care of your dogs --
17 to include the care of my dog except for those
18 items in a separate list. Were you aware of the
19 separate list?

20 A. No.

21 Q. Did you --

22 A. But let me rephrase that. I knew there
23 was one, but I had no idea what was in it.

24 Q. Okay. And so did you talk to Bessie
25 about that, about the separate writing?

1 A. No.

2 Q. Did you ever ask her what was in the
3 writing that you were supposed to inherit?

4 A. No.

5 Q. So did you ever talk to Bessie Huckabee
6 about exactly what you would be getting from
7 Alice's estate?

8 A. I don't recall.

9 Q. So your relationship started in 1989
10 until her death, and it was mainly focused on the
11 relationship of dogs and dog charities. Would
12 that --

13 A. I knew Alice when I started work at
14 Charleston Memorial in 1974.

15 Q. 1974. But --

16 A. We started doing dog things around
17 1989.

18 Q. And is there any question in your mind
19 that the house and the monies and life insurance
20 benefits and all of those things were to be used
21 for the benefit of animals?

22 A. She never said that, but she knew
23 that's what I did. I take care of a lot of dogs.

24 Q. What did Alice do? Did Alice live a
25 life where animals were the main focus of her life?

1 A. Same as me, yes.

2 Q. And so the fact that she left you
3 monies, did -- and told you that the monies could
4 be used for land, did that ever come to your mind
5 that was what she wanted and her intention was that
6 the monies be used for that?

7 A. It wasn't something I thought about.
8 We talked about it. Like I said, I had seven dogs,
9 and she knew that I would take in a dog. I don't
10 know what her intentions were. We didn't discuss
11 that kind of small details.

12 Q. It's not that small of a detail, is it?

13 A. I think she knew that the money would
14 go to dogs. I've got enough of them.

15 Q. So you think she knew that because you
16 represented to her that the monies would be used
17 for dogs.

18 A. No. I never represented anything.

19 Q. Only by your life?

20 A. My life is pretty expensive when it
21 comes to dogs.

22 Q. And so your life was a life of
23 intention of taking care of animals as well,
24 correct?

25 A. Yes.

1 Q. Okay. And that's what you held
2 yourself out to doing?

3 A. I don't hold myself out for anything.

4 Q. Well, if an animal charity needs help,
5 do they call you?

6 A. Sometimes.

7 Q. And do you help them?

8 A. Sometimes.

9 Q. And you certainly were doing that with
10 the Jack Russell Coastal --

11 A. Yes. Still do with Lowcountry Animal
12 Rescue.

13 Q. And so they call you and you are
14 affiliated with them?

15 A. I would say so.

16 Q. And Alice believed that you were
17 affiliated with them?

18 A. I assume so.

19 Q. Okay. You testified at your deposition
20 -- I'm going to read the question before.

21 Did you have any comments to Alice at
22 all about leaving any of her assets to you? And
23 you said no.

24 And then you said, how about -- the
25 question was: How about you never discussed that

1 with her?

2 And the answer was: We discussed the
3 house and she would make comments that, you know, I
4 had this done and so if something happens to me --
5 but, no, I didn't know what to say to that.

6 So what exactly did you not know what
7 to say to her? I mean, if the house was going to
8 you and you knew that she expected -- let's say
9 this in a different way. Did you know that she
10 expected the money to go to animals?

11 A. No.

12 Q. You didn't know that?

13 A. No.

14 THE COURT: Any other questions?

15 MS. FISHER: Yes, Your Honor.

16 BY MS. FISHER:

17 Q. While I'm getting that, at some point
18 you knew that you were beneficiary on her life
19 insurance, and you knew that you were -- at some
20 point did you know you were beneficiary on her life
21 insurance?

22 A. No.

23 Q. And at some point did you attempt to
24 collect the monies on that life insurance?

25 A. No. After she passed away, I got a

1 letter in the mail.

2 Q. And so did you at any time have to give
3 Alice your social security number or your -- your
4 address? Did she ever ask you for personal items
5 for her life insurance?

6 A. I don't -- she asked me. I'm sure I
7 must have give her my social security, but I didn't
8 know what it was for.

9 Q. She didn't tell you I need it for --

10 A. No.

11 Q. -- insurance? So what you -- did you
12 work directly with Alice?

13 A. No.

14 Q. Did you have an impression of Alice
15 where you believed that she would set -- did you
16 have an impression of Alice as being very
17 meticulous about the information that she would
18 collect for any of her business? Do you understand
19 the question?

20 A. No.

21 Q. Okay. How would you describe Alice
22 with regard to her decision making?

23 A. Alice did what Alice wanted to do. I
24 mean, Alice didn't ask people and -- Alice was a
25 very private person; her businesses were not

1 discussed. We did not discuss finances, any of
2 that.

3 Q. But she gave you advice regarding
4 deferred compensation?

5 A. Yeah, that was it.

6 Q. Was she a person that you expected to
7 make good financial decisions?

8 A. Yes.

9 Q. And so --

10 MS. FISHER: Your Honor, I believe
11 these documents have been introduced, but I may
12 have to introduce them again. These are the State
13 of South Carolina Deferred Compensation Program,
14 and I want to approach the witness and show them.
15 It's ING 10 and ING 16 on the bottom, and I know
16 that the Court has been given a copy of them.

17 Is it all right if I approach the
18 witness?

19 THE COURT: Go right ahead.

20 MS. FISHER: Thank you.

21 BY MS. FISHER:

22 Q. So I'm going to ask you to look at the
23 document entitled ING 16.

24 A. Uh-huh.

25 Q. And so -- I'm sorry, my -- I don't have

1 my glasses on. So this document, although it's
2 blacked out, there is a space for social security
3 number. Did you give Alice your social security
4 number?

5 A. I don't remember.

6 Q. So is that something that you would
7 likely give Alice?

8 A. She probably had the ability to get it,
9 but I could have. I wouldn't be opposed to giving
10 it to her.

11 Q. So if you did give it to her, would you
12 have asked what she wanted it for?

13 A. No. She might have told me for her
14 estate.

15 Q. For her --

16 A. That was for the house, for the estate
17 probably. I had no idea what all that involved.

18 Q. Okay. Thank you.

19 MS. FISHER: So, Your Honor, I need to
20 make sure that this document has been introduced
21 and is part of the record. It's dated
22 February 14th of 2001. And it says, beneficiary
23 change, at the top.

24 And so if it hasn't been introduced, I
25 want to make sure that it's introduced.

1 THE COURT: I think it's already in.

2 MR. COOPER: I believe it's in, Your
3 Honor. It's Plaintiff's Exhibit 18.

4 MS. FISHER: I want to make sure that
5 that is marked.

6 BY MS. FISHER:

7 Q. So do you have any reason to believe
8 that -- do you have any knowledge as to why Alice
9 would have listed you as custodian of pet and
10 rescue?

11 A. Other than me taking her dogs.

12 Q. And the fact that you were associated
13 with rescues?

14 A. Yes. I was a volunteer.

15 Q. And then there is another exhibit -- so
16 there is another -- I'm sorry. So in 2004, did you
17 -- were you still working with the dog rescues?

18 A. Uh-huh.

19 Q. And so if Alice had stated to someone
20 at the South Carolina retirement systems that
21 current beneficiary owns a dog rescue and money to
22 go to the dog rescue, that would not have been
23 accurate?

24 A. And I still volunteer with animal
25 rescue. You spend your own money when you do that.

1 I guess that would be accurate that I work with
2 rescues. I didn't know she had wrote that.

3 Q. I understand. My point here is that
4 Alice was under the impression that you were going
5 to use the monies for the dog rescue?

6 A. Who says I won't?

7 Q. Would that be accurate?

8 A. Who says I won't?

9 THE COURT: Good answer.

10 BY MS. FISHER:

11 Q. Okay. You represented that you weren't
12 going to use the monies for a dog rescue; isn't
13 that correct?

14 A. No.

15 Q. So as you sit here today, what dog
16 rescue are you planning on using the money for?

17 THE COURT: That's irrelevant.

18 MS. FISHER: I don't know, Your Honor.

19 THE COURT: That's irrelevant. Ask
20 another question.

21 BY MS. FISHER:

22 Q. Did you represent that you were going
23 to give it to the dog rescue that you were
24 currently working at?

25 A. No.

1 Q. You never had a conversation that you
2 were going to make sure that that rescue received
3 that money?

4 A. You do things with all sorts of rescues
5 when you volunteer. Even if you are affiliated
6 with one rescue, you still help others.

7 Q. Uh-huh. Would you say that Alice's
8 decision to give you a disproportionate amount of
9 money, rather than her best friend Bessie Huckabee,
10 was based on your involvement with dog rescues?

11 A. No. I think it was based on the fact
12 that I agreed to take her dogs.

13 Q. And so in 2008, when her last dog died,
14 isn't that the time when you contacted elder care?

15 A. That was the time I realized that Alice
16 had some issues, and I contacted them to find out
17 what I could do. I would not even tell them who
18 she was because I was worried about her. I was
19 worried about some of her actions and things that
20 just weren't right. I wasn't sure what to do.

21 Q. Did you tell Elizabeth Spencer that you
22 were the beneficiary of the will?

23 A. I do not recall.

24 Q. And did you tell Pete Kouten that you
25 were the beneficiary of her will?

1 A. At that time, no. I didn't see Peter
2 Kouten until at the hospital the last day that
3 Alice was alive.

4 Q. And it's your understanding that Bessie
5 Huckabee called him that day regarding Alice's
6 death?

7 A. I'm not sure who called him. I wasn't
8 there. Oh, I might have been there, but the last I
9 recall, Bessie's phone wasn't even working. But
10 I'm not sure who called him.

11 Q. So the last time that you saw Alice
12 before her death, do you recall when that was?

13 A. I don't recall the exact date, but I
14 know we had gone on a Saturday to see her.

15 Q. And you saw her at her house?

16 A. No. I saw her in the hospital.

17 Q. Okay. The last time you saw her before
18 that, was it at her home?

19 A. I went to the hospital a couple of
20 times and saw her. But, yeah, we went to her
21 house, but I couldn't tell you when. I talked to
22 her on the phone.

23 Q. You testified in your deposition that
24 Alice would tell you the house is going to be yours
25 and that's it. And did you ever tell her that the

1 intention -- that you weren't going to necessarily
2 use the money for animals?

3 A. Never discussed what my intention was.

4 Q. In fact, what you would say instead is
5 that I told her I never wanted to have any of that
6 to come true because that would mean I had lost
7 her?

8 A. That's correct.

9 Q. And yet you weren't willing to take on
10 the responsibility of her -- as agent under the
11 power of attorney?

12 A. I couldn't.

13 Q. Why not?

14 A. I worked full-time and my husband was
15 just diagnosed with melanoma. He was given four to
16 five years to live. I did not feel like I could
17 spread myself that thin.

18 Q. By reporting her to elder care, rather
19 than seeking other family members or talking to
20 anybody else, you insured that Alice didn't have an
21 opportunity to change her will; was that your
22 intention?

23 A. Not at all. I didn't know she had any
24 family.

25 Q. You didn't know she had any family?

1 A. No.

2 Q. But you knew --

3 A. I knew she talked to you, but she
4 didn't consider you her close family.

5 Q. But you -- she considered you her close
6 family?

7 A. I don't know what she considered me. I
8 was a good friend.

9 Q. A good friend who is now willing to
10 take her money but was unwilling to take care of
11 her --

12 A. As I said, I was not available to be
13 able to do that. I didn't know what I could do
14 under the circumstances. It wasn't like she was
15 incapacitated. She had some mental challenge. I
16 had no idea what was wrong with Alice. Alice was
17 very private and would not let us go to the doctor
18 or do anything for her.

19 Q. You knew you were named on the power of
20 attorney?

21 A. No, I did not at that time.

22 Q. I thought Bessie Huckabee testified
23 that you had the --

24 A. I did, but I didn't read it.

25 Q. So you just took these documents for

1 Alice but didn't read them?

2 A. Sometimes, uh-huh.

3 Q. Well, if you had read them it meant
4 that you would have had authority to assist her.
5 It never came into your mind that some of the
6 documents you had would be --

7 A. As I said, I had a lot going on in my
8 life at that time. There was no way I could spread
9 myself that thin.

10 MS. FISHER: Nothing further.

11 THE COURT: Any questions?

12 MR. WILLS: No questions.

13 THE COURT: I have a couple.

14 EXAMINATION

15 BY THE COURT:

16 Q. Tell us what was not right about Alice
17 Shaw Baker when you contacted -- I'm not sure who
18 it was -- someone with the elder care --

19 A. Elder care --

20 Q. -- about helping her?

21 A. The fact that she was telling us people
22 was coming into her home, but she couldn't really
23 tell us who. We took her to the ER vet, and while
24 we were there it just wasn't Alice. I mean, it was
25 like Alice could not comprehend what was going on.

1 And the ER clerk told us that -- she
2 goes, I know you, you call here. And, evidently,
3 Alice was calling them all the time, but she could
4 not comprehend anything to do with the care of her
5 last dog. It just -- she got very, very angry,
6 threw the chart. I mean, it just wasn't Alice.

7 And she just couldn't -- she couldn't
8 remember anybody that came to her home or -- it was
9 just kind of crazy. That's one reason Bessie and I
10 would always go together was because of -- Thomas
11 went to fix some things one time, Sandra Byrd's
12 husband. And she was like -- he was doing the
13 cable. And she said he blew up the refrigerator.

14 It was just worrisome things, her
15 appearance. Just different things.

16 Q. Were you trying to do anything other
17 than help her?

18 A. No, sir. In fact, I wouldn't tell
19 Elizabeth Spencer who I was talking about. And she
20 talked to me for a while and said, we just don't
21 know what we can do. And she said who it was and
22 then she said she knew her. She said, I'll just go
23 by and talk to her and I'll get back with you.

24 And it was probably six months later
25 that -- that she called me back. She didn't --

1 Alice didn't always come across as she was having a
2 problem, but there was a lot of little things that
3 we picked up on.

4 THE COURT: All right. Thank you very
5 much. You can return to your place in the
6 courtroom.

7 Any other witnesses for the plaintiffs?

8 MR. COOPER: Your Honor, we have
9 Dr. Waid coming in at 9:30 in the morning, but we
10 have no more for today.

11 THE COURT: Okay. Well, I have a
12 couple of assignments for you over the evening
13 recess. And you're probably going to need to give
14 some information to this young man right here who
15 is my on-loan law clerk.

16 Actually, he's Judge Nicholson's law
17 clerk, but I'm getting to use him this week, and
18 I've enjoyed meeting him and working with him.

19 And the reason I say that you need to
20 give him your e-mail addresses, you know, because I
21 want you to fill out a current financial statement
22 showing all of your assets, liabilities, and net
23 worth. I need that to deal with issues that I have
24 to deal with at the conclusion of this case.

25 So that's the first thing I want you to

1 do is to give the information to him so that he can
2 send that form to you that I want you to fill out.

3 Who wants to go first?

4 MR. COOPER: You want the e-mail?

5 THE COURT: Tell him how to send it to
6 you --- -

7 MR. COOPER: Okay. It's
8 shiplaw@jhcooper.com, S-H-I-P-L-A-W.

9 THE COURT: Ms. Fisher.

10 MS. FISHER: It's
11 lfisher6736@yahoo.com.

12 THE COURT: And then do you want to get
13 it for your mother?

14 MS. FISHER: Yes.

15 MRS. FISHER: Well, wait a minute. Why
16 do I have to do it?

17 THE COURT: Because you're a party and
18 you are subject to the rules.

19 MRS. FISHER: Okay. I'll accept that.

20 THE COURT: Okay. And then the other
21 thing I want each of you to do is to give me page 1
22 and page 2 of your US federal tax returns for last
23 year. If you have it for this year, you can give
24 it to me for -- that is, if you've already filed
25 it. If you have it prepared, I want the 2017 and

1 the 2016 page 1 and page 2 of your federal tax
2 returns.

3 What I'm interested in is showing me
4 what your taxable income was for those years, and I
5 believe that will be shown on page 2 of the return.
6 So you can -- if you want to -- whatever the word
7 is, where you take it out, scratch it out, or
8 whatever, if you want to -- what's the word I'm
9 looking for?

10 THE CLERK: Redact.

11 THE COURT: Redact, that's it. Redact
12 your social security number. I want your name on
13 it, though, and I want your signature -- well, you
14 don't have to put your signature on it because
15 you're giving it to me as an officer of the court.
16 You're swearing that that's your return showing
17 what your taxable income was of the year submitted.

18 MRS. FISHER: Well, if I have to do it,
19 why don't they have to do it?

20 THE COURT: Because the issues that I'm
21 considering only relate to you and not to them.

22 MRS. FISHER: Well, what are they here
23 for, except for my aunt's money? I don't want to
24 be impolite, Your Honor, but this is so outrageous.
25 You know, you lay out the red carpet for these guys

1 and we're like the bad guys.

2 THE COURT: I appreciate your position,
3 but you are to comply with my order. I'm sure your
4 daughter will --

5 MRS. FISHER: It's private --

6 MS. FISHER: Your Honor, I will --

7 MRS. FISHER: -- make it public what I
8 ever made --

9 THE COURT: It's not going to be
10 public. The only person that's going to see it is
11 me.

12 MRS. FISHER: -- South Carolina.

13 MS. FISHER: Your Honor, we will take
14 all appropriate legal actions to review your order.

15 THE COURT: I'm sorry?

16 MS. FISHER: I will take all
17 appropriate legal actions to review your order.
18 I'm not --

19 THE COURT: You're going to comply with
20 it before you do anything else.

21 MS. FISHER: I'm going to look at what
22 you're asking us to do. This Court has not made a
23 decision --

24 THE COURT: I need that to make a
25 decision about the attorneys' fees and sanctions.

1 MS. FISHER: Obviously --

2 THE COURT: Obviously.

3 MS. FISHER: Obviously, but we are in a
4 position where the person who is the plaintiff is
5 being -- before all the evidence is introduced is
6 being charged with something.

7 THE COURT: I want to get this done as
8 soon as possible.

9 MS. FISHER: I'm sure you do, but
10 that's not how things are done through the law.
11 People are given rights, they're given notice,
12 they're given an opportunity to respond.

13 So if that's not what the law is in
14 South Carolina, then, you know, I need to know that
15 as well. So when I see the form, I will then
16 determine what I need to do, Your Honor.

17 THE COURT: All right. I appreciate
18 that.

19 MS. FISHER: Thank you.

20 THE COURT: Thank you very much.

21 We'll be in recess until 9:30 tomorrow
22 morning.

23 MR. COOPER: Thank you, Your Honor.

24 MR. WILLS: Thank you, Your Honor.

25 THE COURT: One other thing, I have the

1 issue of attorneys' fees. So I'm going to need an
2 up-to-date at the end of this case, the end of the
3 trial, your best estimate of what your attorneys'
4 fees request are. Both sides.

5 You can send all of that sort of stuff
6 to this young man. He'll give you the e-mail
7 address for you to send it to him to give it to me.

8 (These proceedings were recessed at
9 3:37 p.m., to be resumed 3/13/2018 at 9:30 a.m.)

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1 (The following proceedings were had
2 March 13, 2018, 9:44 a.m., in re Baker v. Huckabee,
3 Charleston County Common Pleas Court.)

4 THE COURT: Thank you. Anything else
5 before we get started whenever the witness gets
6 here?

7 MR. COOPER: Your Honor, John Hughes
8 Cooper for the Plaintiffs. You ordered us to
9 produce the invoices, and that's a copy of
10 Plaintiffs' invoices. (Indicating)

11 THE COURT: Thank you.

12 MR. COOPER: Also, Your Honor ordered
13 me to submit to you a personal financial statement
14 and income tax returns, and there are those
15 documents.

16 THE COURT: Thank you.

17 Ms. Fisher, I imagine that you're
18 working on yours.

19 MS. FISHER: Your Honor, of course I
20 don't have those records.

21 THE COURT: I'm sorry?

22 MS. FISHER: I do not have those
23 records here.

24 THE COURT: Okay. But you'll get them
25 to me as soon as you can?

1 MS. FISHER: Your Honor, at this time,
2 I'm going to interpose an objection to the
3 documents you're requesting. The order was vague.
4 If you can explain to me what statutory authority
5 you have for requiring me to produce tax records.

6 Financial records are protected under
7 the constitution, and I'm not sure why you're
8 requesting information --

9 THE COURT: Well, I'll --

10 MS. FISHER: -- for --

11 THE COURT: -- tell you why. Because I
12 think that it's relevant in regard to the issue of
13 attorney's fees, and I think it's relevant in
14 regard to the issue of sanctions.

15 MS. FISHER: Yes. And, unfortunately,
16 Your Honor, I think that demonstrates a little bit
17 of a bias in light of the fact that the case is not
18 complete yet.

19 THE COURT: If I decide against it,
20 then there won't be any problem.

21 MS. FISHER: I understand that, except
22 that you've already demonstrated that the only
23 people that you think are subject to sanctions
24 would be Plaintiffs --

25 THE COURT: You didn't ask for

1 sanctions against them.

2 MS. FISHER: That's true, Your Honor, I
3 didn't, but I'm not sure that it's appropriate to
4 ask prior to the end of trial.

5 In any event, Your Honor, if you can
6 tell me what statutory authority --

7 THE COURT: There's no statutory
8 authority. It's within the discretion of the
9 Court; I'm telling you that and you ought to know
10 that.

11 MS. FISHER: I know that -- I don't
12 believe that's correct. I mean no disrespect to
13 you --

14 THE COURT: You can take it up or do
15 whatever you want to do afterward. If you don't
16 get that to me within a reasonable period of time,
17 you're going to face further sanctions.

18 MS. FISHER: Okay. Well, just for
19 clarity, Your Honor, I did look to try and find
20 what statutory authority you might have, and now
21 you're telling there is none. So I did look under
22 the Internal Revenue Codes -- the Revenue and
23 Treasury Code 1425119542, which indicates that
24 income taxes are privileged.

25 Also, under --

1 THE COURT: Okay. We can go at it
2 several ways. I want the figures I told you, your
3 net taxable income. You don't have to show me your
4 tax return. You give it to me under oath that
5 that's your net taxable income and that would be
6 sufficient.

7 MS. FISHER: And, Your Honor, with
8 regard to that issue, I still believe that's under
9 the code -- under the Constitution, financial --

10 THE COURT: I don't believe so. I will
11 bear whatever responsibility comes from that.

12 MS. FISHER: Well, I understand. And I
13 will bear whatever responsibility it takes, but I
14 will look further into that. If the Court requires
15 briefing, I certainly will give that to you, but I
16 don't think whatever amount of money I made, or may
17 not have, has any -- has any limits to what you can
18 do.

19 My hope is that based on the law
20 regarding sanctions, that of course sanctions will
21 not be imposed and attorney's fees will not be
22 imposed.

23 THE COURT: I can understand that.

24 MS. FISHER: I respectfully am not
25 attempting to disobey your order, but I do believe

1 that I need to interpose that objection.

2 THE COURT: I appreciate it, and you've
3 got it in the record.

4 MS. FISHER: Thank you very much.

5 THE COURT: But I expect you to do all
6 that you can to get the information to me as soon
7 as you can.

8 Thank you, Mr. Cooper, for getting this
9 for me.

10 MR. COOPER: I would like to ask the
11 court reporter to mark some documents I'm going to
12 use with Dr. Waid.

13 (PLAINTIFFS' EXH. 21, Waid CV, was
14 marked for identification.)

15 (PLAINTIFFS' EXH. 22, Waid report, was
16 marked for identification.)

17 (PLAINTIFFS' EXH. 23, Deposition
18 excerpts, was marked for identification.)

19 THE COURT: Where is the house? Where
20 is that?

21 MR. COOPER: 306 Cassina.

22 THE COURT: I know, but where is it?

23 MR. COOPER: West Ashley.

24 THE COURT: Where?

25 MR. COOPER: Parkwood Estates.

1 THE COURT: Where is that?

2 MR. COOPER: It's after you pass
3 Farmfield on the left and before you get to what
4 used to be Kmart. I'm not sure --

5 MS. CROWLEY: Up 17.

6 THE COURT: I know where Kmart used to
7 be.

8 MR. COOPER: Before you get into the
9 first car --

10 THE COURT: I know where Kmart used to
11 be.

12 MS. FISHER: Would it be okay if I take
13 a 15-minute break?

14 THE COURT: Sure.

15 (A recess transpired.)

16 THE COURT: All right. Call the first
17 witness.

18 MR. COOPER: Your Honor, Plaintiff
19 calls L. Randolph Waid, PhD.

20 L. RANDOLPH WAID, PHD,
21 being first duly sworn, testified as follows:

22 THE CLERK: Have a seat. Once you get
23 seated speak into the microphone, state your full
24 name, and spell your last.

25 THE WITNESS: Full name is Lewis

1 Randolph Waid, and Waid is W-A-I-D.

2 DIRECT EXAMINATION

3 BY MR. COOPER:

4 Q. Thank you, Dr. Waid. Appreciate you
5 coming. You are here today under subpoena?

6 A. Yes, sir.

7 Q. Okay. And I'll show you first
8 Plaintiffs' Exhibit Number 21. Ask you to take a
9 quick look at that. Is that a reasonably updated
10 copy of your CV or resume?

11 A. Yes, it is.

12 Q. Okay. I think it looks like it was
13 dated August 7th of 2017. Any significant
14 additions to it since that time?

15 A. No. Just a change in my office
16 address, only because I'm slowing down and thinking
17 about retiring, but other than that I'm still in
18 Mt. Pleasant.

19 Q. A lot of us are slowing down. Let me
20 ask you to take a look at Plaintiff's Exhibit
21 Number 22.

22 A. Yes, sir.

23 Q. Is that a copy of your report in the
24 matter of Alice Shaw Baker?

25 A. Yes, it is.

1 Q. And it does include on the back of it
2 in addition to the report some testing materials?

3 A. Yes, sir, it does.

4 Q. So that is a complete copy of your file
5 on Alice Shaw Baker's evaluation?

6 A. Yes, it is.

7 Q. Tell us, the -- the report does
8 indicate, I think on it's the last page that -- I
9 would also add that is a part of the independent
10 living assessment. This is on Waid page 6?

11 A. Yes.

12 Q. Bottom of the first paragraph there, I
13 would also add that as part of the independent
14 living scale assessment, Ms. Shaw Baker was able to
15 correctly identify the purpose of a will.

16 A. Yes. That was one of the questions on
17 the independent living skills that had to do with
18 her understanding of the purpose of a will. And
19 she answered that particular item correctly.

20 Q. And just summarize for the Court, if
21 you would, what your findings were when you
22 evaluated her.

23 A. Ms. Baker was referred to me by probate
24 court Judge Curry and, ultimately, was to provide a
25 neuropsychological evaluation and to respond to

1 specific questions about the mental condition, the
2 diagnosis, treatment options, prognosis, and
3 whether Ms. Baker has a dementing disorder or one
4 or more other conditions which might affect her
5 cognitive functioning.

6 It was requested, like I said, for
7 potential treatment intervention that may be
8 helpful. There was a question of whether she
9 should be able to drive an automobile and whether
10 she requires 24-hour daily care supervision or some
11 type of less care supervision than the 24 hours.

12 And so those were the specific referral
13 questions and based on the evaluation that I was
14 requested to do.

15 Q. Okay. And were you able to determine
16 during that evaluation whether Ms. Alice Shaw Baker
17 knew the general nature and extent of her bounty?

18 A. Basically, in the will -- we didn't
19 specifically address all of that, but, basically,
20 she understood the purpose of the will and the
21 objects of her affections that she would be leaving
22 her sources of income or money or things to people
23 she desired. We got that far.

24 I did not specifically ask her about
25 whether she knew her accounts or the value of

1 things that she had. That did not get done in this
2 evaluation.

3 Q. Was there any discussion at all whether
4 she owned her own home or lived in her home?

5 A. To my knowledge, there was not a
6 specific questioning about that.

7 Q. Just a minute. Dr. Waid, was there a
8 final determination of her capacity, or did you
9 recommend further medical review and then possible
10 further evaluation?

11 A. I definitely recommended the potential
12 for improvement because the evaluation, while I did
13 believe it revealed brain behavior impairments, it
14 was very difficult to know at where and what level
15 those impairments were because Ms. Baker clearly
16 had some psychiatric overlay behaviors that got in
17 the way of testing.

18 So that may have made it difficult to
19 fully ascertain the level of impairment solely to
20 the brain disease, if that was such, versus the
21 interfering effects of her behaviors. She was
22 rather agitated. Ms. Fisher, who brought her
23 there, who was her conservator and serving in that
24 capacity, said she often is in the morning, smoked
25 incessantly, and some other behaviors.

1 She was fairly negative about having to
2 do the testing, but to a certain extent we see
3 that, particularly when people have difficulty
4 meeting the demands of testing. So we didn't think
5 she was lacking brain behavior impairments. We
6 just didn't know exactly what the level was
7 relative to the dementia versus the interfering
8 behaviors.

9 Q. Was there a concern of possible
10 diabetes or -- and diet?

11 A. Clearly, there was concern regarding
12 Ms. Baker's ability to even manage her medications
13 and so forth. She really couldn't tell us what she
14 was on personally. She was under care of a good
15 colleague and friend Dr. McGuire.

16 She does have diabetes, something that
17 you need to stay on top of. So we were concerned
18 about some vascular issues that could be
19 contributing to her decline and her brain behavior
20 functioning and the need for that to be closely
21 monitored and managed.

22 Q. Okay. And you didn't evaluate Ms. Shaw
23 Baker after this first evaluation, which by your
24 report was November 20, 2008?

25 A. I did not evaluate her after that date.

1 I had correspondence from Lisa Fisher following
2 that regarding some of the things that she was
3 looking into to provide the -- what Ms. Baker needs
4 while allowing her to be as independent as
5 possible, and so we certainly reviewed those, but I
6 had no other contact with Ms. Baker or Ms. Fisher
7 after November 21st.

8 Q. Okay. And you did in your report
9 recommend that she be seen potentially by a
10 geriatric psychiatrist?

11 A. Yes. I thought there was definitely
12 some psychiatric overlay that could be managed with
13 geriatric psychiatry, in general, because they're
14 more well-educated about using medication in
15 elderly individuals.

16 And I thought that with some
17 improvements that would certainly change the
18 recommendations in terms of level of care and so
19 forth. I also recommended that there could be a
20 MRI study of the brain which might elaborate on
21 understanding the amount of the behavior problems
22 related to the brain versus psychiatric overlay.

23 The psychiatric overlay technically
24 could be improved via treatment, yes.

25 Q. Okay. So -- and potentially had

1 additional evaluation been done after that, it
2 would have been more complete?

3 A. Yes. I think, obviously, if some
4 interventions were pursued and, certainly, she
5 showed an ability to profit from those
6 interventions, then you would do another evaluation
7 so you would have a more valid assessment solely of
8 the brain-based impairment versus any interference
9 due to her behaviors that were fairly extreme and
10 she easily got agitated.

11 Q. And at one point during the testing
12 when Ms. Fisher had to leave for a period of time,
13 Ms. Shaw Baker actually refused to continue the
14 testing?

15 A. Yes. She basically wasn't too pleased
16 and balked at testing at that point. Certainly,
17 she re-engaged when Ms. Fisher returned and served
18 to comfort her some.

19 MR. COOPER: Okay. Thank you very
20 much.

21 Your Honor, might --

22 BY MR. COOPER:

23 Q. Dr. Waid, just a few more questions I
24 got from my co-counsel here. Is what she had, best
25 you can determine, a vascular dementia?

1 A. I would definitely lean toward the
2 course of her difficulties, the diabetes and that
3 that really is -- would have been a primary
4 consideration. Again, the MRI might have told us
5 more because I would have expected for her to
6 likely have very significant microangiopathic
7 changes to the brain, which is what the vascular
8 component is about.

9 Again, you can clarify that by scans,
10 but also repeat testing because the clinical course
11 of the dementia is quite different from
12 Alzheimer's.

13 Q. And you have done studies and seen many
14 of these agitated patients that have this vascular
15 dementia?

16 A. Yes. Again, there is often aberrant
17 behaviors in Alzheimer's as well as vascular, and
18 in the -- that's what a geriatric psychiatrist is
19 good at in terms of trying to manage some of those
20 behaviors so the person functions at a better
21 level. Not necessarily a better cognitive level,
22 but able to use their brain better.

23 Q. You have seen times when the cognitive
24 behavior improved?

25 A. Absolutely. And, obviously, you would

1 want to -- anything that's reversible you want to
2 reverse it. To the extent there is a psychiatric
3 overlay, you certainly would want to treat it and
4 modify it so the person would function in an
5 improved manner.

6 Q. Right. And in your report you really
7 didn't think she needed 24-hour care. You
8 recommended at least 12-hour care, I believe?

9 A. I did. And the fact there was report
10 that she slept through the night and wouldn't
11 necessarily need 24 hours, but I did recommend --
12 basically have her covered throughout the 12-hour
13 period, 8 to 8, all the meals so we know she's
14 getting adequate food intake, as well as somebody
15 overseeing her usage of medication. So 12 to 12
16 versus 24 on that given occasion.

17 MR. COOPER: Thank you. No further
18 questions from the plaintiff.

19 THE COURT: Any cross-examination?

20 MR. WILLS: Your Honor, we have a few
21 questions.

22 THE COURT: Go ahead.

23 MR. WILLS: I'm going to beg the
24 Court's indulgence. We're just looking at this
25 report and just got to find this one passage on it.

1 THE COURT: Take your time.

2 CROSS-EXAMINATION

3 BY MR. WILLS:

4 Q. Dr. Waid, thank you.

5 A. Sure.

6 Q. I want to ask you a couple of questions
7 about your report here.

8 A. Yes.

9 Q. First off, you are a PhD; is that
10 correct?

11 A. That's correct.

12 Q. Not a medical doctor?

13 A. That's correct.

14 Q. Okay. Were you paid to make this
15 report?

16 A. Yes, I'm sure I was.

17 Q. Do you recall who it was that paid you?

18 A. I think Ms. Fisher was responsible for
19 payment since she was serving in the guardian and
20 conservator role.

21 Q. Okay. And do you recall what the
22 purpose of this evaluation was?

23 A. The purpose was, specifically, the
24 order from Judge Curry to undergo this type of
25 evaluation. Again, respond to the specific

1 questions that I addressed from page 5 on,
2 diagnosis, potential treatment, should she be
3 driving and so forth. Those questions I responded
4 to, all of them.

5 Q. And but your evaluation, your -- the
6 diagnoses that you have set out are medical
7 diagnoses; are they not?

8 A. They're psychiatric diagnoses out of
9 our diagnostic statistical manual and, certainly,
10 psychologists use those diagnoses.

11 Q. I understand, but when you say that
12 there was a component of diabetes that you figured
13 was more responsible for Ms. Alice Shaw Baker's
14 cognitive deficiencies than was any type of
15 dementia, that would be a medical diagnosis,
16 wouldn't it?

17 A. Well, no, not necessarily. And I do
18 want to correct that statement because that's not
19 what I said. What I said is she has diabetes and
20 that puts her at risk for a vascular dementia.
21 Further exploration and studies would have
22 clarified that, and also, vascular dementia like
23 other dementia can come with psychiatric overlays.

24 So my concern was she couldn't tell me
25 her medicines, much less be compliant with them.

1 So that needed to come in order. If you get
2 compliance and good management of diabetes, then
3 you will be less concerned. Though with advancing
4 age, diabetes is a risk factor for vascular
5 dementia in all individuals, quite frankly.

6 My point is, I didn't absolutely say
7 that was it. I said that's one of the etiologies
8 that one would really be concerned about with her
9 versus Alzheimer's versus psychiatric.

10 Q. And you have just mentioned she wasn't
11 able to remember the names of the medication. Did
12 you find her to be incapacitated?

13 A. Yes. In my opinion, to be
14 incapacitated and need protection, I don't have to
15 break down the causal factors, the overlay. I
16 mean, psychiatric alone can do that. This
17 individual, who I evaluated that day from a
18 cognitive and emotional/behavioral point of view,
19 clearly needed protection.

20 I'm only talking about the possibility
21 of reversing some of those problems if they were
22 psychiatric via the appropriate psychiatric
23 medication, but I have -- very clear to me that she
24 at that level lacked the competency to manage her
25 personal and financial affairs.

1 MR. WILLS: Okay. Thank you very much.

2 THE WITNESS: You bet.

3 THE COURT: Thank you very much. You
4 may return or be excused. Appreciate you coming.

5 Anything else from the plaintiff?

6 MR. COOPER: Not from this witness,
7 Your Honor.

8 THE COURT: Anything else from the
9 plaintiff?

10 MR. COOPER: No further witnesses.
11 Ms. Fisher has something.

12 THE COURT: Go right ahead.

13 MS. FISHER: Your Honor, I want to make
14 -- and ask this Court to take judicial notice of
15 certain documents that are in the conservatorship
16 estate to make sure -- I believe that you already
17 have these documents because the Court has
18 indicated that it has reviewed the entire file;
19 however, in reviewing the entire file, there were
20 objections and there were things that I don't know
21 if this Court considered that may or may not have
22 been things that were helpful to our case.

23 So I do want to present to the Court
24 the order appointing Lisa Fisher as guardian and
25 conservator of Alice Shaw Baker. Would the Court

1 like me to approach and give you a copy of it?

2 THE COURT: You can do whatever you
3 want to do.

4 MS. FISHER: Okay.

5 THE COURT: You have no objection to
6 that being put in the record, do you?

7 MR. WILLS: No, Your Honor.

8 THE COURT: Okay.

9 (PLAINTIFFS' EXH. 24, Order, was marked
10 for identification.)

11 MS. FISHER: I would like to bring to
12 the Court's attention on the order appointing. On
13 page 2, there is reference to Peter Kouten being
14 appointed as counsel. Based on his testimony the
15 other day, I wanted to make clear that the Court is
16 aware that he was both guardian ad litem and
17 counsel and, actually, he was also visitor.

18 I would like the Court to look at --
19 there has been argument I was not allowed to take
20 her out of the state. And pursuant to this order,
21 the only thing that it says is I'm not allowed to
22 change her placement. And --

23 THE COURT: Change her placement, did
24 you say?

25 MS. FISHER: Yes, sir. And I will get

1 that. I thought it was marked here.

2 THE COURT: That's all right. If
3 that's what it says, that's what it says. I will
4 take your word for it. And what do you mean by
5 placement?

6 MS. FISHER: Well, it was the Court's
7 order. That's why I really need to read it to the
8 Court so there is no misunderstanding as there was
9 testimony it wasn't a permanent move.

10 Yes, it's on page 9, Your Honor. And
11 it's one, two, three paragraphs from the top. I
12 did mark the copy because the Court indicated it
13 has the original record, and I'm asking the Court
14 to look at it.

15 THE COURT: I'm looking at it.

16 MS. FISHER: I further order that Alice
17 Shaw Baker shall not be removed from her home for
18 placement elsewhere without further order of this
19 Court.

20 So for clarity, she was being removed
21 for a vacation and also to see other doctors as
22 available. And so I would ask --

23 THE COURT: That kind of argument is
24 consistent, I will say.

25 MS. FISHER: Okay. Yes, Your Honor.

1 So -- excuse me. Okay. So I'm asking the Court to
2 take judicial notice of that document.

3 THE COURT: We put it in the record of
4 the case.

5 MS. FISHER: Okay.

6 THE COURT: The whole thing.

7 MR. COOPER: Yes, Your Honor. It's
8 been marked as Plaintiff's 24.

9 THE COURT: You have it, right.

10 THE COURT REPORTER: Yes, sir.

11 THE COURT: I can give this back.

12 MS. FISHER: I would also bring the
13 Court's attention to the same case, the
14 conservatorship case, order granting fees by --

15 THE COURT: Hold on just a second.

16 MR. COOPER: Let's get it marked first.

17 (PLAINTIFFS' EXH. 25, Order appointing
18 fees, was marked for identification.)

19 MS. FISHER: So this is an order
20 granting fees, and I would ask that the Court --
21 the Court has already marked it as Number 25.
22 Court appointed guardian ad litem as stated
23 January 1st to February 25, 2009.

24 And if the Court -- I will tell the
25 Court and counsel that the numbers on the bottom of

1 Baker's intent at those times.

2 Now, she does -- she does execute
3 actually two more wills after that, but the last
4 will and testament, which is Exhibit 4, Your Honor,
5 it does say in item five, she gives all the rest --
6 again, to Kay Passailaigue, all the rest of the
7 remainder of my estate, real and personal and mix,
8 or whatever kind and nature, wherever the same may
9 be situated to be heard in fee simple absolute, to
10 include the care of my dogs.

11 Since she didn't have any dogs when she
12 died, that brings up the question of -- is this --
13 is this an ambiguity because she didn't have to
14 care for any dogs? The law in South Carolina is
15 where there is a latent ambiguity in the will, of
16 course that's one that's not necessarily apparent
17 when it's made or when it's read, but appears by
18 the circumstances -- the surrounding circumstances,
19 Your Honor, where there is a latent ambiguity in a
20 will, extrinsic evidence is admissible to determine
21 the testator's intent.

22 What I'm asking Your Honor to do is to
23 consider what Alice Shaw Baker's intent really was.
24 Was it to give the money totally unrestricted to
25 Kay Passailaigue or was she --

1 THE COURT: Or whether she trusted her
2 to do something with it.

3 MR. COOPER: Well, I don't know.
4 That's a trust.

5 THE COURT: It's not a legal trust.
6 It's a trust that she had.

7 MR. COOPER: And we're asking this
8 Court to impose a constructive trust --

9 THE COURT: I understand that.

10 MR. COOPER: -- based on Alice Shaw
11 Baker's, what I believe, is her expressed intent in
12 her own handwriting. Extrinsic evidence is
13 admissible to determine the testator's intent,
14 where there's a latent ambiguity in the will; Colin
15 Grant Home v. Medlock, 292 S.C. 466. That's a 1986
16 case that's cited in the trial brief.

17 I'm not going to go through all of
18 these, but the gist of our view is that Alice Shaw
19 Baker always intended for all of her property,
20 house, property of every description, other than
21 the bequest to Mrs. Byrd, to go to animal
22 charities.

23 And her way of doing that, when she got
24 mad with the SPCA, was to change and put Kay
25 Passailaigue as --

1 THE COURT: Don't you think animal
2 charities is even more ambiguous?

3 MR. COOPER: Your Honor, that's a
4 question that I'm not sure I should be answering
5 because I just don't know.

6 THE COURT: That's a good answer. You
7 know --

8 MR. COOPER: Well, I think we all know
9 what Alice Shaw Baker wanted. She wanted the
10 monies to be used to benefit animals and not
11 particular people.

12 THE COURT: What animal? She didn't
13 have any when she died. Whose animals is she going
14 to look after?

15 MR. COOPER: The ones that are
16 connected with animal rescue; in other words,
17 homeless dogs, dogs that needed help, pets that
18 needed spay, neuter, you know, rehoming. That sort
19 of a thing. I'm --

20 THE COURT: Just put all the names in a
21 hat and pick them out?

22 MR. COOPER: Well, Your Honor, there
23 are charities that do that sort of thing, and this
24 Court could and does have the power to impose a
25 constructive trust and to direct the monies in that

1 way.

2 Look at the will, Sandra Byrd was a
3 friend, but not the best friend. Bessie Huckabee
4 was the best friend. And both of those got
5 considerably less than Kay Passailaigue, and the
6 reason is because Kay Passailaigue held herself out
7 as the owner, operator, volunteer of a Jack Russell
8 dog rescue and many other animal rescue operations
9 and --

10 THE COURT: So you think it's your
11 client's duty to come in and make that happen.

12 MR. COOPER: Your Honor --

13 THE COURT: What standing did they have
14 to do that?

15 MR. COOPER: Well, first of all, Your
16 Honor, there has been no final ruling --

17 THE COURT: Answer that. What standard
18 do they have to do that?

19 MR. COOPER: One of my clients is an
20 heir in the law --

21 THE COURT: What makes her have any
22 standing to do that?

23 MR. COOPER: Well --

24 THE COURT: As it stands, she's the one
25 that is going to get the money.

1 MR. COOPER: I'm not sure she's going
2 to get the money. I mean, certainly --

3 THE COURT: I don't see anything in the
4 record that indicates otherwise.

5 MR. COOPER: Well, in her testimony
6 yesterday she didn't expect to get anything --

7 THE COURT: Yeah, but she doesn't know
8 what the law is.

9 MR. COOPER: Well, that's true in a
10 certain sense, but -- because she's not an attorney
11 and certainly she's not even from South Carolina,
12 but her testimony made it clear yesterday, she
13 wanted the money, thought the money should go to
14 animal charities --

15 THE COURT: After her niece gets
16 \$160,000; is that right? 60,000, \$70,000. How
17 much is it in attorney's fees for the two of you?

18 MS. FISHER: Excuse me, Your Honor --

19 THE COURT: I'm asking him.

20 MS. FISHER: Except that's not my
21 attorney's fees.

22 THE COURT: How much is it?

23 MR. COOPER: Your Honor --

24 THE COURT: How much is it?

25 MR. COOPER: I submitted my bills.

1 THE COURT: I haven't gotten hers yet?

2 MR. COOPER: No, Your Honor.

3 THE COURT: Oooooooh.

4 MR. COOPER: I don't keep records of
5 hers.

6 THE COURT: I hate to hear that.

7 MR. COOPER: The attorney's fees that
8 -- the invoices and the summary that I handed up
9 are a summary of the attorney's fees that I have.

10 THE COURT: Do you think they should
11 get attorney's fees?

12 MR. COOPER: No, Your Honor, I don't;
13 but, you know, I think it's in the Court's
14 discretion to grant attorney's fees to the
15 Plaintiffs, but based on -- well, let me just say
16 that's our attorneys' fees because Your Honor
17 ordered us to put it up. It is --

18 THE COURT: Well, you asked for
19 attorney's fees.

20 MR. COOPER: In the Complaint we did.
21 And in the trial brief and at the beginning of this
22 trial, I suggested that we wait until the Court
23 ruled on the entitlement to attorney's fees and
24 then we'd do the quantum. You know, if any fees
25 are awarded.

1 THE COURT: I'm sorry, I interrupted.
2 Go ahead.

3 MR. COOPER: All right. Yes, Your
4 Honor.

5 At any rate, in my view, whether or not
6 -- there's two main points. I think Alice Shaw
7 Baker's intention is what the Court is -- is
8 required under the law to look for. And if it
9 determines that Alice Shaw Baker's intention was to
10 benefit animals primarily, then the Court has the
11 power to impose a constructive trust.

12 Also, Your Honor, I believe that even
13 though the jury determines that the will, Exhibit
14 Number 4, was Alice Shaw Baker's last will and
15 testament, I think that her tearing up a copy of it
16 indicates her intention at that time, because there
17 is testimony that she discovered then and only then
18 that Kay Passailaigue was no longer involved with
19 the Jack Russell rescue operation.

20 Now, Your Honor has to wrestle with
21 this to determine what Alice Shaw Baker's true
22 intention was. And, you know, we -- our position
23 -- you know what our position is, and we would urge
24 you to look fairly at the evidence. And there is
25 no evidence more clear than the handwritten

1 indications that Alice Shaw Baker made.

2 Thank you.

3 THE COURT: I appreciate your position.

4 MS. FISHER: Your Honor, you did
5 indicate we could both argue. If I could have --

6 THE COURT: Sure. Glad to hear from
7 you.

8 MS. FISHER: Thank you, Your Honor, for
9 the opportunity to speak to you on this issue.

10 So in light of the testimony and in
11 light of some inferences that I think have been
12 made with regard to my intent in bringing this
13 action and my mother bringing this action, this
14 Court has come to what apparently is a conclusion
15 that doing it to recover monies and attorney's
16 fees.

17 The reason there was no submission of
18 attorney's fees was because I do not expect to be
19 reimbursed for my attorney's fees on the case. I
20 have paid all of the attorney's fees, and although
21 that wasn't included in the testimony because the
22 Court hasn't inquired --

23 THE COURT: You put it in the
24 pleadings.

25 MS. FISHER: Right. The request for