THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Circuit Court

Thomas A. Russo, Circuit Court Judge

Appellate Case No.: 2018-001144

In the Matter of: Estate of Thomas G. Moore

Michael Dennis Moore,.....Appellant,

v.

Thomas Paul Moore, et al,.....Respondents,

INITIAL BRIEF OF RESPONDENT THOMAS PAUL MOORE

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STATEMENT OF THE ISSUES ON APPEAL

I. Did the lower courts correctly rule that a letter was a part of the Decedent's will pursuant to the legal doctrine of integration, where there was testimony locating the letter and the will together in the safe and no evidence contradicting the requirements for integration was admitted?

II. Did the lower courts correctly rule that the Decedent's estate was entitled to one-half of the proceeds of the Cypress Road property which was put under a binding contract of sale before the Decedent's death, but the closing occurred days after death?

III. Did the Circuit Court err in ruling that the Appellant did not preserve the issue for review of prejudicial submission of evidence and allowance of claims the day of trial, when counsel for the Appellant did not object to evidence and claims at the time of submission?

   a. If the issue was preserved, did the lower courts properly consider the extensive evidence and testimony presented at the trial of the matter and correctly make rulings based on that evidence that the Appellant failed to pursue loans to the Estate, failed to account for funds received which belonged to the Estate, and failed to account for loans made by the Decedent to the Appellant's own business?

STATEMENT OF THE CASE

Thomas G. Moore died on December 20, 2013.[1] The Decedent had a will dated September 27, 1997.[2] The Will was admitted to probate in the Florence County Probate Court and one of his sons, Michael Dennis Moore ("Appellant") was appointed personal representative.[3] The Decedent was survived by four other children Thomas Paul Moore, Phillip Frederick Moore, Francine Lawhon and Linda Moore and was predeceased by his wife.[4]

Two hearings were held before the probate court to approve the proposed estate closing documents and to take testimony and evidence on the issues related thereto.[5] The first hearing was December 22, 2015 and the second was July 27, 2016. Florence County Probate Judge J. Munford Scott, Jr. issued an Order on November 28, 2016 making findings of fact, conclusions of law, and directing the personal representative to take certain steps to close the estate and distribute the assets. The terms of the Order speak for themselves. This appeal followed.

STATEMENT OF THE FACTS

The litigation of this estate has included numerous issues that are not being appealed here. The evidence and testimony was extensive, but much of it bears on issues that were not appealed. This Statement of Facts is specifically limited to facts relevant to the Issues on Appeal. More factual discussion of other issues can be provided if helpful to this Court.

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[1] Final Order, 1, Nov. 28, 2016.
[2] Hr'g Tr. Ex. 18, Dec. 22, 2015.
[3] Final Order, at 1.
[4] Id.
[5] Id.

The Decedent owned a one-half undivided interest in a 4-acre parcel of property in Richland County, South Carolina.[6] The other half owner was the Decedent's brother and his heirs.[7] The Richland County property was the location of a church which was founded by the Decedent, his brother and their families.[8] For many years, the Decedent attended services weekly at this place of worship.[9] The Respondent Thomas Paul Moore ("Respondent Thomas") served as the assistant pastor of this church for many years.[10]

A copy of a letter was delivered to the Respondent Thomas during the Decedent's lifetime showing the Decedent's intent that the church property pass to Respondent Thomas upon the Decedent's death.[11] After the Decedent's death, the Decedent's will was located, and presented by the Appellant personal representative, in the safe with the original letter about the church property.[12]

The Decedent was a joint owner with right of survivorship with the Appellant of property located on Cypress Avenue in Garden City Beach.[13] In November 2013, the Decedent and Appellant entered into a binding contract to sell the Cypress Avenue property for $324,500.00.[14]

The Decedent died on December 20, 2013.[15] The closing of the sale of the Cypress Avenue property was on December 27, 2013.[16] The Appellant accepted all of

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[6] Hr'g Tr. 156, Dec. 22, 2015.
[7] Id. at 160.
[8] Id. at 159 – 60.
[9] Id. at 157 – 58.
[10] Id. at 158 – 59.
[11] Id. at 163.
[12] Id. at 49-50.
[13] Hr'g Tr. Ex. 20, Dec. 22, 2015.
[14] Hr'g Tr. Ex. 22, Dec. 22, 2015.
[15] Final Order, at 1.
[16] Hr'g Tr. Ex. 21, Dec. 22, 2015.

the proceeds from the closing and did not pay any into the Estate account or otherwise to the devisees of the Decedent's will.[17]

During his lifetime, the Decedent made loans to Tammy Jackson, a person who assisted the Decedent with various tasks over the years.[18] Tammy Jackson did not repay these loans.[19] The Appellant personal representative was aware of the loans and took no action to collect the loans.[20]

The Decedent, Appellant and several other devisees were all involved in various car sales businesses for many years.[21] After the Decedent's death, the Personal Representative repossessed a 2004 Jaguar because Tammy Jackson had not paid for the Jaguar.[22] However, the Appellant Personal Representative did not pay the proceeds from the 2004 Jaguar repossession back to the Estate, but instead kept them for himself.[23]

Apparently, both the Appellant and the Decedent both operated businesses known as Moore's Cars, LLC, even though only one was registered with the Secretary of State.[24] Over an extended period of time, the Decedent loaned the Appellant Personal Representative significant sums of money.[25] Those loans were documented by the descriptions in the Decedent's own writing on his checks.[26] These loans were not repaid to the Decedent during life or to the estate after the Decedent's death.[27]

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[17] Final Order, at 11.
[18] Hr'g Tr. 194-95, Dec. 22, 2015.
[19] Id.
[20] Id.
[21] Hr'g Tr. 86-136, Dec. 22, 2015.
[22] Hr'g Tr. 22-24, 29, 33-37 July 27, 2016.
[23] Id.
[24] Hr'g Tr. 86-136, Dec. 22, 2015; see also Hr'g Tr. Ex. 1-7, July 27, 2016.
[25] Id.
[26] Id.
[27] Id.

STANDARD OF REVIEW

On appeal from the lower court, this Court is limited to considering arguments based on the evidence that was admitted in probate court, and no new evidence can be presented.[28] Further, the arguments must have been raised with specificity, in a timely manner and ruled upon by the probate court.[29] All determinations of fact and law not appealed are the law of the case.[30]

The standard of review as to each issue depends upon the nature of the underlying issue-is it a matter of law, or is it a matter of equity?[31] In matters of law, the appellate court cannot disturb the lower court's findings of fact unless there is no evidence in the record to support the lower court's findings.[32] Only for matters sounding in equity can an appellate court find facts in accordance with its own view of the preponderance of the evidence.[33] And even then, the appellate court may find that the probate judge was in a better position to see and hear the witnesses and evidence and defer accordingly.[34]

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[28] S.C. Code Ann. §62-1-308(i) (2014).

[29] S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007).

[30] Biales v. Young, 315 S.C. 166, 432 S.E.2d 482 (1993) (finding that failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal); see also Anderson v. Short, 323 S.C. 522, 476 S.E.2d 475 (1996) (stating where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case); Carolina Chloride, Inc. v. Richland Cnty., 394 S.C.154, 714 S.E.2d 869 (2011) (finding the trial judge's unappealed procedural ruling was the law of the case); Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009) (finding circuit court's unchallenged ruling on magistrate court's subject matter jurisdiction was the law of the case); Ulmer v. Ulmer, 369 S.C. 486, 632 S.E.2d 858 (2006) (holding circuit court erred in changing visitation order because respondent never petitioned the probate court to modify the visitation order; therefore, the matter was not properly preserved for review).

[31] Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (Ct. App. 1993); see also Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

[32] Howard v. Mutz, 315 S.C. 356, 434 S.E.2d 254 (1993); see also Townes Assocs., 266 S.C. 81, 221 S.E.2d 773; Alexander's Land Co., L.L.C. v. M & M & K Corp., 390 S.C. 582, 703 S.E.2d 207 (2010); Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008).

[33] Howard, 315 S.C. 356, 434 S.E.2d 254 (1993); see also Townes Assocs., 266 S.C. 81, 221 S.E.2d 773 (1976); Goldman v. RBC, Inc., 369 S.C. 462, 632 S.E.2d 850; Doe v. Clark, 318 S.C. 274, 457 S.E.2d 336 (1995); Lowcountry Open Land Trust v. Charleston S. Univ., 376 S.C. 399, 656 S.E.2d 775 (Ct. App. 2008).

[34] U.S. Bank Trust Nat'l Ass'n v. Bell, 385 S.C.364, 684 S.E.2d 199 (Ct. App. 2009); see also Lewis v. Lewis, 392 S.C. 381, 709 S.E.2d 650 (2011); Pinckney v. Warren, 344 S.C. 382, 544 S.E.2d 620 (2001).

An action to construe a will or to determine its validity is an action at law.[35] An action seeking an accounting and the surrender of assets is an action at law.[36] Actions which determine ownership and title to real property are actions at law.[37] Actions alleging breaches of fiduciary duty and actions for money damages are both actions at law.[38] All of the issues involved in this appeal are actions at law. The Appellant in his brief fails to name an issue which sounds in equity and cites the standard for reviewing legal issues.

ARGUMENTS

I. The probate court correctly ruled that a letter was a part of the Decedent's will pursuant to the legal doctrine of integration.

As stated above, a letter in an envelope with the Decedent's letterhead on it was found with the Decedent's will after his death.[39] No evidence was admitted, nor testimony taken, to the contrary. As such, those facts must be accepted by this court as construing a will is a matter at law.[40] Appellant does not contest those facts in his brief.

The real issue before this court is whether the probate court was correct in applying the legal doctrine of integration. The probate court went to great lengths to explain the doctrine of integration in its Order.[41] In summary here, integration allows for another document in existence at the time of the making of the will to be included in the

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[35] See Kemp v. Rawlings, 358 S.C. 28, 594 S.E.2d 845 (2004); In re Estate of Pallister, 363 S.C. 437, 611 S.E.2d 250 (2005).
[36] Abernathy v. Latham, 345 S.C. 106, 545 S.E.2d 848 (Ct. App. 2001).
[37] Grant v. State, 395 S.C. 225, 717 S.E.2d 96 (Ct. App. 2011).
[38] Verenes v. Alvanos, 387 S.C. 11, 690 S.E.2d 771 (2010); Corley v. Ott, 326 S.C. 89, 485 S.E.2d 97 (1997); Ritter & Assocs., Inc. v. Buchanan Volkswagen, Inc., 405 S.C. 643, 748 S.E.2d 801 (Ct. App. 2013).
[39] Final Order, at 2; See also Hr'g Tr. 49-50, Dec. 22, 2015.
[40] See Kemp v. Rawlings, 358 S.C. 28, 594 S.E.2d 845 (2004).
[41] Final Order, at 2-5.

will if intended by the testator.[42] Following the formalities of will execution is not necessary-if it were, the doctrine of integration need not exist because then the document itself would be considered a will.[43]

Integration has been recognized in other jurisdictions and the principle has been used in South Carolina.[44] Admittedly, there is not extensive case law on the issue in South Carolina. However, Appellant fails to mention a single authority in South Carolina or otherwise that contradicts this theory or finds it inapplicable in South Carolina. In Goethe v. Browning, the court found that it was a determination of fact as to whether or not the documents purported to be the will are in fact the will of the testator.[45] Therefore,

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[42] Estate of Hicks, 3 Cal. App. 3d 312, 314, 83 Cal. Rptr. 499, 501 (1970); see also In re Will of Carter, 565 A.2d 933, 936 (Del. 1989) ("Under the doctrine of integration, a separate writing may be deemed an actual part of the testator's will, thereby merging the two documents into a single instrument."); In re Estate of Benson, C7-95-2185, 1996 Minn. App. LEXIS 330, at *4 (Ct. App. Mar. 19, 1996) ("Multiple writings may constitute a single integrated will if the separate writings were present at the time of the will's execution and the testator intended them to function as a single instrument.").

[43] Martin v. Hamlin's Ex'rs, 35 S.C.L. 188, 4 Strob. 188, 11850 WL 2884, 53 Am. Dec. 673 (1850); see also Restatement (Third) of Prop.: Integration of Multiple Pages or Writings into a Single Will §3.5 (1999).

[44] See, e.g., Martin v. Hamlin's Ex'rs, 35 S.C.L. 188, 4 Strob. 188, 11850 WL 2884, 53 Am. Dec. 673 (1850); Estate of Hicks, 3 Cal. App. 3d 312, 314, 83 Cal. Rptr. 499, 501 (1970); see also In re Will of Carter, 565 A.2d 933, 936 (Del. 1989) ("Under the doctrine of integration, a separate writing may be deemed an actual part of the testator's will, thereby merging the two documents into a single instrument."); In re Estate of Benson, C7-95-2185, 1996 Minn. App. LEXIS 330, at *4 (Ct. App. Mar. 19, 1996) ("Multiple writings may constitute a single integrated will if the separate writings were present at the time of the will's execution and the testator intended them to function as a single instrument."); S. ALAN MEDLIN, SOUTH CAROLINA BAR REVIEW, INC. § WILLS 18-19 (Vol. 1. 1999) ("Integration: Papers Constituting the Will. Only Papers Present at Signing. Except for papers incorporated by reference, all papers constituting or comprising the will must be present at the execution of a will, and only one signing is necessary."); ROBERT M. WILLCOX, SOUTH CAROLINA BAR REVIEW, INC. § WILLS 22 (Vol. 2. 2004) ("Integration: All papers present at execution that are intended to be a part of the will are included in the will. It is not necessary that the papers be attached."); Colloquy, BARBRI BAR REVIEW OUTLINE § WILLS (2014) ("All papers present at execution that are intended to be a part of the will are included in the will. They do not have to be attached."). These citations, are to materials provided to individuals sitting for the South Carolina Bar Exam during the years 1999, 2004, and 2014. While review materials for the South Carolina Bar Exam are not governing law, there is no question that Alan Medlin and Dean Robert Willcox are two of this state's preeminent scholars in the area of Wills and Trust law during the last thirty years. There is also no question that these noted scholars, one the present dean of the South Carolina School of Law, have been teaching these principles to all students sitting for the bar exam for at least fifteen years.

[45] Goethe v. Browning, 146 S.C. 7, 143 S.E. 362 (1928).

the findings of fact on the issue of what constitutes the testator's will are conclusive and cannot be overturned unless there is no evidence to support them.[46]

The letter was located with the will when the will was found.[47] That evidence was uncontested at trial or in briefings here. Additionally, the coherence and continuity between the two documents was inherent.[48] The court found that these facts created a presumption of the presence of the letter at the time the will was executed.[49] No evidence of any contrary intent by the testator was presented. Appellant's argument fails to note that the letter was located with the will.[50] Appellant's argument about the date inconsistencies does not support his proposed conclusion. The law does not require that the letter was executed at the same time as the will, only that it was present at the time of the will.[51] Even if the letter was referencing a prior will, that actually supports Respondent's position that the letter was in existence at the time of the execution of the will.

As the Appellant noted in his argument, determining which sheets of paper or documents compose a will is a question of fact.[52] "If the [finder of fact] is satisfied by intrinsic evidence or otherwise that the purported will composed of one, two, or more sheets is the will of testator, and render their verdict accordingly, it is sufficient."[53]

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[46] Id.
[47] Final Order, at 5.
[48] Final Order, at 5.
[49] Id.
[50] Appellant's Br. 4-7, Oct. 31, 2018.
[51] Estate of Hicks, 3 Cal. App. 3d 312, 314, 83 Cal. Rptr. 499, 501 (1970); see also Betsy Dupree-Kyle, Comment, Michigan Self-Proved Wills: What are they and How do They Work?, 2000 L. Rev. M.S.U.-D.C.L. 829, 840 (2000); see also Alvin E. Evans, Incorporation by Reference, Integration, and Non-Testamentary Act, 25 Colum. L. Rev. 879, 888-90 (1925) (requiring all the writings to be physically present at the final execution).
[52] Appellant's Br. 5. Oct. 31, 2018; Goethe v. Browning, 146 S.C. 7, 143 S.E. 362, 364 (1928).
[53] Goethe v. Browning, 146 S.C. 7, 143 S.E. 362, 364 (1928).

Finally, Appellant erroneously makes the assertion that integration fails because Respondents never put forth on any of the attesting witnesses to prove that the subject document was in fact identified at the time of the execution of the Will. By the same token Appellant never put forth any of the attesting witnesses to prove that the subject document was not identified at the time of the execution of the Will. In fact, Appellant did not put forth any evidence to suggest that the document was not present at the time of the execution of the Will or that the Decedent did not intend to include the document as part of the Will.

The probate court correctly applied the law of integration to include the disposition in the letter with the other terms of the will because the facts showed that to be the intent of the testator. No contrary facts were presented at trial, and no law disputing the doctrine of integration has been presented.

II. The probate court correctly ruled that the Decedent's estate was entitled to one-half of the proceeds of the Cypress Road property which was put under a binding contract of sale before the Decedent's death.

An action to determine the title to real property is an action at law.[54] The lower court's findings of fact should not be disturbed unless there is no evidence in the record to support the court's findings.[55]

Decedent and Appellant owned real property as joint tenants with right of survivorship.[56] They entered into a binding contract of sale before Decedent's death.[57]

[54] Grant v. State, 395 S.C. 225, 717 S.E.2d 96 (Ct. App. 2011).
[55] Howard v. Mutz, 315 S.C. 356, 434 S.E.2d 254 (1993).
[56] Hr'g Tr. Ex. 20, Dec. 22, 2015.
[57] Hr'g Tr. Ex. 22, Dec. 22, 2015.

Shortly after death, that sale was closed.[58] Appellant kept all of the proceeds from the sale despite the existence of the contract before the Decedent's death.[59]

The issue here is a legal question about the effect of an executory contract to purchase and sell real estate creating rights for Decedent after his death. The probate court cited South Carolina Federal Savings Bank v. San-A-Bel Corporation for the proposition that an executory contract like this one creates an equitable lien on the property.[60] The contract entitles the purchaser to purchase the property according to the contract's terms and the Decedent and Appellant to receive the proceeds.[61]

The Appellant's legal argument is flawed. First, Appellant attempts to depend on case law from the Washington Supreme Court.[62] While perhaps informative, such law is not binding in this case. In fact, the Washington Supreme Court notes as much when it asserts that, "...cases from other jurisdictions are of little value in analyzing cases under the joint tenancy statute in Washington because no other state has a joint tenancy statute identical to or substantially identical to our Washington statute, RCW 64.28.010, in either its former version or its 1993 amended version."[63] As such, this court should not consider the Appellant's analysis of such case law.

Second, the Appellant fails to respond to the lower court's dependence on San-A-Bel in analyzing the creation of the lien at issue. Instead, the Appellant only argues the language of a statute. As such, the determination by the lower court based on that case is

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[58] Hr'g Tr. Ex. 21, Dec. 22, 2015.
[59] Final Order, at 10-11.
[60] See S.C. Fed. Sav. Bank v. San-A-Bel Corp., 413 S.E.2d 852, 307 S.C. 76 (Ct. App. 1992).
[61] Id.
[62] Appellant's Br. 9, Oct. 31, 2018.
[63] Estate of Phillips v. Nyhus, 124 Wash. 2d 80, 88–89, 874 P.2d 154, 159 (1994).

now the law of the case.[64] Further, no other case law or statutes are presented by the Appellant to contradict, question, or explain the holdings in San-A-Bel.

Once the Decedent and Appellant entered into the binding contract, the Decedent's death did not prevent him from preserving all of the rights under an executory contract that was simply waiting to be executed. As such, the probate court was correct in holding that Appellant should pay the Estate $162,500.00 for the Estate's portion of the sales proceeds.

III. The Circuit Court did not err in ruling that the Appellant did not preserve the issue for review of prejudicial submission of evidence and allowance of claims the day of trial, when counsel for the Appellant did not object to evidence and claims at the time of submission.

a. The probate court properly considered the extensive evidence and testimony presented to correctly make rulings that the Appellant failed to pursue loans due to the Estate, failed to account for funds received which belonged to the Estate, and failed to account for loans made by the Decedent to the Appellant's own business.

In considering the Appellant's arguments about the failure to pursue debts due to the estate, to account for funds received belonging to the estate, and for failing to account to loans from the Decedent to the Appellant Personal Representative, the court is reviewing matters at law. Claims for breaches of fiduciary obligations, claims for money damages, and claims for accountings are all actions at law.[65] As such, the findings by the

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[64] Biales v. Young, 315 S.C. 166, 432 S.E.2d 482 (1993) (finding that failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal); see Anderson v. Short, 323 S.C. 522, 476 S.E.2d 475 (1996) (stating where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case).

[65] Abernathy v. Latham, 345 S.C. 106, 545 S.E.2d 848 (Ct. App. 2001); Verenes v. Alvanos, 387 S.C. 11, 690 S.E.2d 771 (2010); Corley v. Ott, 326 S.C. 89, 485 S.E.2d 97 (1997); Ritter & Assocs., Inc. v. Buchanan Volkswagen, Inc., 405 S.C. 643, 748 S.E.2d 801 (Ct. App. 2013).

trial court shall not be disturbed unless there is no evidence in the record to support them.[66]

As an initial matter, Appellant did not properly preserve this issue for appeal. Appellant cites State v. Dunbar, for the rule regarding preservation of an issue for appeal. "In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."[67] The Appellant's trial counsel acquiesced to the admission of all of the checks into evidence at the July 2016 hearing, either expressly or by silence.[68] After cross-examining Phillip Moore, the witness who introduced the checks, Appellant still did not raise any objection to the court about the evidence or the testimony.[69]

In addition, Appellant argues that the court's failure to allow him to file a "counter summary brief" about the checks was prejudicial.[70] This issue was not preserved. Appellant's trial counsel only asked "[w]ould the Court also ask that Mr. Dennis Moore supply some type of answer or a brief summary as to his interpretation of where the checks went".[71] The probate court responded in the negative, and Appellant's trial counsel four times agreed with the court and failed to object or specifically request that right.[72] The only question raised was whether the court would expect a summary from Dennis Moore, not whether Dennis Moore had the right to file one.[73] Regardless, presenting any additional evidence not subject to cross-examination would have been

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[66] Howard v. Mutz, 315 S.C. 356, 434 S.E.2d 254 (1993); see also Townes Assocs., 266 S.C. 81, 221 S.E.2d 773; Alexander's Land Co., L.L.C. v. M & M & K Corp., 390 S.C. 582, 703 S.E.2d 207 (2010); Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008).
[67] State v. Dunbar, 356 S.C.138, 142 (2003)(*citing* Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001)).
[68] Hr'g Tr. 43, 45, 48, 56, 64, 82-83, July 27, 2016.
[69] Id. at 90, 93.
[70] Appellant's Br. 12, Oct. 31, 2018.
[71] Hr'g Tr. 93, July 27, 2016.
[72] Id.
[73] Id.

entirely inappropriate. As such, this Court is limited to the factual findings below. The evidence overwhelmingly supported the factual findings and no contrary evidence or testimony was presented, nor has it been argued here.

Further, Appellant claims that "copies of checks" were not provided to him in advance of trial and thus such evidence should be excluded.[74] This is a red herring and does not entitle the Appellant to relief for several reasons. First, and most importantly, the issues of the non-collection of the loan to Tammy Jackson and sale of the Jaguar were raised at the December 2015 hearing, not the final hearing the following July.[75] It was only at the July hearing that new checks were presented and Appellant asked to be able to respond by a "counter summary."[76] As such, there is no argument being presented here that goes to the court's findings on the Mercedes sale or the failure to collect the Tammy Jackson loan. On that basis alone, this Court should affirm the lower court rulings as to the Jaguar sale and failure to collect the Tammy Jackson loan.

Further, the timing of the production of the checks is not prejudicial because Appellant failed to request such documents through discovery. No written discovery was exchanged between the parties. Limited depositions were taken, and some documents were exchanged voluntarily. However, none of the parties submitted Requests for the Production of Documents to the others. Appellant's failure to do so and then face surprise at trial was a risk that he took in conducting the litigation. Nothing unfair occurred. The Appellant simply took a risk and then did not like the outcome when the risk failed to pay off. Exclusion of evidence through Rule 403, SCRE is not for this purpose.

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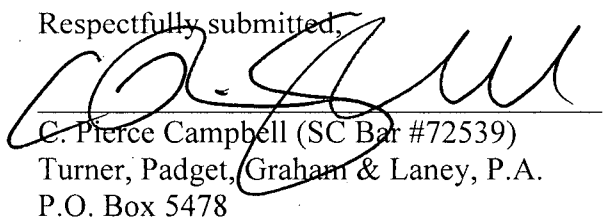
[74] Appellant's Br. 11-12, Oct. 31, 2018.
[75] See Hr'g Tr. 90-136, 194, Dec. 22, 2015; Hr'g Tr., July 27, 2016.
[76] Hr'g Tr. 93, July 27, 2016.

The lower court was correct in finding that the proceeds of the sale of the Jaguar belonged to the Estate, that the Appellant Personal Representative failed to pay the loan proceeds from Tammy Jackson to the Estate, and that there were significant loans from the Decedent to the Appellant that were never repaid. The issues about the timing of the checks and a requested reply brief, raised by Appellant here, have no impact at all on the Tammy Jackson and Jaguar issue, as those issues were raised and evidence on those points was taken in December. The arguments do not support Appellant's positions on the other loans, because the issue was not preserved as outlined above.

CONCLUSION

The circuit court should be affirmed because there is sufficient factual evidence in the record to support the probate court's findings on all of the issues raised on appeal. Further, the application of the law to those facts should be upheld because the probate court did so appropriately and the Appellant fails to raise any other legal authority that shows otherwise.

Respectfully submitted,



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BRIEF OF RESPONDENT THOMAS PAUL MOORE

CERTIFICATE OF SERVICE

I certify that I have served the Initial Brief of Respondent Thomas Paul Moore, Designation of Matter to be Included in the Record on Appeal, Certification, and Certificate of Service on November 28, 2018, via hand-delivery to the Deputy Clerk, South Carolina Court of Appeals, 1220 Senate Street, Columbia, SC 29201 and by depositing a filed-stamped copy of same in the United States Mail, postage prepaid, addressed to the following:

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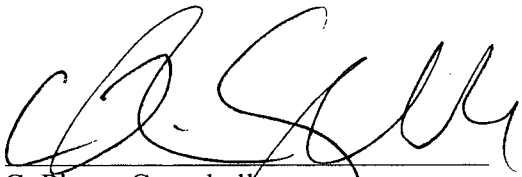

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November 28, 2018

Via Hand-Delivery

The Honorable Jenny Abbott Kitchings
Deputy Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Michael Dennis Moore v. Thomas Paul Moore, Francine Laura Lawhon, Linda Kay Moore, and Phillip Frederick Moore
Appellate Case No.: 2018-001144
TPGL File No.: 13272.101

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the following for filing in the above case:

1. Initial Brief of Respondent Thomas Paul Moore;
2. Designation of Matter to be Included on the Record;
3. Attorney's Certification; and
4. Certificate of Service.

Please file the original with the Court and file-stamp the copy for us and return same in the enclosed, prepaid, self-addressed envelope. We are serving a filed copy of the Brief on all parties of record via United States mail. Thank you for your assistance in this matter.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

C. Pierce Campbell

CPC/met
Enclosures

cc(w/enc): The Hon. J. Munford Scott, Jr.
Norwood D. DuRant, Jr., Esq.
James R. Snell, Jr., Esq.
Thomas P. Moore
Francine M. Lawhon
Linda K. Moore