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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

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SC Court of Appeals

Case No. 2010-CP-28-311

Theresa Brown Appellant

Janet Butcher and the Butcher Law Firm, P.A. Respondents

RECORD ON APPEAL

Melvin D. Bannister
Post Office Box 6833
Columbia, South Carolina 29260
(803) 782-8688
Attorney for the Appellant

William L. Howard, Sr.
Russell G. Hines
P.O. Box 993 (29402)
25 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 720-5488
Attorneys for the Respondents

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STATE OF SOUTH CAROLINA FILED FOR RECORD IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW 2011 NOV -8 AM 8:58 FIFTH JUDICIAL CIRCUIT

THERESA M. BROWN, JUDGE: J. L. WALKER
FILED: OF CASE NO. 2010-CP-28-0311
KERSHAW COUNTY, S.C.

PLAINTIFF,

vs.

JANET BUTCHER AND THE
BUTCHER LAW FIRM, PA,

DEFENDANTS.

**ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANTS**

Plaintiff Theresa Brown alleges a cause of action for legal malpractice against the Defendants.¹ The Plaintiff's Complaint stems from the Defendant's representation in the handling of Plaintiff's divorce case. Viewing the Plaintiff's factual allegations and all reasonable inferences in a light most favorable to the Plaintiff, the Plaintiff has failed to allege facts sufficient to constitute a viable cause of action for legal malpractice against the Defendants. For the following reasons, the Plaintiff's Complaint is hereby dismissed and summary judgment is granted to the Defendant.

FACTS/PROCEDURAL HISTORY

Taking the evidence in a light most favorable to the Plaintiff, the facts in the underlying divorce suit are as follows. Plaintiff is a resident of Kershaw County, South Carolina, and was previously married to Robert Brown, also of Kershaw County, South Carolina. The Browns were married on November 7, 1980, and had three children during their marriage. In 1990, they moved to Kershaw County, South Carolina, where they purchased a home. In 1991, Mr. Brown

¹ Plaintiff named both Janet Butcher and her professional association as Defendants. Plaintiff alleges negligence on the part of the Defendant, Janet Butcher. For ease of reference, both are referred to as one Defendant in this Court.

ATTEST: I, Clerk of Court, do hereby certify that this is a true and correct copy of the original on file in this Court.

Jay McDaniel
Clerk of Court Kershaw County

retired from the military, and served as a Sheriff's Deputy in the Kershaw County Sheriff's Department until his disability retirement.

After the parties moved to Camden, South Carolina, Mrs. Brown began employment with Blue Cross/Blue Shield of South Carolina, where she is still employed. Mrs. Brown handles telephone inquiries regarding health care insurance claims.

In August 2005, the Plaintiff separated from her husband, leaving the marital residence. She moved from the marital residence because she found evidence that her husband had committed adultery. In September 2005, the Plaintiff retained Ron Moak of the Butcher Law Firm to represent her in a divorce action initiated by her husband, who was seeking a divorce from the Plaintiff on the grounds that she had committed adultery. Mr. Moak filed an Answer and Counter-Claim in the divorce action, also seeking a divorce for the Plaintiff on the grounds that her husband had committed adultery. Pursuant to the Family Court's Temporary Order, Mr. Brown continued to live in the marital residence during the pendency of the divorce action. However, the Court ordered the parties to list the property for sale with a real estate agent.

After several months, Ron Moak left the Butcher Law Firm. His representation is not at issue in this case. Following his departure, on or about April 20, 2006, Janet Butcher of the Butcher Law Firm, PA, agreed to represent the Plaintiff.

Ms. Butcher represented the Plaintiff for the remainder of the divorce action. The divorce case was scheduled for a two-day hearing on the merits in November 2006. On the first day, at the Judge's suggestion, the parties and their attorneys negotiated in an attempt to reach a settlement. However, those negotiations were not fruitful, and on the second day the case was continued because the husband's attorney fell ill and was unable to attend.

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The divorce case was re-scheduled for a final hearing on April 16, 2007. On the morning of the hearing, Plaintiff came to the offices of the Defendant, and helped to carry all the files and trial notebooks to the hearing. Plaintiff had previously met with the Defendant in preparation for the hearing. Trial notebooks prepared by the Defendant contained sections for each witness the Defendant intended to call in support of Plaintiff's case, including the Defendant's intended examination subjects and questions, any prior statements or affidavits provided by the witness, and the pertinent documents to be introduced through the witness' testimony. The Defendant had subpoenaed all of the witnesses needed for the hearing, approximately fifteen (15) in number. All subpoenaed witnesses were in attendance pursuant to their subpoenas.

Prior to the call of the case, the Defendant met with the Family Court Judge and counsel for Mr. Brown in chambers for a pretrial review of the case. According to the Plaintiff, the Defendant exited from the Judge's chambers looking stern and advised the Plaintiff that the Judge did not want to hear her case, and was not going to award the Plaintiff alimony. Although these assertions are disputed by the Defendant, they must be accepted as true for the purposes of considering this Motion for Summary Judgment.

According to the Plaintiff, she became visibly upset and went to the ladies room of the courthouse. Over the course of the morning, she remained in the ladies room crying, with her daughter in attendance, while Defendant continued to negotiate a settlement of the divorce proceedings on her behalf. Plaintiff recounts that the Defendant came into the ladies room on numerous occasions, and told the Plaintiff what the Defendant was demanding on her behalf and what she would get under the terms of a proposed settlement agreement. The Plaintiff does not acknowledge that she responded to the various settlement proposals, or that she had input into the settlement process. Rather, she claims that she was too upset to hear, understand or respond.

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At the conclusion of the negotiations, Plaintiff states that the Defendant ushered her into the courtroom with the Family Court Judge presiding. Both Mr. Brown and his attorney were also in the courtroom. At that time, through counsel, the parties announced that a settlement had been reached.

As is required under South Carolina law, the Family Court Judge first reviewed the terms of the agreement, provisions of which were recited to the court by Mr. Brown's attorney. The Defendant added provisions that were inadvertently left out by the husband's attorney. The addition was acknowledged as accurate. Thereafter, the court extensively questioned both Mr. Brown and the Plaintiff as to the settlement proposal. In response to the Judge's questions, the Plaintiff acknowledged the following:

1. These were the terms of the parties' agreement;
2. The Plaintiff understood the agreement;
3. The Plaintiff had not been forced, pressured, coerced or made to enter into the agreement;
4. The Plaintiff had nothing else to ask her attorney;
5. The Plaintiff was satisfied with the services of her attorney;
6. The Plaintiff was not under the influence of medication, drugs or alcohol such that any substance might impair her judgment;
7. The Plaintiff had gotten all the information needed regarding her husband's financial situation to be able to enter into the agreement and, although she was sure he had hidden assets and/or income, she agreed to the settlement anyway;
8. There was nothing else Plaintiff wanted to look at regarding financial statements;
9. Plaintiff was willing to give up her right to a trial and asked the court for the agreement to be a final order, and she understood the order was final and could not be changed;

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10. She was not getting any alimony, could not ever come back and ask for alimony and was willing to give up the right to alimony.

The Family Court Judge observed the Plaintiff throughout this questioning, and following the exchange, having reviewed the agreement with the parties, including the parties' financial declarations and submissions, the court approved the agreement and incorporated it into the Decree of Divorce.

Under the terms of the settlement, the Plaintiff received fifty percent of her husband's state retirement pay and twenty-five percent (25%) of the husband's military retirement. The parties achieved a 50/50 division of property, and each received various automobiles and other personal property, and 50% of the equity in the marital home and furniture. The Court ordered that the house and 32.5 acres upon which it is situated be sold, and that the parties accept the first bona fide offer they receive. Both parties waived their right to alimony, and the divorce was granted on the ground of one-year separation.

With regard to the marital home, the court allowed Mr. Brown to live in the marital home until it is sold. However, he was required to list it for sale at its fair market value. Likewise, at the time the house is sold, the furniture within the house is to be auctioned under the divorce decree thirty (30) days after the closing on the sale, with the proceeds divided on a 50-50 basis.

At the time the malpractice suit was filed, the parties' home was still listed for sale and the price had been reduced subsequent to its initial listing due to economic conditions. The home had not sold as of the date of the suit.

FACTS/PROCEDURAL HISTORY OF MALPRACTICE LAWSUIT

In this legal malpractice action, the Plaintiff complains that she only entered into the settlement agreement as a result of the Defendants' recommendation. She claims she should have received alimony. Although she was awarded one-half of the marital home and furniture,

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she asserts that she will not receive it because her husband is still living in the home and will thwart efforts to sell it.

The Plaintiff complains that the Defendant was negligent and breached the standard of care by:

- a) Failing to consider the Plaintiff's desires for a full hearing on the merits;
- b) Informing Plaintiff prior to the hearing on the merits that the judge had stated she would not award alimony;
- c) Failing to request a continuance based on her extreme emotional and distraught condition;
- d) Advising the Plaintiff that she was not entitled to alimony, or, in the alternative, that she would benefit from a settlement that did not include alimony;
- e) Advising or instructing the Plaintiff that it was in her best interests to accept a settlement which denied her the ability to receive any portion of the equity in the marital residence and an appropriate division of other marital properties;
- f) Failing to use due care.

Plaintiff claims she was extremely distraught and emotionally upset throughout the process, as a result of which she did not hear or understand the terms of the settlement agreement. She attributes her emotional state to the statements the Defendant made to the effect that the court did not want to hear her case, and that the court was not going to award her alimony.

Despite this position, Plaintiff acknowledges the settlement hearing and all of her answers given to the court in the settlement hearing.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), S.C.R.C.P.;

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David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006) ("In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.").

LAW/ANALYSIS

In order to prevail in a cause of action for legal malpractice, the Plaintiff must prove: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client's damages by the breach. *Rydde vs. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "In South Carolina attorneys are required to render services with a degree of skill, care, knowledge and judgment usually possessed and exercised by members of the profession." *Holy Loch Distribs. Inc. v. Hitchcock*, 340 S.C. 20, 26, 531 S.E.2d 282, 285 (2000). Generally, a plaintiff in a legal malpractice action must establish the standard of care by expert testimony. *Id.*, 340 S.C. at 435, 472 S.E.2d at 613.

I. Plaintiff is Judicially Estopped from Asserting this Cause of Action.

The Defendant argues the Plaintiff is judicially estopped from asserting her claim under the circumstances. Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). "The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary." *Id.*

In *Cothran*, our Supreme Court adopted the following elements necessary for the doctrine of judicial estoppel to apply: "(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings."

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involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to deceive the court; and (5) the two positions must be totally inconsistent." *Id.*

A. Plaintiff has Taken Two Inconsistent Positions.

When approving a settlement agreement, a Family Court judge must first determine if consent to the agreement is voluntarily given, and second, must determine if the agreement is within the bounds of reasonableness from both a procedural and substantive perspective. *Burnett v. Burnett*, 290 S.C. 28, 347 S.E.2d 908 (Ct. App. 1986). In this case, a settlement hearing was held by the Family Court Judge assigned to preside over this case on the date that a final hearing on the merits was scheduled. After the parties spent time with their attorneys outside of the courtroom, the parties and their attorneys entered into the courtroom and, upon the record, recited to the Court that they had reached a settlement and asked that the settlement be approved by the Court. A review of the transcript of that hearing reveals that the Judge exhaustively examined both parties before accepting the agreement.

The Plaintiff clearly and repeatedly represented to the Family Court in the settlement hearing that she understood the agreement and that she was not forced, pressured, coerced or made to enter into it. Plaintiff acknowledged that she had nothing else to ask her attorney and that she was satisfied with her attorney's services. She further acknowledged that she was not under the influence of medication, drugs or alcohol such that any substance might impair her judgment. She represented to the Court that she had gotten all of the information needed regarding her husband's financial situation to be able to enter into the agreement and that there was nothing else she wanted to look at regarding the financial statements. In this regard, she told

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the Judge she was sure her husband had hidden assets, but she agreed to the settlement anyway. She told the Court that she was willing to give up her right to a trial and asked the Court for the agreement to be made a final order, understanding that the order was final and could not be changed. She specifically acknowledged that she was not getting any alimony and that she understood that she could not come back and ask for alimony. She told the Court she was willing to give up the right to alimony. The Plaintiff made vocal, affirmative statements to the Court with regard to each aspect of the approval process.

As a result of the hearing and the answers given by the Plaintiff to the Family Court Judge in that hearing, the Court approved the settlement. Under the terms of the settlement, later incorporated into the Decree of Divorce, the Plaintiff was awarded one-half interest in the family residence, the furniture and fixtures, and numerous other items of personalty. She was awarded 50% of the husband's state retirement and 25% of his Army retirement pay. She retained all of her interest in her 401(k) and IRA retirement funds saved through her employer, Blue Cross/Blue Shield of South Carolina. The husband received no interest in Plaintiff's retirement.

In this litigation, Plaintiff now alleges that she was confused and under duress. She asserts that she was too emotionally upset to understand what she was doing at the time of the Family Court hearing, or to understand the terms of the agreement. She states that her attorney never told her what the terms of the agreement were and the first time she heard it was in the courtroom during the settlement hearing although she did not even hear it then because she was crying. Clearly, this position is inconsistent with the position taken by the Plaintiff in front of the Family Court Judge in the divorce proceeding.

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B. The Divorce Action and this Action are Related Proceedings Involving Parties in Privity with Each Other.

The divorce proceeding is clearly related to the current litigation. As such, the second necessary element for judicial estoppel, that the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other, is met. These are related proceedings in that they involve the same subject matter and the current litigation arises out of the divorce proceeding. But for the divorce proceeding, the current litigation would not exist. Although the Defendant is not a party to the Family Court divorce action, as attorney in the case, the Defendant was so intimately intertwined with the divorce case that this legal malpractice action can be termed to be arising out of the same transaction.

C. The Plaintiff was Successful in Maintaining her Position and Received Some Benefit.

The third element in judicial estoppel is that the party taking the position must have been successful in maintaining the position and have received some benefit. In the divorce proceeding, the Plaintiff obtained a settlement under the terms of which she received a one-half interest in the marital residence and other property, a portion of the husband's disability and retirement pensions, personal and real property, a divorce, and retention of retirement funds that were subject to equitable distribution. She clearly took a position that the settlement should be accepted, that she agreed with it, and even more clearly she received some benefit from it.

D. The Plaintiff's Inconsistency is a Part of an Intentional Effort to Mislead the Court.

The fourth element in judicial estoppel is that the inconsistency must be a part of an intentional effort to mislead the Court. Our Court of Appeals held in *Kilcawley vs. Kilcawley*, 312 S.C. 425, 440 S.E.2d 892 (Ct. App. 1994), that a party to a divorce proceeding is bound by assertions made to the Family Court in a settlement hearing. In *Kilcawley*, similar to the

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allegations here, the plaintiff made certain assertions to the Court in her settlement hearing about her physical and mental state. The Court of Appeals held that, in a subsequent proceeding, plaintiff was precluded from undermining the agreement on the basis of her physical and mental state. In other words, the plaintiff's statements, when made in open court to the presiding judge, that her judgment was not clouded by ingestion of drugs or alcohol, when the judge had the opportunity to contemporaneously observe the plaintiff's demeanor, kept the plaintiff from later claiming she was under the influence of drugs or alcohol.

Here, the Plaintiff persuaded the Court that the settlement should be adopted. In order to do so, Plaintiff acknowledged to the Court that she understood its terms and had the full information necessary to make an appropriate decision. Plaintiff, along with Mr. Brown, asked the Court to accept the terms of the settlement, to incorporate those terms into a Decree of Divorce, and to issue a Decree of Divorce. Plaintiff specifically acknowledged that she was not under duress or coercion, and was not forced into the settlement. On the basis of the representations made by the Plaintiff and Mr. Brown in court, the Family Court issued a final Decree of Divorce containing the provisions of the Settlement Agreement.

Plaintiff now seeks to take what is clearly a consciously invoked opposite position; that is, that she was under duress and was too emotionally distraught to make any decision. She now contends that she did not understand the proceedings, and that Mr. Brown had assets and income that Defendant should have found, but did not. However, Plaintiff acknowledges that she has no evidence of any such hidden income, and knows of none that is available. Thus, her assertions are purely speculative.

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Plaintiff now intentionally advances an inconsistent position in this Court; the Court cannot reasonably conceive of any other purpose for this effort on the part of the Plaintiff but for to deceive the Court.

The Plaintiff's claims of duress and confusion fail for two reasons. First, having made these representations to the family court, she cannot now disavow them. *See Kilcawley*. Second, Plaintiff cannot rely upon her claim of duress because she had a clear alternative to settlement at the time the settlement was entered in the record and approved by the Family Court. In the recent case of *McCann v. Doe*, 377 S.C. 373, 660 S.E.2d 500 (2008), our Supreme Court reiterated the long standing definition and explanation of the term "duress." As the court explained, duress is defined as "a condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition. . . Duress is viewed with a subjective test, looking at the individual characteristics of the person allegedly influenced, and duress does not occur if the person has a reasonable alternative to succumbing and fails to avail themselves of the alternative." 377 S.C. 373 at 385, 660 S.E.2d 506, citing *Blejski v. Blejski*, 325 S.C. 491, 498, 480 S.E.2d 462, 466 (Ct. App. 1997)(emphasis added).

The facts in *Blejski* are almost identical to the facts of this case. In *Blejski*, the wife sought a divorce from her husband after learning of his adultery, and sought separate support, maintenance, alimony, custody of the children, child support, possession of the marital home, and equitable division of the husband's military retirement. Prior to the final hearing, the parties negotiated for approximately three hours and informed the court that they had agreed to a settlement which they wished the court to approve. The court held a settlement hearing and

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approved the settlement, a part of which included a waiver by the wife of any interest in the husband's military retirement.

Thereafter, the wife became dissatisfied with the settlement, and hired a new attorney who made a motion for reconsideration in which he sought a modification of the settlement agreement or alternatively, a new trial. In support of the motion, the wife claimed the following: (i) that she had been depressed and distraught at the time of the original hearing; (ii) that she had been misled by her attorney as to her potential entitlement to alimony and an interest in her husband's retirement benefits; (iii) that she could have explored the retirement issue on appeal but for erroneous advice from her attorney; (iv) that she could not afford her expenses or support herself; and (v) that her attorney misled her into thinking the hearing would result in a decree of divorce.

Further mirroring the allegations in this case, the wife in *Blejski* testified that her attorney had pulled her out of the courtroom at the time of the original hearing to advise her that the trial judge was already mad at her, and that she stood a chance of losing custody of her children if she proceeded to trial instead of taking the settlement. Unlike the Plaintiff in this case, the wife in *Blejski* had a history of mental illness, although her therapist thought she was mentally sound, assertive and independent at the time of the final hearing.

The wife sought reversal on two grounds: (1) that the trial judge had made comments which affected the proceedings and induced her into entering the settlement under duress (the Court of Appeals reviewed the trial judge's comments and concluded they did not apply improper external pressure or influence that induced the wife to enter into the settlement); and (2) most pertinent to this case, that the actions of her attorney supported her claim that she was

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under duress at the time she agreed to the settlement. *Blejski*, 325 S.C. at 499-500, 480 S.E.2d at 467. The Court of Appeals found against the plaintiff on precisely this issue, stating:

The wife also points to actions by her attorney to support the claim that she was under duress at the time she agreed to the settlement. Even if the attorney told the wife that the judge was mad at her and she should accept the settlement or she possibly could lose custody of her children, these statements would not amount to duress as to make the wife's assent involuntary and require a new trial. Essentially, these statements, if made, amounted to the wife's attorney giving his best advice that if the wife did not accept the settlement, the case would have to be tried and the wife potentially could have lost custody of her children. The wife had the reasonable alternative of taking her chances with a trial. Moreover, the ultimate decision was the product of a rational judgment call in a bargaining process where the wife achieved what she wanted most, custody of her children. The attorney testified that all indications were that the husband would be discharged from the service, thus losing his retirement benefits. This judgment was reasonable at the time even though the husband ultimately was not discharged. Similarly, the settlement is not invalid because the attorney did not, and could not, predict how this court would subsequently resolve the issue of divisibility of retirement benefits in *Ball*. Therefore, we reject the wife's claim she was subject to duress from her attorney.

Id. (Emphasis added.)

As in *Blejski*, the Plaintiff in this case chose to accept the settlement, and she had the reasonable alternative of taking her chances with a trial. In the hearing, the Court specifically asked the Plaintiff if she understood that she would be giving up her right to a trial. At no time did the Plaintiff represent to the Court that she wanted a trial or request that the Court deny the agreement and allow her to proceed to trial. She did not take advantage of the reasonable alternative to agreeing to the settlement that was presented to her.

Furthermore, all of the evidence is susceptible of only one inference; that is, that the Defendant was ready to try Plaintiff's case. The witnesses were subpoenaed and present, the trial notebooks were prepared and ready, and the Defendant had prepared the Plaintiff for trial.

That Plaintiff is intentionally taking a totally inconsistent position in this Court is highlighted by the fact that Plaintiff acknowledged to the Family Court in the settlement hearing

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that she believed her husband was hiding assets and income, but stated that she agreed to settle anyway. The Court asked the parties multiple times if they needed further information about the other party's financial condition before entering into the settlement. Finally, the Court asked the Plaintiff one last time, in the following colloquy:

THE COURT: Anything you want to know or look at regarding financial circumstances?

DEFENDANT (Mrs. Brown): No. I'm sure he's had some hid but I'm agreeing to it.

The Plaintiff in this case *stated on the record* in the settlement hearing that she believed her husband was hiding assets, but she wanted to go forward with the settlement anyway. Under those circumstances, she is chargeable with all that could have been discovered and that she now would claim as undermining the fairness of the agreement. Furthermore, Plaintiff hired new counsel in post-divorce proceedings, and to this day has not identified any income or assets that were not disclosed by her husband at the time of the divorce.

By representing to the Court that the settlement was fair and equitable, that she agreed with it, that she had all of the information necessary to make an informed decision, and that she wanted to waive her right to a trial, the Plaintiff made assertions that provide an unfair advantage if judicial estoppel does not apply. By making these representations to the Court in order to obtain a final settlement and divorce, the Plaintiff created the circumstances that now culminate in her claim of legal malpractice against the Defendant. By her own conduct, she deprived the Defendant of the opportunity to correct any alleged mistake or malfeasance at a time when an adjustment of the settlement with her husband may well have been feasible; or, in the alternative, to proceed to trial. However, the Plaintiff's decision to settle made it impossible for her to obtain

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the results she now desires from her husband and has set up the scenario for the malpractice claims against the Defendant that might otherwise have been avoided.

Furthermore, the Plaintiff cannot be heard to argue that any malfeasance on the part of the Defendant "forced" her to lie in the Family Court in order to obtain her settlement. Plaintiff was specifically asked whether or not she was satisfied with the services of the Defendants as her attorney, or whether she needed to ask Defendant anything else. She also acknowledged that she was waiving her right to trial. As in *Blejsky*, even if Plaintiff acquiesced in the settlement because the Defendant stated the Judge had indicated she did not want to hear Plaintiff's case and was not going to award alimony, these opinions, if stated, amounted to the Defendant giving her best advice that if the wife did not accept the settlement, the case would have to be tried and the wife potentially could have lost.

To the extent the Defendant is chargeable with having advised the Plaintiff to agree to the settlement because of indications the Judge did not want to hear the case and was not inclined to award alimony, this is not actionable *unless* the Defendant's advice was unreasonable as a matter of law. *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 293, 701 S.E.2d 742, 751 (2010). Plaintiff does not claim, nor does she advance any evidence to support a claim that the Defendant misrepresented the Judge's in-chambers remarks, or that the Defendant incorrectly interpreted the Judge's pre-trial comments. Instead, Plaintiff argues the Defendant was negligent in "informing the Plaintiff, prior to a full and final hearing in the divorce case on the merits with testimony taken and evidence given, that the trial Judge had stated that she (the trial judge) would not award the Plaintiff any alimony." Complaint, ¶14. However, as our Supreme Court recently pointed out in *Harris Teeter*:

The practice of law is not an exact science. The practice of law involves the exercise of judgment based on the circumstances known and reasonably

Boyle

ascertainable at the time the judgment is rendered. "[A] lawyer shall exercise independent professional judgment and render candid advice." Rule 2.1, RPC, Rule 407, SCACR. The Rules of Professional Conduct are replete with the recognition that a lawyer cannot pursue every issue that arises in a case while effectively representing his or her client. To the contrary, the Rules recognize that in order to provide a client the best and most competent representation, a lawyer has the professional discretion to make a judgment call as to which legal theories are the strongest and will best serve the client's interest. See Rule 1.3, cmt. 1, RPC, Rule 407, SCACR ("A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued."); *Hudson v. Windholz*, 416 S.E.2d 120, 124 (Ga. 1992) (recognizing that "the tactical decisions made during the course of litigation require, by their nature, that the attorney be given a great deal of discretion").

390 S.C. at 292-293, 701 S.E.2d at 751.

Furthermore, any recommendation based upon the possibility Plaintiff would not be awarded alimony was reasonable as a matter of law. According to the Plaintiff's financial disclosures, her income, without any alimony, was sufficient to cover her stated annual and monthly expenses. Plaintiff reported net monthly income of \$1704 and total expenses of \$1693. Plaintiff's husband submitted an affidavit stating he had previously suffered a stroke, a heart attack, was disabled and suffered from Meniere's disease, as a result of which he had no income other than his military retirement pay, social security disability, and his state retirement income. Mr. Brown's financial declaration reflected a net monthly income of \$3846 and total expenses of \$3733. He had operated a detective agency for several years, but the books revealed virtually no income, except for approximately eight hundred dollars per month paid to his agency to transport the local water company daily deposits to the bank.

Under these circumstances, taking the evidence in a light most favorable to the Plaintiff, the purported recommendation to accept the settlement was reasonable as a matter of law. Under any view of these facts, there was material risk that the Plaintiff would not be awarded alimony due to the parties' financial and other circumstances or because of the statutory bar to alimony

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upon a finding of adultery. See *Hatfield v. Hatfield*, 327 S.C. 360, 489 S.E.2d 212 (Ct. App. 1997), S.C. Code Ann. § 20-3-130(A) (Supp. 2007). Therefore, as in *Harris Teeter* there is no viable action for legal malpractice.

E. The Two Positions taken by Plaintiff are Totally Inconsistent.

The last element necessary for the doctrine of judicial estoppels to apply is that the two positions taken must be totally inconsistent. Clearly, the Plaintiff's position in the Family Court is totally inconsistent with her position in this case. For all of the above reasons, under any view of Plaintiff's allegations, her position at the settlement hearing and her position in this case are diametrically opposed to one another, and she is judicially estopped from proceeding with her claims against Defendant in this matter.

II. Taking the Evidence in a Light Most Favorable to Plaintiff, She has Suffered No Damages or Injury as a Proximate Cause of any Alleged Negligence by Defendants.

In addition to being judicially estopped from asserting this malpractice claim, Plaintiff has no factual support for her assertion that she suffered damages proximately caused by any negligence of the Defendant. In order to prevail in a cause of action for legal malpractice, the Plaintiff must prove; (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client's damages by the breach. *Ryde vs. Morris*, 381 SC 643, 646, 675 SE2d 431, 433 (2009). In this case, there are no damages that Plaintiff can claim as proximately caused by the alleged negligence of the Defendant.

- A. Because Plaintiff has identified no basis for establishing that any Opinion or Advice given by Defendant was Unreasonable as a Matter of Law, Plaintiff has not shown any Negligence that Proximately Caused a loss of Alimony to Plaintiff.**

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Plaintiff claims she did not receive alimony as a result of entering into the settlement based upon (i) the negligent advice of Defendant and/or (ii) the fact that Defendant was negligent in telling Plaintiff the Judge had indicated she would not award alimony. Even assuming Defendant did advise Plaintiff that she would probably not be awarded alimony, Defendant's opinion on this is not a basis for a malpractice claim **unless this advice was erroneous as a matter of law.** *Harris Teeter*, 390 S.C. at 293, 701 S.E.2d at 751 (emphasis added). In this case, there are multiple reasons why the Plaintiff's claim for alimony was speculative.

First, Plaintiff's husband asserted a claim for divorce on the grounds of adultery. To substantiate this claim in support of temporary relief, Mr. Brown filed an affidavit with the Court in which he stated the Plaintiff had exhibited suspicious behavior leading him to believe she was having an affair. Mr. Brown swore in his affidavit that Plaintiff visited a male friend at night in the friend's house while the friend's wife was not at home. He described seeing Plaintiff and the friend sitting on a couch kissing and hugging. According to Mr. Brown, they then got up and went into the bedroom of the home where the lights were not on. He observed that they stayed in the dark bedroom for over an hour, and he then waited an additional length of time in his car before leaving. Mr. Brown also provided an affidavit from a corroborating witness who accompanied him on that evening. Husband's witness described the same observations in his affidavit.

Under South Carolina law, a family court may not award alimony to a spouse who commits adultery before the earliest of (1) the formal signing of a written property or marital settlement agreement or (2) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties. S.C. Code Ann. §20-3-130(A) (Supp. 2007). Proof of adultery as a ground for divorce must be

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"clear and positive and the infidelity must be established by a clear preponderance of the evidence." *McLaurin v. McLaurin*, 294 S.C. 132, 133, 363 S.E.2d 110, 111 (Ct. App. 1987). A "preponderance of the evidence" is evidence which convinces as to its truth. *DuBose v. DuBose*, 259 S.C. 418, 423, 192 S.E.2d 329, 331 (1972). Because of the "clandestine nature" of adultery, obtaining evidence of the commission of the act by the testimony of eyewitnesses is rarely possible, so direct evidence is not necessary to establish the charge. *Fulton v. Fulton*, 293 S.C. 146, 147, 359 S.E.2d 88, 88 (Ct. App. 1987).

Accordingly, adultery may be proven by circumstantial evidence that establishes both a disposition to commit the offense and the opportunity to do so. *Hartley v. Hartley*, 292 S.C. 245, 246-47, 355 S.E.2d 869, 871 (Ct. App. 1987). Generally, "proof must be sufficiently definite to identify the time and place of the offense and the circumstances under which it was committed." *Loftis v. Loftis*, 284 S.C. 216, 218, 325 S.E.2d 73, 74 (Ct. App. 1985).

Plaintiff denied she committed adultery. Nevertheless, this pits the credibility of Plaintiff's denial against the credibility of the assertions by Mr. Brown and his corroborating witness. Under similar circumstances, our courts have affirmed a trial judge's adultery ruling precluding alimony on the basis of sexual intimacy, even in the absence of intercourse. *Nemeth v. Nemeth*, 325 S.C. 480, 486, 481 S.E.2d 181, 184 (Ct. App. 1997); *see also Marquez v. Caudill*, 376 S.C. 229, 656 S.E.2d 737 (2008); *Dodge v. Dodge*, 332 S.C. 401, 505 S.E.2d 344 (Ct.App.1998). Thus, under any view of the divorce case, there was a material risk Plaintiff would be found guilty of adultery and thereby barred from claiming alimony.

The second reason Plaintiff's claim for alimony was speculative involves an analysis of the parties' circumstances. S.C. Code §20-3-130 provides a list of factors that must be considered by a Family Court in determining whether or not to award alimony. These factors

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include: the age of the parties at the time of the divorce; the physical condition of the parties; the employment history and earning potential of each spouse; the current and reasonably anticipated earnings of both spouses; and the current and reasonably anticipated expenses and needs of both spouses, *Id.*

At the time of the divorce, Plaintiff's husband was 60 years of age. Plaintiff's husband testified in his affidavit in support of temporary relief that he was disabled, having suffered strokes and a heart attack. He claimed he suffered from Meniere's disease, causing a degeneration of his ear structure, resulting in vertigo. He also claimed he was diagnosed with a tumor on his pituitary gland. The husband was on full Social Security disability and took 22 prescription pills per day. In contrast, the Plaintiff was only 47 years of age, in good health, and had full time employment with Blue Cross/Blue Shield earning approximately \$32,000 per year.

Mr. Brown had a declared income composed of his state sheriff's department retirement, his military retirement and social security disability, in the total amount of \$3846.00 per month, with monthly expenses of \$3733 per month. Plaintiff had a salary of \$2646 per month, a net income of \$1704 per month, and total monthly expenses of \$1693 per month, which is less than her monthly net income.²

Under like circumstances, our Court of Appeals affirmed the denial of alimony to the wife in *Hatfield v. Hatfield*, 327 S.C. 360, 489 S.E.2d 212 (Ct. App. 1997). In *Hatfield*, the parties had approximately the same disparity in ages (13 years in this case, 14 years in *Hatfield*); but unlike this case, both parties in *Hatfield* appeared to be in good health at the time of the hearing. Wife's declaration in *Hatfield* reflected gross income of \$ 1,735.31 per month and expenses of \$ 978.01 per month. Husband's financial declaration listed gross monthly income of

² Although Plaintiff received no "alimony" from Mr. Brown in the settlement, she does receive 50% of her husband's state retirement income and 25% of his military retirement income each month.

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\$ 5,419.01 (\$ 4,612.34 after taxes and insurance), and monthly expenses of \$ 4,525.00. The majority of Husband's income came from his government pension, social security, and dividends and interest. After weighing all of the circumstances, the family court denied the wife any alimony, and the Court of Appeals affirmed, finding no abuse of discretion in the judge's decision to deny the wife alimony.

In view of the above related circumstances and existing South Carolina statutory and case law, there was a material risk Plaintiff would be denied alimony. Consequently, it cannot be said that the opinion attributed to Defendant was unreasonable as a matter of law. Because Plaintiff has identified no basis for establishing that any opinion or advice given by Defendant was unreasonable as a matter of law, Plaintiff has not shown any negligence that proximately caused a loss of alimony to Plaintiff.

B. As a Matter of Law, the Settlement Terms do not deny Plaintiff her one-half Equity in the Marital Residence or Personal Property.

Without any legal or factual foundation for her assertion, Plaintiff next asserts the divorce settlement agreement, which she alleges was recommended negligently by Defendant, denied her the benefit of her one-half interest in the marital residence and personal property. Plaintiff makes this claim on the basis that the property has not yet sold, her husband continues to live in it, and consequently, her opinion that the property will never sell. Plaintiff testified that she suspects her husband will try to thwart any sale, but she acknowledges she has no evidence of this. Furthermore, when asked if she had tried to enforce the sale requirement through the contempt power of the Court, she stated she had not because it "wouldn't do any good." Thus, Plaintiff's claim is based on her own speculation and her own decision to ignore her legal remedies.

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It is undisputed that the agreement was incorporated into the final Decree of Divorce, and thereby became a court order. The Decree provides:

REAL ESTATE. The parties agree that their marital home and 32.5 acres shall be sold and the net proceeds shall be divided equally between them after payment of all costs of sale, other costs and mortgage indebtedness as of date of filing. The parties shall accept the first bona fide, reasonable offer they receive. The parties shall timely execute all documents necessary to effect the sale of the marital home and land. The [Husband] may match the net to [Wife] as is indicated on the HUD statement in the event he desires to maintain ownership of the home.

The Decree also provided that the furniture and furnishings in the home are to be sold at auction 30 days after the closing of the sale of the residence.

Finally, the Decree provides for enforcement as follows:

13. The terms of the Agreement shall be fully enforceable by and against each party under the contempt powers of the Court. Any party who willfully violates this Order shall be subject to imprisonment of up to one year, a fine of up to \$1500.00, community service of up to three hundred (300) hours, or a combination of any of these.

Clearly, the Plaintiff's property interest awarded by the Court in the settlement incorporated into the Decree of Divorce is protected under the contempt power of the court. Even without this express provision, the court has the power to enforce the provisions of the final Decree of Divorce through contempt. "The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice," *Floyd v. Floyd*, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct. App. 2005) (quoting *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982)); *State v. Stanley*, 365 S.C. 24, 38, 615 S.E.2d 455, 462 (Ct. App. 2005); see also *In re Brown*, 333 S.C. 414, 420, 511 S.E.2d 351, 355 (1998) ("The power to punish for contempt is inherent in all courts and is

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essential to preservation of order in judicial proceedings.”); *State ex rel. McLeod v. Hite*, 272 S.C. 303, 306, 251 S.E.2d 746, 748 (1979) (instructing that a court has the inherent authority to punish offenses calculated to obstruct, degrade, and undermine the administration of justice, and such power cannot be abridged).

Furthermore, Plaintiff's claim that the Defendant committed malpractice by not incorporating a specific time frame for sale of the house into the settlement is without merit. In *Ebert v. Ebert*, 320 S.C. 331, 465 S.E.2d 121 (Ct. App. 1995), our Court of Appeals considered a settlement provision incorporated into a final order of the Family Court in which the parties had agreed that the wife received titled ownership and exclusive use of the parties lake house until it was sold. The agreement gave the husband the primary responsibility to price, market and sell the lake house for a period of time, after which it became the wife's choice to market the property to whomever she chose at such price as she determined. Pending sale, husband was responsible for taxes, insurance and maintenance and was obligated to pay wife \$4,000 per month until the house sold. No final date by which the property had to be sold was set forth in the agreement.

When the property did not sell as quickly as the parties had contemplated, husband brought an action to stop his obligation to continue supporting the wife, arguing there was no incentive for her to sell and no specified time by which it must be sold. Construing the provisions of the settlement, the Court noted that “[a] court approved divorce settlement must be viewed in accordance with principles of equity and there is implied in every such agreement a requirement of reasonableness. Where there is no time set for performance of the terms of a contract, a reasonable time is implied.” *Ebert*, 320 S.C. at 340, 465 S.E.2d 126 (citing 17A *Am. Jur. 2d Contracts* § 479 (1991)). Based upon this ruling, the Court remanded for a determination

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of a reasonable time, after which the Family Court was instructed to sell the residence at a judicial sale.

Plaintiff's unfounded fear that her husband may thwart the Court's mandate to sell the home is not a damage that can be claimed in a malpractice action. It is nothing but speculation. But even if that fear is realized by the husband's actions, the Plaintiff has the remedy of enforcing the Decree through the contempt powers of the Family Court. Clearly this does not provide a basis for a malpractice claim. Otherwise, every attorney is subject to a claim of malpractice whenever the adverse party in a case fails to live up to their legally binding settlement agreement. The wheels of justice would come to a screeching halt in the wake of such a ruling.

C. Plaintiff has failed to put forth Actual and Ascertainable Damages

Plaintiff fails to put forth any valid evidence as to her alleged damages in this matter. As such, Plaintiff's claim must be dismissed for failure to put forth evidence of "actual and ascertainable" damages as required in a legal malpractice action.

The recovery of damages at trial is inherently speculative; arguably, this is the main reason for settling a matter. One never knows what result the fact finder will hand down. Furthermore, this Court recognizes a policy argument in favor of upholding previously entered settlement agreements and the importance of having concrete, ascertainable damages figures before a legal malpractice action will be allowed to go to a jury.

Plaintiff asks this Court to set a dangerous precedent. She has failed to present any specific evidence as to her damages, yet she asks this court to allow a lawsuit against her former attorney to go forward based upon the speculation that she may have done better had her divorce action gone to trial. Under Plaintiff's theory, any settlement signed off on by a client

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could result in a malpractice action against his former attorney so long as the action accompanied mere allegations of negligence on the part of the attorney. Without proof of actual and ascertainable damages, Plaintiff's position is simply untenable. See *Hall v Fedor*, 349 S.C. 169, 561 S.E2d 654 (Ct. App. 2002)(plaintiff must show he or she "*most probably*" would have been successful in the underlying suit if the attorney had not committed the alleged malpractice). Plaintiff does not Provide any Expert Opinion to Raise a Question of Fact on the Issue of Standard of Care, Liability or Damages.

On a defendant's motion for summary judgment in a professional negligence claim, there usually will be no genuine issue of material fact unless the plaintiff presents expert testimony on the standard of care and its breach by the defendant. *Jernigan v. King*, 312 S.C. 334, 440 S.E.2d 379, 381 (Ct. App. 1993). Plaintiff's expert Susan R. Edwards provided testimony by affidavit and deposition. Ms. Edwards' testimony did not properly establish the standard of care, any breach or deviation from the proper standard of care, or that Defendants' actions were the proximate cause of Plaintiff's alleged damages. Additionally, Ms. Edwards based her expert opinion on impermissible sources, such as the opinions of others and the credibility of witnesses.

III. Plaintiff has not provided Expert Testimony necessary to create a Factual Issue.

A. Plaintiff's Expert Witness Did Not Establish the Correct Standard of Care in Her Affidavit or Deposition.

Plaintiff fails to set forth the proper standard of care required by Defendant. In order to create a genuine issue of material fact in a claim for legal malpractice, the Plaintiff must provide expert testimony which sets forth the proper standard of care. *Harris Teeter*, 390 S.C. at 290, 701 S.E.2d at 749-50. The standard of care set forth must be specific as to the situation complained of and do more than set forth mere generalities which could be applied to any

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professional negligence claim. *Id.* “[G]eneralities fall woefully short of our admissibility standards for experts in professional negligence cases.” *Id.* at 290, 701 S.E.2d at 750. Our Supreme Court further rejects “as a matter of law any suggestion that a bad result is evidence of the breach of the standard of care.” *Id.* 390 S.C. at 291, 701 S.E.2d at 750.

The affidavit of Ms. Edwards states that Defendant breached the standard of care, but does not set forth the required standard. Ms. Edwards does list actions by which she believed Defendant breached her duty to Plaintiff; however, specifying a negligent act or omission presupposes a definition of “negligence.” Prior to setting forth what action “breached” the standard, the expert must set forth the standard.

Ms. Edwards also failed to establish the proper standard of care in her deposition. Ms. Edwards’ deposition did not contain any language similar to the required standard of “the degree of skill, care, knowledge and judgment usually possessed and exercised by members of the profession.” Her testimony only provided generalities, which not meet the specific standard of care required by our Supreme Court.

B. Plaintiff’s Expert Witness Did Not Provide Evidence to Establish that Defendants Breached the Standard of Care.

An expert witness must establish that the defendant breached the standard of care. *Harris Teeter*, 390 S.C. at 289, 701 S.E.2d at 749. An expert witness who does not testify as to the correct standard of care, and yet concludes that the defendant breached the standard of care does not create a genuine issue of material fact. *Id.* Conclusory statements that the defendant breached the standard of care did not create a genuine issue of material fact. *Id.*

Even if the court finds that Plaintiff’s expert/s vague statements properly set forth the standard of care, speaking in generalities about the “bad result” does not create a genuine issue of fact as to breach. When an attorney’s judgment is not unreasonable as a matter of law, it is

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proper for a trial court to dismiss a malpractice claim. *Harris Teeter*, 390 S.C. at 293, 701 S.E.2d at 751.

C. Plaintiff's Expert Witness Did Not Provide Evidence to Establish that Defendant's Actions Were the Proximate Cause of Plaintiff's Alleged Injuries.

Plaintiff has the burden of proving that the breach of the standard of care of Defendant was both the cause in fact and proximate cause of any injuries she alleges. An expert witness must testify that defendant's action satisfied the causation-in-fact requirement of proximate cause. *Harris Teeter*, 390 S.C. at 289, 701 S.E.2d at 749. The expert witness must state that the conduct most probably caused the outcome in order to establish that defendant's actions were the "but for" cause of plaintiff's loss. *Id.* at 290, 701 S.E.2d at 749.

Although it is not necessary that the words "most probably" be used, the expert's testimony must impress that the opinion represents the expert's professional judgment that the attorney's conduct was the most likely cause of the plaintiff's injuries. *Hatfield v. Van Epps*, 358 S.C. 185, 191, 594 S.E.2d 526, 529 (Ct. App. 2004). In order to satisfy the proximate cause requirement, Ms. Edwards would have had to testify that but for Defendant's actions, Plaintiff would have received alimony and would have received one half of the equity in the marital home.

Nowhere in her affidavit or deposition testimony does Ms. Edwards use "most probably" or any other words conveying the proper magnitude of certainty to describe the likelihood that Plaintiff would have been awarded alimony or received payment for her one-half of the equity in the marital home or furniture.

Ms. Edwards testified in her deposition that Plaintiff would not have waived alimony had the case gone to trial. (Deposition of Edwards, p. 34). This statement fails to provide any insight

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into how Defendant's actions allegedly injured Plaintiff. Rather, the statement merely describes what Ms. Edwards believes would have been Plaintiff's likely course of action. Ms. Edwards' opinion about Plaintiff's entitlement to alimony is further undermined by her admission that the court in the divorce proceeding could have ruled that Plaintiff committed adultery, which clearly would have affected Plaintiff's ability to receive alimony. Ms. Edwards testified: "If it was raised in the pleadings, if Mr. Christianson testified, if [Mr. Brown] met the burden of proving adultery with Mr. Christianson's testimony and his, and if it were credible, yes." (Deposition of Edwards, p. 50). In other words, Ms. Edwards admits that had witnesses merely followed through and testified in accordance with affidavits previously submitted to the court under oath, the Family court could have refused to provide alimony to Ms. Brown. To paint Plaintiff's alimony request as being anything but speculative is a complete misrepresentation.

The same lack of certainty about the success of Plaintiff's underlying action is found in Ms. Edwards' statements about the marital home. In her affidavit, Ms. Edwards stated "Ms. Brown would have been entitled to receive as an equitable division one half of the marital estate." (Affidavit of Edwards, para. 10). Ms. Edwards gave no indication of the likelihood that a court would have granted such a division; failed to set forth an opinion that Plaintiff would have received one-half of the marital estate in the underlying action, but for any alleged negligence of the Defendant; and failed to take into account the exhaustive negotiation process Defendant undertook on behalf of the Plaintiff in coming to final settlement terms. As such, this testimony does not meet the standards required for causation.

The factors involved in determining the proper standard of care for an attorney in Defendant's position and the potential breach of that standard are not within the knowledge or experience of lay people, and as a result this Court cannot expect a jury to competently

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determine these issues without assistance through expert testimony. Expert opinion is required to show both the standard of care required and that any alleged breach of that standard proximately caused injury to the Plaintiff. Plaintiff has failed to provide proper expert testimony to meet her burden.

D. Plaintiff has not provided any Evidence that a Settlement on any other Terms could have been Reached.

The crux of the testimony from Plaintiff and her expert, Ms. Edwards, is that Defendant failed to negotiate a settlement of Plaintiff's divorce proceeding on terms they felt were "fair." Clearly, if the divorce proceeding were handled in a similar fashion by Defendants, yet Plaintiff obtained "significant alimony" and "half the marital estate," Defendants would not be a party to this litigation. However, there is no testimony in the record indicating that Ms. Brown's ex-husband ever would have agreed to a settlement on those terms. Plaintiff and Mr. Brown entered into a settlement agreement; there is no evidence in the record indicating a settlement on any other terms was possible. Plaintiff cannot now argue that had she been advised to enter into the agreement on different terms, she would have been adamant about demanding different terms. There is simply no evidence that any other agreement could have been entered into, and as such, Plaintiff failed to produce evidence that any of her alleged injuries were proximately caused by Defendants.

E. Plaintiff's Expert Witness' Opinions Were Based on Impermissible Sources.

Ms. Edwards' testimony fails to satisfy the requirements of Rule 702. Rule 702 provides: "If scientific, technical, or *other specialized knowledge* will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise" (emphasis added). Judging credibility is not specialized knowledge; the credibility of witnesses

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is peculiarly within the province of a jury. *Warren v. Watkins Motor Lines*, 242 S.C. 331, 343, 130 S.E.2d 896, 902 (1963).

With regard to her conclusion that Plaintiff would have received alimony had the divorce case been tried, Ms. Edwards based her opinion on the credibility of Mr. Brown's claim of adultery. In her deposition, Ms. Edwards acknowledged that *if* Mr. Brown and his witness testified in accordance with their affidavits as to their observations of Mrs. Brown's adulterous conduct with her friend, and *if* the Family Court Judge had chosen to believe the testimony, then Mrs. Brown would have been barred from claiming alimony. Plaintiff's expert further acknowledged that the factual recitation contained in the affidavits was sufficient to support a conclusion of adultery under South Carolina law. Notwithstanding these acknowledgements, Plaintiff's expert completely rejected any reasonable risk that Mrs. Brown would be barred from claiming alimony if the case had gone to trial, and she did so based entirely upon her view of the credibility of Mr. Brown, himself, and upon her conclusion that neither Mr. Brown nor his witness were entitled to any credibility. With regard to the corroborating witness, Plaintiff's expert conceded she had never met him, knew nothing about him, and had no basis for her conclusion. Ms. Edwards' testimony about the credibility of Mr. Brown and his corroborating witness is not based on specialized knowledge and thus she cannot testify as to these opinions under Rule 702.

F. Plaintiff has failed to Provide Expert testimony to Support a factual Basis for Determining What a Reasonable Family Court Judge, Who was Aware of All of the Facts and Circumstances, Would Have Awarded in the Divorce Action.

Plaintiff has the burden of proof on her "case within a case" and must provide evidence to enable the jury to make a decision which in the divorce action would have been made by a judge. Plaintiff states in her affidavit that she "begged for the Defendant to fight for me." Plaintiff's

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divorce action, had it been tried, would have been tried to a Family Court Judge, sitting as fact-finder and arbiter of the law. Thus, Plaintiff has the burden of providing expert testimony to establish what a reasonable judge who was aware of all the facts would have most probably awarded had the case gone to trial. See *Rydde vs. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)(to prevail in a cause of action for legal malpractice, the Plaintiff must prove: . . . (3) damage to the client; and (4) proximate cause of the client's damages by the breach); see also *Helmbrecht v. St. Paul Ins. Co.*, 122 Wis. 2d 94, 118, 362 N.W.2d 118, 131 (Wis. 1985). Without setting forth this evidence, a plaintiff fails to satisfy her burden of proving causation and damages. *Id.*

In the instant matter, Plaintiff has failed to provide any evidence of what a "reasonable judge" would have most probably awarded had the divorce action gone to trial. In fact, Plaintiff's expert specifically stated that she was not asked to provide any testimony or calculations as to damages. (Deposition of Edwards, Part 2, p. 4). Therefore, there is no evidence in the record of what damages a "reasonable judge" would have granted had the divorce action gone to trial. Without additional expert testimony regarding the potential damages award of a "reasonable judge" in the underlying action, Plaintiff has simply failed to satisfy her burden of providing evidence from which a jury could determine causation and damages.

G. There is no Claim Based Upon a Conflict of Interest and no Testimony to Support any Such Claim.

Plaintiff alleges in her Memorandum in Opposition to Defendants' Motion for Summary Judgment that Defendant failed to inform the Plaintiff of a conflict of interest. It is not entirely clear why Plaintiff makes this allegation. Plaintiff makes no allegations regarding a conflict of interest in her Complaint; as such, Plaintiff's claim for legal malpractice is not based on any such

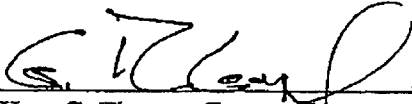
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allegations. Furthermore, Plaintiff's only expert, Ms. Edwards, states explicitly that she has not been asked to provide an opinion as to whether any conflict of interest existed. (Deposition of Edwards, Part II p. 8). Simply put, Plaintiff has made no formal allegations regarding any conflict of interest on the part of the Defendants and fails to provide expert testimony as to any potential breach of the standard of care regarding alleged conflict of interest. Consequently, this basis for recovery is not framed within the pleadings, nor is there evidence to support the allegation.

CONCLUSION

For the foregoing reasons, the Defendants' Motion for Summary Judgment is hereby granted, and the case is dismissed with prejudice.

IT IS SO ORDERED.


Hon. G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

11-7-11

602-33

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)
)
Theresa M. Brown,)
)
PLAINTIFF,)
)
VS)
)
Janet Butcher and the Butcher Law)
Firm, P.A.,)
)
DEFENDANT.)

IN THE COURT OF COMMON PLEAS
(JURY TRIAL)

SUMMONS

FILED FOR RECORD
2010 MAR 12 AM 8:47
CLERK OF COURT
KERSHAW COUNTY, S.C.

TO THE DEFENDANT ABOVE NAMED:

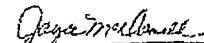
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer on the subscriber in his office, 5115 Forest Dr., Suite G-1, Post Office Box 6833 Columbia, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.



Melvin D. Bannister
Post Office Box 6833
Columbia, South Carolina 29260
(803) 782-8688
Attorney for the Plaintiff

8 day of March, 2010.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court



Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
Theresa M. Brown,)
Plaintiff,)
vs.)
Janet Butcher and the Butcher)
Law Firm, PA,)
Defendants.)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

COMPLAINT

FILED FOR RECORD
2010 MAR 12 AM 8:47
JUDGE HODGKINS
CLERK OF COURT
KERSHAW COUNTY, S.C.

The Plaintiff would respectfully show the following:

1. The Plaintiff and Defendant, Janet Butcher, are residents of Kershaw County, South Carolina; the Defendant, Butcher Law Firm, PA, is a professional association doing business in Kershaw County, South Carolina; at all times herein the Defendant, Janet Butcher, was the owner and agent of the Defendant, The Butcher Law Firm, PA. Hereinafter, the Defendants will be referred to as the "Defendant".
2. On or about August 30, 2005, the Plaintiff retained the Defendant to represent the Plaintiff herein in a divorce action filed on behalf of the Plaintiff's now former husband, Robert Brown.
3. A final divorce hearing for Robert Brown vs. Theresa Brown (2005-DR-32-567) was held on April 16, 2007, in the Kershaw County Family Court. Prior to the actual hearing commencing, the Defendant had several meetings with opposing counsel, George Speedy, and the trial judge, Dorothy Mobley Jones immediately

prior to the hearing. After the initial pre-trial meeting the Defendant informed the Plaintiff that the trial judge stated to the Defendant that the Plaintiff would not receive any alimony. The Plaintiff became emotionally distraught. Discussions between the Plaintiff and the Defendant took place in the women's restroom, after subsequent pre-trial meetings between the Judge and counsel for the (divorce) parties, due to the emotional state of the Plaintiff and the fact that she could not control her sobbing.

4. During the meetings between the Plaintiff and the Defendant in the said restroom, bits and pieces of a proposed agreement, between the parties to the divorce, were related to the Plaintiff by the Defendant. Upon the divorce hearing being called by the Court, counsel for the parties informed the Court that an agreement had been reached by the parties. The agreement was recited to the Court by George Speedy, counsel for Mr. Brown. This was the first time that the Plaintiff had heard the entire agreement. The Plaintiff was still emotionally distraught and was still crying. The Plaintiff did not hear, nor understand the entire agreement. The Plaintiff felt that she was coerced by her counsel, the Defendant.
5. The Plaintiff has acknowledged that she responded to the Court's inquiries based upon the advice and instructions of the Defendant. The Plaintiff further relied upon statements made to her by the Defendant that the Judge had stated that the Plaintiff would not receive alimony.
6. The Plaintiff herein had requested that the Defendant seek alimony from the Plaintiff's now former husband during the time period prior to trial. The Plaintiff

was ready to proceed with her request and had numerous witnesses available to testify as to this request.

7. The most noteworthy damaging term of the agreement between the Plaintiff and her now former husband was the waiver of alimony. The Plaintiff's ex-husband made substantially more than the Plaintiff at the time and had more earning potential (there was a \$3,000.00 per month income disparity to Mr. Brown's favor). The Plaintiff had also provided to the Defendant a wealth of information, which indicated the adultery on the part of her then husband.
8. The Defendant in advising the Plaintiff to waive alimony in the divorce case was a violation of the standard of care owed by the Defendant to the Plaintiff.
9. Based upon the alimony factors delineated in the South Carolina Code of Laws, §20-3-130, and discussed in numerous cases of the South Carolina Appellate Courts the Plaintiff would have been entitled to a substantial sum of alimony each month.
10. The Plaintiff is informed and believes that she would have been granted a substantial sum as alimony had the Defendant provided proper representation for the Plaintiff.
11. The Defendant in advising the Plaintiff to accept the equitable division of the marital properties in the divorce case was a violation of the standard of care owed by the Defendant to the Plaintiff.
12. Mr. Brown was actually retaining use and possession of the home for an undetermined amount of time. The Plaintiff has not received her portion of the division of the properties as of this date. Therefore, she has also been denied

the use and earning potential of her portion of the division of the marital properties. This has ultimately had the effect of preventing the Plaintiff from ever receiving her one half equity in the marital residence. Further, based upon the case and statutory law, the Plaintiff would have been entitled to receive as an equitable division equaling one half of the marital estate. In the event that the Plaintiff was paid for her share of the marital home, she still would not have received one half of the marital estate.

13. The Plaintiff also gave up the right to request educational support for the (divorce) parties' daughter, who was in college and residing with the Plaintiff. Mr. Brown had previously stated that he would pay educational support, but this was not made a part of the recited agreement.

14. The Defendant was negligent, willful, wanton, careless, and grossly negligent and breached the duty owed to the Plaintiff by the Defendant at the time and place above-mentioned in the following particulars:

- a. failing to consider the Plaintiff's desires for a full hearing on the merits of the divorce case;
- b. informing the Plaintiff, prior to a full and final hearing in the divorce case on the merits with testimony taken and evidence given, that the trial Judge had stated that she (the trial judge) would not award the Plaintiff any alimony from Mr. Brown;
- c. failing to request a continuance based upon the extreme emotional and distraught condition of the Plaintiff upon call of the divorce case;

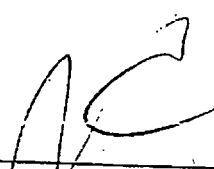
- d. advising or instructing the client that she was not entitled to alimony or, in the alternative, that she would benefit from accepting a settlement, which did not include any alimony;
- e. advising or instructing the client that it was in her best interests to accept a settlement, which denied her any ability to receive any portion of the equity in the marital residence and an appropriate division of other marital properties;
- f. failing to use the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing;

All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of the Statute and case laws of the State of South Carolina.

15. Attached and incorporated by reference herein is an Affidavit of Susan Edwards, Esquire, as is required by § 15-36-100 of the 1976 South Carolina Code of Laws, Ann.

16. The Plaintiff is informed and believes that she is entitled to judgment against the Defendant in a reasonable sum as actual damages, and for punitive damages in an appropriate amount.

WHEREFORE, Plaintiff prays for judgment against the Defendant in a reasonable sum as actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.



Melvin D. Bannister
PO Box 6833
Columbia, SC 29260-6833
803-782-8688
803-782-8677—fax
sctriallawyer@bellsouth.net
Attorney for the Plaintiff

March 8, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FIFTH JUDICIAL CIRCUIT
	)	
THERESA M. BROWN,	)	CASE NO. 2010-CP-28-0311
	)	2010-CP-28-0168
	)	
PLAINTIFF,	)	
	)	
vs.	)	ANSWER OF DEFENDANTS
	)	
JANET BUTCHER AND THE	)	
BUTCHER LAW FIRM, PA,	)	
	)	
DEFENDANTS.	)	
	)	

TO: MELVIN D. BANNISTER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

The Defendants, answering the Complaint of the Plaintiff, allege:

1. Each allegation of the Complaint not specifically admitted, denied, qualified, or otherwise explained, is denied.
2. Defendants admit the Plaintiff and the Defendant Janet Butcher are residents of Kershaw County, and that the Bucher Law Firm is a professional association doing business in Kershaw County, South Carolina. The Defendants further admit that Janet Butcher is an owner and agent of The Butcher Law Firm.
3. Defendants admit the Plaintiff retained The Butcher Law Firm in September, 2005, to represent the Plaintiff in a domestic action brought against the Plaintiff by her then husband, Robert Brown. The Defendants deny Janet Butcher undertook direct representation of the Plaintiff until March, 2006, after associate attorney, Ron Moak, left the employ of the firm.
4. Answering Paragraph 3 of the Complaint, the Defendants admit that a final divorce hearing was held on April 16, 2007 in the Kershaw Family Court. Defendants further

admit that counsel for the parties conferred with the trial judge in a prehearing in chambers conference, as is the normal procedure for Family Court. The Defendants admit that some of the settlement discussions with Plaintiff occurred in the Ladies Restroom, and that the settlement negotiations resulted in a Final Settlement Agreement that was approved by the Court after questioning of the Plaintiff, under oath, to determine that the Agreement was freely, voluntarily, knowingly, and intelligently entered into by the Plaintiff. The Defendants deny the remaining allegations of Paragraph 3.

5. Answering Paragraph 4 of the Complaint, the Defendants admit that counsel for the parties informed the Court that an agreement had been reached between the parties. Defendants further admit that the Agreement was placed on the record in open court. Defendants deny the remaining allegations of Paragraph 4.
6. Answering Paragraph 5 of the Complaint, the Defendants admit the Plaintiff fully responded to the Court's inquiries regarding the Settlement Agreement, answering, under oath, as follows:
 - a. The terms recited to the Court were, in fact, the terms of the agreement reached between the Plaintiff and her husband as a final settlement;
 - b. She understood the Agreement;
 - c. She had not been forced, pressured, coerced or made to enter into the agreement;
 - d. She had nothing else to ask her attorney;
 - e. She was satisfied with the services of her attorney;
 - f. She was not under the influence of medication, drugs, or alcohol, such that any substance might impair her judgment;

- g. She had gotten all the information needed regarding her husband's financial situation in order to be able to enter into the Agreement;
- h. There was nothing else she wanted to look at regarding financial statements;
- i. She was willing to give up her right to a trial and asked the Court for the Agreement to be the Final Order, understanding that the Order was final and could not be changed; and
- j. She was not getting any alimony, could never come back and ask for alimony, and was willing to give up the right to alimony.

Defendants deny the remaining allegations contained in Paragraph 5. Further answering Paragraph 5, the Defendants allege that the Defendants advised the Plaintiff that the trial judge had indicated during the in chambers conference that she was not inclined to award alimony to the Plaintiff if the evidence at trial supported the conclusion that Plaintiff's husband was retired and partially disabled.

- 7. Answering Paragraph 6, the Defendants admit that in the divorce proceeding the Defendants sought alimony for the Plaintiff. The Defendants deny that the Plaintiff was ready to proceed with her pursuit of alimony. To the contrary, Defendants were ready to proceed with trial, having subpoenaed all witnesses and prepared for trial, all of which lead to the negotiations and Settlement Agreement Plaintiff entered into with her husband. Under the terms of the settlement, Plaintiff waived her entitlement to alimony, which decision was the choice of the Plaintiff.
- 8. Answering Paragraph 7, the Defendants admit that the Plaintiff knowingly and voluntarily waived her right to alimony. Defendants deny the remaining allegations contained in Paragraph 7.

9. Defendants deny the allegations contained in Paragraph 8, 9, 10 and 11 of the Complaint.
- Further answering said paragraphs, Defendants alleged that the allegations contained therein are conclusions of law, not properly pled.
10. Answering Paragraph 12, Defendants deny same.
11. Answering Paragraph 13, Defendants crave reference to the Settlement Agreement entered into between the Plaintiff and her husband, Robert Brown, as an accurate description of the Plaintiff's Agreement.
12. The Defendants deny the allegations contained in Paragraph 14 of the Complaint.
13. Answering Paragraph 15 of the Complaint, subject to a Motion to Strike, the Defendants admit that the Plaintiff obtained a document purporting to be an Affidavit from Susan Edwards, Esquire, in an attempt to fulfill the requirements of § 15-36-100 of the South Carolina Code of Laws.
14. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

15. The Complaint fails to state facts sufficient to constitute a cause of action upon which relief can be granted, and it should be dismissed pursuant to Rule 12(b)(6), SCRPC.

SECOND AFFIRMATIVE DEFENSE

16. At all times, the Defendants complied with legal and ethical duties with respect to the representation of the Plaintiff.

THIRD AFFIRMATIVE DEFENSE

17. The Plaintiff knowingly, intelligently and voluntarily entered into a settlement with her husband, Robert Brown, of all the issues raised between the parties in the divorce action. Having done so, the Plaintiff voluntarily assumed the risks attendant upon the settlement

and was fully advised with respect to the settlement and the resolution of the case. Further, the Plaintiff voluntarily and knowingly assumed any risk associated with market conditions and other factors affecting the marketability of the property requiring sale in order to effect the division.

FOURTH AFFIRMATIVE DEFENSE

18. The Plaintiff condoned and/or ratified the actions of the Defendants in this case and therefore, the Plaintiff's claims are barred.

FIFTH AFFIRMATIVE DEFENSE

19. The Plaintiff's claims are barred by the doctrines of waiver, estoppel, laches and/or unclean hands.

SIXTH AFFIRMATIVE DEFENSE

20. The Plaintiff has failed and refused to market the real property to be divided in accordance with the settlement agreement by refusing to list and market the property at realistic fair market value, or to adjust the asking price to reflect market conditions. Furthermore, Plaintiff refused an offer to purchase her interest in the property at fair market value. Consequently, Plaintiff has failed to mitigate her damages, if any.

SEVENTH AFFIRMATIVE DEFENSE

21. The Plaintiff is judicially estopped from asserting that she did not knowingly, intelligently, voluntarily, and willingly enter into the settlement agreement with her husband by virtue of her affirmative assertions to the Court, under oath, at the time of the settlement confirmation and divorce hearing.

EIGHTH AFFIRMATIVE DEFENSE

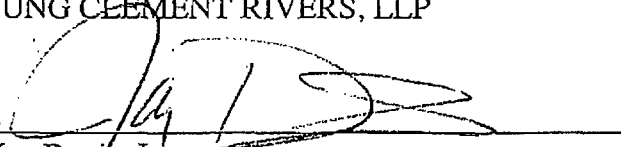
22. The claims of the Plaintiff are barred by the Statute of Limitations, and must be dismissed.

NINTH AFFIRMATIVE DEFENSE

23. The Plaintiff's claim for punitive damages is violative of the South Carolina and United States Constitutions, and must be dismissed.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants respectfully request that this Court enter judgment in favor of the Defendants, dismissing the Complaint in its entirety, with prejudice, denying the Plaintiff any relief of any nature and awarding the Defendants the costs of this action and reasonable attorney fees, and granting such other and further relief as the Court deems just and proper.

YOUNG CLEMENT RIVERS, LLP

By: 

D. Jay Davis, Jr.

William L. Howard, Sr.

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

(843) 724-6692; bhoward@ycrlaw.com

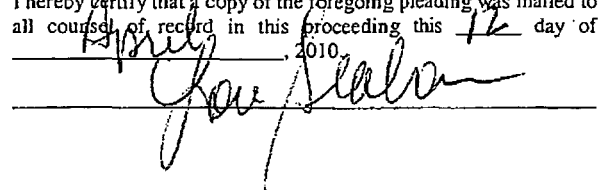
Attorneys for the Defendants

Charleston, South Carolina

Dated: 4/12/10

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 12 day of April, 2010.



STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

THERESA M. BROWN,

PLAINTIFF,

vs.

JANET BUTCHER AND THE BUTCHER
LAW FIRM, PA,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

CASE NO. 2010-CP-28-0311

NOTICE OF MOTION
FOR
SUMMARY JUDGMENT

LOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

2011 FEB -2 AM 11:24

FILED FOR RECORD

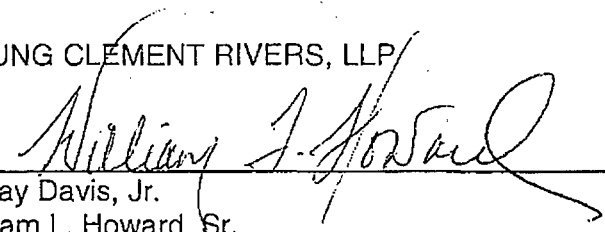
TO: MELVIN D. BANNISTER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that the undersigned attorneys for the Defendants, Janet Butcher and the Butcher Law Firm, PA, will move before the presiding judge of the Court of Common Pleas, Third Judicial Circuit, for Summary Judgment upon the following grounds:

A. Taking all facts in a light most favorable to the Plaintiff, the Plaintiff does not state a cause of action and the Defendants are entitled to Summary Judgment as a matter of law.

The motion will be based upon the depositions, affidavits, memoranda, and such other information as shall be filed with the Court prior to the hearing, and shall be heard ten (10) days following service of this notice upon you, or as soon thereafter as counsel may be heard. Please be present to defend if so minded.

YOUNG CLEMENT RIVERS, LLP

By: 

D. Jay Davis, Jr.

William L. Howard, Sr.

P.O. Box 993, Charleston, SC 29402

(843) 724-6692;

E-mail: bhoward@yrcrlaw.com

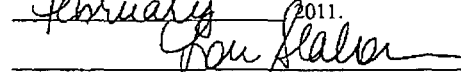
Attorneys for the Defendant

Charleston, South Carolina

Dated: Feb. 1, 2011

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 1 day of February, 2011.



STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.
07 JUN 21 AM 11:55
IN THE FAMILY COURT OF THE
FIFTH JUDICIAL CIRCUIT
Case No: 2005-DR-28-0567...

Robert L. Brown,

Plaintiff,

v.

Theresa M. Brown,

Defendant.

DECREE OF DIVORCE

NOTES: This Court & Certified
Copy of Original on File in this
Court.
Dorothy Mobley Jones
Clerk of Court, Kershaw County

Date of Hearing: April 16, 2007
Presiding Judge: Dorothy Mobley Jones
Plaintiff's Attorney: George W. Speedy
Defendant's Attorney: Janet T. Butcher
Court Reporter: Kelly Flanders
Guardian ad litem: N/A

This matter came before the Court for a final hearing on April 16, 2007. Present for the hearing were the parties, together with their respective attorneys. Prior to taking any testimony, the Court inquired of both parties as to whether there was anything the Court could do which would assist them in saving this marriage, but both parties informed the Court that the marriage was irretrievably broken.

Plaintiff initiated this case with the filing of a Family Court Coversheet, Summons, and Complaint on September 21, 2005. Defendant filed an answer and counterclaim for divorce, and Plaintiff then filed a reply. Defendant separated from Plaintiff on August 23, 2005.

In Court, Plaintiff's attorney made an oral motion to amend the complaint to request a divorce on the ground of living separate and apart, without cohabitation, continuously for more than one year. Defendant joined in that motion and waived the thirty (30) day period for filing a response.

Counsel for the parties then announced to the Court that the parties had reached an Agreement resolving all of the issues raised by the pleadings. The Agreement is as follows:

[Handwritten signature]

A. Personal Property. The parties agree that all personal property shall be sold at auction, thirty (30) days after the closing of the sale of the marital home (including all barn and contents and farm and yard equipment – tractor, mower, and all implements, etc.), and also including the Galaxy boat and trailer, 1995 Oldsmobile, 1996 Jimmy, 1954 International truck, tools and tool boxes, sewing and craft supplies, etc.) except for the following:

- (1) Plaintiff shall keep the 1996 Cadillac, 1986 Dodge van, 1995 motorcycle, motorcycle trailer, the Lee County mobile home, and equipment of Carolina Confidential, and pay to Defendant the amount of \$4,400.00 within ten (10) days of April 16, 2007, to compensate Defendant for her interest in those items. Plaintiff is the owner of Carolina Confidential and the equipment of Carolina Confidential
- (2) Additionally, Plaintiff shall pay to Defendant the amount of \$800.00 within 10 days of April 16, 2007, to reimburse Defendant for the costs of her witness to fly to South Carolina from Texas to testify at the trial of this case.
- (3) Plaintiff shall pay, therefore, a total of \$5,200.00 to Defendant no later than April 26, 2007 at 5:00 p.m. from the items listed immediately above in (1) and (2).
- (4) Plaintiff shall release the horse "Blondie" to Crystal, the parties' daughter.

The parties shall equally divide the net proceeds from the auction.

The parties shall timely execute any documents that they are provided which are reasonably necessary to carry out the intention of the parties as they relate to the personal property.


2

B. Real Estate. The parties agree that their marital home and 32.5 acres shall be sold and the net proceeds shall be divided equally between them after the payment of all costs of sale, other costs and mortgage indebtedness as of date of filing. The parties shall accept the first bona fide, reasonable offer they receive. The parties shall timely execute all documents necessary to effect the sale of the marital home and land. The plaintiff may match the net to Defendant as is indicated on the HUD statement in the event he desires to maintain ownership of the home.

C. Retirements.

- (1) Defendant shall receive one-half (1/2) of Plaintiff's state retirement pay and she may opt to purchase herself, and pay all costs herself, for her share of that program's survivor benefit plan if it is available to her. A Qualified Domestic Relations Order (QDRO) shall be timely prepared by Plaintiff for the Court's signature.
- (2) Plaintiff and Defendant agree that Plaintiff's military retired pay is marital property under the laws of the State of South Carolina, and Defendant shall receive twenty-five percent (25%) of Plaintiff's disposable retired pay. Defendant is entitled to direct payment of her twenty-five percent (25%) portion of Plaintiff's disposable military retired pay directly from the Defense Finance and Accounting Service (DFAS). Plaintiff shall timely sign and/or prepare any necessary document(s), or order, for the transfer to Defendant of this asset.
- (3) Defendant shall solely keep her IRA and 401(K), and Plaintiff forever waives any interest he might have in these accounts.

D. Alimony. The parties agree that neither party shall receive any alimony from the other at any time, now or in the future.


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E. Attorney's Fees and Costs. At the time of the closing of the marital home, Plaintiff shall pay to Defendant the additional sum of \$5,000.00 to reimburse Defendant for her attorney's fees and costs incurred in this divorce action.

F. U.S. Savings Bonds. Within ten (10) days of the filing of this Order, the parties shall each receive one-half (1/2) of the U.S. Savings Bonds, such that each receives bonds with the same total value and, Husband shall turn over to Defendant her share of the bonds.

G. Cars and Trucks.

- (1) Plaintiff shall keep his 2006 truck and Defendant shall keep her 2002 Grand Prix, and each shall be solely responsible for all costs and payments associated with each one's vehicle.
- (2) Plaintiff shall sign over to each daughter the title to each one's Grand Am car.

H. Wachovia Securities. Defendant shall solely own the Wachovia Securities account that existed as of the date of filing of this action and Plaintiff forever waives his right or interest in these securities. Plaintiff shall timely sign all necessary documents to effect this transfer of ownership to Defendant.

I. Bank Accounts. Each party shall keep solely for himself and herself whatever bank accounts – savings, checking, and credit union – he and she had at the time of the separation and at this time.

J. Golf Cart. Defendant shall solely own the golf cart and Plaintiff forever waives any interest he might have in that item.

K. Visit to Marital Home. Plaintiff agrees that Defendant shall have the right to visit the marital home at 2:00 p.m. on August 16, 2007. Neither party shall dispose of any of the


4-#4

home's contents, the barn contents, or farm's equipment before the auction date, except as agreed upon above, by the parties.

I closely questioned both parties as to their understanding of the Agreement as stated above on pages 2, 3, 4, and 5, and find that they have entered into this Agreement freely and voluntarily, and neither was under the influence of any substance which might affect his or her ability to understand the agreement. Both parties stated that each one is generally familiar with the marital estate and the financial circumstances of the other. Each party acknowledges that each has had ample time to consult with his or her respective attorney, and each believes the Agreement to be fair to the parties themselves and both parties asked for me to approve the Agreement. I find that the Agreement is fair, that it should be approved and merged into this Court's Order, and that its terms should be fully enforceable by the Court.

After the Agreement was placed on the record and I questioned the parties about their Agreement, Defendant proceeded to testify regarding the divorce. Based on Defendant's testimony and that of her corroborating witness, I find that the Defendant meets the statutory requirements for my granting a divorce to her.

Based on a close review of the file and having listened carefully to the parties' testimony and the representations of the attorneys, I make the following additional:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The parties were married November 7, 1980 in Alabama.
2. The parties have three children, Jeffrey John Brown, Crystal Caroline Brown, and Brandy Michelle Brown, all of whom are adults and emancipated. No other child is expected of this marriage.
3. The parties have resided in Kershaw County for more than one year prior to the divorce hearing.

Handwritten signature
5-11-83

4. The parties both submitted current financial declarations to me at the call of their case.

5. Defendant is entitled to a divorce from Plaintiff on the statutory ground of living separate and apart, without cohabitation, continuously for more than one year.

6. The Decree of Divorce should incorporate all the terms of the Agreement as set forth above in pages 2 - 4, paragraphs A - K. The parties' Agreement provides for a full and final resolution of all issues arising out of their marital relationship.

7. Plaintiff's military retirement pay is the property of the parties and the defendant satisfies the eligibility criteria in section 2904 to receive a twenty-five percent (25%) share of Plaintiff's disposable retired pay.

8. Considering the age, health, education, and earning capacity of each party, the terms of the property division and the alimony provisions are fair and reasonable under the circumstances.

9. Considering the factors set forth in S.C. Code §20-7-472 and the nature of the marital property available for division, the property division provisions of the Agreement are fair and equitable.

10. The Agreement is also substantively fair. As the parties know, it is not necessarily the identical result the Court would have reached after a full hearing on the merits of the case; however, it does provide for a fair and equitable division of the parties' marital property, allocating to each party a reasonable share of that marital property, and a substantively fair resolution of all other issues.

11. I find that the Agreement has been freely, voluntarily and knowingly entered into by the parties and resolves all the issues this Court would otherwise have to adjudicate.


6/16

12. I find that the parties' Agreement entitles Defendant to direct payment from the Defense Finance and Accounting Service (DFAS) of Defendant's portion of Plaintiff's military retired pay. I find that this Court reserves jurisdiction in this case to issue such orders or amendments to orders as may be necessary to effect the provisions of the parties' Agreement concerning the division of Plaintiff's military retired pay as set forth in the parties' Agreement approved by the Court.

13. The terms of the Agreement shall be fully enforceable by and against each party under the contempt powers of the Court. Any party who willfully violates this Order shall be subject to imprisonment of up to one year, a fine up to \$1,500.00, community service of up to three hundred (300) hours, or a combination of any of these.

14. This marriage is irretrievably broken and the parties cannot be reconciled.

NOW THEREFORE, I HEREBY ORDER, ADJUDGE, AND DECREE as follows:

1. Defendant be granted a divorce on the ground of living separate and apart from Plaintiff, continuously, without cohabitation for more than one year; and

2. The Agreement set forth above at pages 2 - 5, paragraphs A - K, be and hereby is merged and adopted into this Final Order.

AND, IT IS SO ORDERED!


Dorothy Mobley Jones

Columbia, South Carolina
June 15, 2007



STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

)
)
)

IN THE FAMILY COURT FOR THE
FIFTH JUDICIAL CIRCUIT

AFFIDAVIT OF SUSAN R. EDWARDS

PERSONALLY APPEARED BEFORE ME, Susan R. Edwards, who, being duly sworn, deposes and says the following:

1. I make this Affidavit in support of Plaintiff's (Ms. Theresa Brown's) allegations of the negligent representation of Ms. Brown in the divorce action between Robert Brown and Theresa Brown.
2. I graduated from Campbell University School of Law in 2001 and was licensed to practice law in South Carolina on November 23, 2001. I entered the private practice of law immediately, and have been so engaged for the past eight years. I began my Family Law practice while working at the law firm of Nexsen Pruet, LLC as an associate for Victoria Eslinger, Esquire. I worked for Ms. Eslinger until 2007 at which time I opened my own firm. My practice has become almost entirely trial practice, with a substantial percentage of it in the area of Family Law. I am a member of the Richland County Bar, as well as the South Carolina Bar and the American Bar Associations.
3. I was contacted by Ms. Eslinger to assist a potential client, later known to me as Teresa Brown (the plaintiff). Ms. Eslinger provided the pleadings and relevant documents for my review and informed me that Ms. Brown was in need of assistance with a contempt action.
4. Upon review of the file, both Ms. Eslinger and I noticed several glaring issues that Ms. Brown had agreed to accept in her settlement (at the final hearing more fully discussed herein below), which were against her best interests.
5. It appears from the record and interview with Ms. Brown and her daughter, that a final divorce hearing for Robert Brown vs. Theresa Brown was held on April 16,

2007, in the Richland County Family Court. Prior to the actual hearing, Ms. Butcher had several meetings with opposing counsel, George Speedy, and the trial judge, Dorothy Mobley Jones. After the initial pre-trial meeting (Ms. Brown stated) Ms. Butcher informed Ms. Brown that the trial judge stated to Ms. Butcher that Ms. Brown would not receive any alimony. Ms. Brown became emotionally distraught. Discussions between Ms. Brown and Ms. Butcher took place in the women's restroom after subsequent pre-trial meetings between the Judge and counsel for the parties, due to the emotional state of Ms. Brown and the fact that she could not control her sobbing.

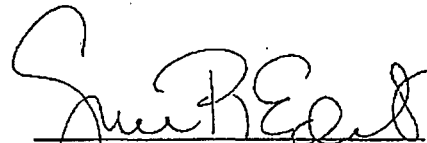
6. During the meetings between Ms. Butcher and Ms. Brown in the restroom, bits and pieces of a proposed agreement were related to Ms. Brown by Ms. Butcher. Upon the case being called by the Court, counsel for the parties informed the Court that an agreement had been reached by the parties. The agreement was recited to the Court by George Speedy, counsel for Mr. Brown. This was the first time that Ms. Brown had heard the entire agreement. Ms. Brown was still emotionally distraught and was still crying. Ms. Brown did not hear, nor understand the entire agreement.
7. Ms. Brown has acknowledged that she responded to the Court's inquiries based upon the advice and instructions of Ms. Butcher. Ms. Brown further relied upon statements made to her by Ms. Butcher that the Judge had stated that Ms. Brown would not receive alimony.
8. The most noteworthy damaging term of the agreement was the waiver of alimony. Ms. Brown's ex husband made substantially more than Ms. Brown at the time and had more earning potential (there was a \$3,000.00 income disparity to Mr. Brown's favor). Ms. Brown had also provided a wealth of information, which indicated potential adultery on the part of her then husband. I could not understand why Ms. Brown would have been advised to waive alimony in the case unless she was perhaps receiving a larger share of the marital estate.

9. Based upon the alimony factors delineated in the South Carolina Code of Laws, §20-3-130, and discussed in numerous cases of the South Carolina Appellate Courts, in my expert opinion, Ms. Brown would have been entitled to a substantial sum of alimony each month.
10. Upon close review of the equitable distribution, I learned that Mr. Brown was actually retaining use and possession of the home for an undetermined amount of time. It is my understanding that Ms. Brown has not received her portion of the division of the properties as of this date. Therefore, she has also been denied the use and earning potential of her portion of the division of the marital properties. This has ultimately had the effect of preventing Ms. Brown from ever receiving her one half equity in the marital residence. Further, based upon the case and statutory law, Ms. Brown would have been entitled to receive as an equitable division one half of the marital estate. In the event that Ms. Brown was paid for her share of the marital home, she still would not have received one half of the marital estate.
11. Ms. Brown also gave up the right to request educational support for the parties' daughter, who was in college and residing with Ms. Brown. Mr. Brown had previously stated that he would pay educational support, but this was not made a part of the recited agreement.
12. Pursuant to my representation of Ms. Brown, I addressed the outstanding issues which were appropriately brought as contempt actions. Pursuant to our contempt claim, which included various actions on the part of Mr. Brown, we argued that the house should be forced to sale. The Court heard evidence and ruled that Mr. Brown was in contempt on many of the issues but the court stated that it had no power to undo the property arrangement, which Ms. Butcher had advised and instructed Ms. Brown to accept. The court did try to implement some safeguards to help Ms. Brown, by requiring an evaluation by a realtor of the marketability and an evaluation of Mr. Brown's efforts to sell the house. *See contempt order which details these issues*

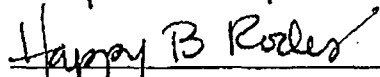
attached hereto.

13. It is my professional opinion that Ms. Butcher has breached the duty owed to Ms. Brown in the following particulars:
- a. failing to consider Ms. Brown's desires for a full hearing on the merits of the case;
 - b. informing Ms. Brown, prior to a full and final hearing on the merits with testimony taken and evidence given, that the trial Judge had stated that she would not award Ms. Brown any alimony from Mr. Brown;
 - c. failing to request a continuance based upon the extreme emotional and distraught condition of Ms. Brown upon call of the case;
 - d. advising or instructing the client that she was not entitled to alimony or, in the alternative, that she would benefit from accepting a settlement which did not include any alimony;
 - e. advising or instructing the client that it was in her best interests to accept a settlement, which denied her any ability to receive any portion of the equity in the marital residence and an appropriate division of other marital properties.

THAT FURTHER THIS AFFIANT SAYETH NAUGHT.


Susan Rawls Edwards

SWORN TO before me
this 4 th day of August 2009



Notary Public for South Carolina
My commission expires: 12-15-2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	FIFTH JUDICIAL CIRCUIT
	)	
Theresa M. Brown,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT
	)	
Janet Butcher and the Butcher	)	2010-CP-28-311
Law Firm, PA,	)	
Defendants.	)	
	)	

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

I am the Plaintiff in the above captioned action.

In addition to my sworn testimony given during my deposition, I add the following.

Shortly after November 2006, the Defendant raised her hourly rate from \$168 to \$250 because she stated that a trial was going to be necessary. She also back dated the attorney's fee from the commencement of my representation.

Prior to April 16, 2007, (the day of the scheduled trial in my divorce case) the Defendant and I had attempted to negotiate a fair settlement with my now ex-husband and his attorney, Bob Hallman. The negotiations were futile due to my ex-husband.

We also had to have contempt hearings against my ex-husband after the Temporary Hearing.

We (myself, the Defendant, and all of our witnesses) were ready to proceed to trial on April 16, 2007. We, the Defendant and I, knew that we would not be able to negotiate any fair settlement, even if we were given the opportunity before trial.

After we arrived at the courthouse, the Defendant went into the Judge's chambers with my ex-husband's new attorney, George Speedy. After a few minutes the Defendant came out of the chambers and met me in the hallway. She had me to set down and she told me that Judge Jones did not want to hear the case, that she would not order my ex-husband to pay me any alimony. The Defendant further stated that she would waive any further attorney's fees. The Defendant stated that we had to settle. The Defendant did not tell me that we could go to trial or explain any further options. Upon hearing these statements and demands from the Defendant, I became very upset. For the remainder of the day, I was crying—harder at times than others. I begged the Defendant to fight for me.

The initial meeting lasted a few minutes. The Defendant left me and returned to the chambers. I retreated to the restroom.

Over approximately the next four hours, I remember only four times that the Defendant came into the restroom to talk with me. The meetings lasted 1-5 minutes. The following statements were made:

1. The Defendant stated the opposing party is keeping all of his bank accounts, and I am keeping mine. He is keeping all of Carolina Confidential. I responded that she was unfair and to fight for me. The Defendant deceived me and told me it was the court's decision. The Defendant then followed up with if I make the judge mad, she will give me far less and may make me pay all attorney fees, including my ex's. I wept more. The Defendant left me in the restroom in an emotional and distraught state of mind knowing I disagreed with this, but refused to help or listen to me on the unfairness of this.

2. The Defendant again came in the restroom and told me that the opposing party was going to get to keep first right of refusal on the marital home and it would stay up for sell. I again told the Defendant this was unfair because she knew me and my situation and that he needed to buy me out now. The Defendant again deceived and threatened me and told me that I may not get the retirement monies I was already getting, if I did not agree with this and this is what the court decided. Because the Judge had already ordered that I could start receiving the military and state retirement, there was no reason to think it wasn't going to be the same thing at the time of the hearing. The Defendant left the restroom leaving me emotionally crying and upset but knew I was not agreeing to this, but ignored and refused to help or listen to me.
3. The Defendant came in for the third time and told me that the opposing party was willing to give \$200.00 to support our daughter, Brandy, while in college, but it would not be in the court decree. I told the Defendant, again this was unfair, and he will never pay it, if it was not in the decree, because she knows how he is. I again asked the Defendant to fight for me and the Defendant left without a comment. I later found out that the Defendant disregarded my request and went to my daughter and told my daughter she could bring her own action against her father and that it was the only thing holding up the divorce and to talk me out of wanting this. The opposing party never paid these monies to help support our daughter.
4. The fourth time the Defendant came in the restroom, she told me to hurry up and get cleaned up because she had to settle because the Judge was waiting

for us and she had other things she needed to do. I could not get it together and the Defendant swept me into court anyways without going over the whole "agreement" with me, or making sure I was emotionally stable to understand or know what she was doing. I believe she had doubts about me going into the courtroom because of her discussions with my daughters. She asked them, "Do you think she is in any- that she is capable of settling this case? Do you think that she knows what she is doing?" I later found out that the Defendant went to my daughters telling them to get me cleaned up and that she had to hurry up and settle.

After the initial meeting in the hallway, I retreated to the restroom. I was in a state of shock and disbelief. I did not recover from the statements of the Defendant and the way she treated me.

I remained in the restroom because I could not control my sobbing. On the occasions the Defendant came into the restroom, she did not attempt to calm me down. Her statements and demands to me made it worse. I believe the Defendant knew that while I was in this emotional state, it would be easier to con, manipulate, and intimidate me.

The Defendant intentionally misled me in making me think that I had no other choice but to settle. She did not give me any other options.

It appears now, that the Defendant never wanted to go to trial, because each time that I met with the Defendant she ignored my requests to fight for me. She just walked away without any response.

I believe the Defendant knew she should not be attempting to "negotiate" a settlement with me, while I was crying over the sinks and stalls in the women's restroom.

When ushered into the courtroom, I was in such an emotional state that I did not stand up for myself. I had no support in the courtroom. My daughters and all my witnesses were not allowed into the courtroom. They were told by the Defendant that they could not come in. I believe the Defendant knew, if my daughters heard what was in the agreement, they would have tried to stop the hearing.

The Defendant was aware of my emotional state.

I was crying throughout the hearing in the courtroom before Judge Jones.

Unfortunately, we don't have a transcript of the conversations in the restroom, but the statements, which were said and the way they were said, are just as important—perhaps more so. The statements in the restroom are very crucial to show my state of mind when we went into the courtroom.

In the courtroom, I may have heard what the Judge was saying, but I was not able to listen or to comprehend what was being said or what was going on. I was still in a state of shock.

The Defendant knew that my ex-husband should not have been given possession of the house until it was sold. At the temporary hearing, he was ordered to list the property for sale. A contempt action had to be brought to force him to list the property.

Even after he was forced to list the property, he put such a high listing price that it would never be sold.

The Defendant had a witness, one of her employees, who would have testified that Mr. Brown, my ex-husband, down graded the property in the presence of realtors and inspectors. At the meeting we were attempting to obtain a proper value for listing the property for sale.

I have been told that during the very few times that prospective purchasers came to view the house, he would down grade the house (and me) to the purchasers. He also painted rooms with undesirable colors. The pool liner had been cut (I believe by him). He did other things to sabotage any offers to purchase the property.

Certainly, if the demand price for the property is way over market value, the property will not sell.

As to the alimony issue, I have never committed adultery. He has with more than one. He and his witness were not credible.

As to credibility, he was in an auto accident prior to our separation. He used the same photographs of his injuries from the auto accident to say that I had physically assaulted him. I have never assaulted him. He has assaulted me.

My ex was receiving a payment from the VA for his partial disability. I don't believe he is disabled. After his retirement from the military and the Kershaw County Sheriff's Department, he formed a new business. It was Carolina Confidential. I helped him form it and did some bookkeeping, etc. At the time of our separation in August 2005, he was working full time at the business. I believe he continued to work full time in April 2007.

His income at the time of the divorce was approximately \$3000 more than mine.

My standard of living has certainly decreased since I had to move out. I have had to live with friends. Now I am living in a small trailer. Prior to the separation I was living in a beautiful 3000 square foot home.

My ex-husband had been represented by Bob Hallman. Mr. Hallman was relieved as my ex's lawyer at the November hearing due to communication problems between them. Just before the April hearing was to be held, he retained George Speedy.

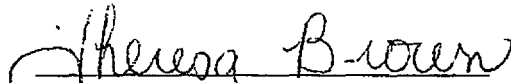
I did not know that George Speedy was representing the Defendant's son at the time of our hearing in April 2007. In reality, the Defendant and Mr. Speedy were acting as co-counsel for Bob Butcher.

I believe that this was a conflict of interest for the Defendant.

I also didn't know that the Defendant used to be partners with George Speedy, or that she clerked in their office before she was a lawyer.

The only change in circumstances in our case between November and our hearing in April was that George Speedy was representing my ex-husband.

After the final divorce hearing, I retained Susan Edwards to represent me in a contempt action against my ex. Judge Murdock said that the divorce decree wasn't fair and that he wanted to help me, but he could not overrule or change the divorce decree.


Theresa Brown

Sworn to before me this 1

day of September, 2011.



Notary Public for South Carolina

My commission expires: 12/29/15

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
:
COUNTY OF KERSHAW) C/A #2019-CP-28-168

Theresa M. Brown,)
) AFFIDAVIT
Plaintiff,)
)
-vs-)
)
Janet Butcher and the)
Butcher Law Firm,)
)
Defendant.)

This is to verify that I, Bernice M. Powell, Verbatim Court Reporter and Notary Public for the State of South Carolina, was present and recorded the deposition of Janet Butcher at the law firm of Melvin Bannister on Friday, December 3, 2010, from 10:00 a.m. to 12:20 p.m. During a break near the end of the deposition and while we were off the record, I inquired of Ms. Butcher as to whether the marital home had been sold. She stated that it had not been sold and that Mr. Brown was currently residing in it.

Bernice M. Powell

Bernice M. Powell

Court Reporter and Notary Public

My commission expires 2/8/2021

PALMETTO COURT REPORTING SERVICE
1178 Louis Leconte Road * Hopkins, SC 29061
Telephone: (803) 783-3724

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Robert L. Brown
Plaintiff,

vs.

Theresa B. Brown
Defendant

IN THE FAMILY COURT OF THE
FIFTH JUDICIAL CIRCUIT

CASE NO. 2005-DR-28-567

AFFIDAVIT OF

ROBERT L. BROWN

I, Robert L. Brown, being first duly sworn, state the following to be truthful:

PHYSICAL ABUSE

1. I am truly embarrassed and saddened to have to go public with this information, but it is totally the truth. I am and was for quite some time the victim of physical abuse at the hands of Defendant, Theresa Brown, and my youngest daughter, Brandy Brown. I state this fully recognizing that this is an Affidavit and that I am under oath. I would never say this if it were not truthful and would never make up such a significant allegation just to gain an advantage in this litigation.
2. I am bringing these facts to the attention of the Court because my wife has completely fabricated her position in this case in an effort to gain what she wants. She, with the help of my youngest daughter, Brandy, are alleging that I committed adultery which is totally untrue. I am only hopeful that the Court will read this Affidavit carefully and give me the opportunity at a subsequent hearing to prove the truthfulness of everything that I am saying here.
3. I was the sole provider for my family from the time we were married in 1980 until 2001 when I was forced to retire due to disabling health conditions. At that time my wife began to see me not as the asset which provided for all of her needs but rather as a liability. Gradually both she and my daughter began a course of conduct in which I was physically abused. They would stomp my feet, kick me in my legs and groin; hit me in the head with their open hand; pull the hair off my head and from under my arms; and pinch me violently. I was embarrassed to be in this situation, and it was quite depressing. I spent many days in my room in bed out of despair and in an effort to avoid them and their abuse.

4. When the conduct persisted, I began to take pictures of myself so that I could document what they were doing. Even though I had no intention of going public with what was occurring because I did not want to harm my daughter, I was hopeful that they would stop. Both of them were quite upset over my actions in taking the pictures, but the abuse continued. They were more cautious in where they attacked me and would stomp my foot or violently pull the hair under my arms.

I recognize that this alleged conduct is in great contrast to the appearance of the two women who you will see as you raise your eyes from this Affidavit, however, I swear to God that my words are truthful.

SEPARATION AND DEFENDANT'S ADULTERY

1. My wife began staying out all night and not coming home in June 2005. My daughter had been living in our home, but when I refused to allow her to move her boy friend into our home, she became angry and moved out on May 27, 2005. At that time she moved in with her boy friend, Brian Bradley, and lived with him through the summer.
2. Shortly after my daughter left, my wife began staying out all night. On June 3, 2005, she announced that she was no longer going to stay in our home, and she packed up a great percentage of her clothes and left. She returned June 10, 2005, knocked on the door and asked if she could come in to get more of her clothes. As she left, she said you can burn the rest of my stuff, and I'll buy more.
3. On July 22, 2005, I caught her in adultery with Ben Rabon at his home. We have not lived together as husband and wife since that time. I can give more details later, but let me briefly explain how I happened to observe them. My wife stopped by the house the day before and Ben Rabon (with whom I has suspected she was having an affair) pulled up behind her on his motorcycle and acted like he wanted to borrow a wrench to tighten his mirror. He only lived a short distance away. I don't know whether they didn't expect me to be at home or what, so he just made up an excuse for being there. She took a shower at the house and then left and did not return. The next night she returned again, took a shower, and said she was going for a walk. I asked her if she was going to stay for the night and she said "maybe or maybe not". About 2 hours later when she hadn't returned, I decided to go out and look for her. As I was leaving, Lee Christianson drove up, and he wanted to talk. I told him to just ride with me, and we could talk. When I didn't see her walking, and since it was dark, I drove over to Ben Rabon's house. When I

got to his door, I saw them on the sofa kissing and hugging. They got up and walked back to his bedroom. I went around the house, but there was no light on in his bedroom.. I waited for almost an hour standing in his yard and then waited in my car. I was very mad and wanted to go in, but Lee talked me into leaving. That weekend I confronted my wife, and she denied that she had even gone at Ben Rabon's home at all.

4. My wife has subsequently accused me of adultery, but this is absolutely untruthful and has been made up by my daughter and my wife in order to assist my wife in gaining an unfair advantage in our domestic matter and to gain relief to which she is not entitled.
5. After she began to make accusations regarding adultery, I told her that if her allegations were truthful then she should file for divorce. She told me that she wasn't going to file. I humbly ask the Court to recognize that she took no action in this matter from June '05 until October '05. She had been gone from our home full time since June 3, 2005. She alleges that I committed adultery but she took no action. She says she has no place to stay and needs the home, but she took no action. I finally decided to take action and filed a Complaint on September 21, 2005 (3 ½ months after she had left our home).
6. If my wife was so destitute, as I am sure she will be alleging sympathetically in her Affidavit, why did she not take some action? The truth is that she had no basis for taking an action because I had not committed adultery nor had I done anything else wrong. It was her who had left the marital home and committed adultery.

FULL DISABILITY

1. I am a veteran of the military and the Kershaw County Sheriff's Department. I have unfortunately developed numerous health problems, which have resulted in strokes and a heart attack. I also suffer from high blood pressure and diabetes. Another significant problem I have is vertigo. I have a disease known as "Meniers Disease" which is a degeneration of the structure of the ear. It affects my equilibrium and causes vertigo. I also have a tumor on my pituitary gland. As a result of this combination of significant health problems, I am on full disability with Social Security and receive other disability also. In order to help control my health issues, I take 22 prescription pills a day.

2. As a result of my compromised health condition, I desperately need stability and low stress in my life. It is very important that I have a stable place to live and that is a primary reason I am requesting that the Court permit me to continue to live in my home.

POSSESSION OF MARITAL HOME

1. I was the primary monetary provider for this family for 21 years. It has only been in the last two or three years that my wife has contributed financially for our family. Until then, I paid for everything and never asked her to contribute any of her money to the family. We have our current home and land solely because of my hard work and efforts.
2. My wife left and has not made any contribution toward this home (mortgage, utilities, insurance or anything) since June 2005. I recognize that she is making various allegations and very much wants to get back in the home. She is claiming that she and my daughter are living in difficult circumstances but I believe that this is a contrived situation. She has an adequate income to provide for herself and certainly could afford not to sleep in a double bed with our adult daughter.
3. I again ask the Court to consider that Defendant has been gone from our home almost continuously since June and during this five month period she made no effort to seek the assistance of the Court. She is counter-attacking because I have brought an action against her, and she is making up various lies in order to place herself in a better position. I urge the Court to leave us in the circumstances in which we have been for over five (5) months and allow me the opportunity at a final hearing to demonstrate the truthfulness of all the facts I have stated herein.
4. My wife may allege that I have a trailer in Bishopville that I could use for a home. This is absolutely not true. This "trailer" is actually a storage facility and is totally not habitable. It has no kitchen, no bathroom, no electricity and is currently used by members of my family to store boxes and junk. I do not have another place to live and due to my health I very much need to stay in my home.

THEFT OF ITEMS

1. Since I filed this action, my wife, my daughters, Crystal and Brandy, and Brandy's boyfriend have broken into my home on at least two occasions and stolen my personal property from my office.

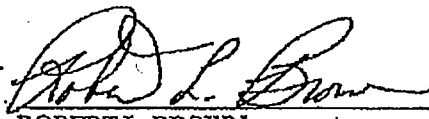
They took the pictures that I had taken of their physical abuse and have further taken my personal files. They have also taken files that were created when I did work as a private investigator.

2. One time when I returned home, I found my daughter, Brandy, crouched down in the bushes outside the house where she attempted to hide. When I approached her she ran. She had a metal detector, camera case, and transformers. She finally threw them down and jumped in the car with Defendant and Brian.
3. I am attaching a list of the various items that were taken and request that the Court order Defendant to immediately return the items without making any duplicates. Some of this material is extremely confidential and should never have been taken by her. Also, they have stolen items, which will prove the truthfulness of what I have stated herein. I also request that she be required to return the golf cart key so that I can use it on my property.

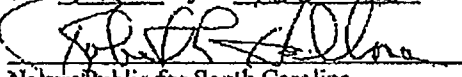
REQUESTED TEMPORARY RELIEF

1. POSSESSION OF MARITAL HOME: Not only do I need the home because of my health, but my wife cannot afford the upkeep nor can she do the physical activity necessary to maintain the home and thirty (30) acres to keep it ready to sell. I ask the court to leave the status quo for the last 5 months and allow me possession of the home. I will fully cooperate in having the home placed on the market for sale.
2. RETURN OF PROPERTY: I request that Defendant be ordered to immediately return the personal property of mine, which she stole from my home and office, and further that she be ordered not to make copies of any thing.
3. ALIMONY: Require Defendant to pay a reasonable amount of money per month to assist in the upkeep of the home and deny Defendant any financial assistance. She is in excellent health, fully employed, and capable of maintaining herself. Additionally, Defendant has committed adultery and should be barred from any alimony.
4. HEALTH INSURANCE: Require Defendant to maintain her own health insurance. She is employed with Blue Cross/Blue Shield and has insurance available to her.
5. VALUE OF MARITAL HOME: Require the parties to establish the value of the marital home either by agreement or through an appraisal paid for by the parties equally.

6. SALE OF MARITAL HOME: After a value for the marital home has been established, require the parties to immediately determine whether either party intends to purchase the equity of the other party or require that the home be placed on the market for sale. Plaintiff agrees to cooperate fully with the realtor and to maintain the home in a condition suitable for sale.
7. VEHICLES: Permit each party to maintain temporary possession of any vehicle in his or her possession. Plaintiff has no objection to his daughter's maintaining possession of their vehicles.
8. RESTRAINING ORDER: Place both parties under an Order restraining them from disposing or transferring of any property or accounts. Plaintiff asserts that there is no reason to place either party under a personal Restraining Order inasmuch as the parties are not harassing each other and that there is no factual basis for doing so.
9. DISCOVERY: Grant both parties the right of mutual discovery pursuant to the South Carolina Rules of Civil Procedure.
10. ATTORNEY FEES: Hold the issue of attorney fees in abeyance until the time of the final hearing.
11. LIFE INSURANCE: Hold the issue of life insurance in abeyance until the time of the final hearing.


ROBERT L. BROWN

SWORN TO and subscribed before me
This 16th day of November, 2005


Notary Public for South Carolina

My Commission Expires: 10/3/15

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Robert L. Brown
Plaintiff,

vs.

Theresa B. Brown
Defendant

IN THE FAMILY COURT OF THE
FIFTH JUDICIAL CIRCUIT

CASE NO. 2005-DR-28-587

AFFIDAVIT OF

HAROLD LEE CHRISTIANSON

I, Harold Lee Christianson, being first duly sworn, state the following to be truthful:

1. I have known Robert Brown since approximately 1995. He was a police officer and would check in at Rays Game Room where I often hung out as a teenager.
2. Mr. Brown was always nice and helpful to all the kids, and I began to talk with him. I found him to be a very nice man whom I trusted. Actually, he was about the only adult I did trust. I have gone to him for advice and help over the years.
3. As a result of my difficult childhood and the impact that I saw that an adult could make on the lives of children, I have begun working with young people. I want to try to make a difference in the lives of young people so that their lives can be better.
4. In late July 2005 I stopped by Robert Brown's home to speak with him. When I arrived, he was coming out of his house. I told him that I wanted to talk, and he said that would be fine if I wanted to ride with him. He indicated that his wife had gone out for a walk and that he was concerned because it had been a long time.

As we drove around, he turned down a driveway and pulled up to a house. He indicated that he knew the person and was going to go in. He invited me to go with him. As we approached the door he stopped and was looking into the window. I naturally looked also. At that time I saw a woman and man on a sofa and they were hugging and kissing. As they stood up and turned to walk off, I realized that the woman was Mrs. Brown. I felt very awkward and just looked at Mr. Brown. He was obviously shocked.

Mrs. Brown and the man walked into another part of the house away from us, so Mr. Brown went to walk around to the back-side of the home. I was nervous and sort of followed close behind him. When we got around to the back, the house was dark, and we

Butcher 05001

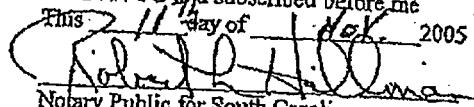
could not see anything in the house. We stood there for awhile and then returned to his vehicle. We sat in the vehicle, and he was considering whether he should go in the house. I encouraged him to leave and we did.

I know that Mrs. Brown was with another man and that they were in a dark part of the house for almost an hour. I could not see what they were doing after they left the sofa area and went to the dark part of the house.

5. If additional information is needed from me regarding this matter, I can be reached at 490 Wheeler Road, Camden, SC 29020.


HAROLD LEE CHRISTIANSON

SWORN TO and subscribed before me
This 11 day of Dec, 2005


Notary Public for South Carolina

My Commission Expires: 10/2/13

Butcher 05002



STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE FAMILY COURT
FIFTH JUDICIAL CIRCUIT
Case No.: 2005-DR-28-567

Robert Brown,

Plaintiff,

v.

Theresa Brown,

Defendant.

FINANCIAL DECLARATION
OF WIFE



Husband: _____

Address: _____

Wife: Theresa Brown

Address: 3735 Roberts Road

Kershaw, SC 29067

Age: _____ Soc. Sec. No.: _____

Age: 46 Soc. Security No.: 450-37-4223

Occupation: _____

Occupation: Customer Service Rep.

Employer: _____

Employer: Palmetto GBA- Blue Cross/ Blueshield

Address: _____

Address: P.O. Box 100300

Columbia, SC

PART A. INCOME AND EXPENSE STATEMENT

Father

Mother

(a) GROSS MONTHLY INCOME from:

Salary and Wages (including commissions,
bonuses and overtime) payable weekly/ monthly/ etc. _____

\$ _____

\$ 2646

Pensions and retirement _____

Disability and unemployment insurance _____

Public assistance (AFDC payments, etc.) _____

Child/spousal support _____

Dividends and interest _____

Rents _____

All other sources: (Specify) _____

TOTAL MONTHLY INCOME

\$ _____

\$ 2646

(b) Itemize DEDUCTIONS FROM GROSS INCOME:

Income taxes (state and federal) _____

\$ _____

\$ 568

Social Security _____

162

Disability insurance	_____	_____
Medical and other insurance	_____	<u>52</u>
Union or other dues	_____	_____
Retirement or pension fund	_____	<u>160</u>
Savings plan	_____	_____
Other (Specify)	_____	_____

TOTAL DEDUCTIONS	\$ _____	\$ <u>942</u>
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(c) NET MONTHLY INCOME	\$ _____	\$ <u>1704</u>
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ESTIMATED MONTHLY EXPENSES: (Specify which party is the custodial parent and list name and relationship of all members of the household whose expenses are included.)

Rent (residence)	\$ _____	\$ _____
Note or mortgage payments (residence)	_____	_____
Real property taxes (residence)	_____	_____
Real property insurance (residence)	_____	_____
Maintenance (residence)	_____	_____
Food and household supplies	_____	<u>750</u>
Utilities	_____	_____
Telephones	_____	<u>80</u>
Laundry and cleaning	_____	_____
Clothing	_____	_____
Medical	_____	<u>28</u>
Dental	_____	_____
Insurance (life, health, accident)	_____	_____
Child care	_____	_____
Payment of child/spousal support	_____	_____
School	_____	_____
Entertainment	_____	_____
Incidentals	_____	<u>240 (Gas)</u>
Auto expenses	_____	<u>295</u>
Auto payments	_____	<u>200</u>
Other installment payment(s) (Insert TOTAL HERE) and (ITEMIZE BELOW)	_____	<u>100</u>

Creditor's Name	For	Monthly Payment Estimated	Balance
Safe Fed. Credit Union	Credit Card	100	500
_____	_____	_____	_____
_____	_____	_____	_____



Other (Specify)

 _____ \$ _____ \$ _____

TOTAL EXPENSES

\$ _____ \$1693

OTHER DEBTS and obligations NOT payable in monthly installments:

Creditor's Name	For	Date payable	Balance
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_____	_____	_____	_____
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All property of the parties known to me includes the following:

Cash on hand	\$ _____	\$ 8
Money in checking accounts	_____	1,500
Money in savings accounts	_____	200
Money in credit union	_____	_____
Money in any other accounts or deposits	_____	19,000 (401(k))
Retirement or Pension Funds	_____	3,500 (IRA)
Life insurance cash value	_____	_____
Value of any stocks or bonds	_____	_____
Value of real estate	_____	_____
Value of all other property	_____	_____

TOTAL PROPERTY

\$ _____ \$24,208

Theresa Brown

SWORN to before me this

16th day of November, 2005

Ronald R. [Signature]
 Notary Public of South Carolina

My commission expires 2/5/2009



STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Robert L. Brown

Plaintiff

vs.

Theresa B. Brown

Defendant.

IN THE FAMILY COURT

FIFTH JUDICIAL CIRCUIT

FINANCIAL DECLARATION

OF ROBERT L. BROWN

FILE NO. 2005 DR 28-567

Husband: Robert L. Brown
Address: 2591 Old Stagecoach Road, Cassatt, SC
Age: 58 Soc. Sec. No. 249-76-5259
Occupation: Retired - Disabled
Employer: _____
Employment Address: _____

Wife: Theresa B. Brown
Address: _____
Age: _____ Soc. Sec. No. _____
Occupation: _____
Employer: _____
Employment Address: _____

PART A: INCOME AND EXPENSE STATEMENT

- a) Gross monthly income from:
- Salary and wages (including commissions, bonuses and overtime)
 - payable ☐ weekly / ☐ monthly/etc.
 - Pensions and retirement
 - Social Security
 - Disability and unemployment insurance
 - Public assistance (AFDC payments, etc.)
 - Child/spousal support (prior marriage, etc.)
 - Dividends and interest
 - Rents
 - All other sources: (Specify):
 - VA Disability Compensation

TOTAL MONTHLY INCOME

- b) Itemize deductions from gross income: Income taxes (state and federal)
- Social security
 - Disability insurance
 - Medical or other insurance
 - Union or other dues
 - Retirement or pension fund
 - Savings plan
 - Other (specify)
 - Survivors Benefits for Brandy

TOTAL DEDUCTIONS

- c) NET MONTHLY INCOME

Husband

Wife

	\$0.00	
	\$1,575.00	
	\$1,190.00	
	\$790.47	
	\$0.00	
	\$0.00	
	\$0.00	
	\$0.00	
	\$364.00	
	\$919.47	
	\$60.03	
	\$0.00	
	\$0.00	
	\$0.00	
	\$0.00	
	\$0.00	
	\$13.08	
	73.11	
	3846.36	

SCCA 430a (5/02)

Butcher 04669

ESTIMATED MONTHLY EXPENSES: (Specify which party is the custodial parent and list name and relationship of all members of the household whose expenses are included)

	Husband	Wife
Rent (residence)	0.00	
Note or mortgage payments (residence)	783.82	
Real property taxes (residence)	54.16	
Real property insurance (residence)	138.00	
Maintenance (residence)	250.00	
Food and household supplies	250.00	
Utilities	191.80	
Telephone	155.72	
Laundry and cleaning	50.00	
Clothing	50.00	
Medical	180.00	
Dental	50.00	
Insurance (life, health, accident, etc.)	38.00	
Child care	0.00	
Payment of child/spousal support (prior marriage, etc.)	0.00	
School	0.00	
Entertainment	50.00	
Incidentals	50.00	
Auto expenses (insurance, gas, oil, repair)	333.00	
Auto payments	328.00	
Other Installment payment(s) (total here & itemize below)	210.00	

Creditor's Name	For	Monthly Payment	Balance
CitiAdvantage	Credit Card	150.00	8000.00
Capital One	Credit card	30.00	1000.00

Other (Specify)	Husband	Wife
Farm & Animal Supplies	30.00	
TOTAL EXPENSES	3733.34	

Other debts and obligations not payable in monthly installments:

Creditor's Name	For	Date Payable	Balance

SCCA 430b (5/02)

Butcher 04670

All property of the parties known to me includes the following:

	Husband	Wife
Cash on hand	0.00	
Money in checking account(s)	1000.00	
Money in savings account(s)	0.00	
Money in credit union(s)	1500.00	
Money in any other account(s) or deposit(s)	0.00	
Life insurance cash value	0.00	
Value of any stock(s) & bond(s)	0.00	
Value of real estate	2000.00	
Value of all other property	12000.00	
TOTAL PROPERTY	16500.00	

Sworn to and Subscribed before me
this 16th day of November, 2005)

[Signature]
Notary Public for South Carolina)

My Commission expires 10/3/13)

[Signature]
Signature

[illegible]

² Set forth amount and source of downpayment and/or full purchase price (if not financed); original amount and source of mortgage payments; and names of persons who signed notes, mortgages, security agreements, and power renunciations.

Set forth the name of lending institution or other lienholder. The balance should be given as of the date of filing of the action or such other date as may be proper under governing law.

Butcher 04672



_____	\$ _____	\$ _____
_____	_____	_____
TOTAL EXPENSES	\$ _____	\$1693

OTHER DEBTS and obligations NOT payable in monthly installments:

Creditor's Name	For	Date payable	Balance
_____	_____	_____	_____
_____	_____	_____	_____

All property of the parties known to me includes the following:

Cash on hand _____	\$ _____	\$ 8 _____
Money in checking accounts _____	_____	1,500 _____
Money in savings accounts _____	_____	200 _____
Money in credit union _____	_____	_____
Money in any other accounts or deposits _____	_____	19,000 (401(k)) _____
Retirement or Pension Funds _____	_____	3,500 (IRA) _____
Life insurance cash value _____	_____	_____
Value of any stocks or bonds _____	_____	_____
Value of real estate _____	_____	_____
Value of all other property _____	_____	_____



TOTAL PROPERTY	\$ _____	\$24,208
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SWORN to before me this _____ day of November, 2005

Notary Public of South Carolina

My commission expires _____



The Butcher Law Firm, PA

Attorney and Counselor at Law

1124 LITTLE STREET
CAMDEN, SOUTH CAROLINA 29020
POST OFFICE BOX 128
CAMDEN, SOUTH CAROLINA 29021

Telephone: 803.432.2088

Facsimile: 803.432.3066

Janet T. Butcher

April 20, 2006

Ms. Theresa M. Brown
2701 Dovefield Road
Elgin, South Carolina 29045

RE: Retainer Letter - Divorce

Dear Theresa:

I am sending this new retainer letter because Ron has left the firm. This letter is to confirm that you have retained me to represent you in the above-referenced action.

As we discussed, I charge \$225.00 per hour for my time, but with your discount I will charge you \$168.00 per hour which will be charged against your retainer. Phone calls, letters, review of necessary correspondence, and preparation for trial are examples of some of the kind of work that I will be charging you on your case. In addition, I charge a minimum of \$300.00 for every court appearance, no matter how short. You are responsible for all costs including but not limited to filing fees, services of process, depositions, long distance charges, copy and fax costs, and all other costs related to your case. I also charge for mileage at the IRS prevailing rate, and travel time at \$100.00 per hour. My paralegal will be assisting you from time to time. Her time with you in person or on the phone is charged by the office at a rate of \$45.00 per hour. My law clerk might also assist you and his time is billed at \$85.00 per hour, and my associate's time with you is billed at \$100.00 per hour.

You have been advised that mediation may help resolve some or all of the issues in your case. You will also be responsible for all costs of mediation.

As we discussed, you may want to consider arbitration, mediation, or other alternate methods of dispute resolution regarding some of all the issues in your case. If you have any questions about this, please phone me.

I DO NOT GIVE TAX ADVICE. YOU ARE RESPONSIBLE FOR CONSULTING YOUR CPA. You authorize me to hire such experts as are necessary to present and prepare your case. This Agreement **DOES NOT INCLUDE** any amounts for representation in an appeal, and an additional fee will be charge prior to representation in any appeal.

At the end of your case, your file will be maintained in our office. If you wish at anytime to have a copy of the file, please let me know. If any of your funds remain in our trust account at the end of your case, we will return them to you or your designee. If we cannot locate you or your designee after 60 months, we will transfer any remaining money to the South Carolina Abandoned

Butcher 04824

Property Section of the State Treasurer of South Carolina.

Please sign and return the enclosed copy of this letter as acknowledgement of your Agreement. If I do not receive a signed copy of this Agreement, I will withdraw from representation. If a disagreement arises between us regarding the fees charged or your bill, we agree to submit the disagreement to the Fee Dispute Committee of the South Carolina Bar, and we will both be bound by its decision.

If this letter does not accurately reflect our Agreement or if you have any questions, please call me. We appreciate the opportunity to serve you. We are always willing to discuss your bill or our services.

Again, we look forward to a mutually beneficial relationship. We ask that you call us if you should have any questions or if we may be of service in any way.

With best wishes, I am

Very truly yours,

Janet T. Butcher
Janet T. Butcher/lgb

Enclosure: SASE
Copy of Retainer

I consent to the terms set out in this letter.

Theresa Brown
Theresa M. Brown

Date: *042206*

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
:
COUNTY OF KERSHAW) C/A #2019-CP-28-168

Theresa M. Brown,)
)
Plaintiff,)
)
-vs-)
)
Janet Butcher and the)
Butcher Law Firm,)
)
Defendant.)

DEPOSITION OF
SUSAN RAWLS EDWARDS

Thursday, January 20, 2011

2:00 p.m. - 5:45 p.m.

The deposition of SUSAN RAWLS EDWARDS was taken at the offices of Melvin D. Bannister, Attorney at Law, 5115 Forest Drive, Suite G-1, Columbia, South Carolina, on the 20th day of January, 2011, given before Bernice M. Powell, Verbatim Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

BERNICE M. POWELL, COURT REPORTER
1178 Louis Leconte Road * Hopkins, SC 29061
Telephone: (803) 783-3724

1 that ultimately we filed an amended contempt complaint to
2 include many of the things that were not addressed in the
3 original contempt complaint, which had been continued, I
4 believed.

5 Q Okay.

6 A I don't think it had been heard.

7 Q After meeting with her, you prepared an amended
8 complaint?

9 A Amended contempt, yes.

10 Q For --

11 A I don't know if I drafted it. It was a contempt
12 as a complaint or a rule to show cause with an affidavit.
13 I can't remember.

14 Q Well, I noticed that it's captioned with her as a
15 plaintiff.

16 A Yes.

17 Q So I'm assuming it was a petition. I think it
18 referred to her. It might have been petitioner. But,
19 anyway, she was the one as the petitioner as opposed to the
20 underlying divorce action?

21 A That's right. That's right.

22 Q Okay. And you've given me a file today which I
23 understand to be your complete file --

24 A Yes.

25 Q -- with regard to that action --

1 it through a contempt, is that right?

2 A Right. And I think that's when he did draft
3 something that he sent. It just didn't meet their
4 approval.

5 Q If I understand correctly, there was a time when
6 he sent something in, and it sat for a while on the judge's
7 desk, and he finally ended up sending one again. Is that
8 your understanding, as well?

9 A On the QDRO issue?

10 Q Yes. I thought I saw a letter from his --

11 A I think that was actually the actual contempt
12 order.

13 Q Oh, okay. That was the contempt order?

14 A I think that's right.

15 Q All right. Who drew the contempt order?

16 A I did.

17 Q You did it, okay. Now, with regard to these e-
18 mails, I also see a series of e-mails back and forth
19 between you and Ms. Brown. Specifically, I noticed that
20 there was an e-mail talking about finding a legal lawyer.

21 A Yes, that's correct.

22 Q And there's one from you to her and then one from
23 her back to you saying she hasn't yet found a --

24 A That's right.

25 Q I'm not sure of the exact language, something

1 like legal --

2 A I'm familiar with what you're referring to,
3 that's correct.

4 Q Yes, okay. So I'm gathering from that, and I'm
5 asking you, that you were helping her to find a lawyer to
6 sue Ms. Butcher?

7 A I was helping her find somebody to evaluate the
8 case, to decide if she had a claim against Ms. Butcher,
9 yes.

10 Q Okay. So had you at that point rendered an
11 opinion to her about the case?

12 A I don't know that I ever said anything negative
13 about Ms. Butcher to Ms. Brown. It was glaringly obvious
14 that she needed help. There were going to be certain
15 things that were just not going to be -- we just weren't
16 going to be able to cure.

17 I think we cured as many of them in the contempt
18 as were possible to cure. But it really didn't have to be
19 said that more needed to be done. So I did make calls for
20 Ms. Brown.

21 Q Okay. You did make calls?

22 A I did.

23 Q Who did you call?

24 A I called Eric Bland.

25 Q Okay.

1 A Yes.

2 Q Okay. And did you tell them what you thought was
3 the basis for that?

4 A I don't know that I went into great detail. I'm
5 sure I said it's a domestic case, which, you know, a lot of
6 lawyers don't believe there -- I mean, we all know that
7 damages are sometimes an issue in a domestic case. It
8 certainly probably wasn't worth Eric Bland's time, and I
9 think he was very honest with me about that.

10 And he may have been the person that referred me
11 to Daryl Hawkins. And I think around that time Daryl may
12 have become ill. There was an ancillary reason that we
13 didn't go forward with Daryl, but it wasn't as if he
14 evaluated it and said he wasn't going to take it.

15 Q I think there was a time something happened.

16 A Yes, I think he got shot.

17 Q It seems like he got shot. Yes, something like
18 that happened. So you've told me about those. So Eric
19 Bland basically said he did not think that it was a case
20 that would give rise to a claim large enough for him to
21 want to handle it?

22 A He didn't say that specifically. He just said he
23 generally did not take domestic cases. He did not evaluate
24 this case substantively. We did not get into the facts of
25 the case.

1 Q Okay. Now, I notice at the beginning of your
2 file that there is a series of bills.

3 A I printed those off today for you, because I
4 didn't have those in the file.

5 Q Okay. So these are your time records. And so
6 you did bill for your work --

7 A I did.

8 Q -- during this time period that you were
9 representing Ms. Brown?

10 A Yes, I think that Ms. Brown -- I think Nexsen,
11 Pruet sent me a check for \$5,000 as a retainer.

12 Q Okay.

13 A I billed off of that retainer. And at some
14 point, I think that Theresa received \$1,500 in attorney
15 fees from the contempt, and I credited those to her. And I
16 believe I refunded her some money, but I can't remember the
17 exact amount.

18 Q How much did you charge her in all?

19 A It would be in those records.

20 Q You want to take a look at them?

21 A (Whereupon, the deponent examined the records.)
22 I want to say --

23 Q And I don't need the exact hours, because I know
24 you're giving me copies of those. I can always go add
25 those up later. But just rather than for me to try to

1 piece it together, since we're short on time.

2 A She had a balance with us of \$1,710 that we
3 refunded to her.

4 Q Okay.

5 A But that includes the credit, the \$1,500 credit
6 of fees that we received from the contempt. If you look
7 here --

8 Q Overall, by the end of the time --

9 A I filled her \$4,790.

10 Q I've got you.

11 A She was refunded \$1,710.

12 Q So you charged her approximately \$3,000, then,
13 for your representation?

14 A No, I charged her \$4,700.

15 Q And then she got \$1,700 back?

16 A Correct.

17 Q That you had over and above the \$4,700?

18 A No, I think I --

19 Q Is that money that the Court ordered him to pay?

20 A Yes.

21 Q Okay. So you charged her \$4,700, and she paid
22 you \$4,700. And then when you got the --

23 A Correct.

24 Q -- ex-husband, Mr. Brown, paid Mr. Speedy, and he
25 sent you a check and it cleared the bank, you sent it to

1 her?

2 A That's right. Actually, it was some months
3 later. We continued to do some work for her, but I don't
4 think I charged her for the work I did.

5 Q Okay. But during this time period when you are
6 representing her in the contempt action, if I understand
7 correctly, you're charging her on an hourly basis?

8 A Yes.

9 Q And that would be how much per hour?

10 A It should be on the bill, maybe --

11 Q A hundred and seventy-five?

12 A -- a hundred and seventy-five.

13 Q And do you know if Eslinger had charged her, in
14 addition?

15 A No, she did not. I know that she charged her for
16 the consultation. And the time that we spent going over
17 the file, I did not charge Ms. Brown for that, I don't
18 believe.

19 Q Do you know if Ms. Eslinger did?

20 A Yes, she did. There was a \$7,500 retainer, and I
21 think \$3,500 of that stayed with Ms. Eslinger.

22 Q Thirty-five hundred. So handling the contempt
23 action between you and Ms. Eslinger cost Ms. Brown, then,
24 \$4,700 plus \$2,500?

25 A I don't know that that's accurate, because I

1 that day. And I believed her when she told me I lost them.

2 Q Okay. This is the amended rule and a copy of the
3 decree and so forth, which we'll go over in a little while?

4 A Yes.

5 Q The qualified domestic relations order that was
6 finally filed and sent to the State Retirement was one that
7 you helped to draft it, if I understand correctly?

8 A I think that's right.

9 Q Okay. Now, we've got a copy of the settlement
10 here when you were in front of Judge Jones. You had that
11 in your file at the time, is that accurate?

12 A I think that I -- yes, I did.

13 Q Okay.

14 A I think I ordered a copy of the transcript -- or
15 somebody did.

16 Q Do you know where the original of that transcript
17 is? Would you have gotten that, do you think?

18 A No, I don't. Let me, if you don't mind me
19 looking at it.

20 Q Sure.

21 A That may have been in Ms. Brown's file.

22 Q Okay.

23 A I don't know if I asked for it. I don't
24 remember. I think I may have correspondence requesting it,
25 and I know I don't have that in the file. So I don't think

1 A They had to have been around the time of the
2 contempt.

3 Q So would these notes have been in preparation for
4 the contempt hearing?

5 A Yes.

6 Q Okay. And if I understand them, one is her --

7 A Her entry into the home.

8 Q The major points with regard to Ms. Brown's claim
9 that she was not allowed in the home to get her things.
10 And was it Crystal or Brandy?

11 A I think Brandy -- whichever daughter was at The
12 Citadel, I think. Yes, Brandy came.

13 Q Okay.

14 A I think the other daughter was out of state at
15 the time.

16 Q Okay. And if I understand this correctly, the
17 claim was that the father would not, or that Mr. Brown
18 would not, let them in the house?

19 A It was actually a little worse than that. But we
20 don't have to go into it now, if you don't want to. The
21 judge ordered it from the bench that she could leave the
22 courthouse and go retrieve her things.

23 When she got to the house, he called the police.
24 She had no order to show the police, because it had been
25 announced from the bench.

1 Q All right, now, let's back up. Let's back up.
2 You're talking about on a prior occasion --

3 A I'm talking about the decree, at the day of the
4 divorce.

5 Q The day of the divorce decree?

6 A Yes.

7 Q The judge ordered that she could go to the house
8 and get her things --

9 A Right.

10 Q -- right then and there?

11 A Yes.

12 Q And, of course, there's no written order at that
13 point?

14 A Right.

15 Q And so she does that?

16 A Right.

17 Q And the husband or -- well, I guess still husband
18 at that point, because there's no written decree -- Mr.
19 Brown, at any rate, calls the police on her?

20 A Right.

21 Q Okay. And below that it says, "Got clothes
22 only."

23 A He had her clothes in trash bags, what he
24 represented to be her clothes. And I think he -- I don't
25 remember the exact testimony, but my recollection as I sit

1 here today is that when she got there, he purported to have
2 packed her clothes into trash bags.

3 And he said, "Here are all your things," and that
4 might have been on the second trip back, because the first
5 trip I believe she was precluded from entering because the
6 police did not allow her to enter the house.

7 Q Okay. And then below that, it says, "Cell
8 phones, rings, suits are missing, Christmas ceramics."

9 A Those would have been -- I was probably planning
10 on who was going to testify to what.

11 Q And these were things that Ms. Brown said were
12 missing?

13 A Yes.

14 Q Okay, all right. So if I understand correctly
15 with regard to the day of the divorce hearing and what she
16 tried to do and was not able to do, what she said and what
17 Brandy, her daughter, would also say --

18 A Right.

19 Q -- was that when she got there, just as you
20 recited occurred, is that accurate?

21 A Yes.

22 Q Okay. And you wrote that down to be prepared to
23 be able to present that at the hearing?

24 A I think Brandy -- if we're talking substantively,
25 for some reason I don't think Brandy was with her on the

1 first trip. I think she had a friend with her.

2 Q Okay.

3 A I may be wrong on that.

4 Q Ms. Risher?

5 A I think that's right.

6 Q Okay.

7 A I think she had a friend, but then Brandy ended
8 up coming later. And Brandy had been in the house and had
9 seen what things were missing before that day, I think.

10 Q Okay. Of course, this is before you got involved
11 in the case --

12 A Yes.

13 Q -- and so you obviously --

14 A Yes.

15 Q -- were not there --

16 A Right.

17 Q -- just as I was not there?

18 A Absolutely.

19 Q Okay. And the witnesses listed on the right-hand
20 side, are these the witnesses you had there or were going
21 to have there? I see Crystal's name --

22 A I think those were probably -- I was probably
23 contemplating who all we needed --

24 Q Okay.

25 A -- because I can tell you that I didn't call Ms.

1 Risher. I didn't call Rhonda Bradley, I don't think.

2 Q Okay.

3 A I think -- and we were on a little bit limited
4 time. But for some reason, I think I only called Brandy
5 and Theresa.

6 Q All right.

7 A I think the transcript -- yes.

8 Q So the transcript was actually going to be
9 introduced into evidence in support of the contempt, is
10 that accurate?

11 A Yes, because it supported her testimony that
12 Judge Jones had said, "You can go get your things," and had
13 no order.

14 Q I've got you. So if I understood you correctly,
15 according to Ms. Brown, the judge in that transcript or in
16 that settlement hearing when the divorce was granted -- and
17 it'll show in there -- said, "Go now to the house and get
18 your things" --

19 A I don't think that that's --

20 Q -- "or go within the next 24 hours, something
21 like that"?

22 A I want to take time to look at the transcript,
23 because I don't know that her exact words were "Go now." I
24 think that it seemed to be everybody's understanding that
25 they were leaving then.

1 She had been waiting for a long period of time
2 for her personal belongings. Her fear -- and I had never
3 seen this done in a case, but somehow they had agreed to
4 auction off all of their belongings.

5 Q Right.

6 A And she was going to only get her personal
7 things.

8 Q So she wanted to go get those?

9 A Yes.

10 Q I've got you, okay.

11 A But I don't know the exact verbiage the judge
12 used.

13 Q Semicontemporaneously, then, to the actual
14 granting of the divorce, she was to go over there and get
15 that, is that accurate?

16 A Yes.

17 Q And she did -- or tried to?

18 A She tried.

19 Q I've got you, okay. So you would have had the
20 transcript, then, as an exhibit to demonstrate what the
21 judge had said and then the police report to show that he
22 had called the police?

23 A Sounds like a good plan to me at this point.

24 Q Am I accurate?

25 A I think that's right.

1 Q I'm trying to make sure I'm getting that right.

2 A I think that's right.

3 Q And then down below that, the savings bonds were
4 an issue because he had not provided her with the savings
5 bonds that she was entitled to, one-half of what was --

6 A That's right.

7 Q And if I recall correctly, his reasoning was that
8 she had some. And what she said and you said at the
9 contempt hearing was that those were bonds provided to the
10 children by her parents that had not --

11 A That's right.

12 Q -- been given to her and were not hers, and that
13 she --

14 A I think that's right.

15 Q -- might get them someday, but there's no
16 completed gift there, if I read the order correctly.

17 A That's right.

18 Q Is that accurate?

19 A I think that's right. He was requesting ones
20 that her parents had given her --

21 Q All right.

22 A -- in exchange for these.

23 Q And then there's the golf cart issue?

24 A Yes.

25 Q Which, of course, is recited in the order as to

1 Q Well, unless Ms. Brown was saying "Look, I'm
2 never going to get it" --

3 A Sure.

4 Q -- "so could we get him to buy me out, my
5 portion?"

6 A Right. I think that might have had to do -- yes.
7 And that may have had to do with the auction. I'm speaking
8 out of school, but for some reason I didn't think the
9 auction was going to occur until the house sold. I think
10 that's right.

11 Q Yes, we'll look at the decree in a little bit.

12 A Right, that would help.

13 Q You're accurate on that, though. I think it's 30
14 days after.

15 A I have not looked at the decree to prepare today,
16 so I apologize for that.

17 Q Okay. And then we've got a Wachovia/K-mart
18 account turnover. And as it turned out, there wasn't any
19 K-mart account, is that accurate --

20 A I think that's right.

21 Q -- that was ever found --

22 A That's right.

23 Q -- that you know of?

24 A I think that's right.

25 Q Okay. Number three on the next page.

1 A Are you on the April 2nd header page?

2 Q No, I'm off of that.

3 A Okay.

4 Q I'm on the next page.

5 A The contents?

6 Q Well, let me see. Did I miss something? I guess
7 we ought to go back to that April 2nd page for just a
8 second. There's one thing here that I'm not sure on. At
9 the very top, it says "low appraisal" down to the word
10 "high." Do you know what that's talking about?

11 A I could have been on the phone, and, no, I don't.

12 Q I'm trying to decipher that very top word on the
13 right-hand side. Is that "subpoena"?

14 A Yes.

15 Q Okay. "Wachovia to his state retirement three
16 sub. to court," do you know what is?

17 A I don't.

18 Q Okay. And you've got "appraisal." Then below
19 that, it's "Camden."

20 A April 2nd, Wednesday, I don't know what the
21 significance of that day is. This could have been the day
22 I met with Vickie. I don't know.

23 Q And this would be your notes probably from that,
24 if it was familiar?

25 A I don't know. I don't know. I can probably -- I

1 receive contact from them about that, or did you know that
2 when it was happening?

3 A I don't remember. I don't remember the sequence
4 of that. I don't even think Mr. Bannister remembers the
5 sequence. But I would assume that Ms. Brown had given Mr.
6 Bannister my name to say, "She represented me and probably
7 would be willing to help," and he probably contacted me as
8 a result. But I don't know.

9 Q Do you remember how you got involved in this case
10 as an expert witness?

11 A Mr. Bannister asked me if I would be willing to
12 provide an affidavit, an expert affidavit, in conjunction
13 with the case, and I said yes.

14 Q Okay. Looking at this affidavit, it is dated
15 August 4, 2009.

16 A Do you mind if I refer to my copy?

17 Q Go ahead and get your copy out.

18 A All right.

19 Q That's a good thing.

20 A Okay.

21 Q When would you have first agreed to provide the
22 affidavit?

23 A I don't know, but it would have been -- I don't
24 know.

25 Q Was it in proximity to when it was actually

1 Q Okay, all right, very good. Now, going over your
2 affidavit, in order to prepare this affidavit, tell me what
3 you would have reviewed and considered to arrive at your
4 affidavit.

5 A I would tell you that -- I'll be very candid. I
6 did not review this file before my testimony here today. I
7 sat in Melvin's office and made sure I had everything in
8 order for about the ten minutes that I waited for us to
9 begin, ten or fifteen minutes. So what I've told you so
10 far today is based on my recollection of what happened when
11 I represented her and your refreshing of those
12 recollections with various notes of mine.

13 But this case is pretty clear in my mind, because
14 of all the people that I have represented since 2007, she
15 would probably be the person that I have felt the most
16 empathy for, for what had happened to her.

17 Q Back to my question, though. What would you have
18 reviewed in order to arrive at your opinions that you put
19 into this affidavit?

20 A I would have reviewed the actual divorce decree.
21 I would have probably re-reviewed the notebooks, if I still
22 had them. I don't know that I still did. I just don't
23 remember. I would have reviewed everything that we've sat
24 and reviewed today.

25 Q Okay. Did you meet again with Ms. Brown or

1 Mr. Speedy. Did you ever talk to him about what occurred
2 at the time of the merits hearing?

3 A Yes, we did talk about it.

4 Q What did he tell you about that?

5 A I think he thought that it had been a very --
6 well, I don't know that I can speak to what he thought. He
7 commented that it had been a difficult day.

8 Q Okay. Anything else?

9 A Probably, but that's what I can recollect at this
10 point.

11 Q So in terms of your opinions here today, there
12 was nothing other than it was a difficult day, according to
13 him, that you would have taken into consideration, besides
14 what's been told you by your client at that time, Ms.
15 Brown, and her two daughters and a review of the
16 notebooks --

17 A And I think my meeting --

18 Q -- and the transcript?

19 A And my meeting with Vickie, as well.

20 Q So you did take into consideration her opinion in
21 arriving at your --

22 A I'm not going to -- you don't sit in a meeting
23 with someone who has her level of expertise and discount
24 what she -- if you're asking me if I'm going to say,
25 "Vickie believes this; therefore, I believe all of this,"

1 and "Vickie said," and "Vickie said," I'm not suggesting
2 that.

3 But I'm telling you that certainly that we had
4 where we dug through the documents was something that I
5 took into account in my representation of Ms. Brown and in
6 my preparation of this affidavit.

7 Q Okay, then. Going on, then, to your opinions at
8 the time of the affidavit, the next paragraph says, "Ms.
9 Brown has acknowledged that she responded to the Court's
10 inquiries based upon the advice and instructions of Ms.
11 Butcher." That was your understanding at the time from
12 what Ms. Brown told you?

13 A I think that I would be referring to the
14 perfunctory questions asked of every litigant in Family
15 Court as to their understanding: "Do you understand? Do
16 you agree? Is this your agreement?" I would have been
17 referring to those questions.

18 Q And your understanding from your client at the
19 time was that --

20 A Yes.

21 Q -- what she said to the Court in that hearing as
22 to those questions --

23 A Yes.

24 Q -- would have been based upon the advice and the
25 instructions of Ms. Butcher?

1 A Yes.

2 Q Okay. And then from there, you go into what your
3 opinions were at that time?

4 A Yes.

5 Q Now, before we go through those, have those
6 opinions changed?

7 A No.

8 Q So those opinions remain the same?

9 A I would have an additional opinion. I did, in
10 preparation for this review -- and I cannot quote the case,
11 but the Harris Teeter versus Moore Van Allen case.

12 Q And Howell Morrison?

13 A Yes. I did review that case last night, but I
14 can't quote it for sure. But it did call to mind to me
15 that one thing that I probably left out of my affidavit was
16 that but for Ms. Brown not entering the Court, she would
17 not have waived alimony had she gone into Court.

18 Q Okay. I don't think I understood that. Say that
19 for me again.

20 A I don't think I said it very well.

21 Q That's all right. Go ahead, take your time, and
22 state it for me the way you want to say it.

23 A I think that in reviewing a standard of -- you
24 know, what duty was owed to Ms. Brown, I think that had Ms.
25 Brown walked into Court to try this case, as a litigant to

1 have a trial, she certainly would not have waived alimony
2 had she gone forward to trial. And I think I left that out
3 of my affidavit.

4 Q Okay, let me make sure I understand what it is
5 you're trying to get at. If I understand you correctly,
6 what you're saying is that if Ms. Brown had walked into the
7 courtroom to try her case, she wouldn't have gone in there
8 and as a part of her trial, she would not have waived
9 alimony --

10 A Correct.

11 Q -- as part of her trial of the case in the
12 courtroom?

13 A Right. I would assume they would have tried the
14 issue of alimony.

15 Q You assume they would have tried the issue of
16 alimony, okay, all right.

17 A I don't think I was very clear.

18 Q That's okay. And I see what you're getting at,
19 then. In the Harris Teeter case, there were certain
20 defenses that the plaintiff alleged the attorneys had
21 waived when they were trying the case. And you're saying
22 that had this case gone to trial, you don't think Ms. Brown
23 would have waived her right to claim alimony in the
24 courtroom. Is that what you're saying?

25 A That is what I'm saying. I think she certainly

1 A I agree with that.

2 Q Okay. So then it's a knowing settlement, is that
3 accurate?

4 A I guess that would be, if we're applying that
5 standard to this particular case, I think there are some
6 issues that distinguish this particular case from that
7 bright line.

8 Q But you agree with me that, as to the rule, if
9 there is --

10 A That's what the rule says. I absolutely agree
11 with you.

12 Q Okay. And, indeed, a lawyer would be breaching
13 their responsibility if they didn't, if the rule requires
14 them to do it. Is that not accurate? In other words, you
15 can't say, "No, I don't care what you say, client. I'm not
16 going to do that"?

17 A I'm not suggesting that.

18 Q "I don't think that's in your best interests.
19 I'm not going to do that."

20 A I just think that in the area of domestic law,
21 the reasonably prudent thing to do is to make sure your
22 client understands what he or she is agreeing to and is not
23 emotional in making that agreement.

24 If I did that, if I just carry out the wishes of
25 every client I had who called and say, "Do this, get it

1 applying here?

2 A I think that there are lots of things.

3 Q Are you saying that -- here's my question to you.
4 Let me make sure that I'm posing it accurately so you
5 understand what I'm posing. Are you saying that that's
6 something you would not have recommended, and therefore you
7 think she shouldn't have done that? Or are you saying that
8 there's some other standard that should be applied here in
9 the review of what you think Janet Butcher did?

10 A I think we're talking about two different things,
11 because you're talking now about a recommendation to a
12 client. That's one thing. The scenarios you've posed to
13 me today are situations where a client says to me, "Please
14 settle this for me," and I'm obligated to do that. And I
15 don't think that's what happened here.

16 Q Okay.

17 A So your question now is, if Ms. Butcher
18 recommended to Ms. Brown that she waive alimony, would I
19 think that was a breach of her duty of care? If that's the
20 question, my answer would be yes.

21 Q Okay. And what standard do you apply when you
22 say a breach of the duty of care?

23 A I think her duty of reasonable care, exactly
24 what's alleged in the complaint.

25 Q Okay. So if she did do that, then that would be

1 a recommendation, right?

2 A If she did what?

3 Q If she made a recommendation that "We should take
4 this settlement, and you should waive alimony."

5 A If Ms. Butcher recommended that to her --

6 Q Right.

7 A -- that's a different scenario than this --

8 Q Just listen to my question. You're saying, then,
9 that that would be a breach of the standard of care if she
10 made that recommendation?

11 A Based upon these facts, I believe it would be.

12 Q Based upon these facts.

13 A And coupled with the fact that she had a client
14 who was so distraught that I don't know that she was
15 emotionally in a position to be making these kinds of
16 decisions. I think the reasonable care standard would have
17 been to continue it and to allow Ms. Brown time to think
18 about the offer and think about the agreement, and reset it
19 for trial if there was some reason that they legitimately
20 could not go to trial.

21 I think she had a client -- if you believe Ms.
22 Brown and you believe her daughters, she had locked herself
23 in the bathroom and was sobbing uncontrollably. And if the
24 issue is, "Well, Ms. Brown's just an emotional person," I
25 think we know more we should make sure she was secure in

1 A I'm sure he claimed that.

2 Q Okay. Now, let me ask you this question. Would
3 you not agree with me that if a judge believed him, that a
4 judge would likely put that in a negative column in terms
5 of whether or not to award alimony?

6 A I think you can't take it piece by piece, because
7 you've got to look at all 13 factors together.

8 Q Oh, I understand that. But that would be a
9 factor --

10 A If you isolate that factor, that would certainly
11 go in his column, if a judge believed him.

12 Q That would certainly weigh against Ms. Brown
13 getting alimony --

14 A Right.

15 Q -- if the judge believed him?

16 A I think, if you're taking it on Mars with no
17 other factors, yes.

18 Q Okay. And you would agree with me, would you
19 not, that if the financial declaration of Ms. Brown showed
20 that she had a net income that was essentially the same as
21 her expenses, and if he had a net income, albeit higher,
22 that was \$100 more than his expenses, and he had a
23 disability, and the judge believed him, that those factors
24 would weigh against alimony being awarded? Would you agree
25 with that?

1 A I don't think I can agree to that, Mr. Howard,
2 because I've seen Mr. Brown. And if we want to talk about
3 this, there's a particular element of credibility with Mr.
4 Brown that is significant to this case.

5 Q Okay.

6 A So let's say is he were gnome with no abusive
7 tendencies and no intimidation and all those things, and
8 we're looking at each factor individually, as if it's a
9 playing card not in a full deck, but we're looking at
10 factor one and factor two, I'm sure you can pose a
11 hypothetical for me in this case that I can absolutely
12 agree with you, yes, that would count against an alimony
13 award.

14 Yes, that would count against an alimony award.
15 But with Mr. Brown, I think one of the main issues with Mr.
16 Brown that would need to be proven at a trial would be his
17 credibility or lack thereof.

18 Q Okay.

19 A And what my experience was, in the contempt
20 action with Mr. Brown, Judge Murdock was our judge.

21 Q Right.

22 A He passed away on Christmas Day. And Judge
23 Murdock was probably one of the kindest -- I've never seen
24 Judge Murdock angry -- a very kind, good man. And I
25 thought Judge Murdock was going to put Mr. Brown in jail

1 the day of the contempt just because of the way he
2 addressed the Court.

3 It was the most blatant and flagrant treatment of
4 a judge I've ever seen, even in a pro se case. And so that
5 aspect of Mr. Brown is a big part of why I would think in
6 this particular case, because I wouldn't believe anything
7 Mr. Brown said, because Mr. Brown lies a lot.

8 So those are some factors in this particular
9 case. And I can agree with you on various scenarios of the
10 13 factors. But in our particular case, Mr. Brown's a big
11 element in this case.

12 Q Okay. So it's fair to say, then, what goes into
13 your opinions in this case include your view of the
14 credibility of Mr. Brown?

15 A I think witness credibility, beyond the 13
16 factors, is certainly an issue.

17 Q Okay, all right.

18 A One issue.

19 Q So, essentially, your view of your expert opinion
20 here would be that it's based upon your view of the
21 strength of Ms. Brown's case and the credibility or lack of
22 credibility of the opposing case. Is that accurate?

23 A Mr. Howard, I think Ms. Brown would have gotten
24 alimony.

25 Q Can you answer my question --

1 A Yes.

2 Q -- yes or no?

3 A Yes.

4 Q Yes, you do.

5 A I do.

6 Q Okay. Now, that brings up an interesting
7 question, then. Were you aware that Mr. Brown had brought
8 the lawsuit to begin with?

9 A Yes.

10 Q Were you aware that he sued Ms. Brown for a
11 divorce on the grounds of adultery?

12 A I don't recall that, but I'm not surprised by
13 that.

14 Q Okay. Well, let's look at that for a minute, if
15 we might. Now, if you want to, I know in these documents
16 Mr. Brown's affidavit is in here. Do you have that --

17 A No. In front of me?

18 Q -- in front of you?

19 A No.

20 Q Okay. I've got my copy. And I'm going to ask
21 that this be marked as a part of the record, as well. If
22 you want to go ahead and do this, it would be Defendant's
23 Exhibit Two.

24 (Defendant's Exhibit Number Two, Affidavit
25 of Robert L. Brown, was marked for identification

1 purposes.)

2 Q Okay. Now, since you tell me you have not looked
3 at the pleadings of the divorce case, I will ask you to
4 accept as true that Mr. Brown initiated the divorce,
5 seeking a divorce on the grounds of adultery.

6 A Right. I have not looked at those recently.

7 Q Were you aware of the fact?

8 A I think I was, Mr. Howard. I just don't -- as I
9 sit here today, I can't tell you definitively. But I'm
10 sure I read the pleadings a year ago. I just haven't read
11 them recently.

12 Q Okay. Did you take that into account in
13 rendering your opinion?

14 A I would have taken into account --

15 Q For the alimony.

16 A -- everything in regards to alimony, the 13
17 factors.

18 Q Would you have taken into account the fact that
19 under South Carolina law, if someone is guilty of adultery
20 prior to the execution of a written separation agreement or
21 a divorce that they are absolutely barred from claiming
22 alimony?

23 A Yes, but I don't recall seeing any evidence of
24 Ms. Brown committing adultery, at all.

25 Q Okay. Let's look at the --

1 A I'm not telling you he didn't allege it, but I
2 never --

3 Q Why don't you take a minute and read his
4 affidavit? That's part of it there that talks about the
5 separation and adultery.

6 A (Whereupon, the deponent reviewed the document.)
7 Is this the one where he claims that she physically abused
8 him?

9 Q Yes, the same affidavit, which is another thing
10 that he alleged, right -- he alleged physical cruelty
11 against her?

12 A Yes.

13 Q Okay. But if you look at the second page, is
14 where it begins.

15 A Where the truth began?

16 Q Is where it begins with his allegations about her
17 adultery.

18 A Right.

19 Q Okay. Had you ever seen that before?

20 A I have not seen this.

21 Q So you had not taken that into consideration in
22 rendering your opinion, then?

23 A Mr. Brown's affidavit, I have not.

24 Q Okay. Do you want to take a minute and read it?

25 A Yes, but -- okay.

1 Q Why is it irrelevant to you?

2 A Because I don't think Ms. Brown had any fear that
3 Mr. Brown was going to be able to prove a case of adultery
4 against her and thereby eliminate alimony.

5 Q And what is the significance or relevance of
6 that?

7 A I don't think he had an adultery claim any more
8 than he had a physical abuse claim.

9 Q And you base that on what?

10 A I base that on knowing how physically abusive he
11 was to the children and to Ms. Brown and how afraid they
12 were of him.

13 Q Okay.

14 A I base that on my --

15 Q So you're basing that on --

16 A -- observation of him.

17 Q -- your judgment, then?

18 A I'm basing it my --

19 Q Your view of Mr. Brown?

20 A No, I'm basing it on what I learned in the case
21 from my client of what happened historically through the
22 marriage. This is laughable --

23 Q Okay, that's laughable.

24 A -- to say he --

25 Q Okay.

1 A Yes, that is laughable.

2 Q All right. Well, why don't you go ahead and read
3 it?

4 A Okay. (Whereupon, the deponent reviewed the
5 document.)

6 Q You've read that portion?

7 A Yes.

8 Q Okay. Now, is it your understanding -- well, if
9 I understand you correctly, you were not aware of what's
10 said in that affidavit up till now?

11 A Correct.

12 Q Okay. Do you know whether or not there's any
13 further evidence of adultery on the part of Ms. Brown other
14 than what he asserts in that affidavit?

15 A I know that he's a private investigator.

16 Q Well, if you'll --

17 A I don't know if he --

18 Q If you'll answer my question directly, I would
19 appreciate it, and we'll be able to get out of here
20 earlier. Do you know whether or not there's other evidence
21 besides that affidavit or what he says in there?

22 A That was presented to the Court? Are you asking
23 if it was presented to the Court?

24 Q It was presented to the Court, yes.

25 A I do not know.

1 Q Whether it was there in this divorce case that
2 would have been a part of the evaluation as to what --

3 A There was nothing in the discovery, in the file
4 that I reviewed, that had anything about adultery towards
5 Ms. Brown.

6 Q Are you aware of another witness corroborating
7 this evidence that he says is evidence of adultery?

8 A I'm not aware of that.

9 Q Okay. Have you ever heard of Harold Lee
10 Christianson?

11 A I don't know if I have or not.

12 Q Were you aware that he also provided an affidavit
13 as a part of the temporary --

14 A Was it a filed affidavit?

15 Q Yes. Are you aware of that?

16 A It was filed with the Court?

17 Q Are you aware of an affidavit by him as to what
18 he says to corroborate this? Would you like to review it?

19 A I'm asking if it was filed with the Court. Are
20 you asking me if I'm aware of one that was filed with the
21 Court?

22 Q And I'm asking you if you are aware of the
23 affidavit that was a part of the file --

24 A Part of what file?

25 Q A part of the Brown file that Ms. Brown would

1 have carried to you.

2 A Does that mean it's a part of the Court's file,
3 or does that mean it's a part of Ms. Brown's and what Ms.
4 Brown brought me?

5 Q Yes. If you want me to answer your question, yes
6 it was a part of the notebooks for trial preparation that
7 Ms. Brown had taken from Ms. Butcher after the case was
8 concluded --

9 A Okay.

10 Q -- and brought over to you.

11 A Okay. I don't recall a filed copy of an
12 affidavit, but I'm happy to review it to refresh my memory.

13 Q Okay, I'd like to do that, then.

14 (Defendant's Exhibit Number Three, Affidavit
15 of Harold Lee Christianson, was marked for identification
16 purposes.)

17 A (Whereupon, the deponent reviewed the document.)
18 This is not a filed affidavit, but I do not recall ever
19 seeing that.

20 Q Okay.

21 A So I don't -- as far as this goes, this doesn't
22 look like it was ever presented to the Court.

23 Q Okay. My question to you is this, though.

24 A Would it have changed my opinion -- is that the
25 question?

1 Q No. My question to you is this, if Mr. Brown had
2 come to the merits hearing --

3 A With Harold Lee Christianson?

4 Q -- with Mr. Christianson, and they had testified
5 essentially in accordance with those affidavits, and if a
6 court had chosen to believe those affidavits, could the
7 Court have decided not to award alimony?

8 A Based on this affidavit?

9 Q Based upon these affidavits and South Carolina
10 law as to the statutory prohibition --

11 A Well, first of all, he wouldn't be able to --
12 you're saying that if Mr. Christianson came to trial that
13 day and testified?

14 Q Right.

15 A Because he wouldn't be able to present the
16 affidavit.

17 Q Absolutely.

18 A And it hadn't been filed prior.

19 Q He would have to have testified, no question
20 about it. And I'm not asking you if you think the Court
21 would have believed him, wouldn't have believed him, that
22 they might have changed their testimony, might not have
23 changed their testimony.

24 What I'm asking you is, if they had come and
25 testified according to those affidavits under oath, would

1 that not have raised an issue with regard to adultery that
2 a Court would have had to decide? And could a Court not in
3 its discretion have decided to believe those people and
4 ruled that Ms. Brown had committed adultery?

5 A If it was raised in the pleadings, if Mr.
6 Christianson testified, if he met the burden of proving
7 adultery with Mr. Christianson's testimony and his, and it
8 were credible, yes.

9 Q Okay. All right, that's all I'm asking. And I
10 understand -- and you're welcome to tell me -- that you
11 don't believe from a credibility standpoint that would have
12 happened.

13 A I think he would have been laughed out of court
14 with this testimony. And I watched him in court -- I mean,
15 I just can't even describe in the time that I've practiced
16 ever seeing somebody act the way Mr. Brown acts.

17 Q Okay. And if I understand correctly, that is a
18 part of your opinions?

19 A His credibility is an ancillary part.

20 Q That's a part of your opinions?

21 A It's an ancillary part.

22 Q So what you're really saying is in your judgment,
23 you would have told Ms. Brown something else. You would
24 not have told her, "You may not get alimony"?

25 A I would not have let Ms. Brown settle this case

1 didn't comply with things historically anyway. And I think
2 in Ms. Butcher's testimony, she certainly acknowledged that
3 he was difficult.

4 Q And if I understand you correctly, that's your
5 judgment call on it, is that right?

6 A I think it's based on my knowledge, my
7 experience.

8 Q But you're making a judgment call --

9 A I'm telling you what it's based on.

10 Q -- here, is that not right?

11 A I think it's based on exactly what I've told you.
12 If we're going to split words, we can.

13 Q We'll have to, because if I understand you
14 correctly, I'm making a distinction here between your
15 judgment versus some rule of law.

16 A I think the standard of care required, and I
17 think that part of --

18 Q And what's your basis for that? Tell me what
19 your legal basis for that standard of care that you're
20 saying is breached.

21 A Okay. I think a reasonable lawyer in a similar
22 situation, with the same knowledge, information,
23 experience, would not recommend to a client (a) to waive
24 alimony --

25 Q Okay.

1 A -- (b) this issue of the house is a horrible
2 thing.

3 Q Well, we'll go to that next.

4 A And I know you're not there yet. But this is a
5 totality of circumstances, in my opinion. And, thirdly, to
6 have a client be this distressed, personally and
7 professionally I think you owe your client the duty to make
8 sure you are telling your client, informing your client.

9 And I don't dispute when you say was Ms. Butcher
10 wrong or right in coming to her client and telling her
11 client "Hey, the judge said she's not going to" -- you
12 know, "This is the way she's leaning." That happens. We
13 all know that happens.

14 But to go to your client -- I can tell you this.
15 I've been in front of Judge Jones many times, and Judge
16 Jones would never say, "This is what I'm going to do."

17 Q No.

18 A And that's --

19 Q I'm not asking you that. I'm asking you if you
20 have an objective standard that you're --

21 A The objective standard I think that she breached
22 was her duty to give reasonable care to her client and
23 informing in this waiver of alimony --

24 Q Well, let's break it down for a minute, okay? Do
25 you think that there was any breach of a standard of care

1 in telling her that she might not get alimony?

2 A No, I do not.

3 Q Okay. That that was at risk.

4 A Okay, wait a minute. The way you posed it to me
5 over the course of this deposition, I do not.

6 Q Okay.

7 A The way that I believe this woman who I believe
8 to be truthful has reported it, I do believe there was a
9 breach, because I think she coerced Ms. Brown.

10 Q Okay. So your opinions are based upon coercion
11 of Ms. Brown?

12 A No, it's not -- I mean, that's a part of what I
13 think happened.

14 Q And are your opinions based upon that
15 supposition?

16 A Well, that's a different question. What you
17 asked me let's break it down into what I think the standard
18 of care was and did she breach that -- did Ms. Butcher
19 breach that when she reported to Ms. Brown.

20 Q I'm trying to understand what the bases of your
21 opinion was, Ms. Edwards.

22 A I understand. But you're not accepting what I'm
23 saying. And what I'm telling you that if we believe Ms.
24 Butcher and all Ms. Butcher did was come out and say, "The
25 judge said she's leaning against alimony," or "I don't

1 Christianson?

2 A Right. I'm not saying I hadn't seen it. I
3 didn't read it in preparation for today.

4 Q I've got you.

5 A But if it was in that --

6 Q I misspoke, I apologize. What I want to
7 understand, you mentioned that you are of the view that you
8 believe Ms. Brown's description to you of her mental state
9 at the time?

10 A Do I believe Ms. Brown's description? I believe
11 Ms. Brown's description of the facts of what happened that
12 day. Yes, I believe her.

13 Q And as to her mental state, you're basing your
14 opinion on what she says is her mental state at that time,
15 is that accurate?

16 A And her daughter, what her daughter described to
17 me.

18 Q And what her daughter described?

19 A Yes.

20 Q Okay. And to the extent that that may be
21 inaccurate, that would then change your opinion?

22 A If that were inaccurate, if Ms. Brown were a
23 liar, it would certainly change my opinion.

24 Q Okay. Or if Ms. Brown was just exaggerating,
25 that would change your opinion?

1 want to know or look at regarding financial circumstances?"

2 And Ms. Brown responds with what?

3 A "Well, I'm sure he's got some hid, but I've
4 agreed to it."

5 Q Okay. So she's acknowledging to the Court that
6 she at that time doubts that he's told her everything about
7 his finances --

8 A Yes.

9 Q -- given them everything that he's supposed to
10 give --

11 A Yes.

12 Q -- but she wants the Court to approve it anyway,
13 right?

14 A That's what she's answering, yes.

15 Q Now, that's a conscious decision, isn't it?

16 A I don't think in the state she was in it was
17 necessarily a conscious decision. But I certainly
18 understand that a judge would assume that it was, presumed
19 that it was, and I think the judge did everything she was
20 supposed to do.

21 Q And you weren't there, so you have no idea
22 whether --

23 A I'm doing nothing but going on what I've been
24 told, and what I've reviewed, and what I've seen in my
25 client and her family.

1 Q And it's based on what she tells you?

2 A Yes.

3 Q And if you were to find that they walked out of
4 the courtroom and there was almost a few moments of
5 everybody being friendly outside the courtroom door, sort
6 of that relief, including with Ms. Brown, would that change
7 your opinion?

8 A No.

9 Q And why not?

10 A Because she was an abused woman. She was an
11 absolutely terrified woman of this man. And I think they
12 had all learned to play-act with this man in whatever way
13 they had to do. And you're asking me my opinion.

14 I think they would have done whatever they needed
15 to do to be nice. I think she'll be nice to you when you
16 leave. I mean, she's a cordial, nice person.

17 Q Well, you're not saying that she was in such a
18 mental condition that she was mentally ill at the time, are
19 you?

20 A No, I'm saying that she was distraught. I'm not
21 saying she was mentally ill.

22 Q Okay, all right. Of course, obviously, again --

23 A I wasn't there.

24 Q -- you weren't there. But you acknowledge that
25 she answered all of those questions appropriately for the

1 Court to have --

2 A Approved the agreement.

3 Q -- approved the agreement?

4 A Yes.

5 Q And for everybody in the courtroom at least to
6 believe that she understood what she was saying and doing?

7 A I don't know that everybody in the courtroom
8 would believe that, but I can't speak for those people.
9 But she answered the questions..

10 Q And aside from taking a psychiatric exam, there
11 would be no other way to know, would there?

12 A I don't know if there'd be other ways to know or
13 not. I don't know how to speculate about that.

14 Q And you are not a psychiatrist, right?

15 A I am not.

16 Q Okay. Now, you next say that you believe, based
17 upon the decree and the way that it's worded and the
18 settlement that was reached, if I understand you correctly
19 -- well, let's just look at it. Your next opinion has to
20 do with the marital home, looking at paragraph ten.

21 A Yes.

22 Q Well, before we get there, what's your opinion as
23 to what alimony Ms. Brown would have been entitled to?

24 A I think that that would take an analysis of -- I
25 mean --

1 Q You haven't done that analysis?

2 A I have not done that analysis.

3 Q And looking at the financial declarations, did
4 you do any kind of financial analysis such as determining
5 whether or not Ms. Brown's reported deductions from gross
6 income comport with what she paid at the end of the year in
7 taxes or whether or not it's just based on what's
8 withdrawn?

9 A I would be happy to do that, but I have not done
10 that in preparation for today.

11 Q Okay. So you haven't done that kind of an
12 analysis?

13 A No, I have not.

14 Q Okay. Now, in the following paragraph, which is
15 paragraph ten, you say that "It is my understanding" --
16 again, that's based on what Ms. Brown and her daughters
17 tell you, right?

18 A No, I think that would have been based on my
19 representation of Ms. Brown. And after my representation,
20 I did continue to try to help Ms. Gordon, the realtor, at
21 least get some action. I did not charge Ms. Brown for
22 doing that.

23 Q Okay.

24 A But I knew that the house -- he was still in the
25 house and wasn't complying with the sale.

1 Q All right. This says "ultimately had the effect
2 of preventing Ms. Brown from ever receiving her one-half
3 equity in the marital residence." And that's what you
4 opined there. Do you still have that opinion?

5 A To date, she has not received her -- it's my
6 understanding she hasn't received her portion of the equity
7 in the home.

8 Q My question to you, again, is, in this you say
9 that "This has the effect of preventing Ms. Brown from ever
10 receiving" --

11 A Yes.

12 Q -- "her one-half equity in the marital
13 residence."

14 A That's what I said.

15 Q Is that still your opinion?

16 A Yes.

17 Q Okay. So if I understand you correctly, you're
18 saying based upon this decree of divorce, the house will
19 never be sold, and she will not receive her one-half equity
20 in the marital residence?

21 A That's my opinion based on Mr. Brown. Mr. Brown
22 has no reason to sell the house. He's going to continue to
23 frustrate the sale.

24 Q Okay.

25 A And you can pose 50 hypotheticals where Mr. Brown

1 dies and the house is sold at an auction, so maybe the word
2 "ever" is too strong.

3 Q Well, I want to be precise here.

4 A Okay. Well, then I would say the likelihood that
5 Ms. Brown is going to receive her equity in the home is
6 most probably no.

7 Q Most probably, she will never receive it, is what
8 you're saying?

9 A That's what I would say.

10 Q Okay. And do you have -- well, let's look for a
11 moment at the order from the contempt proceeding, okay? I
12 think you've got a bunch of copies in here. You can
13 probably find it faster than I can.

14 A Okay.

15 Q And if you want to find a copy, we can make it a
16 part of this record, assuming you've still got your
17 certified copy in your file --

18 A I don't know that I do.

19 Q -- or I can pull my copy out. I'll pull my copy
20 out, then. Did you find it?

21 A I have it, yes.

22 Q Let's make this the next exhibit, if we can.

23 (Defendant's Exhibit Number Four, Contempt
24 Order, was marked for identification purposes.)

25 Q All right, that's Exhibit Number Four. Now,

1 first of all, with regard to the allegations that the
2 husband has frustrated the sale of the marital residence.

3 A Yes.

4 Q If you'll look at page two.

5 A Okay.

6 Q The first full paragraph, am I not right that it
7 says, looking at the second line of that, "There was
8 testimony from the parties' daughter that Husband has taken
9 various actions to frustrate the sale of the marital
10 residence" --

11 A Yes.

12 Q -- "particularly by painting the walls in a bold
13 orange color and by cutting the liner to the pool such that
14 the water is drained."

15 A Yes.

16 Q Is that accurate?

17 A There was more than that, but, yes.

18 Q All right. But that's what the Court says in
19 this order, right?

20 A Right.

21 Q All right. So the Court says there was testimony
22 from the daughter to this effect?

23 A Yes.

24 Q The Court does not make any finding with regard
25 to that, does it?

1 A Right.

2 Q Okay. So the Court then orders that the realtor
3 who currently has it listed for sale inspect, issue a
4 report. If there's anything that needs to be changed --
5 and I'm summarizing here -- to make it more saleable, then
6 she's to include that in her report.

7 If she finds the home is in need of repairs, the
8 walls are an unusual color, other things need to be
9 repaired, she's going to detail those items to the Court.
10 Husband would be responsible for making the repairs,
11 submitting copies of the invoices and monies spent, to the
12 wife. He can get deduction of it when the sale occurs,
13 provided he's provided those invoices to the wife. Is that
14 accurate?

15 A Yes.

16 Q Okay. So the Court takes action directly to the
17 realtor for the realtor to undertake to alleviate whatever
18 problem there is in that regard. Is that accurate?

19 A That's partially accurate.

20 Q Okay.

21 A Judge Murdock, at the close of that issue, said
22 that he just felt that his hands were tied because he did
23 not have jurisdiction, that he did not have the authority
24 to modify the equitable division. And he felt very bad for
25 this woman.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 :
COUNTY OF KERSHAW) C/A #2019-CP-28-168

Theresa M. Brown,)
)
 Plaintiff,)
)
 -vs-)
)
Janet Butcher and the)
Butcher Law Firm,)
)
 Defendant.)

DEPOSITION OF
SUSAN RAWLS EDWARDS

Monday, February 28, 2011
11:00 a.m. - 11:35 a.m.

The deposition of SUSAN RAWLS EDWARDS was taken at the offices of Melvin D. Bannister, Attorney at Law, 5115 Forest Drive, Suite G-1, Columbia, South Carolina, on the 28th day of February, 2011, given before Bernice M. Powell, Verbatim Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

BERNICE M. POWELL, COURT REPORTER
1178 Louis Leconte Road * Hopkins, SC 29061
Telephone: (803) 783-3724

1 SUSAN RAWLS EDWARDS, after being duly affirmed, testified
2 and deposed as follows:

3 DIRECT EXAMINATION

4 BY MR. HOWARD:

5 Q I've read through what there is so far, and I
6 think we can be very short in the rest of this deposition,
7 unless any of your opinions have changed.

8 A No, they have not.

9 Q Or the foundations for them have changed?

10 A No.

11 Q So everything is good to go with regard to what
12 you've said so far?

13 A I think to the extent I can answer that broad of
14 a question, yes.

15 Q Okay. All right, very good, then. With regard
16 to the issue of damages, you had indicated in a previous
17 part of the deposition that you had not tried to do any
18 kind of calculations or anything of that nature. Is it
19 accurate to say that you're not anticipating providing
20 testimony with regard to those issues?

21 A At this point, I've not been asked to do that.

22 Q Okay, very good. You'll let me know if you are,
23 or at least, Melvin, you'll let me know if you do. I'm not
24 going to waste our time --

25 A Sure.

1 Q -- if you're not being asked to do that. We've
2 gone through your view with regard to having told Theresa
3 Brown -- that is, Janet Butcher having told Theresa Brown
4 that the Judge didn't want to try the case and was not
5 going to award alimony, right, and your opinions with
6 regard to that?

7 A You did ask me a lot of questions about that,
8 yes.

9 Q Okay. You've provided me your opinion about
10 that?

11 A Yes.

12 Q And then we also went through your belief based
13 upon, if I understand correctly, what Ms. Brown told you
14 and her two daughters told you of her condition at that
15 time, mentally and physically. You opined as to what
16 should have been done in terms of continuing the case as
17 opposed to going forward into a settlement hearing before
18 the Court, is that right?

19 A That's a long question. I don't know that I
20 based it solely on what she told me, but a lot was also
21 based on my call in similar situations. I don't want to be
22 held to that. Yes, I absolutely did consider those things.

23 Q Well, we've got what your answers were.

24 A Right.

25 Q And I'm not trying to narrow those --

1 A Okay.

2 Q -- your answers. But if I understand correctly,
3 you have not talked with Janet --

4 A I have not.

5 Q -- Butcher?

6 A No, never.

7 Q You did talk with George Speedy?

8 A Yes.

9 Q And you've told me what he told you. Anything
10 else you can remember that he told you about that day other
11 than that it was a difficult day?

12 A Not to my recollection at this point.

13 Q Okay. Anybody else that you relied upon as to
14 what their recount was of that day -- anyone else, any
15 other witnesses, anyone else that you've talked to? Is
16 there anyone else that you've talked to in arriving at your
17 conclusions?

18 A As to the recount of the day, no. It would be
19 Theresa and the other folks that were there that day. I
20 did discuss the case -- as I testified earlier, I did
21 discuss the case with Vickie Eslinger.

22 Q Right, I understood that. But as to actual
23 eyewitnesses who were there on that day, if I understand
24 you correctly, those are the people whose recounts of
25 that --

1 Q Okay, I just wanted to make sure of that. That
2 was what I thought you had indicated.

3 A Right.

4 Q But it wasn't clear to me. So Theresa then would
5 have gone there that afternoon, you believe, to try to get
6 her things and then the next day, as well?

7 A I think that's right.

8 Q Okay.

9 Mr. Howard: I noticed I don't have the
10 attachments. Do you have Ms. Edwards' affidavit?

11 Mr. Bannister: Yes.

12 A And just to clarify what I just said, I think the
13 transcript shows that they agreed to 2 p.m.

14 Mr. Bannister: Excuse me just a moment.

15 Mr. Howard: All right, why don't you wait till
16 he comes back, so he hears that.

17 *(Off the record.)*

18 Q I just want the specifications. That's what I
19 was looking for. So all of your opinions that you intend
20 to provide at trial are opinions that are already stated in
21 the previous portion of this deposition?

22 A On the issues that we've already discussed, yes.

23 Q Are there any other issues on which you intend to
24 render an opinion?

25 A At this point, no.

1 settlement is in the best interests of a client?

2 A I think that's right. I think that the lawyer
3 certainly has a duty to inform a client of all of the facts
4 that in that lawyer's opinion go towards those issues.
5 But, ultimately, it's the client's decision.

6 Q Does the client's mental condition affect the
7 negotiations or even settlement of a case?

8 A In my opinion, yes. And I would say particularly
9 in a domestic arena, because it tends to be -- and I think
10 I testified to this before -- it tends to be a very
11 emotional time when people are making business decisions.
12 Essentially, dissolution of the marriage often involves the
13 making of financial decisions, business decisions.

14 And people are often doing that at a very
15 emotional time. So I think to gauge and to know your
16 client's mental status at the time they're entering into an
17 agreement is a critical part of practicing law, certainly
18 domestic law.

19 Q Should a lawyer always be honest with the client?

20 A Sure.

21 Q Should the lawyer inform the client of any
22 conflicts of interest?

23 A Yes.

24 Q Potential conflicts of interest?

25 A Yes.

1 Q Or the appearance of a conflict of interest?

2 A Yes.

3 Mr. Howard: I object to the form of the
4 question.

5 Q As to the damages issue, was there any time limit
6 placed on the sale of the house in the decree of divorce?

7 A No, and I think we talked about that in the first
8 part of my deposition last month. When I was asked what I
9 -- and I don't know the exact phrasing of the question, but
10 what I thought the problems were with the agreement, or
11 maybe it wasn't phrased that way.

12 But however I was asked, the thing that I believe
13 I testified to earlier that I felt like really hurt Theresa
14 was the fact that there was no end date on how the house
15 would eventually be divided -- how that would play out, how
16 it would be sold, how it would ever happen on the issue of
17 the house.

18 Q And was that issue dealt with to some extent in
19 one of the contempt hearings?

20 Mr. Howard: Again, I object to the form of the
21 question. You can answer.

22 A Yes, we raised the issue of the house and how --
23 and I'm not sure how we phrased it. I think I have the
24 contempt somewhere. But it was certainly addressed in one
25 of the contempt hearings -- the only one that I handled. I

1 for a conflict of interest at this point?

2 A I am aware, which is what I'm explaining to you,
3 yes.

4 Q Let me rephrase my question.

5 A Theresa said that.

6 Q But do you know of a fact pattern by which you
7 assert there is a conflict of interest that Janet Butcher
8 had in this case?

9 A The only thing that I know is that Theresa raised
10 that as an issue when she met with Vickie, because she had
11 learned after the fact that George had represented Janet's
12 son, I believe.

13 Q All right. So, if I understand you correctly,
14 then, you have not looked into that from a factual point of
15 view to make an opinion as to whether there was or was not
16 a conflict of interest?

17 A I have not, other than just speaking with her.

18 Q And so if we were, for example, in the trial of
19 this case, you would not be rendering an opinion that there
20 was or was not a conflict of interest?

21 A I have not been asked to render an opinion about
22 that.

23 Q And should that change, you'll let me know?

24 A I would let you know, yes.

25 Q All right, thank you very much, then.

1 A Thank you.

2 Q I don't have anything further.

3 A Thank you.

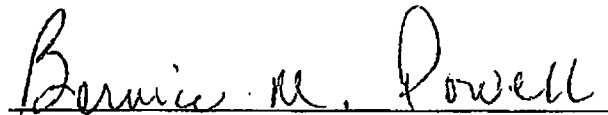
4 (There being no further questions, the deposition was
5 concluded at 11:35 a.m.)

CERTIFICATE

This is to certify that the deposition of SUSAN RAWLS EDWARDS, consisting of Sixteen (16) pages, is a true and correct transcript of the testimony given by said deponent after being duly affirmed; said deposition was reported by the method of Stenomask with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 4th day of March, 2011.



Bernice M. Powell
Verbatim Court Reporter
Notary Public for South Carolina
My Commission Expires: 2/8/2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	CASE NO: 2010-CP-28-0311
	)	
THERESA M. BROWN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JANET BUTCHER AND THE BUTCHER	)	
LAW FIRM, PA,	)	
	)	
Defendants.	)	

- - -
 SEPTEMBER 2, 2010
 - - -

Oral deposition of THERESA BROWN, taken pursuant to notice, was held at 5115 Forest Drive, Columbia, South Carolina, commencing at 10:18 a.m., on the above date before Katy McCormick, Court Reporter and Notary Public in and for the State of South Carolina.

MAGNA LEGAL SERVICES
 210 Wingo Way, Suite 200
 Mount Pleasant, South Carolina 29464
 (843) 654-4630

1 A. We saved money.

2 Q. Was it mostly saved from your husband's income?

3 A. It was saved from both our incomes.

4 Q. And what was your income?

5 A. I probably made \$1,000 a month.

6 Q. What did he make at that time?

7 A. Probably 2,000 or something, 2,200 maybe.

8 Q. Okay. So you borrowed \$70,000 and \$30,000 went into

9 the purchase of the house?

10 A. Yes. I was a real good saver.

11 Q. Okay. So you were a real good saver?

12 A. Yes. We saved money. We both saved money.

13 Q. You're talking about when he was in the Army?

14 A. Yes.

15 Q. Okay?

16 A. Well, I got out because I got pregnant and we decided

17 -- because he had come to the States at the time I was still in

18 Germany -- that we decided it would be best for me to get out

19 and come to live with him because otherwise we would be

20 separate.

21 Q. That would have happened when?

22 A. In 1980 actually. Early 1980s.

23 Q. Were you dating him at that time?

24 A. Yes.

25 Q. So you were in the service?

1 A. Yes, and we were dating.

2 Q. How did you meet your husband?

3 A. We were in the same battalion or whatever together.

4 Q. What was your rank?

5 A. E4.

6 Q. And what was it that you were doing? What was your
7 occupation so to speak within the service?

8 A. Police. Military police.

9 Q. You were an MP?

10 A. Yeah, and he was too.

11 Q. And he was as well?

12 A. Yeah.

13 Q. Were you all in the same office in Germany?

14 A. We ended up being in the same office because they
15 wanted my secretarial skills at the provost marshal's office,
16 and so I eventually got off the road and went to the provost
17 marshal and worked there. And then they -- he worked for -- he
18 worked for something.

19 Q. All right, so --

20 A. We ended up being in the same office.

21 Q. All right. How is it that you ended up going into the
22 service?

23 A. I decided one day -- I was working at an insurance
24 company and just decided to go in.

25 Q. Where were you working at an insurance company?

1 probably around that time.

2 Q. Around that time. And when did you all get married?

3 What was your date of marriage?

4 A. The 7th of November.

5 Q. Of 1980?

6 A. Yes.

7 Q. Where did you all get married?

8 A. At the courthouse.

9 Q. In?

10 A. In Camden. No, that ain't right, in Alabama. At the

11 courthouse in Alabama.

12 Q. All right. Now, they have got a few courthouses in

13 Alabama. Where in Alabama?

14 A. Fort McClellan -- I mean Anniston.

15 Q. When he came back you went to Fort McClellan?

16 A. Anniston, Alabama.

17 Q. Where Fort McClellan is, okay, I got ya.

18 Was any family in attendance at the wedding?

19 A. Yes -- no.

20 Q. Just you and your husband?

21 A. Yes. We, yes. At the time. I did get married in the

22 church later where there was a few in attendance.

23 Q. So you had a second ceremony later on?

24 A. Right.

25 Q. Okay. So when you got married in November of 1980,

1 Q. Anybody in the family who's giving you advice about
2 this lawsuit?

3 A. No.

4 Q. Okay. Now, where are you employed?

5 A. At Blue Cross Blue Shield.

6 Q. Tell me how long you've been employed with them?

7 A. About 15 years.

8 Q. And where is your office?

9 A. Off Percival Road.

10 Q. In Columbia?

11 A. In Columbia.

12 Q. So you drive about how far to get to and from work?

13 A. About 10 miles to work.

14 Q. And what do you do for Blue Cross Blue Shield?

15 A. Customer service for a major group.

16 Q. For all major groups?

17 A. Yeah. Yes, sir.

18 Q. So any major group like the state health care program
19 or anything like that calls?

20 A. Not state.

21 Q. All right. So for any major group, that number on the
22 back of the card is customer service and you would be one of the
23 people they would reach on the telephone?

24 A. Right, yes, sir.

25 Q. And how many -- it's good to know somebody at Blue

1 Cross Blue Shield. You normally can't talk to anybody at Blue
2 Cross Blue Shield. They won't give you any information. Do
3 they teach you to not give people information?

4 A. I tell you what, the information is limited.

5 Q. I know.

6 A. It is so limited what we can give people. It is bad,
7 I have to agree with that.

8 Q. Based on HIPAA a lot, isn't it?

9 A. That HIPAA -- don't worry when we get a zero because
10 we didn't ask it right, you know.

11 Q. Tell me this. How many people are there that work at
12 Blue Cross Blue Shield in your office in customer service?

13 A. There might be 30 or 40 people just in -- I am saying
14 just that one little office.

15 Q. Right. Okay, so if I understand then your day is
16 taken up with answering the telephone, getting on your computer
17 seeing what the claim has to say or whatever the question may be
18 and trying to help them resolve it or deal with it; is that
19 accurate?

20 A. Yes, sir.

21 Q. Has that been your occupation with Blue Cross Blue
22 Shield during the last 15 years?

23 A. I started out in claims processing and I went to
24 customer service for most of the time.

25 Q. All right. So you were in claims processing for about

1 how long?

2 A. Three years.

3 Q. And have you been in that same office your entire
4 time?

5 A. No I was in Medicare customer service, the provider
6 line over there. Now I am on the member line with the major
7 group.

8 Q. We'll come back to your employment or that employment
9 in a few minutes with regard to, you know, income and that sort
10 of thing. I am not going to go into that right this minute,
11 okay.

12 Prior to that employment where were you employed, if
13 any, outside the home?

14 A. With Kershaw County I was a bus driver and a
15 substitute teacher.

16 Q. Where were you a substitute teacher?

17 A. At North Central and Midway Elementary.

18 Q. And that would have been approximately when?

19 A. Eighty -- '92, '93 until '96, so probably about three
20 years prior to doing Blue Cross in '96.

21 Q. That would have been in Kershaw County?

22 A. In Kershaw County, and before that I was a security
23 guard at the Coca Cola plant in Bishopville.

24 Q. For how long?

25 A. Probably a year.

1 A. The judge -- no, he didn't hold me in contempt; he
2 held him in contempt.

3 Q. Okay. And the judge -- we'll get to that in a minute.

4 Did you then go over this, what your complaints
5 against Janet Butcher and the Butcher Law Firm were with Ms.
6 Edwards at that time?

7 A. We were going over it as we were going along.

8 Q. What did she tell you about bringing this lawsuit?

9 A. She told me that it was, that, you know, that Ms.
10 Butcher did a lot of things that weren't appropriate. You know,
11 that --

12 Q. What was it she told you she had done wrong?

13 A. Just things that, you know, not -- especially me just
14 crying in the bathroom and her coming in the bathroom for a
15 minute telling me what we're going to do and leaving. She
16 thought she should have postponed the court date until I was
17 better, until I could understand fully what she was doing to me.
18 About the house, that there should have been something on the
19 house. You know that it was written so wrong that I would never
20 get my part in the house.

21 Q. She told you that?

22 A. Yes.

23 Q. She said you'll never get your part of the house?

24 A. She didn't say it the part, I guess exactly, but you
25 know, you were due this stuff.

1 going to go down past her first two paragraphs because that's
2 about her, okay?

3 A. Okay.

4 Q. And paragraph 3 we'll skip over, and paragraph 4.

5 Let's go to paragraph 5 if we could, and I want to go -- I am on
6 the second page of the Affidavit, okay, starting with that
7 second sentence on that page:

8 After the initial pretrial meeting Ms. Brown stated --
9 this is in parenthesis -- Ms. Brown stated Ms. Butcher informed
10 Ms. Brown that the trial judge stated to Ms. Butcher that Ms.
11 Brown would not receive any alimony.

12 So if I understand correctly, she's reciting what you
13 told her occurred at the time of the final divorce; is that
14 right?

15 A. Yes, sir.

16 Q. Okay. It then goes on to say: Ms. Brown became
17 emotionally distraught.

18 Again this would be based on what you're telling her
19 occurred at the final divorce?

20 A. Yes.

21 Q. Then it says: The Discussion between Ms. Brown and
22 Ms. Butcher took place in the women's restroom after subsequent
23 pretrial meetings between the judge and the counsel for the
24 parties.

25 Again, that's based on your telling her what occurred?

1 A. Yes.

2 Q. It goes on to say: Due to the emotional state of Ms.
3 Brown and the fact that she could not control her sobbing.

4 Again now, that's your telling her what you say is the
5 reason you were in the bathroom?

6 A. Yes. The reason I was in the bathroom is because
7 Janet came to me out in the hall and told me the judge doesn't
8 want to hear my case and is not going to give you alimony and
9 we're going to settle.

10 Q. Well, we're going to go over that.

11 A. That's what she told me. And it made me very --

12 Q. I am trying to keep this orderly so that I don't
13 become repetitive and cause you to have to sit here longer than
14 we have to sit here. It's hard to stay focused on one
15 particular thing, but I am trying to get through this just to
16 make sure...

17 If you look at paragraph 6 it continues to recite
18 these things:

19 During the meetings between Ms. Butcher and Ms. Brown
20 in the restroom, bits and pieces of the proposed settlement were
21 related to Ms. Brown by Ms. Butcher.

22 Again, that's what you're telling her occurred, right?

23 A. (Deponent nods head in the affirmative.)

24 Q. And all through this is what you're telling her
25 occurred?

1 a relationship with Robert and that she was taking care of his
2 dog, right?

3 A. Yeah.

4 Q. And that if she couldn't have him she was going to
5 commit suicide, or words to that effect?

6 A. Yes.

7 Q. Robert denied having any kind of personal physical
8 relationship with her, didn't he?

9 A. Yes.

10 Q. He never admitted that in fact, did he?

11 A. No, he never did. No.

12 Q. And she never admitted it either, did she?

13 A. No.

14 Q. But now, if I understand correctly, her husband said
15 he walked in on them; is that right?

16 A. Yes.

17 Q. And found them in a compromising physical
18 relationship?

19 A. Yes, sir.

20 Q. And if we look at your trial, your copy of the trial
21 notebook there's a Subpoena in there for Mr. Payne to be at
22 trial to testify for you, isn't there?

23 A. Yes, sir.

24 Q. And he was actually there that day, wasn't he?

25 A. Yes, sir.

1 Q. To testify about his wife's adultery with your
2 husband?

3 A. Yes, sir.

4 Q. And in fact with that testimony you all concluded that
5 it might be a simpler more straightforward case to prove his
6 adultery through that?

7 A. That's why Ms. Butcher had me fly him in because it
8 would be easier to establish that.

9 Q. Right, and he came from Texas?

10 A. Yes, sir.

11 Q. And when you all settled, you got the 500 bucks back
12 to fly him in, right?

13 A. Yes, sir, the 800 bucks.

14 Q. Okay, 800. So that was part of the settlement was
15 that you got reimbursed for that?

16 A. Yes.

17 Q. Okay, all right. Now, other than your suspicions
18 about Sue Payne, was there ever any other time when you
19 suspected your husband was having an affair with somebody up
20 until the revelations that came out in 2005?

21 A. No, sir, but I have since learned.

22 Q. Okay. Tell me what you have since learned?

23 A. I have since learned, he admitted to me that he's been
24 running around since '98.

25 Q. He's now admitted that to you?

1 but he acknowledged he was at the beach with her, said it was
2 different bedrooms, right?

3 A. Yes, sir. Her husband gave me those pictures after
4 August 25th after he found out for sure too that they were
5 running around.

6 Q. Then there was a witness, Mr. Neeley (ph)?

7 A. Yes.

8 Q. Who said that he had loaned him his cabin up in the
9 mountains and he had taken -- was it Ms. Hill up there or Ms.
10 Payne?

11 A. Miss Hill.

12 Q. And tried to get him to go out with their special
13 daughter to keep her occupied while they went off?

14 A. Yes.

15 Q. That was an Affidavit?

16 A. Yes.

17 Q. And that Affidavit was prepared by Janet, he signed
18 that, and that would have been a part of the pleadings as well,
19 right?

20 A. Yes.

21 Q. And they had him subpoenaed to come to court as well,
22 right?

23 A. Yes. And there was one thing since then that happened
24 that I found out about that Buffy Hill, which is the daughter,
25 went back to live with the dad because they claimed Robert raped

1 Q. You've looked at those trial notebooks before, right?

2 A. Yes.

3 Q. And those trial notebooks have a table of contents,
4 right?

5 A. Yes.

6 Q. And they go through pretty much how the divorce is
7 going to be laid out in a courtroom?

8 A. Yes.

9 Q. With the Affidavits from the witnesses. And there's
10 even questions, notes from Janet about questions she's going to
11 ask each of the witnesses to make sure she goes over the
12 important points, right?

13 A. Right.

14 Q. So that notebook was ready on that day?

15 A. Oh, yes, sir.

16 Q. In fact you met Janet in her office that morning in
17 April and you all walked over together?

18 A. Yes, sir.

19 Q. Do you remember that?

20 A. Yes, sir.

21 Q. Did you help carry any of those books?

22 A. Yes, sir.

23 Q. So she had a bunch of stuff you all carried over there
24 for the hearing that day?

25 A. Yes, sir.

1 Q. Do you remember the November hearing the year before?

2 A. Yes.

3 Q. Tell me what you remember about the discussions as to
4 how you might settle the case that day. What was being offered
5 back in November?

6 A. 40, 60,000 for the house.

7 Q. For your share of the house?

8 A. For my share of the house.

9 Q. And then split up the acreage?

10 A. I don't think it was spilt up the acreage. I think it
11 was just straight 40,000, 60,000 for everything. I don't know
12 of any split up.

13 Q. Well, there did come a time when they offered to buy
14 your interest in the house?

15 A. Yes, sir.

16 Q. And split up the acreage with you being able to choose
17 either one of the two acreages?

18 A. Yes, sir. Which was irrational. It was irrational.
19 Even she would admit that -- Janet would admit that it was
20 irrational what they were offering because what they was saying,
21 if I buy the house then I get to choose which land I want, so he
22 can choose this land and have this house here and I have all the
23 land around the house. It was not -- there was no sense to
24 that.

25 You see what I am saying? The offer didn't make any

1 don't know if she was willing or not.

2 Q. Do you have any affidavit or statement from her to the
3 effect that there was something wrong with the soil?

4 A. No.

5 Q. Or that she appraised it at \$202,000 by virtue of
6 that?

7 A. No. She was going to state that.

8 Q. But in your opinion that has no relevance; that
9 appraisal; that's not an appropriate thing?

10 A. That's why she -- right. That's why she appraised the
11 land at \$1,000 because as you see the big discrepancies in
12 everything when --

13 Q. Now that was the \$202,000 appraisal, right?

14 A. Right.

15 Q. Then we have one in September 2006 which is a little
16 bit later that appraises it at \$257,000 as a whole?

17 A. Right.

18 Q. Is that an appropriate amount?

19 A. Yes, sir.

20 Q. Do you think that's an appropriate amount?

21 A. Yes, sir.

22 Q. Okay?

23 A. That's a selling price, yes.

24 Q. Okay. And that shows the house itself as being worth
25 \$152,000 with the land that it's on?

1 A. Yes.

2 Q. So that's a reasonable price; \$257,000?

3 A. Yes, I would say that's pretty much --

4 Q. So if your husband had offered you half of the acreage
5 plus a half of the net value of that \$152,000 for the house,
6 that would have been a fair offer?

7 A. At the time yes, sir.

8 Q. At the time, okay.

9 A. Yes. Even though my preference was --

10 Q. To go to court?

11 A. No. Well, to go to court but for him to buy the whole
12 thing. You know what I am saying, and not leave me in that pain
13 of trying to have to sell it because I knew I wasn't going to
14 live next to him. So really that was my ultimate goal was to
15 have him buy everything. And to be honest, he wasn't going to
16 do either.

17 Q. Now, originally in your answer in that complaint you
18 said you wanted the house, right?

19 A. Yes, sir.

20 Q. And you all went to -- Mr. Moak represented you at a
21 temporary hearing?

22 A. Yes.

23 Q. And your husband had been in the house because you had
24 left the house when you discovered his adultery, right?

25 A. Yes.

1 Q. And then Mr. Moak went and became a solicitor and left
2 the firm?

3 A. Yes. One thing you have to understand. Robert listed
4 the house for \$425,000 which was way too high. We never -- then
5 he wouldn't come down on the price. Then finally he listed it
6 at \$325,000 which was way too high. We never could get him to
7 do what he was supposed to do on the house so it would sell in a
8 reasonable time frame. Janet knew that he was sabotaging the
9 sale of the house at \$425,00 and then even higher at \$395,000.
10 She knew he was sabotaging the sale and she also knew he didn't
11 want to buy me out. So we were in a corner because he didn't
12 want to do either.

13 Q. This is all in the temporary stage, right?

14 A. He still don't want to do either.

15 Q. Well, you took him back to court with Janet being your
16 lawyer, right?

17 A. Right.

18 Q. That was the first time she appeared in court for you?

19 A. Yes, sir.

20 Q. When he was in contempt for not having listed it?

21 A. Yes.

22 Q. And the judge held him in contempt?

23 A. Right, for the first order and the second order. He
24 was held twice I think.

25 Q. Once before and once after?

1 negotiations, there was nowhere close to a negotiation on
2 November 27th. We should have went to court that day, okay? We
3 should have went into court. We had the people there. We had
4 the -- like you say, all my witnesses were there. He had no
5 one.

6 Q. And if I understand you correctly, on that day there
7 was nothing accomplished, there were no offers, there was no
8 discussions about what might be ways to settle the case?

9 A. Nothing reasonable at all.

10 Q. Well, let's -- you're qualifying that now. Are you
11 saying nothing took place or nothing that was acceptable to you?

12 A. Nothing took place.

13 Q. Nothing took place, okay. And then the next day his
14 lawyer got sick?

15 A. Right.

16 Q. And did he show up or not?

17 A. No.

18 Q. And he didn't show up, and the judge had no choice but
19 to continue it?

20 A. I don't blame her for that.

21 Q. You don't?

22 A. No.

23 Q. Okay, all right. So if he showed up the second day
24 and you'd said I am ready to go to trial you could have gone to
25 trial, right?

1 A. Yes, sir, I guess that could have been. Yes, unless
2 --
3 Q. And then we come to the next time is in April of 2007,
4 right?
5 A. Yes, sir.
6 Q. Okay. And again you went with her over to the trial?
7 A. Yes.
8 Q. And besides you, your daughter Crystal was there and
9 your daughter Brandy was there, and both of them were going to
10 be witnesses. There were Affidavits they had filed for the
11 temporary issues, right?
12 A. Yes.
13 Q. And Mr. Payne was there. He was going to testify,
14 right?
15 A. Yes, sir.
16 Q. And the -- who else was there?
17 A. Carolyn McGee, Gordon Realty.
18 Q. Carolyn McGee, Gordon Realty, okay.
19 A. Rick Neeley.
20 Q. How about the termite inspector?
21 A. The termite inspector, the home inspector.
22 Q. And Janet's office had subpoenaed all of these people,
23 hadn't she?
24 A. Yes.
25 Q. And they were all there?

1 A. They were all there.

2 Q. And she had the trial notebook with everything,
3 questions, all their Affidavits?

4 A. Yes.

5 Q. All of the Exhibits that would have been introduced
6 with them including -- it's all in those notebooks, right?

7 A. Yes.

8 Q. And it's your testimony that Janet simply refused to
9 go into the courtroom?

10 A. She coerced and lied to me to make me feel that she --

11 Q. Can you answer my question first and then if you want
12 to elaborate, I'm happy for you to do so.

13 Are you telling me she refused to go into the
14 courtroom?

15 A. Yes.

16 Q. You said, Janet, let's go to trial and she said oh,
17 no, I won't go in the courtroom?

18 A. No, sir.

19 Q. What did she say?

20 A. She said it in other ways.

21 Q. What did she say it in?

22 A. She told me that the judge did not want to hear my
23 case. This is the first words out of her mouth. She is not
24 going to award you alimony and we are going to settle. There
25 was no, we're going to trial, do you want to go to trial, should

1 we go to trial? There was nothing. She told me what we were
2 going to do.

3 Q. So she never said, Teresa, this is your decision, you
4 have to decide whether to go to trial?

5 A. Never.

6 Q. Okay. She never said that to you?

7 A. No, never.

8 Q. She told you you were not going to trial?

9 A. She told me we are not going to trial, she is not
10 going to award you alimony. She's not going to award you
11 alimony.

12 Q. All right. Now, tell me exactly what she said about
13 that. Were those her exact words to you?

14 A. Yes, sir.

15 Q. The judge is not going to award you alimony?

16 A. The judge does not want to hear your case. She's not
17 going to --

18 Q. The judge doesn't want to hear your case?

19 A. Yes.

20 Q. Okay.

21 A. She's not going to award you alimony and we are going
22 to settle.

23 Q. Okay. And what did you say?

24 A. I balled like a baby. I cried and I cried.

25 Q. Now what time of the day was this?

1 A. In the morning.

2 Q. What time in the morning; 9:30?

3 A. Around 9:00, 9:30.

4 Q. Okay, because you all had the only case for that day,
5 right?

6 A. Yes.

7 Q. Starting at 9:00 in the morning?

8 A. Yes.

9 Q. So you're standing where or sitting where?

10 A. She came out of the courtroom. I guess she came out
11 from somewhere, I don't know where, and there was a bench over
12 there. And she sat me down on the bench and very sternly -- not
13 just nicely -- very sternly told me, we are going to settle, the
14 judge does not want to hear your case and she's not going to
15 award you alimony.

16 Q. And you started to cry?

17 A. I balled.

18 Q. Did you cry all the rest of the day?

19 A. Yes.

20 Q. You never stopped?

21 A. No.

22 Q. Okay. And what happened after that?

23 A. I retreated to the bathroom. Oh, this is what she
24 said first, she says, I'm going to drop -- I'll drop my attorney
25 fees if you settle. And that -- and I said no, Janet, I said,

1 you deserve your attorney fees and please fight for me. And she
2 walked away from me. And I went to the bathroom where I stayed
3 crying. Because I couldn't believe what has happening again.
4 Because after November 27th she assured me we were going to
5 court. That's why she upped her fees from \$168 to \$225 then to
6 \$250 because she said we had to go for the adultery charges to
7 get a reasonable settlement.

8 Q. But you never paid her based on that, did you? I mean
9 you really only paid her about seven, eight, \$10,000?

10 A. That's correct.

11 Q. And she actually, even at \$168 an hour incurred about
12 \$30,000 between expenses and costs and everything else, didn't
13 she?

14 A. I do not know that.

15 Q. You don't know?

16 A. She really -- I know she put down she incurred
17 \$40,000.

18 Q. Right, based on \$250 an hour which is what she was
19 charging other people at the time, right, that was her going
20 rate?

21 A. She was giving me \$168.

22 Q. Right. She was giving you a break, right?

23 A. She was giving me a break.

24 Q. Because Brandy worked for her?

25 A. Yes, sir.

1 negotiating back and forth, then they'd be lying?

2 A. Yes, sir.

3 Q. I see, okay. And was the bathroom larger than those
4 little rooms?

5 A. Not really.

6 Q. No, okay. I see.

7 A. Well, the little stalls and everything. Probably
8 about the same size.

9 Q. Okay. Who all was in there?

10 A. Brandy came in sometimes, Crystal came in sometimes,
11 Janet came in sometimes, Dean Risher came in.

12 Q. And you just stayed in there but they'd come in and
13 out, in and out?

14 A. Yes.

15 Q. So they might hear bits and pieces of what you and
16 Janet were talking about?

17 A. Yes, sir.

18 Q. So the negotiations went on from 9:30 in the morning
19 until --

20 A. There was no -- okay, can I back up?

21 Q. Sure.

22 A. There were no negotiations.

23 Q. There weren't?

24 A. No, sir.

25 Q. Oh, okay. Well, what happened between 9:30 and 12:30

1 A. No. She told me.

2 Q. She just basically came in over that morning and told
3 you this is what you're getting, period?

4 A. Yes.

5 Q. Okay, I see.

6 A. And she threatened me with if I --

7 Q. Janet threatened you? How did she threaten you?

8 A. She threatened me with if I made the judge listen to
9 my case she would be mad at me and that I would have to pay all
10 the attorney fees including my ex's. She did everything she
11 could to coerce me.

12 Q. Did she threaten you in any other way?

13 A. That's it. I mean, besides if I made the judge mad, I
14 would get far less by going to court.

15 Q. If you made the judge mad you'd get far less?

16 A. If I went to court.

17 Q. Okay. Now, at the end of that time period when it was
18 completed, what happened then? What did Janet say to you then?

19 A. About what? I guess I am not understanding... like at
20 the end of --

21 Q. Okay. We've now settled your case. Is that what she
22 said? What did she say?

23 A. We've got to go to the courtroom. We've got to go in
24 the courtroom.

25 Q. And did she say anything else to you?

1 A. No.

2 Q. Nothing whatsoever, nothing about the hearing that was
3 about to take place?

4 A. No.

5 Q. Nothing at all?

6 A. No.

7 Q. Just we've got to go in the courtroom?

8 A. Yes.

9 Q. So let me make sure I understand this now. We get
10 started at 9:30 in the morning. You carried over the books, the
11 trial notebooks, all the witnesses are subpoenaed. Janet has
12 got on her courtroom clothes, you have got on your clothes ready
13 to go in the courtroom. And Janet goes in for a pretrial
14 conference with the other lawyer, comes out and tells you the
15 judge doesn't want to hear your case and you're not getting any
16 alimony and you run off crying to the bathroom. She then
17 proceeds over the next three hours to go in sporadically for a
18 minute or two at a time to tell you you're getting this, you're
19 not getting that. Then at the end she says -- without telling
20 you what it is you've gotten or what the agreement will be or
21 anything of that nature -- she says, come on, we've got to in
22 the courtroom. That's what happened?

23 A. Yes.

24 Q. And did anyone else hear this? Have you talked with
25 Brandy?

1 Q. The parties are, and the Court says, Let me ask you
2 this. Have we resolved everything?

3 Now, is that the first time you'd seen Judge Jones?

4 A. Yes.

5 Q. Ever been before her before?

6 A. No.

7 Q. How did she appear to you on that day?

8 A. Okay, I guess.

9 Q. Appear to be a nice lady?

10 A. She appeared to be okay, yes.

11 Q. She didn't bark at anybody or bite at anybody?

12 A. I was scared of her already.

13 Q. You were. And what made you scared of her?

14 A. Janet Butcher.

15 Q. I see, okay. And that's based upon Janet telling you
16 that the judge said she wasn't going to give you alimony?

17 A. And didn't want to hear my case, and I would make her
18 mad.

19 Q. So George Speedy says, Yes, ma'am, we have resolved
20 everything. Right?

21 A. Yes.

22 Q. You heard that?

23 A. Yes.

24 Q. You were standing about how far from Mr. Speedy?

25 A. Not very far.

1 Q. Then the judge goes and starts to talk to you and Mr.
2 Brown, right?

3 A. Yes.

4 Q. Now, Mr. and Ms. Brown, understand that the Court has
5 reviewed this file and I have heard briefly from your attorneys.
6 At this time I will ask the attorneys to work together as much
7 as they can and present the agreement. And I know you have been
8 very involved in this but it is necessary now for you to listen
9 and make sure that you understand the agreement. I am going to
10 be asking you questions to be sure it is right.

11 You heard that?

12 A. Yes, sir.

13 Q. You heard the judge say that?

14 A. Bits and pieces yes, sir.

15 Q. You only heard bits and pieces?

16 A. Yes.

17 Q. Do you have any hearing defects?

18 A. Yes.

19 Q. What is it?

20 A. I mean, I can't hear very well. But that wasn't my
21 defect. It was my crying.

22 Q. What was your defect?

23 A. My crying.

24 Q. So are you telling me at this time, standing there in
25 the courtroom, you walked into the courtroom and you're balling,

1 sobbing such that you can't hear?

2 A. I am crying. I have heard bits and pieces, yes.

3 Q. When you cry you can't hear?

4 A. I can't hear very well.

5 Q. So you don't hear when your eyes are tearing; is that
6 what you're saying?

7 A. No, I can hear but I don't comprehend. You know what
8 I am saying. You can hear, but to know what they are saying,
9 really.

10 Q. But you have had several crying spells here today and
11 you've understood my questions?

12 A. Yes, sir.

13 Q. And given me answers?

14 A. Right.

15 Q. Are you saying that you couldn't do that then?

16 A. No, I could do that then.

17 Q. So you heard what the judge said?

18 A. I heard some of what the judge said, yes.

19 Q. So you only heard some of what the judge said and
20 that's because you were crying?

21 A. Yes.

22 Q. I see.

23 A. I mean comprehending anything.

24 Q. All right. Now, you have head this transcript?

25 A. Yes.

1 Q. Is there anywhere in this transcript where you said,
2 Judge, I am sorry, I am sobbing, I'm crying and I don't hear
3 when I'm crying and I don't understand and therefore I don't
4 understand?

5 A. No, sir.

6 Q. You never said that, did you?

7 A. No.

8 Q. And Mr. Speedy then goes through the agreement, what
9 he says is the agreement, doesn't he?

10 A. Yes, sir.

11 Q. From beginning to end?

12 A. Yes.

13 Q. And you read that?

14 A. I have read it yes, sir.

15 Q. And in your complaint you say that that's the first
16 time you heard the agreement, don't you?

17 A. Yes, sir. That was the first time.

18 Q. You want to look at your complaint?

19 A. That was the first time I heard it.

20 Q. You have never heard that agreement before?

21 A. No, sir.

22 Q. So Janet Butcher had never gone over the agreement you
23 were now standing in front of the judge agreeing to before?

24 A. No. Not in the entire hearing, no. Is that what
25 you're asking?

1 Q. I am asking you if she had gone through the agreement
2 with you and you knew what the terms of the agreement were
3 before you walked into the courtroom?

4 A. No, sir.

5 Q. You did not?

6 A. I did not know everything, no.

7 Q. Did not know. What didn't you know?

8 A. I didn't know any of this.

9 Q. Didn't know any of it, okay.

10 A. When she would come in the bathroom and tell me he's
11 keeping his bank accounts you're keeping yours, and I told her
12 that wasn't fair she would walk out. And I thought she was
13 negotiating for me. She never came back with, well, that's what
14 we're going to do.

15 Q. So she never said that's what you are going to do?

16 A. Right. She would just tell me that's the way it was
17 and then I would tell her that's not fair and she would just
18 walk out and she never came back with any conclusive thing.

19 Q. So you never heard any agreement before you walked in
20 the courtroom?

21 A. No.

22 Q. Didn't even know why you were in the courtroom?

23 A. No, I knew why I was in the courtroom.

24 Q. Oh, you did. How did you know?

25 A. Because we were there for the divorce issue.

1 Q. Did you know you were in the courtroom to put a
2 settlement on the record?

3 A. Yes.

4 Q. You did. How did you know that?

5 A. Because that's what you do, I guess, in the courtroom.

6 Q. So you just picked that up yourself; nobody told you
7 that -- because Janet never told you you had an agreement?

8 A. No.

9 Q. And Janet never said, we're going to now go put this
10 on the record, she just said we've got to go in the courtroom?

11 A. Yes, sir.

12 Q. She never told you why you were going in the
13 courtroom?

14 A. Not really.

15 Q. Not really or not?

16 A. She didn't tell me what we were going in there for. I
17 assumed that's what we were going there for.

18 Q. So you assumed you were going in to put this agreement
19 on the record that she hadn't told you you had; is that what
20 you're saying?

21 A. No, sir.

22 Q. Well, what are you saying?

23 A. That she told me -- I did not know what this agreement
24 was.

25 Q. You didn't know it at all, period? Never been through

1 the terms with her?

2 A. I know what she said when she came in the bathroom,
3 and I know what I told her.

4 Q. Is what's on this record what she said when she came
5 into the bathroom?

6 A. Yes, what she told me.

7 Q. What she told you is what's in this record?

8 A. Yes.

9 Q. You just didn't know it was an agreement?

10 A. I told her I didn't agree to that.

11 Q. Oh, okay. So you told her adamantly I am not agreeing
12 to this?

13 A. Right.

14 Q. But she made you go to the courtroom anyway?

15 A. Yes. She said that that's the way it was, that's what
16 they decided.

17 Q. And what did you say to her when she said that?

18 A. I was just crying too much to even argue at the point.

19 Q. So you were crying too much to argue and you didn't
20 hear it anyway because you can't hear when you cry?

21 A. No, sir. I didn't say I can't hear when I cry. I
22 said I couldn't understand or comprehend what was going on.

23 Q. You couldn't comprehend what was going on?

24 A. Yeah.

25 Q. What did you think was going on if you couldn't

1 comprehend what was going on?

2 A. I don't know what you mean by that.

3 Q. Well, you said you couldn't comprehend what's going
4 on. Comprehend means you don't understand what's going on.

5 A. I didn't understand.

6 Q. If you didn't understand what was going on, what did
7 you think was happening?

8 A. That I was going in making an agreement.

9 Q. You did think you were going in to make the agreement?

10 A. Yes.

11 Q. And in fact --

12 A. I didn't understand it, but I knew I was going to make
13 an agreement.

14 Q. And Mr. Speedy goes through the entire agreement,
15 doesn't he?

16 A. Yes, sir.

17 Q. And you knew you were going in to make an agreement?

18 A. Yes, sir.

19 Q. And the judge even asks some questions to make sure
20 that she understands what the terms are; isn't that right?

21 A. Yes, sir.

22 Q. And Janet Butcher even brings up items that Mr. Speedy
23 had forgotten to mention, doesn't she? There is one item that
24 wasn't mentioned and it doesn't need to be in the order, but Mr.
25 Brown is going to be sure one of his daughters gets to see her

1 horse when she's not living on the property; isn't that right?

2 A. Yes, sir.

3 Q. Now, you're saying that she just came up with that on
4 her own?

5 A. Yes. Yes, never heard of that.

6 Q. You never heard of that, had no relevance to you,
7 that's not a part of anything that was important?

8 A. Recommended, yeah.

9 Q. You could have cared less?

10 A. Yes.

11 Q. Now, the Court then looks and says, All right, let's
12 go to the divorce part. The Court says, Mr. and Mrs. Brown,
13 listen to me carefully.

14 Did you understand that or were you still not
15 comprehending?

16 A. Yes, sir, I understood that.

17 Q. What does that mean?

18 A. To listen to her.

19 Q. I have a series of questions to ask. You need to
20 stand up and I'm going to ask you some questions. This lady
21 here, our court reporter, is going to take down your answers. I
22 have been told this morning you have an agreement. You were in
23 the courtroom just as I am and we heard the agreement read into
24 the record.

25 She says that, doesn't she?

1 A. Yes, sir.

2 Q. You heard that?

3 A. Yes.

4 Q. You understood that?

5 A. Yes, sir.

6 Q. Mr. Brown, is that your agreement?

7 Your husband says, that's my agreement. Right?

8 A. Yes, sir.

9 Q. The judge says, All right. Is that your agreement,

10 ma'am?

11 She's looking at you, isn't she?

12 A. Yes. Yes, sir.

13 Q. And what did you say?

14 A. Yes.

15 Q. Yes, it was. Yes, it was. That's what you tell her?

16 A. Yes.

17 Q. Are you understanding that question?

18 A. I'm understanding the question. Yes, sir.

19 Q. You're understanding what the judge is asking you?

20 A. Yes, sir.

21 Q. You heard the agreement?

22 A. Yes, sir.

23 Q. In total, it's been laid out by Mr. Speedy?

24 A. Yes, sir.

25 Q. And by Ms. Butcher?

1 A. Yes, sir.

2 Q. Right there in the record in open court, Judge Jones
3 is six feet away from you?

4 A. Yes.

5 Q. And you heard it all?

6 A. Heard it.

7 Q. And you say, yes, it is, or yes, it was. Don't you?

8 A. Yes, because I had no choice but to say yes.

9 Q. All right, we'll come to that. The Court says, do you
10 understand the agreement?

11 And your husband said, I do.

12 Do you understand it, ma'am? The judge asks, looking
13 at you, right?

14 A. Yes, sir.

15 Q. And what did you say?

16 A. Yes. And we can go through all of this and I did say
17 yes.

18 Q. Let's go through one more question, shall we?

19 The Court says, Now, has anyone forced or coerced or
20 threatened you and made you enter this agreement?

21 The judge asked you that, didn't she?

22 A. Yes, she did.

23 Q. Your husband says, no. Doesn't he?

24 A. Yes.

25 Q. And then she looks at you, All right, Mrs. Brown?

1 And what do you say?

2 A. Yes.

3 Q. You say -- look at what you say.

4 Has anyone forced or coerced or threatened you or made

5 you enter this agreement?

6 The Plaintiff says no.

7 That's your husband.

8 The Court says, All right, Mrs. Brown?

9 A. Where are you at?

10 Q. Butcher 04759.

11 A. Okay.

12 Q. And what do you say?

13 A. Yes.

14 Q. Has anyone forced or coerced or threatened you and

15 made you enter this agreement?

16 Your husband says, no.

17 All right, Mrs. Brown? Says the Court.

18 And what do you say?

19 A. No. But I didn't know I was being coerced at the

20 time.

21 Q. Well, wait a minute.

22 A. I mean, I did say no.

23 Q. I will give you a chance to explain all this, but

24 let's continue to read what the judge said.

25 A. The coercion I didn't understand at the time how bad I

1 was being coerced at that time.

2 Q. I see. The judge goes on to say, Now entering this
3 agreement today you have the benefit of your attorney.

4 Now, Mr. Brown, you've had Mr. Speedy to answer your
5 questions and give you advice, the benefit of his legal
6 experience. Is there anything else you need to ask him right
7 now?

8 And he says, no.

9 Are you satisfied with him?

10 He says, I am?

11 Anything else you need to ask your attorney Ms.
12 Butcher who was been talking with you and answering your
13 questions?

14 The Court: No?

15 Because she can't tell what your answer is. And then
16 you say, no.

17 The Court says, All right, are you satisfied with her
18 services, ma'am?

19 And you do exactly what you're doing now, don't you?
20 You don't give an audible response. And the Court says you have
21 to. This lady has to be able to hear it.

22 She couldn't hear your response, could she?

23 A. Because I didn't want to respond.

24 Q. I am sorry but you've got to speak out where we can
25 hear you, okay?

1 A. I didn't want to respond.

2 Q. But you did respond?

3 A. But I did. Yes, I did.

4 Q. And you said what?

5 A. I did say yes.

6 Q. You said yes, didn't you?

7 A. I did, but I didn't want to. I knew something was
8 terribly wrong. I just couldn't...

9 Q. And the Court continues to make sure, doesn't she?

10 A. I didn't have the strength to stand up for myself.
11 She was supposed to stand up for me.

12 Q. And the judge goes on and asks it again, doesn't she?

13 The judge says, Listen to me carefully, and I know
14 this is a very stressful time.

15 The judge emphasizes that, doesn't she?

16 A. Yes. And you can say that. I just didn't know how
17 bad I was being coerced at the time.

18 Q. We're going to try to get through this as quickly as
19 we can but I need you to answer these questions as loudly as you
20 can.

21 That's what the judge says, doesn't she?

22 A. Yes. And I didn't know how to stand up for myself and
23 I do regret ever saying yes to any of this. This is garbage.

24 Q. And then the judge makes sure you're not under the
25 influence of any alcohol or drugs, doesn't she?

1 A. Yes, she does.

2 Q. And you go through the whole thing, don't you? And
3 the whole time --

4 A. I beat myself up every day for saying yes. For
5 something I never should have said yes for something she should
6 have never said yes to.

7 Q. The truth is that you agreed to all this --

8 A. Under coercion.

9 Q. -- and now --

10 A. Under coercion.

11 Q. And now you're unhappy about it?

12 A. No, under coercion. It was only because of Janet's
13 statement that I felt I had to agree to this.

14 Q. And how did she coerce you?

15 A. By telling me the judge doesn't want to hear my case,
16 she doesn't want to give me alimony, if I make her mad she'll
17 give me far less. I thought I had to to get anything.

18 Q. Now, let's look at your financials. You indicate in
19 your complaint that you think your husband makes 3- or \$4,000
20 more than you. What's that based on?

21 A. The records we got from him.

22 Q. What records? Show me what records shows that he
23 makes more than you. Let's look at your financial declarations
24 to the court first, okay?

25 A. Janet came up with that figure.

1 Q. I am sorry. Let's look at your financial
2 declarations. Here's your financial -- or your husband's
3 financial declaration.

4 A. Now his is wrong.

5 Q. Oh, his is wrong? Okay. According to this financial
6 declaration that you filled out in November of 2005...

7 MR. HOWARD: Let's just mark that.

8 (Defendant's Exhibit 6 marked for identification.)

9 Q. All right. We've got the November 16th, 2005.
10 According to this you have a gross salary of \$2,646 a month
11 total monthly income, right?

12 A. Yes, sir.

13 Q. And then you say you've got \$568 a month in taxes
14 taken out, right?

15 A. Yes, sir.

16 Q. And Social Security at \$162?

17 A. Uh-huh (affirmative response).

18 Q. So coming over here you then also show that you have
19 medical insurance and a retirement taken out at \$160 a month
20 showing that you have a net monthly income of \$1,704; is that
21 right?

22 A. At that time yes, sir.

23 Q. Now, if you look at the next item, the next item is
24 your estimated monthly expenses, okay?

25 A. Uh-huh (affirmative response).

1 Q. And you've got those listed out. And your total
2 expenses are \$1,693 a month, right?

3 A. At that time, I did, yes, sir.

4 Q. Okay. So your net monthly income is actually a little
5 more than what your net monthly expenses are, right?

6 A. Uh-huh (affirmative response).

7 Q. Okay. And on this salary and wages withholding, am I
8 right that that is the actual amount that they take out of your
9 check each month, \$568, as shown on your paycheck stub?

10 A. Right, yes.

11 Q. But you actually get some money back at the end of the
12 year, right?

13 A. No, sir.

14 Q. You don't?

15 A. Oh, the state, I believe the state I got a little back
16 on the state.

17 Q. Okay. Now, according to your husband he had \$3,846
18 net monthly income, right?

19 A. That's what he said.

20 Q. That's including his retirement and his pension. And
21 he had at that time -- this is right after the divorce is
22 started -- he's got total expenses of \$3,733, right? If you
23 look on the next page.

24 A. Okay he was -- one thing he went out and did though is
25 to get it up like that was to -- he went out and bought a

1 \$46,000 truck and put \$10,000 and put \$8,000 or whatever on his
2 credit card, so he tried to up his thing. And plus he does not
3 include his Carolina Confidential business money on there and he
4 does not include his Cassatt Water run money.

5 Q. Now, those were the original financial declarations,
6 right, that each of you filed with the court?

7 A. Right.

8 Q. Okay. And now, at that time, your husband was
9 collecting disability based upon his illness, right?

10 A. Yes, sir.

11 Q. So he was disabled according to him?

12 A. Yes.

13 Q. And he was 58 years old and you were 46 years old. So
14 you're 12 years younger than him. How old are you now?

15 A. Fifty-one.

16 Q. So you have got a work life expectancy of what, how
17 long will you work? Until 65?

18 A. Probably, yes.

19 Q. Okay.

20 A. But see he didn't fill out an accurate thing, but.

21 Q. Now, we get to a later time period when they are
22 amended again because it's been a while; is that right? This is
23 when you're getting close to going to court?

24 A. Yes, sir.

25 Q. All right. This is April of '07. This is right

1 before the divorce, I think the day before April 15, '07. At
2 that point you have a net monthly income, if I understand this
3 correctly, of \$2,262, right?

4 A. You know, back then, I mean, if that's what I filled
5 out, yes.

6 Q. Okay. And at that time, according to you, your
7 expenses were \$2,328, right?

8 A. Okay.

9 Q. So they are within about 60 or \$80 of what you're
10 making?

11 A. Right.

12 Q. And at that time you're 47 years old at that time?

13 A. Okay.

14 Q. And again you don't have any disabilities, right, you
15 work full-time?

16 A. Yes.

17 Q. Okay. Now, you indicate that your husband was lying
18 about the income from Cassett but he gave full disclosure -- you
19 got all the information about Cassett, and that was around \$700
20 a month?

21 A. \$800.

22 Q. Seven- \$800 a month, right?

23 A. Yes, sir.

24 Q. He said he didn't have any money coming in in Carolina
25 Investigations; is that right?

1 A. That's what he said.

2 Q. And the tax returns in fact showed that, correct?

3 A. Yes, sir. I guess they showed it because he was
4 lying.

5 Q. Bank accounts showed that. Do you have any evidence
6 that showed that he was making money in the detective agency?

7 A. We show what his -- what he was writing down for his
8 2004, what he was making. Do you have that sheet? This is what
9 we had proof of that I have.

10 Q. Carolina Confidential Investigations, opening balances
11 and bank fees all the way down through. And this was from
12 January of 2004 through December of 2004, right?

13 A. Yes.

14 Q. Do we have anything in 2005?

15 A. We couldn't get it, no.

16 Q. And what is it that you say that this shows?

17 A. How much money he's making every month. He alters his
18 tax records so that he shows that he don't make nothing, but he
19 actually makes money.

20 Q. Well, how much money do you believe this shows that he
21 makes each month?

22 A. At least close to \$2,000 each month or more.

23 Q. Well, in January we have \$2,885 opening balance. We
24 have total receipts of \$725. We have total disbursements of
25 \$1,086. So we've got a net cash flow of minus \$361.43. Is it

1 your position he's made money in that month?

2 A. I guess I don't know how to read this that well. I
3 mean it's my position that he has made money, yes.

4 Q. All right. Show me where that shows that he's making
5 money. If I take in \$750 and pay out \$1,000 to operate the
6 business, am I not losing money?

7 A. Yeah, but that's not, I mean -- he wrote it down here
8 but he made the money. It was his money.

9 Q. What do you mean he wrote it down here but he made the
10 money?

11 A. I mean, he made the money, though, and he says he did
12 all that stuff.

13 Q. You're saying he's lying about paying these things?

14 A. Right.

15 Q. I see. Do you have evidence that he's lying?

16 A. No.

17 Q. Well, how are you going to prove that he's lying about
18 his income?

19 A. I mean, we know what he's making, though. I mean, he
20 is making money off of Carolina Confidential.

21 Q. You mean you know he's bringing money in?

22 A. Right. He's bringing money in.

23 Q. Is it your position that it doesn't cost anything to
24 run Carolina Detective Agency?

25 A. It costs some money, yes.

1 Q. Is it your position that those expenses are
2 unreasonable?

3 A. Yes.

4 Q. And what's that based on? Have you ever run a
5 detective agency?

6 A. I know what he does. I know how much -- I know what
7 he used.

8 Q. Is it your position that you getting on the witness
9 stand in your divorce case and telling the judge, he's lying
10 about this, I know what he does, that the judge would then have
11 a basis for --

12 A. That wasn't discussed between us.

13 Q. Well, what evidence do you have that your husband was
14 making money in Carolina Investigations? I mean, that's a basis
15 for you saying that she didn't get the alimony for you that you
16 were entitled to, and I need to understand what evidence you
17 have that backs up your assertion you're entitled to alimony.
18 You say that you thought alimony was based on whether or not you
19 proved fault, ie; adultery on his part, but that's not the case.
20 Alimony is based upon financial wherewithal and financial need
21 and things of that nature.

22 So what I want to know is what is the basis for you
23 saying that he's hiding his income in Carolina Investigations?

24 A. Because he didn't put all the cash he gets on there.

25 Q. And that would be your evidence in the courtroom. Is

1 there anything else you would have had to establish income from
2 the detective agency other than that?

3 A. Probably not. I don't know. I don't know what else
4 we had in there that -- why she had put this in there then and
5 why...

6 Q. You don't know any of that, is my point?

7 A. Right. She probably -- my understanding was he was
8 making money with Caroline Confidential and hiding it.

9 Q. And did you tell Susan Edwards that?

10 A. That he was hiding money?

11 Q. Yes.

12 A. No.

13 Q. Making money and hiding money?

14 A. That was not a part of our thing, no.

15 Q. So as far as you know Susan Edwards is not basing her
16 opinions on that at all?

17 A. I don't know what she's basing that opinion on.

18 Q. Now, if I understand, there's no question but that the
19 cattle farm, if you will, was out of existence; it wasn't
20 operating at the time you all split up?

21 A. No.

22 Q. That was gone?

23 A. Except for a little bit of money in the bank account.

24 Q. Seventy bucks?

25 A. \$270, I think.

1 Q. And no other businesses that you know of other than
2 him charging Cassatt Water Company \$35 to make a round trip
3 deposit to the bank from Cassatt to -- was it Aiken?

4 A. No, to Camden. He had other businesses that he was
5 hiding money under but we couldn't prove that.

6 Q. Okay. So we had no proof of that?

7 A. We had other businesses, yeah.

8 Q. You suspected it but we had no proof?

9 A. Well, Debbie -- she had taken depositions of Debbie
10 Hill and David Hill.

11 Q. Trying to get at it, right?

12 A. Showing where he showed them a lump sum of cash and
13 stuff like that. So they did have witnesses where he was
14 showing lump sums of cash.

15 Q. But you don't know what that was or how much it was or
16 how often that was?

17 A. They testified how much it was.

18 Q. But you don't know of any other business or any other
19 evidence of that you have of him making money from other
20 sources; is that fair?

21 A. Yeah.

22 Q. Okay. Do you recall telling Janet Butcher on April 16
23 or 17th, when you all were at the court house, do you recall
24 telling her, I don't want any of the personal property, I want
25 it sold; do you recall saying that?

1 A. No.

2 Q. Okay. Now, in the Rule to Show Cause Notice Temporary
3 Order, your husband was ordered to list the property at
4 \$245,000, wasn't he?

5 A. I don't know about the figure. He was ordered to list
6 the property. I don't think there was an agreement on what the
7 listing price was, so he just said what, 425 I think?

8 Q. Well, you all listed it at 425 initially, right?

9 A. Yes.

10 Q. And we would have -- I am trying to go through this
11 quickly. There's a lot of this stuff, but as I recall that's
12 listed in September of '06, okay?

13 A. (Deponent nods head in the affirmative.)

14 Q. When was the -- that second temporary contempt for
15 your husband for not listing it? Was that in 2000... early
16 2006, January of 2006?

17 A. I can't remember. I'd have to look at the paperwork.

18 Q. The first temporary order was issued on December 16,
19 2005, and in the record the judge says, Plaintiff and Defendant
20 shall put the marital home on the market for sale. Parties
21 shall coordinate and agree upon a Realtor at an appropriate
22 sales price. Proceeds from the sale of the home shall be placed
23 in escrow unless the parties mutually agree to disbursement of
24 the funds.

25 Right?

1 \$425,000.

2 Q. In other words --

3 A. I wanted it up on the market, but not at 425. It was
4 way too high. But I couldn't get any, you know -- that's what
5 we were really trying to do is find a real appraisal of this
6 house. That's why we had Gordon Realty and all these real
7 estates at court (sic). Janet Marsh from Gordon Realty with the
8 appraisal. We had all these people at court so that we could
9 determine a true value of this stuff so it would go on the
10 market correctly.

11 Q. Are you saying that Gordon Realty didn't think it was
12 worth \$425,000?

13 A. No. She tried to talk Robert out of it. He wouldn't
14 do it.

15 Q. All right. Then later on you lowered it to \$325,000?

16 A. \$395.

17 Q. And then to \$325,000, and then last year you lowered
18 it to \$295,000, didn't you?

19 A. Yes.

20 Q. Is it currently listed at \$295,000?

21 A. Yes, sir.

22 Q. It's listed for sale at what you say is approximately
23 the value that it had in 2005 or six currently, right?

24 A. Right. At 295, against --

25 Q. Are you saying that that's never going to sell at any

1 price? Is that your position that house and the property is
2 never going to sell?

3 A. Because he won't let it.

4 Q. I am sorry. How could he prevent that?

5 A. Because he sabotages it.

6 Q. Now, how has he sabotaged it?

7 A. He tells lies about it.

8 Q. Well, give me an example of what you know has
9 happened?

10 A. The Realtors probably would be better to explain what
11 he does. When they get there he stays right around with them.
12 He won't let them show the house by themselves.

13 Q. So if I understand you then, you don't have any
14 first-hand knowledge of that?

15 A. Right, they tell me this.

16 Q. It would only be the Realtors or presumably somebody
17 who had come to look at it?

18 A. And that's from way back, you know, from way back from
19 the beginning. That's why Janet was bringing so many of them
20 into court.

21 Q. You had Ms. Eslinger and you had Ms. Edwards helping
22 you on that in the spring of 2008, right? That was a part of
23 your complaint.

24 A. It really wasn't addressed.

25 Q. Why?

1 A. So much in court.

2 Q. Why?

3 A. We asked the Court to revise it.

4 Q. Did you bring affidavits or testimony from the
5 Realtors at that time?

6 A. No. We had not got that far. We were just asking if
7 we could.

8 Q. Is there some reason why if you had this evidence from
9 the Realtors you couldn't go back to the Court and tell a family
10 court judge, he's ordered to sell it and to do it in good faith
11 and he's not doing it and here's the evidence and present those
12 Realtors and that testimony; is there any reason why you
13 couldn't do that?

14 A. Yeah, the Realtors won't do it.

15 Q. So the truth of the matter is then, that you don't
16 have the evidence because the Realtors won't do it?

17 A. The Realtors were willing to do it for Janet but now
18 they're not -- maybe I haven't really pursued it that much with
19 that end of the bargain because of what the judge said to Ms.
20 Edwards, that he could not revise the court order.

21 Q. Well, to revise the agreement would mean to change the
22 fact of it being sold and the proceeds being divided and him
23 moving it in until then, but the judge could enforce it and make
24 him act in good faith, right?

25 A. I guess my point is that Janet knew he was sabotaging

1 Immediately.

2 Because she knew he was sabotaging, he was wrecking
3 the vehicles, he was tearing the pools. She knew that he was
4 sabotaging. He was stealing the stuff out of the house.

5 Q. Did you have any evidence that he tore the pool?

6 A. He was the only one there.

7 Q. Well, the pool had a tear in it?

8 A. Yes.

9 Q. Do you have any evidence that your husband tore it,
10 direct evidence that your husband tore it?

11 A. No. No direct evidence, but, okay even setting that
12 aside, no direct evidence, things were being destroyed by
13 whoever, okay? Things were being destroyed.

14 Q. What, the pool had a tear in it?

15 A. The pool.

16 Q. The golf cart had a rip in it?

17 A. The golf cart was destroyed.

18 Q. Was it destroyed or did it have a rip in the seat?

19 A. It had a rip in the seat, the batteries were bad
20 because.

21 Q. Did somebody blow up the batteries or did they just go
22 bad?

23 A. He ran them out of water.

24 Q. He ran them out of water?

25 A. He didn't service it.

1 Q. Well, you understand the difference between your
2 belief that he might have done something and having proof to
3 support it?

4 A. Yes, sir.

5 Q. You're getting mad at Janet for not getting you
6 something that you have no proof to support; do you understand
7 that?

8 A. No, that's not why I'm mad at Janet. I'm mad at Janet
9 because she did not, even though she knew things were being
10 destroyed, being hidden, she did not make a court agreement that
11 would settle immediately so that this stuff would not continue
12 to happen.

13 Q. Well, there was nothing that said you had to wait for
14 the golf cart, is there? Are you aware of anything that
15 prevented you from getting the golf cart after the divorce
16 decree?

17 A. I got the golf cart only because my daughter got the
18 golf cart. I was not allowed in the house.

19 Q. But you got it?

20 A. Yes, sir. But that does not negotiate everything else
21 that was at the house that she knew was being taken or destroyed
22 by whoever, that the court decree left it open for more of the
23 property to depreciate, more of the items to go down or be
24 destroyed or be used where they would have no value by the time
25 the sale happened.

1 Q. Where did the numbers come from? Did you just say
2 this has a value of X?

3 A. Robert in his decision put some values on some stuff,
4 yes, and we put values on some stuff.

5 Q. These were the values you put on, is my question?

6 A. Yes.

7 Q. Nobody else did an appraisal?

8 A. No.

9 Q. No one's done one to your knowledge?

10 A. No.

11 Q. You say you've done some garden yard sales?

12 A. Yes.

13 Q. Is it fair to say that in a yard sale you generally
14 get about five cents on the dollar for what something is worth?

15 A. Maybe 25 cents on the dollar.

16 Q. Five cents to 25 cents maybe depending on what it is?

17 A. Yes.

18 Q. Now, you're claiming that you've lost the value of the
19 house and that you didn't get any alimony and that you did not
20 get the \$200 per month ordered to be paid to you for Brandy and
21 that you're never going to get any money out of the house for
22 the personal property.

23 Is there anything else you're claiming in the way of
24 damages other than those four things?

25 A. I don't think there's anything else.

1 do.

2 Q. But I just wanted to clear it up that it is not your
3 contention that if the judge tells her, I don't think this is a
4 case for alimony unless I see something and the proof and it's
5 not here in the pleadings, if the judge says that, she's
6 supposed to tell you that, right?

7 A. I imagine she's -- yes.

8 Q. I would think so. Do you agree with that now?

9 A. I imagine she should but I guess anything that was
10 leading up to that day, all the evidence that she had in the
11 book of everything he made and all this, you know, in --

12 Q. All these trial notebooks and all that stuff?

13 A. All the stuff that she wrote in here in her own
14 handwriting -- that was my understanding what we were going to.
15 And if she was -- if that was not correct, then why did I pay
16 her so much money to put stuff in the notebook that is not
17 correct to give me false pretenses and then come to court and
18 then give me a bigger false pretense under court that all of a
19 sudden now after three years of fighting for alimony and asking
20 for alimony that all of a sudden she could have seen the
21 evenness -- say if she saw the evenness of the salaries, then
22 why did she spend three years of trying to go after alimony?
23 That's what I guess I am having a hard time understanding. If
24 there was -- okay, if -- first of all, adultery was not my big
25 issue. My big issue was getting half of everything, okay, to

1 make sure I got half of everything was the first issue on my
2 mind. That's what she told me I could get was half of
3 everything.

4 Q. How did you not -- you didn't get half of everything
5 you're saying because you haven't gotten half of the proceeds
6 from the house or the property yet. I got you, okay. Let me
7 ask you this --

8 A. Why was so much money spent -- she knew the
9 contingency of Robert -- or whatever that word is.

10 Q. Contentiousness?

11 A. The contentiousness of Robert. She knew that from the
12 beginning. We had to go to court, she had everything she needed
13 to go to court to get my half. If that's all she needed, then
14 why did it take three years to go for -- that we were going for
15 adultery the whole time? I've never wavered from that. She
16 never wavered from that. All of a sudden that day you're going
17 to throw something at me that a professional lawyer is going to
18 throw something at me that you're saying oh, well, we're not
19 going to get it now, you're not going to get it.

20 Q. Your divorce hearing was when?

21 A. The first one was November...

22 Q. 2006?

23 A. Yes.

24 Q. And your second one was April 2007?

25 A. Yes.

1 covered that ground. If you want to cover it some more, that's
2 okay with me. I understand your position on that. I am trying
3 to help you to get out and your lawyer to get out to the
4 Carolina game.

5 Failing to request a continuous. Now this is what I
6 am confused about here. In your pleadings in paragraph 6 you
7 say, Plaintiff -- after the initial pretrial the Defendant
8 informed the Plaintiff that the trial judge stated to the
9 Defendant that the Plaintiff would not receive any alimony. The
10 Plaintiff became emotionally distraught, stepped out...

11 But you allege in your pleadings that you were at all
12 times ready, willing and wanted to go in the courtroom and try
13 your case. Then in your specifications of negligence you say
14 that she was negligent in failing to request a continuance based
15 upon your extreme emotional and distraught condition?

16 A. Only after. I was ready for court. Only after she
17 told me that the coercion and lies that got me distraught.
18 That's when I saying, okay, we need a back-up. I am doing
19 something that's going to effect me for the rest of my life.

20 She's a professional lawyer, she needs to back up and
21 make sure I understand my losses and everything that is going to
22 be in this court order. I mean, just think, it took a year and
23 a half to get to it this point of us going over and over what
24 was in this book, and in a matter of seconds it was stripped
25 from me when we went to court for -- without my understanding of

1 really what she was doing, and being told what to do.

2 Q. All right. And next you say that she was negligent in
3 advising or instructing you that you were not entitled to
4 alimony or in the alternative that you would benefit from
5 accepting a settlement that didn't include alimony.

6 What I want to ask you about that is this. First of
7 all, do I understand you to be saying that from the time you
8 first met with Janet right through until April of 2007, the date
9 of this divorce hearing, Janet never discussed with you what had
10 to be proved to try to get alimony, what the chances of getting
11 alimony were, or that because your husband was disabled and
12 because your incomes were pretty close in terms of what you made
13 and what you spent, that there was any doubt about you getting
14 alimony?

15 A. Never discussed.

16 Q. Never ever mentioned that?

17 A. Always said that I was entitled to alimony.

18 Q. Always said you were going to get alimony?

19 A. Always entitled, yes.

20 Q. And in November when your husband wasn't offering you
21 any alimony --

22 A. Alimony wasn't discussed.

23 Q. It was never discussed?

24 A. Not that I remember.

25 Q. You were there from 9:30 in the morning until 5:00 in

1 the afternoon --

2 A. Because we weren't going to court.

3 Q. But you were talking about the case to try to resolve
4 it?

5 A. Right.

6 Q. And from 9:30 in the morning until 5:00 in the
7 afternoon it was never discussed?

8 A. One thing that was supposed --

9 Q. Answer my question, please.

10 A. Not that I remember.

11 Q. Now, the next thing is advising or instructing the
12 client that it was in her best interest to accept a settlement
13 which denied her any ability to receive any portion of the
14 equity in the marital residence and denied you any appropriate
15 division of the other marital properties.

16 And again that's because you say it will never ever
17 get sold?

18 A. Well, it has been three years. Is that a reasonable
19 amount of time, three years?

20 Q. Have you looked at the real estate market in the
21 United States?

22 A. It doesn't matter about the real estate market.

23 Q. It doesn't?

24 A. It matters about what is in the court order that even
25 if it couldn't sell in that time something else needed to.

1 Q. Right, you get half, right? What was it you were
2 wanting?

3 A. Well, if it's not sold and it's depreciating, I'll
4 never get half of it.

5 Q. Well, are you saying that all along you wanted your
6 husband to pay you for half?

7 A. Yes.

8 Q. So you weren't satisfied with it just being sold --

9 A. I wanted it to be settled then, not three to five
10 years later.

11 Q. I see, so it's negligent of your attorney to reach an
12 agreement whereby it's going to be sold and you get half?

13 A. And especially when she knows the contentiousness of
14 him destroying -- the property being stolen, him hiding.
15 Whether it's factual or not, she knew it was part of the things.

16 Q. But you're not claiming that he destroyed the property
17 in the house?

18 A. Not at this time, no. I have not been there.

19 Q. Now, I don't have the benefit of what you've got there
20 in front of you right now because you brought that with you
21 today.

22 A. Okay. It's her table of contents with her handwriting
23 on it.

24 MR. HOWARD: Do you have a copy of that?

25 MR. BANNISTER: Yes.

1 it say that?

2 A. That's later on that I wrote that, yes.

3 Q. Why would she write that?

4 A. That's my handwriting. These are her handwritings.

5 Q. So is that your handwriting up here at the top where
6 it says, our daughters, on the left-hand side?

7 A. Yes.

8 Q. And wife?

9 A. Yes.

10 Q. What is that written there for?

11 A. That I guess I was just making my own notes. I was
12 trying to make heads or tails of what happened.

13 Q. After the divorce?

14 A. Yes.

15 Q. For purposes of getting ready for this lawsuit?

16 A. It may have not even been in my head at that time.

17 Maybe. I have been through so much. I don't know when I wrote
18 it really, but it was after, it was way after court that I wrote
19 that.

20 Q. Why?

21 A. Well, it maybe was to get ready for this, to prepare.
22 I didn't have a lawyer at the time. I was trying to prepare to
23 do something to make heads or tails of why I was so depressed
24 and what Janet did to me and what --

25 Q. And you feel like Janet has done all this to you,

1 nobody else has done anything to you, and you've never made any
2 bad decisions on your own, or good decisions, it's all somebody
3 else; is that what you're saying?

4 A. I am saying I hired her to represent me because I
5 could not do it at court. I hired a professional to represent
6 me and --

7 Q. And you're saying she prepared all these books,
8 subpoenaed all these witnesses, did all these depositions, got a
9 hearing date, went over to the courthouse and then told you that
10 she wasn't going to go in the courtroom and try your case, and
11 then told you what you were going to get -- no, didn't even tell
12 you that, just went and negotiated with the other side and then
13 took you into the courtroom, stood you up and you had no idea
14 other than you suspected you were there to put a settlement on
15 the record, and that's your testimony; is that correct?

16 A. I would say it in a little bit different words, but
17 yes, that's what she did.

18 Q. And you answered the judge's questions that day?

19 A. Yes, sir.

20 Q. Because you were frightened and because you were
21 crying so you didn't hear well?

22 A. I was scared at the judge.

23 Q. And you were scared of the judge?

24 A. Because of what Janet told me.

25 Q. You say that Janet coerced you in the sense of telling

1 you that the judge would be mad at you for trying your case.

2 Any other coercion or is that it?

3 A. Just about all the attorneys fees and everything.

4 Q. And that you might end up having to pay his attorney
5 fees if you lost?

6 A. Yes.

7 Q. And is it coercion for her to tell you if you lost you
8 could end up having to pay part of his attorney fees?

9 A. Yes.

10 Q. Is that coercion?

11 A. Yes.

12 Q. Do you know what the law is on that, as to whether you
13 could if you lost be required to pay his attorneys fees?

14 A. Yes.

15 Q. What is the law on that?

16 A. I mean, if you lose I guess you can. But she assured
17 me again that with the mounds of evidence that we had that -- he
18 had one witness.

19 Q. Well ma'am, I'm trying to understand. If I am your
20 lawyer --

21 A. She knew.

22 Q. Am I supposed to tell you the good and the bad
23 possibilities?

24 A. Sure.

25 Q. Am I supposed to tell you this is what could happen

1 good as well as what could happen bad?

2 A. This was a coercion tactic.

3 Q. Why was it a coercion tactic to tell you what could
4 happen if you lost?

5 A. Because it was done when I was under -- after she had
6 told me I wasn't getting alimony and stuff and I started crying,
7 she continued to coerce me by throwing out statements that
8 confused me. And in that instance, yes, she was trying to throw
9 me off so I would not go to court.

10 Q. So she wasn't trying to tell you what could happen,
11 she was actually trying to --

12 A. Use it as leverage for her not to try my case.

13 Q. Okay, so this was a calculated thing on her part?

14 A. Yes.

15 Q. And that's what you feel?

16 A. Yes.

17 Q. And your evidence of that is what?

18 A. Because --

19 Q. Because what?

20 A. I didn't get anything.

21 Q. You didn't get anything?

22 A. I didn't get -- okay, what did I get? I got --

23 Q. Half the house?

24 A. No, I haven't got it.

25 Q. Half the furniture?

1 A. I didn't get it.

2 Q. Well ma'am, it's up for sale right now with you
3 listing it, right?

4 A. I have not got it. I don't have it.

5 Q. You don't have it because it hasn't sold, right?

6 A. I will probably never get it because she knew his
7 contentious activity of not wanting to sell or buy the house.
8 She knew this. She had witnesses there to testify in this. She
9 had her own person that worked for her to come out to the house
10 and tell us that he degraded me, he degraded the house. She
11 knew this was a very --

12 Q. You have already been through that again.

13 Let me ask you this question. In the last year what
14 have you done to lower -- have you tried to lower the purchase
15 price?

16 A. Yes. In fact the last real estate agent says we got
17 another appraisal, the appraisal went up. I don't know what it
18 is because he wouldn't give it to me, but the real estate agent
19 told them -- suggested we go down to 250- or \$60,000 and he
20 refused. He went and got another real estate agent and put it
21 back on the market for 295.

22 Q. So you're saying you have a real estate appraisal that
23 says it's worth \$260,000?

24 A. No, that they were going to put it on the market for
25 that.

1 Q. You have an appraisal it of it now, the current market
2 value?

3 A. He has gotten it.

4 Q. Have you?

5 A. No.

6 Q. Is \$260,000 okay with you? Is \$260,000 a fair price
7 for it?

8 A. It could be, yes.

9 Q. Would you sell your interest in it for one half of
10 that?

11 A. I don't know at this time.

12 Q. I am sorry?

13 A. I don't know. I will think about it.

14 Q. So you might not; you might think that's too low?

15 A. I would have to see the appraisal first. I haven't
16 seen the appraisal.

17 Q. So you question whether that's accurate or not?

18 A. I haven't seen it.

19 Q. You think \$295 is okay?

20 A. No, it's too high in this market.

21 Q. \$295 is too high. What steps have you taken to make
22 your husband lower it?

23 A. I can't take any steps.

24 Q. Why can't you take him to court and say, Judge, the
25 value of the property according to this appraisal is \$275-

1 \$280,000, and Judge, he's not acting in good faith in doing what
2 the court order and decree required him to do because he won't
3 agree to list it at this price. Why can't you do that?

4 A. Because I am fighting a losing battle. I feel like
5 I'm fighting a losing battle because all of this was to help me
6 to get it under control and to be right. And none of this is
7 right and I am being punished because this is not right.

8 Q. Explain to me why you're fighting a losing battle to
9 do that?

10 A. Because it's like a futile battle. I paid \$5,800 for
11 her to hold him in contempt of court.

12 Q. And to get advice on whether to sue Janet Butcher?

13 A. And guess what? They got \$1,500 out of the deal and
14 \$800 for the golf cart. Now to me spending \$5,800 to get way
15 over and beyond, I mean I feel like it's just -- this should
16 have been right. It should have been taken care of right. The
17 contentiousness of him made this all wrong.

18 Q. So is it your belief that it would take \$5,800 to go
19 take that to court, that one issue to court?

20 A. It could. I don't know.

21 Q. And that you won't get any attorney fees if you're
22 right and he's wrong?

23 A. I guess I feel like I'm fighting a battle that is just
24 never unending.

25 MR. HOWARD: I don't have any further

1 And I was upset. I was crying. I didn't know what to
2 do after that. And I have been in severe depression because of
3 this and I shouldn't have to be fighting something that should
4 have been done properly.

5 Q. All right. So you're saying the day after you had a
6 conversation about the back pay and she said I forgot?

7 A. Yes.

8 Q. And then you asked her about the VA disability and you
9 got the 25 retirement?

10 A. Right.

11 Q. You asked about the provisions with regard to the
12 disability?

13 A. I didn't ask it that day, but I asked it later on.

14 Q. How long later on?

15 A. A couple months. Whenever I finally saw the court
16 order.

17 Q. What was her response to you?

18 A. She forgot and she would try to put it in there. She
19 would slip it in there. And so she did. And he made her take
20 it out. And she told me she knew that would happen.

21 Q. Now, your husband is still drawing his retirement,
22 right?

23 A. Yes.

24 Q. So that provision has not cost you a penny?

25 A. Not yet. When it goes all disability, it will.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
:
COUNTY OF KERSHAW) C/A #2019-CP-28-168

Theresa M. Brown,)
)
Plaintiff,)
)
-vs-)
)
Janet Butcher and the)
Butcher Law Firm,)
)
Defendant.)

DEPOSITION OF
JANET BUTCHER

Friday, December 3, 2010
10:00 a.m. - 12:20 p.m.

The deposition of JANET BUTCHER was taken at the offices of Melvin D. Bannister, Attorney at Law, 5115 Forest Drive, Suite G-1, Columbia, South Carolina, on the 3rd day of December, 2010, given before Bernice M. Powell, Verbatim Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

PALMETTO COURT REPORTING SERVICE
1178 Louis Leconte Road * Hopkins, SC 29061
Telephone: (803) 783-3724

1 A Yes.

2 Q Had she been served with the summons and
3 complaint in the divorce action?

4 A Yes.

5 Q And did you interview her at that time?

6 A I did meet with her, yes.

7 Q Did you continue to work on her case, then, after
8 you met with her?

9 A Well, Ron came into the case, and he had more
10 time than I did. And Theresa agreed that he would be her
11 attorney, and I supervised him.

12 Q So you supervised?

13 A Sure.

14 Q Do you remember what the allegations as far as
15 grounds for the divorce were in the divorce complaint filed
16 by Mr. Brown?

17 A I think he was alleging adultery in it.

18 Q Anything else?

19 A Oh, you mean all the other issues?

20 Q No, as far as the grounds for the divorce. Did
21 he allege habitual drunkenness or physical cruelty?

22 A I think he might have alleged physical cruelty.
23 That was one of the sub-issues during the thing. I never
24 felt there was any credibility at all to either one. There
25 was no evidence of either one.

1 Q Okay.

2 A There was a witness that Mr. Brown came up with
3 regarding the adultery, and it wasn't a very credible
4 witness.

5 Q And I believe you probably took a deposition of
6 that witness, didn't you?

7 A Yes, I did.

8 Q Do you remember the witness' name?

9 A I think it was Christianson or something close to
10 it.

11 Q And is there anything in particular that stands
12 out in his deposition testimony that made him unbelievable?

13 A I'd have to look at his affidavit and his
14 deposition. I have not reviewed that in a long time.

15 Q Did he mention Brandy?

16 A Did Mr. Christianson mention Brandy?

17 Q Yes.

18 A I don't recall.

19 Q Did Mr. Brown supply you with any exhibits,
20 photographs, or anything like that to indicate that Theresa
21 had been physically abusive to him?

22 A There were pictures.

23 Q And could you describe the pictures?

24 A I haven't looked at them in so long, there's no
25 way I could describe them. But they were not convincing of

1 that since I was his mother, it looked like we were beating
2 up on her too much, on his former wife. So he wanted -- it
3 was his idea to come in with other counsel.

4 Q And who did he get?

5 A George Speedy.

6 Q And did you make any recommendation after Bob
7 told you that he might need other counsel because his
8 mother was going to look like a mean, old woman beating up
9 on his ex-wife?

10 A I'm not sure if it was his idea or mine. But the
11 agreement he had with -- and Jay had gone on the bench, so
12 Jay wasn't available. And the agreement he had with George
13 is I did all the pleadings, I did whatever needed to be
14 done at that stage.

15 I had already filed the modification. We had
16 already had a hearing or two. And I did the work, and
17 George made the court appearance.

18 Q And when, then, did George get involved?

19 A I can't -- I don't recall what date George got
20 involved, but it was after I was working for Theresa,
21 because I told Theresa about it when George came on the
22 case.

23 George came on the case in the spring of 2007.
24 And as soon as he came on the case, I told Theresa. I
25 might have told her earlier, because with her daughter

1 working in my office, we saw Theresa often.

2 And she knew my grandchildren. She was very kind
3 to my grandchildren. She was very kind to my son, just a
4 very nice person. She knew Bob was in litigation for
5 custody of his children. But I'm not sure I ever talked
6 about who was representing him.

7 Q Okay.

8 A But when George came on the case, the first thing
9 I did is I told Theresa that George was on the case and at
10 that time let her know I had -- she might have known
11 already -- that I had worked for him, Mr. Furman, and Mike
12 Stegner earlier in my career, and that George had worked on
13 Bob's custody case.

14 Q But you continued to do the paperwork on your
15 son's case, and George did the court appearances?

16 A Yes. I think George made two court appearances,
17 might have been three. Bob's custody case progressed
18 quickly. It moved very fast. She had sole custody. It
19 moved very quickly to joint custody, and then it moved
20 pretty quickly to Bob having full custody.

21 Q What was wrong with her?

22 A She just agreed that he was going to have full
23 custody. I don't know. There are a lot of young mothers
24 today who --

25 Q Okay. When Theresa came in to your office and

1 picture us there for the deposition. I'd have to check our
2 notes to see if Theresa --

3 Q On any --

4 A I remember Theresa -- yes, I remember Theresa was
5 there. I'm not sure if it was for more than the
6 deposition. I'd have to check my notes.

7 Q Were there any offers dealing with the issues of
8 alimony and attorney's fees in addition to the offer about
9 the real estate?

10 A I don't believe so.

11 Q So --

12 A But I'd have to check the paperwork.

13 Q Do you remember any offer being made by Mr. Brown
14 through his attorney or directly that he would pay anything
15 toward alimony or attorney's fees of Theresa?

16 A I don't recall that, without looking at my file.

17 Q Did you ever tell Theresa that you would not ever
18 be able to settle this case?

19 A After the work we did in November, and the case
20 was continued, and we negotiated, I think I told Theresa I
21 didn't see how it was going to settle. We were fully
22 prepared for trial the next time we went to court.

23 Q And in November, you were prepared, and then in
24 April, you were prepared. What were you going to be asking
25 for on behalf of Theresa?

1 A I had a very long list I was working from, and it
2 was -- we were there for -- we were fighting for
3 everything.

4 Q Equitable division?

5 A Of everything.

6 Q Yes.

7 A There were a lot of details involved --

8 Q Including --

9 A -- alimony.

10 Q I'm sorry, I didn't mean to interrupt you.

11 A Alimony, the divorce on adultery, attorney's fees
12 -- all of that. We went in for everything. We had
13 testimony ready for everything.

14 Q Tell me about April 16, 2007.

15 A When we arrived at the courthouse, I believe all
16 the witnesses were there. Everything was set to go,
17 including Mr. Payne, and the logistics of getting Mr. Payne
18 there worked out. We were ready to start. George and I
19 went in to see the Judge, and --

20 Q And the Judge was Dottie Jones?

21 A Yes, sir. And we were real pleased to have Judge
22 Jones. She's a very good judge.

23 Q Okay. So you went in to have a brief pre-trial
24 conference with Judge Jones?

25 A Yes.

1 in and out. It was a bit of a reunion for the girls.

2 Q Did you discuss the terms of any prospective
3 agreement with Crystal?

4 A I think I did with both girls, especially when
5 Theresa was getting ready to settle. And I said, "I think
6 your mother wants to settle the case." I said, "Would you
7 talk to her, and what do you think?" I said, "Do you think
8 she's in any -- that she's capable of settling this case?
9 Do you think that she knows what she's doing?"

10 Q And you had that question because you saw
11 Theresa, and --

12 A No.

13 Q -- she was crying the whole time that she was in
14 the restroom?

15 A No, that's not why.

16 Q Well, why would you ask her daughters if she was
17 emotionally able to enter into this agreement?

18 A I didn't ask if she's emotionally able to. We
19 were going to go to trial, and it surprised me tremendously
20 that Theresa wanted to negotiate and then settle her case.

21 Q Did Theresa ever tell you that she wanted to give
22 up her right to alimony?

23 A Well, she knew that her husband wasn't agreeing
24 to it. She knew that was part of the agreement.

25 Q Well, she knew that her husband didn't want to

1 Q Has the house been sold?

2 A I don't know.

3 Q Would you be made aware if the house was sold?

4 A Would I be made aware? I think if Theresa and I
5 had remained in touch with each other, I would have known.
6 But, no, there was nothing to notify me.

7 Q After the divorce was signed, did Theresa
8 approach you about representing her in a rule to show cause
9 trying to get the house sold?

10 A We had a rule to show cause. I filed one for her
11 after the divorce.

12 Q Okay. And that was an attempt to get the
13 property sold?

14 A I'd have to look at that rule for the issues
15 involved.

16 Q And you say you don't know whether the property
17 has been sold or not?

18 A I do not know.

19 Q Is he still living in the house?

20 A I do not know.

21 Q Did you make a statement earlier today that he
22 was still living in the house?

23 A I don't remember.

24 Q That's all I have.

25 MR. HAWK: I don't have any questions.

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF KERSHAW

3 THERESA M. BROWN,

4 Plaintiff,

5 vs.

CASE NO. 2010-CP-28-00311

6 JANET BUTCHER and
7 THE BUTCHER LAW FIRM, PA,

8 Defendants.

9 DEPOSITION OF: ANN M. STIRLING

10 DATE: April 21, 2011

11 TIME: 11:13 A.M.

12 LOCATION: Young Clement Rivers, LLP
13 28 Broad Street
Charleston, SC

14 TAKEN BY: Counsel for the Plaintiff

15 REPORTED BY: SANDRA K. BJERKE, RMR, RDR, CRR

16
17
18
19 A. WILLIAM ROBERTS, JR. & ASSOCIATES

20 Fast, Accurate & Friendly

21 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

22
23 Columbia, SC Greenville, SC Charlotte, NC
(803) 731-5224 (864) 234-7030 (704) 573-3919

1 A. I have.

2 Q. Have you had conversations or any
3 conversations with Bill Howard here about this
4 matter?

5 A. Yes.

6 Q. And have you had any conversations with
7 Janet Butcher about this matter?

8 A. No. Never met her, to my knowledge.

9 Q. As you are aware from reading these
10 materials, there is an issue here of an agreement
11 being reached between the Browns and put on record
12 at a final divorce hearing.

13 Is that your recollection?

14 A. It is.

15 Q. In a contested family court matter, who
16 should make the decision to settle a case?

17 A. The client.

18 Q. There is also an issue concerning the
19 understanding of the agreement, the voluntariness
20 of the agreement, emotional stability of Ms. Brown
21 at the time of the agreement.

22 Would you agree that those are issues
23 in this malpractice action?

24 A. It appears those are the allegations,
25 yes, and things arising from them.

1 it were, but the broad strokes, it's pretty much
2 what he had wanted to do. We sell the house, we
3 divide the property, you get a few things, I get a
4 few things, we list it. You know, the things that
5 were in there. I'll divide my retirement up the
6 way we've been doing it.

7 I think that had more or less been his
8 position. Of course, that happens sometimes. You
9 get down there, and they're not going to bend.

10 Q. If you have a client who makes
11 statements to you that are differing or opposite to
12 each other, statements, is there any way you can
13 determine which of the statements would be true?

14 A. I can't answer that question in the
15 abstract. I'm not even sure what you're asking,
16 but I don't think I can answer that.

17 Q. Well, is there any rule of thumb that
18 would say the first statement given to you is the
19 correct statement?

20 A. No, not to my knowledge.

21 Q. We talked a little bit before about
22 Theresa Brown's emotional stability when she went
23 in for the final hearing.

24 Should Janet Butcher have informed the
25 court of Theresa Brown's physical and emotional



1 STATE OF SOUTH CAROLINA)
2 COUNTY OF KERSHAW) IN THE FAMILY COURT
3) No. 2005 DR.28 00567

4 ROBERT L. BROWN)
5 Plaintiff)

6 versus)

7)
8 THERESA B. BROWN)
9 Defendant)

TRANSCRIPT OF RECORD

Camden, South Carolina
April 16, 2007

10
11
12 B E F O R E :

13 HONORABLE DOROTHY MOBLEY JONES, Judge

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

15 For the Plaintiff: GEORGE W. SPEEDY, Esq.

16 For the Defendant: JANET T. BUTCHER, Esq.

17 Reporter: KELLY FLANDERS

18
19
20
21 HARRIET P. BENNETT
22 Reporter, S. C. Court Administration
23 P. O. Box 86
24 Ladson, S. C. 29456
25

Butcher 04747

I N D E X

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EXHIBITS

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NOTE: No Exhibits were marked.

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1 (The within matter came before the Court on April
2 16, 2007)

3 THE COURT: In this case if the attorneys need a
4 few more minutes, go ahead, but I'm going to call the
5 case and put it on the record.

6 This is the matter of Robert L. Brown, Plaintiff,
7 versus Theresa B. Brown, Defendant. Our Docket Number
8 is 2005 DR 28 005 7.

9 This is an old case that's been pending since
10 2005. The original pleadings, being a Summons and
11 Complaint, were filed on September 21st, 2005.

12 In that Complaint, the Plaintiff is alleging that
13 the issues related to the divorce, the marital prop-
14 erty, seem to be resolved.

15 I do have an Answer and Counterclaim that was re-
16 corded October 13, 2005, as well seeking a resolution
17 of the parties' marital disputes.

18 I do see where the parties are both here today at
19 the call of the case.

20 The attorneys -- let me put that on the record --
21 Ms. Butcher is here representing the Defendant, and Mr.
22 Speedy is here representing the Plaintiff.

23 The parties' original attorneys for the record are
24 no longer involved in the case.

25 There was a Temporary Order issued by Judge Bennoitt

4

1 on November 16, 2005. I have that before me, and I
2 have a variety of other pleadings that have been filed,
3 including Rules to Show Cause, Pre-trial Order, and
4 Orders of Continuance.

5 We are here today to dispose of this case. Other-
6 wise it is in jeopardy of having to be dismissed.

7 Mr. Speedy, Ms. Butcher, now I understand that you
8 have been able to negotiate further here this morning.
9 In fact, you can use the balance this morning to con-
10 clude your negotiations.

11 I'll be glad to hear from you.

12 MR. SPEEDY: Yes, maam. I'm going to be responsi-
13 ble for all Orders that are required as a result of
14 today's settlement, Your Honor.

15 The parties are . . .

16 THE COURT: Well, let me ask you this. Have we
17 resolved everything?

18 MR. SPEEDY: Yes, maam.

19 THE COURT: So we have a comprehensive agreement,
20 and also the issue of a divorce.

21 MR. SPEEDY: Yes, maam.

22 THE COURT: And do we have the grounds we're going
23 to proceed on here today?

24 MR. SPEEDY: Yes, maam. We would amend the plead-
25 ings to ask for a divorce on the grounds of continuous

5

Butcher 04751

1 separation of . .

2 THE COURT: Well, let's handle that first.

3 Ms. Butcher, any objection?

4 MS. BUTCHER: No objection.

5 THE COURT: All right. You waive any statutory
6 waiting period?

7 MS. BUTCHER: Yes, maam.

8 THE COURT: Very good. I will allow you to amend
9 and go forward on the issue of divorce.

10 All right. Now, Mr. and Mrs. Brown, understand
11 that the Court has reviewed this file and I've heard
12 briefly from your attorneys.

13 At this time, I will ask the attorneys to work to-
14 gether as much as they can and present the agreement,
15 and I know you have been very involved in this but it
16 is necessary now for you to listen and make sure that
17 you understand the agreement.

18 I'm going to be asking you questions to be sure
19 it is right.

20 Mr. Speedy?

21 MR. SPEEDY: Yes, maam. The parties are the owners
22 of a house and thirty-two acres. It is for sale now,
23 and they both agree the house and they will accept any
24 reasonable offer.

25 It is to be sold in an as-is condition, and after

6

1 the payment of all costs, mortgage expenses, fees, they
2 will then divide the equity equally.

3 If there is an offer, the Plaintiff will have a
4 brief-period, and I would say no more than forty-eight
5 hours, to pay or decide that he will pay the net value
6 to the wife if he decides to keep the house. That is
7 not going to be in the listing agreement, however.

8 The house and the contents, Your Honor, will be
9 sold, and the proceeds divided.

10 Now, the parties have vehicles -- forgive me, Your
11 Honor. I forgot to include one thing I wanted to -- it
12 is on your list and I forgot to . .

13 (Portion inaudible as counsel both speaking)

14 THE COURT: You are speaking to Ms. Butcher now.

15 MR. SPEEDY: Yes.

16 THE COURT: Just so the record will be clear.

17 MR. SPEEDY: Yes.

18 THE COURT: Go ahead.

19 MR. SPEEDY: On your list, there are two things
20 you don't have.

21 THE COURT: All right.

22 MR. SPEEDY: K, which would be an '02 Grand Prix,
23 and J, which would be farm equipment -- farm tractor --
24 should have been on that list.

25 Vehicles and boats -- A, the boat we're to sell.

1 THE COURT: All right.

2 MR. SPEEDY: B, my client is going to pay Five Hun-
3 dred Dollars to the wife.

4 C, the '96 Cadillac. He will pay Twenty-four Hun-
5 dred Dollars to the wife.

6 D, the '95 motorcycle, he's going to pay Fifteen
7 ~~Hundred Dollars.~~

8 All of these representing one-half of the value.

9 THE COURT: All right.

10 MR. SPEEDY: He's going to trade the trailer for
11 a golf cart that's going to be coming up in a moment.

12 E, will be sold. The Jimmy will be sold.

13 G, 06 truck will be my client's.

14 H, the Grand Am will be the daughter's.

15 I, will be the daughter's.

16 J, will be sold.

17 The '02 Grand Prix will be the wife's, K.

18 J, farm equipment and implements will be sold.

19 Number four, the golf cart will be the wife's.

20 Five, will be sold.

21 Six, will be sold.

22 Your Honor, the parties will share one half of the
23 value of all bonds. The only reason I say that is be-
24 cause a lot of times people mix up the face value with
25 the value, and we want to make that clear, that we are

8

1 sharing the value.
2 THE COURT: The value would be today's?
3 MR. SPEEDY: Today's value.
4 THE COURT: All right.
5 MR. SPEEDY: Clothes and personal effects will be
6 -- they tell me that they want today to pick a time to
7 go over to the house.
8 MS. BUTCHER: As soon as we finish.
9 MR. SPEEDY: Well, a particular time -- do you want
10 to say two o'clock?
11 THE COURT: You'll be out of here by one.
12 MR. SPEEDY: So we'll say two o'clock today.
13 THE COURT: What happens at two, Mr. Speedy, just
14 to be clear?
15 MR. SPEEDY: They will come to the house and get
16 their personal belongings, clothing, things like that.
17 THE COURT: I see.
18 MR. SPEEDY: Your Honor, . .
19 MS. BUTCHER: Will one thirty be all right?
20 (Discussion between counsel)
21 THE COURT: That is your decision, not mine.
22 Go ahead.
23 MR. SPEEDY: The husband's State retirement, Your
24 Honor, will be divided by qualified domestic relations
25 law, and I will be responsible for that.

1 The husband's military retirement -- the wife will
2 get one fourth of that, Your Honor, and we will do that
3 by qualified domestic relations law or its equivalent
4 under the federal . . .

5 THE COURT: Right.

6 MR. SPEEDY: It's a little different animal and I
7 am not sure what it's called.

8 Number 11 -- the life insurance should be excluded
9 from that.

10 Bank accounts will be -- their bank accounts will
11 stay with them, in whoever's name.

12 Attorney's fees -- Five Thousand Dollars in at-
13 torney's fees will be paid at the time of the closing
14 on the house.

15 THE COURT: And that is to be paid . . .

16 MR. SPEEDY: That will be paid to the wife. I'm
17 sorry, Your Honor.

18 The wife's retirement, the IRA, 401 K, she will
19 have sole ownership, exclusive of any interest of my
20 client.

21 The parties will share the declarations, one half
22 each.

23 My client will be the owner of the Lee County mo-
24 bile home and the land there. He will be the owner of
25 Carolina Confidential Events and its assets.

10

1 The wife will be the owner of the K-Mart stock.

2 The husband agrees to pay an additional Eight Hun-
3 dred Dollars to the wife, for a total of Fifty-two
4 Hundred Dollars which must be paid within ten days of
5 this date.

6 THE COURT: When you say for a total of Fifty-two
7 Hundred, does that represent adding up these amounts
8 that you have been giving me earlier?

9 MR. SPEEDY: Yes, maam. Fifty-two Hundred.

10 THE COURT: All right. In ten days.

11 MR. SPEEDY: Yes, maam, and both parties will
12 waive their right to alimony, and that is the agreement
13 of the parties.

14 THE COURT: All right. Ms. Butcher, I'll be glad
15 to hear from you now.

16 MS. BUTCHER: Your Honor, this is what we've agreed
17 to.

18 THE COURT: All right. I just wanted to be sure
19 that was the complete agreement.

20 MS. BUTCHER: Yes. There is one item that wasn't
21 mentioned, and it doesn't need to be in the Order, but
22 Mr. Brown is going to be sure one of his daughters gets
23 to see her horse when she is not living on the prop-
24 erty.

25 MR. SPEEDY: I don't mind putting that in the

11

1 Order. She will be allowed to . . .
2 THE COURT: All right.
3 MR. SPEEDY: We'll work out a date and time.
4 THE COURT: All right.
5 (Colloquy between counsel not picked up on the
6 tape)
7 THE COURT: All right, let's go to the divorce
8 part, and, Mr. and Mrs. Brown, if you would stand for
9 me now, please?
10 We're going to do this right where you are, I be-
11 lieve, at this point in the hearing.
12 Raise your right hands. Thank you very much.
13 (Plaintiff and Defendant sworn by the Court)
14 THE COURT: Mr. Robert Brown?
15 PLAINTIFF: Yes.
16 THE COURT: Ms. Theresa Brown.
17 DEFENDANT: Yes.
18 THE COURT: Mr. and Mrs. Brown, listen to me care-
19 fully. I have a series of questions to ask you. You
20 need to stand up and I'm going to ask you some questions.
21 This lady here, our Court Reporter, is going to take
22 down your answers.
23 Now, this action has been pending for quite some
24 time, as you well know. You have had the benefit of
25 representation.

12

1 You have had different attorneys, but you have been
2 pretty much represented throughout this matter. .

3 I have been told this morning you have an agree-
4 ment. . You were in the Courtroom just as I am, and we
5 heard the agreement read into the record.

6 Mr. Brown, is that your agreement?

7 PLAINTIFF: That's my agreement.

8 THE COURT: All right, is that your agreement, maam?

9 DEFENDANT: Yes, it was.

10 THE COURT: Do you understand the agreement?

11 PLAINTIFF: I do.

12 THE COURT: Do you understand it, maam?

13 DEFENDANT: Yes. .

14 THE COURT: Now, has anyone forced or coerced or
15 threatened you and made you enter this agreement?

16 PLAINTIFF: No.

17 THE COURT: All right. Mrs. Brown?

18 DEFENDANT: No.

19 THE COURT: All right. Now, in entering this agree-
20 ment today you have had the benefit of your attorney.

21 Now, Mr. Brown, you've had Mr. Speedy to answer
22 your questions and give you advice, the banefit of his
23 legal experience. Is there anything else you need to
24 ask him right now?

25 PLAINTIFF: No, he's a good attorney.

13

1 THE COURT: Are you satisfied with him?
2 PLAINTIFF: I am.
3 THE COURT: All right. Anything else you need to
4 ask your attorney, Ms. Butcher, who has been talking
5 with you and answering your questions?
6 DEFENDANT: (No audible response)
7 THE COURT: No?
8 DEFENDANT: No.
9 THE COURT: All right, are you satisfied with her
10 services, ma'am?
11 DEFENDANT: (No audible response)
12 THE COURT: You have to -- this lady just has to
13 I'm sorry, but
14 be able to hear it. /You've got to speak out where we
15 can hear. Okay?
16 DEFENDANT: Yes.
17 THE COURT: All right. Thank you, ma'am.
18 Now, coming here today, no one has forced, pres-
19 sured or made you enter this agreement, have they, Mrs.
20 Brown?
21 DEFENDANT: No.
22 THE COURT: All right. Listen to me carefully, and
23 I know it is a very stressful time. We're going to try
24 to get through this as quickly as we can, but I need
25 you to answer these questions as loudly as you can.
Mr. Brown, today -- yes, sir?

14

1 THE COURT: You're dizzy?
2 PLAINTIFF: I am.
3 THE COURT: Why don't you sit down then? Would you
4 all feel better sitting down, both of you, as long as
5 you speak -- Mr. Speedy, just move the microphone down,
6 a bit and let him get some water. We'll give him some
7 benefits.
8 (Brief pause in the proceeding)
9 THE COURT: All right, sir. Are you all right now?
10 PLAINTIFF: Uh hm.
11 THE COURT: All right. Don't take any offense at
12 some of these questions. We have to ask you these ques-
13 tions.
14 Today are you under the influence of any kind of
15 medication, lack of medication, drug, alcohol, or any
16 kind of substance that would impair your judgment or
17 keep you from understanding what you're doing?
18 Mr. Brown?
19 PLAINTIFF: I'm taking prescription medication but
20 I don't think it would affect or impair my judgment.
21 THE COURT: All right. You certainly understand
22 what you agree to. All right.
23 PLAINTIFF: Yes, ma'am.
24 THE COURT: Mrs. Brown, is there anything you are
25 taking today or have not taken that you would be under
15

1 the influence of?

2 DEFENDANT: No, ma'am.

3 THE COURT: All right. You certainly understand
4 your agreement. Is that right?

5 DEFENDANT: Yes, ma'am.

6 THE COURT: And I have already asked both of you
7 if you had anything else to ask your attorneys. Mr.
8 Brown, you said you didn't have anything? Right?

9 PLAINTIFF: Yes.

10 THE COURT: Mrs. Brown, do you have anything you
11 need to ask?

12 DEFENDANT: No, ma'am.

13 THE COURT: Now, listen carefully. In reaching this
14 agreement, you had to consider certain financial in-
15 formation in order to come up with an agreement.

16 Mr. Brown, is there anything else you need to know
17 about your wife's financial circumstances?

18 PLAINTIFF: No, ma'am.

19 THE COURT: Do you believe that she's given you
20 all the information necessary for you to make decisions
21 about this agreement?

22 DEFENDANT: Well, I (few words not audible).

23 ~~THE COURT: I mean, is there anything else you~~
24 need to know?

25 DEFENDANT: No, I'm agreeing with it.

16

1 THE COURT: All right. Thank you. Mrs. Brown, the
2 same question for you. Have you gotten enough informa-
3 tion about your husband's financial situation to be able
4 to enter into this agreement, ma'am?

5 DEFENDANT: Yes.

6 THE COURT: Anything you want to know or look at
7 regarding financial circumstances?

8 DEFENDANT: No. I'm sure he's had some hid but I'm
9 agreeing to it.

10 THE COURT: All right. So both of you all say
11 there could be more you could do, but you are basically
12 satisfied with where you are. Is that right?

13 Mr. Brown?

14 PLAINTIFF: Yes.

15 THE COURT: Mrs. Brown?

16 DEFENDANT: Yes.

17 THE COURT: Okay. Thank you so much.

18 All right. Now, Mr. Brown, do you understand that
19 if you had not entered into this agreement we would
20 have to have a trial, and I don't know if it would take
21 a day or two days or how long it would take, but the
22 fact of the matter is I would then have to make the de-
23 cisions.

24 What you have done here today is enter into an
25 agreement. You have played an active role in making the
17

1 decisions.

2 So, Mr. Brown, are you giving up your right to a
3 trial?

4 PLAINTIFF: Absolutely.

5 THE COURT: Mrs. Brown?

6 DEFENDANT: Yes.

7 THE COURT: Mr. Brown, are you then asking that
8 your agreement or the agreement you've reached with
9 Mrs. Brown then be the final Order?

10 PLAINTIFF: I do, Your Honor.

11 THE COURT: You, Mrs. Brown?

12 DEFENDANT: Yes.

13 THE COURT: And do you understand, Mr. and Mrs.
14 Brown, that it is an agreement but once this Court makes
15 it an Order then it is a Court Order. It's enforceable
16 through the Court and this Court can even order contempt
17 sanctions if you don't live up to you?

18 Do you understand that, Mr. Brown, and do you un-
19 derstand that, Mrs. Brown?

20 PLAINTIFF: Yes.

21 DEFENDANT: Yes.

22 THE COURT: And is that what you want me to do then,
23 Mr. Brown? Do you want me to make it a Court Order?

24 PLAINTIFF: I do.

25 THE COURT: Mrs. Brown?

18

1. DEFENDANT: Yes.

2. THE COURT: Now, in this agreement, you have agreed
3 to everything on a final basis. You can't come back
4 next week or next year and do this all over again. This
5 is a done deal. You cannot change it. Do you under-
6 stand, Mr. Brown?

7. PLAINTIFF: I do.

8. THE COURT: Mrs. Brown?

9. DEFENDANT: Yes.

10. THE COURT: Now, in that regard, the same issue as
11 to property division or alimony. In other words, you're
12 not getting any alimony, so you can't come back ever
13 and ask for alimony. Mr. Brown?

14. PLAINTIFF: I understand that.

15. THE COURT: You waive that right?

16. PLAINTIFF: I waive that right.

17. THE COURT: Mrs. Brown, you can't come back and
18 ask for alimony. Do you understand that?

19. DEFENDANT: Yes.

20. THE COURT: Are you giving up that right?

21. DEFENDANT: Yes.

22. THE COURT: All right. Now, I believe -- let me
23 speak to the attorneys. I believe Mr. and Mrs. Brown
24 have been in litigation for several years. They've had
25 the benefit of legal representation. They understand

19

1 their agreement. They consider it a final, comprehensive
2 and binding agreement, and they also consider that it
3 should be a Court Order. They are willing to live by
4 this agreement as the Court's final Order.

5 Is there anything else you would like to ask, Mr.
6 Speedy?

7 MR. SPEEDY: No, ma'am. You did a good job. Thank
8 you.

9 THE COURT: Anything you would like to ask, Ms.
10 Butcher?

11 MS. BUTCHER: No. No questions.

12 THE COURT: No questions? All right. Then that
13 concludes this phase of the hearing, which is inquiry
14 regarding the agreement.

15 Now, we will proceed with taking up testimony.
16 You cannot agree on this. It has to come up and the
17 Family Court has to rule on the issues.

18 Mr. and Mrs. Brown, let me ask you before we go
19 any further, is there anything this Court can do to help
20 you reconcile your marriage, put it back together?

21 Mr. Brown?

22 PLAINTIFF: No.

23 THE COURT: No. Mrs. Brown, anything you know of?

24 DEFENDANT: No.

25 THE COURT: No. All right, based on the response

20

1 of both the Plaintiff and the Defendant, I certify a
2 reconciliation is not possible.

3 Mr. Speedy, are you going to proceed on that issue?

4 MR. SPEEDY: No, I would -- whichever . .

5 THE COURT: All right.

6 MS. BUTCHER: I would go ahead and request a di-
7 vorce.

8 THE COURT: All right. Mrs. Brown, why don't you
9 come right up here to this seat?

10 You might have to adjust the microphone or the
11 chair. I'm not sure. You've already been sworn, so
12 you're fine. Okay?

13 DEFENDANT: Yes, ma'am.

14 THERESA BROWN, having been pre-
15 viously sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BUTCHER:

18 MS. BUTCHER: I would . .

19 THE COURT: Let the record reflect that I have both
20 current^{As} signed, notarized financial declarations. Thank
21 you.

22 MS. BUTCHER: May it please the Court?

23 THE COURT: Yes, ma'am.

24 Q. Theresa, have you stated your full name for the
25 record?

21

1 A. Theresa M. Brown.
2 Q. Theresa, are you a resident of Kershaw County?
3 A. Yes.
4 Q. And did you and your husband both live in Kershaw
5 County for about seventeen years prior to coming to
6 Court today?
7 A. Yes, maam.
8 Q. And were you married to Robert Brown on November
9 7, 1980, in Alabama?
10 A. Yes, maam.
11 Q. Do you have three children of that marriage?
12 A. Yes.
13 Q. And are all three emancipated?
14 A. That's correct.
15 Q. Did you separate from your husband on August 23,
16 2005?
17 A. Yes.
18 Q. All right, and since that date have you remained
19 separated from your husband?
20 A. Yes.
21 Q. Have you at any time attempted to reconcile and
22 get back with your husband and live with him at any
23 point?
24 A. No.
25 Q. Are you here today asking the Court to grant you
22 .

1 a divorce on living separate and apart continuously
2 from your husband without cohabitation for more than
3 twelve months?

4 A. Yes.

5 Q. That's all the questions, I have.

6 THE COURT: Mr. Speedy?

7 MR. SPEEDY: No, maam. No questions. Thank you.

8 THE COURT: All right. Mrs. Brown, you can step
9 down. Thank you very much.

10 (Witness excused from stand)

11 THE COURT: Do you have another witness?

12 MS. BUTCHER: Yes, maam, I do.

13 THE COURT: If you'll come forward. Put your left
14 hand on the Bible and raise your right hand.

15 DEAN RISHER, being duly sworn,
16 testified as follows:

17 THE COURT: All right, you may be seated. If you
18 would be kind enough to give me your name, please.

19 WITNESS: Dean Risher.

20 THE COURT: All right, MS. Butcher.

21 DIRECT EXAMINATION

22 BY MS. BUTCHER:

23 Q. Ms. Risher, you have given your complete name.

24 Are you a friend of Theresa Brown?

25 A. I am.

23

1 Q. And you know that she was married or has been mar-
2 ried to Robert Brown?

3 A. I do.

4 Q. Do you know Ms. Brown well enough that if she had
5 reconciled and re-established her relationship with her
6 husband as husband and wife that you would have known
7 of this?

8 A. I would have known.

9 Q. And can you tell this Court whether or not Theresa
10 Brown has re-established her relationship as wife to
11 Robert Brown?

12 A. She has not.

13 Q. Thank you very much, Ms. Risher.

14 THE COURT: Anything you need to ask?

15 MR. SPEEDY: No, maam. No questions.

16 THE COURT: All right, Ms. Risher, you can return
17 to your seat. Thank you very much.

18 (Witness excused from stand)

19 THE COURT: Anything further?

20 * MS. BUTCHER: Nothing further, Your Honor.

21 THE COURT: Nothing further from the Defendant.

22 What about the Plaintiff?

23 MR. SPEEDY: No, maam.

24 THE COURT: Thank you very much.

25 Well, Mr. and Mrs. Brown, I am very pleased that

24

1 after years of finding yourselves in litigation that
2 you have put this all behind you, because I do find
3 that both of you have been well represented.

4 Both of you had a very active role in reaching this
5 agreement and you understand it and are desirous of
6 this Court making it a final Order.

7 In other words, an Order in lieu of a trial, and
8 that is what I'm going to do.

9 I find that it certainly addresses all the issues
10 and it is procedurally and substantively reasonable.
11 You have told me that this is what you want done, and
12 I will merge it into your final Decree of Divorce, as
13 I do find that you have lived separate and apart for
14 one year.

15 So I grant the divorce. As well I commend you
16 both. I'm sure it has been most difficult but you were
17 successful here today.

18 Good luck to both of you.

19 Thank you very much.

20 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter
for South Carolina Court administration, do hereby
certify that the foregoing Transcript was prepared from
the records of Kelly Flanders to the best of my abil-
ity, having been heard in the Family Court for Kershaw
County on April 16, 2007.

FURTHER, I certify that I am neither of kin nor
counsel to any party to this action, nor do I have any
interest therein.

March 7, 2009

Harriet P. Bennett

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

COURT OF COMMON PLEAS
10-CP-28-00311

THERESA M. BROWN

-vs-

JANET BUTCHER, ET AL.

:
:
: TRANSCRIPT OF RECORD
:
:

SEPTEMBER 6, 2011
CAMDEN, SOUTH CAROLINA

B E F O R E:

HONORABLE G. THOMAS COOPER, JUDGE.

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

MELVIN D. BANNISTER, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

WILLIAM L. HOWARD, SR., ESQUIRE
ATTORNEY FOR THE DEFENDANTS

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

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I N D E X

3 CERTIFICATE OF COURT REPORTER 38

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E X H I B I T S

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12 (NO EXHIBITS WERE INTRODUCED DURING THE HEARING.)

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1 THE COURT: Theresa Brown versus Janet Butcher.

2 Mr. Howard.

3 MR. HOWARD: Yes, sir.

4 THE COURT: Before we start, let me just make a
5 disclosure. I know the defendant Ms. Butcher. She
6 practices law in this community, Mr. Bannister. I have
7 never practiced law with her. Her son practices law in
8 this community. As a matter of fact, he just left the
9 courtroom a short period of time ago.

10 I attend the same church as Ms. Butcher does, and have
11 had a limited amount of social engagement with her and her
12 husband over the years. I think I need to disclose that to
13 you.

14 Several years ago -- I used to have a law office here
15 when I was a lawyer. And we rented a portion of that -- my
16 wife and I rented a portion of that building to Ms.
17 Butcher. Eventually, she bought that building from us.
18 That was maybe 4 or 5 years ago, something of that nature.

19 So I have some contacts with her. I have no day-to-
20 day contact with her, have no day-to-day social contact
21 with her. Have had her in my court very seldom. Maybe she
22 has a different kind of practice than ends up in this
23 courtroom. I know her husband.

24 So with that disclosure now, you know, it's very
25 uncomfortable to a lawyer to hear a disclosure and then try

Brown vs. Butcher, et al

1 to have to make some decision about whether to proceed or
2 not to proceed.

3 This -- unfortunately, we have very few terms of non-
4 jury court here. I don't know the urgency in moving
5 forward with this. But I've reviewed the file. I don't
6 know anything about the file or anything about the subject
7 matter of the file.

8 I also know former Judge Howard, and pleasantly so.
9 Frankly, I think this is the first time he's ever appeared
10 in my court.

11 MR. HOWARD: Yes, sir.

12 THE COURT: Because he usually hangs out down in
13 Charleston where -- I can't blame him for that.

14 By the same token, I've had you in my court many times
15 in Columbia.

16 MR. BANNISTER: Yes, Your Honor.

17 THE COURT: So I don't think from an attorney
18 standpoint there's any reason to make any disclosures. But
19 I do need to make the disclosure with regard to Ms.
20 Butcher.

21 Now, I'll give you a chance to consult with your
22 clients, see if you wish to go forward or whether you wish
23 to have some other judge hear this.

24 MR. BANNISTER: Well, Your Honor, I'm assuming that
25 with your disclosure, you are telling to us that your

1 relationship and former relationship with the defendant
2 would not have any effect upon your decision.

3 THE COURT: I can tell you there's no reason that I
4 know of that it should. It's a small community. The
5 community of lawyers is even smaller. I have no reason to
6 either favor your client or Judge Howard's client. I feel
7 I can be fair. But on the other hand, I don't want to
8 create a situation where somebody thinks I was not acting
9 fairly, because of my connection is limited as it is with
10 Ms. Butcher.

11 MR. BANNISTER: Thank you, Your Honor. May I take
12 just a moment?

13 THE COURT: Absolutely.

14 (Pause.)

15 THE COURT: All right. Where do we stand?

16 MR. BANNISTER: Your Honor, my client has no
17 objections to your hearing and deciding this matter.

18 THE COURT: This is a summary judgment matter, right?

19 MR. BANNISTER: It is, Your Honor.

20 MR. HOWARD: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. BANNISTER: And I regret that I've only just
23 handed up to The Court my memorandum in opposition with
24 supporting documentation. This is a legal malpractice
25 case, and I think it would be very important for you to

1 read my memorandum ---

2 THE COURT: I will.

3 MR. BANNISTER: --- and documents. And it wouldn't do
4 us a whole lot of good to even argue until you have been
5 able to do so.

6 So in that respect, I would be glad to let you make a
7 decision based upon the documents.

8 THE COURT: Without argument?

9 MR. BANNISTER: Without argument.

10 THE COURT: How about that, Mr. Howard?

11 MR. HOWARD: Well, I can summarize very quickly,
12 because I do have -- and would like to hand up to The Court
13 if I may -- I've put everything together, including the
14 case law that we cite.

15 THE COURT: How about ---

16 MR. HOWARD: I have a copy for counsel as well.

17 THE COURT: All right.

18 MR. HOWARD: I just filed a supplemental memorandum.
19 I have sent to you in Richland County our original memo,
20 but I assume it went to Richland County and didn't go to
21 the wrong Judge Cooper.

22 THE COURT: Wait a minute. I've got the motion for
23 summary judgment.

24 MR. HOWARD: All right. In any event, that has ---

25 THE COURT: Wait a minute. Let me see. I've got --

1 and a memo in support.

2 MR. HOWARD: Okay. Right. That we had sent to you,
3 hoping you would have an opportunity to ---

4 THE COURT: Well, the one I got is the one sent to the
5 clerk.

6 MR. HOWARD: Oh, okay.

7 THE COURT: I was in York County last week, so I
8 wouldn't have gotten it anyway.

9 MR. HOWARD: I'm at The Court's pleasure. We can make
10 an argument to you. I realize you have other motions this
11 afternoon, and this is a matter which ---

12 THE COURT: I think we're free until 3:30.

13 MR. HOWARD: All right.

14 THE COURT: So I'm at your disposal.

15 MR. HOWARD: All right.

16 THE COURT: Mr. Bannister said he will rely on his
17 memorandum.

18 MR. HOWARD: All right.

19 THE COURT: And deposition excerpts.

20 MR. HOWARD: Your Honor, you have a book that I just
21 handed to you, which has a table of contents and has the
22 initial pleadings. And from there our motion and then our
23 memorandum. And then the exhibits to that are in that
24 memorandum.

25 Following that is a supplemental memorandum, which I

1 just filed today.

2 THE COURT: Is that different than this February 1st?

3 MR. HOWARD: It is. The February 1st memorandum was
4 our initial motion memoranda.

5 THE COURT: Right.

6 MR. HOWARD: But since that time we completed the
7 deposition of the plaintiff's only-named expert. And so
8 the supplemental memorandum addresses in further detail
9 some arguments as to why we would be entitled to summary
10 judgment we believe.

11 THE COURT: Based on the expert's testimony?

12 MR. HOWARD: Yes, exactly, or lack thereof. So those
13 would be additional reasons.

14 Your Honor, basically, the case within this case --
15 this is a legal malpractice case.

16 THE COURT: Arose out of a divorce case?

17 MR. HOWARD: Exactly. It arose out of a divorce case
18 in the mid 2000's involving a husband and wife. The wife
19 is the plaintiff in this case. And they had a fairly long
20 marriage, and they had 3 children during their marriage.

21 The divorce action was initiated by the husband. He
22 sought a divorce against the wife on the grounds of
23 adultery, but ---

24 THE COURT: Sort of cross ---

25 MR. HOWARD: Beg your pardon?

1 THE COURT: Cross complaints ---

2 MR. HOWARD: Right.

3 THE COURT: --- with both charging the other.

4 MR. HOWARD: Exactly. And I believe that his was
5 probably caused by the fact that Ms. Brown had learned of
6 his adultery. And so he did an initial strike by bringing
7 his cause of action.

8 At that time Ms. Butcher practiced law here. And Ms.
9 Brown, the plaintiff in this case, one of her daughters
10 worked as sort of a paralegal in Ms. Butcher's office. She
11 was somebody who worked there during her high school -- at
12 the end of her high school, and continued to work with Ms.
13 Butcher at that time, and kind of helped organize the file
14 and that sort of thing. So we have that interaction as
15 well.

16 To make a long story short, after -- initially Ron
17 Moak, who was working with Ms. Butcher, was the attorney
18 for Ms. Brown, but he went to the solicitor's office, so
19 Ms. Butcher took over representation.

20 There was a hearing that was scheduled in -- a
21 November hearing, at which Mr. Brown became ill and ---

22 THE COURT: Open that door. I mean, this is a public
23 courtroom. I hate to see people locked out.

24 Go ahead.

25 MR. HOWARD: Yes, sir.

Brown vs. Butcher, et al

1 THE COURT: We're still expecting people this
2 afternoon.

3 MR. HOWARD: And because of the illness and the
4 initial attorney for Mr. Brown's illness, they couldn't
5 have a merits hearing, and they negotiated to try to
6 attempt to settle. It didn't occur. And the case then
7 came back up for a 2-day merits hearing, I believe in April
8 2007.

9 At that time -- according to all the testimony, they
10 went over to the courthouse on that morning and there were
11 about 15 witnesses there that Ms. Butcher had subpoenaed,
12 including one from Texas, on all of the issues.

13 And according to the testimony in the light most
14 favorable to Ms. Brown, Ms. Butcher and the other attorney,
15 Mr. Speedy, went in and spoke with the judge. And then Ms.
16 Brown says that Ms. Butcher came out and said, We have to
17 settle, the judge doesn't want to hear your case, that she
18 isn't going to give you alimony.

19 Ms. Butcher says that she became -- I'm sorry, Ms.
20 Brown says she became very upset. She went into the ladies
21 room, which I understand to be larger than the little
22 conference room they have. And she stayed there for a good
23 while, while Ms. Butcher went back and forth 4 or 5 times,
24 and told her what was being considered back and forth with
25 negotiations.

1 A settlement was reached. We know that because Ms.
2 Butcher and Ms. Brown went into the courtroom in front of
3 Judge Jones and had a hearing in front of Judge Jones to
4 place the settlement on the record.

5 That is in your materials, Your Honor. And the
6 transcript of the record is under tab G of your materials.

7 In that hearing the judge first asked, Do we have a
8 settlement? Is everybody on the same wave length? Do we
9 have a settlement?

10 Everybody acknowledged that.

11 The judge asked Ms. Brown and Mr. Brown if they
12 understood the terms of the settlement?

13 Ms. Brown said, Yes.

14 The judge asked if she understood the terms of the
15 settlement?

16 Ms. Brown said, Yes.

17 She asked if she had been coerced, forced, pressured,
18 or made to enter in to the settlement?

19 She said, No.

20 She asked if there was anything else that she wanted
21 to ask her attorney about it?

22 She said, No.

23 Asked if she was satisfied with her attorney?

24 She said, Yes.

25 Asked if she was under the influence of any alcohol or

1 drugs, all of those things?

2 She asked if she wanted to look at any financial
3 matters of the husband?

4 She said, No. And then she said, I'm satisfied he's
5 hid some, but I want to settle any way.

6 Then she proceeded -- the judge proceeded to tell her
7 that, of course, she had the right to a trial and that
8 she'd be waiving and giving that up, which she then agreed
9 to do.

10 THE COURT: Well, this is not -- you know this -- an
11 appellate hearing with regard to what took place in Judge
12 Jones' court. There's a different issue before The Court
13 at this point, and that is the issue of professional
14 malpractice or not. And your recitation of what went on at
15 the hearing is one thing. But is that the issue that's in
16 front of The Court today?

17 MR. HOWARD: Well, Your Honor, the first issue that we
18 raise in our motion for summary judgment is this: Judicial
19 estoppel. There's a line of cases holding that under these
20 circumstances that she's judicially estopped because she
21 made all these representations to one court, and that that
22 stops her from now taking an inconsistent, opposite
23 position in another court. And that's exactly what she's
24 trying to do.

25 And you'll see -- and I'll ask you to read our

1 memorandum with the case law that we support it with that
2 points this out, that under the circumstances such as this,
3 that the question is: Is it an inconsistent position? Are
4 they related proceedings?

5 In the cases where there was a domestic case, then a
6 legal malpractice case against the lawyer -- all the ones
7 we cite show that they are considered related proceedings.
8 They are in privity. And, consequently, the judicial
9 estoppel would apply.

10 She's received the benefit from the initial court
11 where she made those initial representations; that is the
12 divorce decree that's spelled out what she was receiving
13 with, you know, the judicial arm to enforce it.

14 And her actions are intentional in that she
15 intentionally gave those answers to The Court. And that's
16 amplified by the fact that she even says to The Court,
17 Yeah, I think he's hidden some assets, but I want to settle
18 any way.

19 And then to come in to this court and say, Oh, I
20 didn't understand. No. I was coerced, is judicially
21 estopped because it is an intentional, taking of an
22 inconsistent position under circumstances which literally
23 put an attorney in a position in this state -- if this is
24 allowed to -- to -- to go to a jury trial, it puts all the
25 attorneys in this state in a position where you can't trust

1 your client in the courtroom in a situation where there is
2 no -- there is absolutely no evidence that she was mentally
3 ill at the time.

4 And so -- and I haven't even -- I haven't gone to the
5 expert's opinion. And I'll do that in a minute. But
6 there's no evidence of any emotional instability. And
7 basically what she says is, I was crying and because I was
8 crying, I didn't understand. But then she gives the judge
9 answers in the transcript which shows she does understand.
10 It's under those circumstances she's judicially estopped.

11 Now, we have case law which in this state -- which I
12 would ask you to take consideration of. The first case is
13 Bledsky (phonetic) versus Bledsky. And that's a case in
14 which a family court judge made some statements as to what
15 he thought he would be ruling. And The Court said that
16 that did not arise to any duress.

17 And then The Court says, Even if the judge's comments
18 somehow influenced the wife's decision, that fact alone
19 does not constitute anything close to duress by the family
20 court judge.

21 But then she also alleged that her lawyer brought her
22 out of the courtroom and told her that the judge was mad at
23 her and didn't want to hear the case, and that if she went
24 forward into the trial, that she'd risk losing her children
25 -- custody of her children.

1 So she alleged in a later malpractice case against the
2 lawyer that that was duress and coercion, and that,
3 therefore, she could bring a malpractice case.

4 And The Court said, No. The Court said, Even if the
5 attorney told the wife that the judge was mad at her and
6 she should accept the settlement or she probably could lose
7 custody of her -- possibly could lose custody of her
8 children, these statements would not amount to duress as to
9 make the wife's assent involuntary and require a new trial.

10 Essentially, these statements if made amounted to the
11 wife's attorney giving his best advice that if the wife did
12 not accept the settlement, the case would have to be tried,
13 and the wife potentially could have lost custody of the
14 children.

15 Now, we have a recent Supreme Court case, the Harris
16 Teeter case, which I know Your Honor is familiar with. And
17 in that case our Supreme Court said that unless the
18 attorney's advice in that situation is unreasonable as a
19 matter of law, unless it meets that threshold, then there
20 is no legal malpractice cause of action.

21 Going to my supplemental memorandum for a moment.
22 Susan Edwards was the only-named plaintiff's expert. She
23 never gives any standard of care. All she says is that she
24 doesn't think she would have given the same advice or that
25 it was reasonable. But she does not say that it was

1 unreasonable as a matter of law. And she gives no basis
2 for her opinion.

3 THE COURT: Was she deposed or was ---

4 MR. HOWARD: She was. And I put excerpts of her
5 deposition in directly behind the supplemental memorandum.
6 The supplemental memorandum is No. 5. And if you look --
7 well, her deposition excerpts are in there for you and I
8 have them just in case there's any question about it. I
9 believe I have -- yes. I have the original -- go ahead and
10 file the case.

11 Now, in addition to that, Your Honor ---

12 THE COURT: Where are the excerpts?

13 MR. HOWARD: They are tab ---

14 THE COURT: Under A?

15 MR. HOWARD: 5 A, right. And they address several
16 different things.

17 THE COURT: You know what he's talking about, Mr.
18 Bannister?

19 MR. BANNISTER: I'm familiar with ---

20 THE COURT: The deposition?

21 MR. BANNISTER: --- the deposition and the affidavit.

22 THE COURT: Okay. Go ahead, Mr. Howard.

23 MR. HOWARD: All right. Thank you, Your Honor.

24 Now, what the plaintiff alleges is that as a result of
25 this settlement that she shouldn't have entered in to, that

1 she was denied alimony.

2 Now, in Susan Edwards' deposition -- well, let me back
3 up. In the divorce case both the husband and another
4 person by the name of Lee Christenson filed affidavits
5 spelling out an incident in which the husband followed her
6 and put her in a position ---

7 THE COURT: Somebody else's house?

8 MR. HOWARD: Right. Exactly. And romanced with
9 another man when the wife wasn't home. Went into the back
10 bedroom where everything was dark and stayed for well over
11 an hour. And it's corroborated by another witness.

12 Now, I asked Susan Edwards in her deposition if a
13 judge -- excuse me. If Mr. Brown and Mr. Christianson had
14 testified at the final hearing -- and they were both there
15 at the final hearing, no question about that. If they had
16 testified in accordance with what they said in their
17 affidavit, and if a judge had chosen to believe that
18 testimony, would you agree with me that that would have
19 provided a legal foundation and factual foundation for the
20 judge to have found adultery on behalf -- or against Ms.
21 Brown, thereby barring her from alimony?

22 And she said, Well, yes, it would if a judge had
23 believed that and if they had testified according to that.

24 Now, she'd never seen Mr. Christianson's deposition or
25 affidavit, never heard him, has never met him, has not

1 observed him.

2 She then went on to say that it was her opinion that
3 the judge wouldn't believe him because she didn't believe
4 in the credibility of Mr. Brown. She -- Ms. Edwards.

5 So she bases her opinions for her expert opinions on
6 the credibility of Mr. Brown and another witness that she's
7 never met, never observed, and didn't know about until the
8 day of her deposition.

9 So that's another problem, Your Honor, which we think
10 provides a basis for summary judgment. There is no expert
11 opinion to substantiate the plaintiff's position, even ---

12 THE COURT: Where do you ask her about the standard of
13 care?

14 MR. HOWARD: Well, throughout her deposition I asked
15 her that. But at the very beginning, for example, on page
16 36 of her deposition. And it's on page 2 under tab A, 5 A.
17 What is your understanding of the attorney's responsibility
18 where the client says to settle?

19 If the client tells me, settle, yes, I think that.

20 Question. To take the settlement that's been offered?

21 Answer. In a domestic case, I think.

22 And I asked: What do the rules say is the attorney's
23 responsibility?

24 Answer. I think you've got to go with your client's
25 wishes. But in a domestic case I think if you're

1 conscientious, you go one step further to make sure that
2 your client is really not making an emotional decision,
3 because some times in a divorce the best financial decision
4 may not be the best emotional decision and vice versa.

5 Question. Are you saying then that if a client makes
6 a decision to settle a case, has an offer on the table, and
7 they say to their attorney: That's acceptable to me, I
8 want you to take it, I'm just ready to be done with this --
9 so whatever it may be -- right -- whatever little emotional
10 twist they throw into it -- right -- then at that point,
11 what is the attorney's responsibility?

12 I think that -- and I said: Under the rules, now.

13 Answer. Under the rules I agree with you. I think
14 that you certainly have a duty to carry out the client's
15 wishes. But I do think it would be remiss to just stop
16 there when you're dealing with a domestic case.

17 But there's absolutely no foundation in law for that.
18 And it's a very general thing which does not meet the test
19 of the mandates of the Harris Teeter case, Your Honor.

20 The case law throughout the United States requires
21 specific testimony, expert testimony. And in this
22 particular case on the issue of damages and proximate
23 cause, it requires that the expert be able to state to a
24 reasonable degree of legal certainty that a reasonable
25 judge under all these circumstances most probably would

1 have awarded X.

2 There is no expert testimony, none whatever.

3 I asked Ms. Edwards in her deposition how much alimony
4 do you think Ms. Brown was entitled to?

5 Her answer was. I haven't calculated that. I haven't
6 looked at the financial information recently, and I was not
7 asked to do that.

8 At the very end of her deposition we -- we took it up
9 on a separate day. I asked her just a few questions. The
10 question that I asked her was: As I understand it, you
11 don't have any evidence or testimony that you're going to
12 give as to what amount of alimony if any she would have
13 been entitled to.

14 She said, That's correct.

15 So there is no expert testimony as to that element.

16 The only other real element in this case is: Although
17 The Court awarded Ms. Brown one-half equity in the house --
18 she's a one-half owner of that house by the divorce decree.
19 And The Court ordered that it continued to be sold, that
20 they accept the first qualified offer, and that he could
21 live -- Mr. Brown could live in the house until it sold.
22 He had been living in it throughout the time of the -- up
23 until the divorce.

24 THE COURT: Some medical condition?

25 MR. HOWARD: Right. He did. He had -- he has

1 Meniere's Disease, which was diagnosed back when he was in
2 the military, which gives you a balance problem, vertigo
3 problem. And then ultimately he was disabled from his job
4 as a sheriff deputy because of the Meniere's Disease. He
5 also has high blood pressure, and had had -- according to
6 him a heart attack or stroke, I can't remember which. And
7 also had some other problems. And they did give him a
8 disability retirement up to his regular retirement, which
9 is in the record as well.

10 So, obviously -- I'm trying to be short. I'm trying
11 to cut out that part. I believe it's in my brief. But
12 there was another basis why there's no alimony. Nobody
13 could say to a reasonable degree of legal certainty that --
14 or -- let me state it this way. You cannot say that it was
15 unreasonable as a matter of law to tell somebody there is a
16 risk you won't get alimony and therefore we ought to
17 settle, when you've got a guy who's 9 years older. He's in
18 his late 50's, going on 60, he is disabled, and his
19 financial declaration shows about \$100 more than what his
20 expenses are and your financial declaration shows that you
21 actually have more money coming in than you spend every
22 month; that was the situation.

23 But going back to what I was saying. With regard to
24 the house, Ms. Edwards' opinion was she will never get her
25 half equity of the house.

1 I said, How can that be?

2 The Court awarded her half interest, ordered that it
3 be sold, ordered that it be listed for sale with a
4 reputable agent, at fair market value, ordered that they
5 accept the first bonafide -- she said, because my client
6 says that he will -- he, Mr. Brown, will thwart the efforts
7 to sell it.

8 Well, Your Honor, as a matter of law that's not a
9 basis for a legal malpractice action, because under the
10 family court, whether it was in the divorce decree or not,
11 under the inherent power of The Court to enforce its order,
12 The Court can take measures against the husband if he tried
13 to thwart the sale.

14 I asked -- because Ms. Edwards had actually
15 represented Ms. Brown is a rule to show case against Mr.
16 Brown after the divorce was over. And you'll see some
17 statements she makes in there that shows you that she's
18 very emotionally attached to Ms. Brown in addition to her
19 role as an expert.

20 Be that as it may, she says that because Mr. Brown
21 will thwart the sale.

22 I said, Is there any evidence of that? And that's in
23 Ms. Brown's deposition. And I believe those excerpts are a
24 part of the record. And they have no evidence that he has
25 tried to thwart any sale of the house.

1 We all know what the economic circumstances have been
2 here and everywhere else over the last few years.

3 But irrespective of all that, we cite to you a case
4 called Ebert (phonetic) versus Ebert. And that's No. 2
5 under these materials.

6 In that case wife and husband divorcing. Wife is
7 going to get the river house, which husband says is worth
8 -- I don't remember the amount. A large amount of money.
9 And when that's sold, that will provide income to you, the
10 wife, and you won't need any alimony. But in the meantime
11 I'll pay you \$4,000 a month.

12 They agree upon that. But the wife says, I don't
13 think the house is worth that. So they agree that the
14 husband will be able to have control of the sale of the
15 house -- I think for the first year -- because he says it's
16 worth more. At the end of a year if he can't sell it for
17 what he says it's worth, then control reverts to her. She
18 then has control of the sale of the house and can sell it
19 to whoever she wants, at whatever price she thinks is a
20 fair price.

21 In the meantime he's still paying her \$4,000 a month.

22 At the end of the year, it doesn't sell. So she gets
23 control of it. The husband starts scratching his head and
24 says, Wait a minute. I'm still paying her \$4,000 a month.
25 She could take forever to sell this house and so that's not

1 fair. So he makes a motion in front of The Court to get
2 out of the \$4,000 a month.

3 The Court of Appeals says that under those
4 circumstances -- I'm sorry. 2. It's 12 -- under tab 12.
5 Court of Appeals says when an agreement is silent as to a
6 particular matter -- and this was an agreement approved by
7 The Court, the same process -- and because of the nature
8 and character of the transaction and ambiguity arises,
9 parole evidence may be admitted in order to supply a
10 deficiency.

11 It then goes on to say, A court-approved divorce
12 settlement must be viewed in accordance with principles of
13 equity. And there is applied in every such agreement a
14 requirement of reasonableness. Where there is no time set
15 for performance of the terms of the contract, a reasonable
16 time is implied.

17 Accordingly, we remand this case to the family court
18 to determine a reasonable date by which the wife must
19 effect a sale of the marital home after which The Court
20 shall order a judicial sale of the property.

21 So South Carolina law on point incorporated within
22 this divorce decree is that -- that rule of law.

23 So Ms. Edwards' position that because no date by which
24 the sale would take place is incorporated in to the decree
25 of divorce or put in to the decree of divorce, that somehow

1 that provides a basis for later litigation of legal
2 malpractice claim -- is just totally against the rule of
3 law and has no foundation.

4 Furthermore, she doesn't say that it's unreasonable as
5 a matter of law for the attorney to provide that advice.
6 She never gives that basis. And she never -- Mr. Bannister
7 has had the position throughout this case -- and I asked
8 him about this many months ago, that he could simply come
9 into this courtroom and say to a jury, Okay, my expert says
10 she should have gotten alimony. Now, here's what she
11 makes. Here's what Mr. Brown made. Now, you, the jury
12 determine -- here are the 13 factors, you determine what
13 amount of alimony is appropriate.

14 I submit to you, Your Honor, that is not the law. The
15 law is that you have to have expert testimony as to what
16 most probably a reasonable judge would have awarded under
17 those circumstances. And there is no evidence of that, no
18 testimony from his only expert about that. And she
19 testified that she did not get hired to make those
20 computations. She had not done them. And that she would
21 not be giving that testimony at trial.

22 So based on that, there is absolutely no proximate
23 causation and no damages that have been factually supported
24 in this lawsuit.

25 We would incorporate our other arguments. I've spoken

1 enough since you do have other cases to be heard. I have
2 other arguments that are in the memoranda. And I would ask
3 you to take a look at those if you feel that you cannot
4 afford the relief based on what I've argued to you at this
5 time.

6 On the thought that you might want to have -- oh, one
7 other point before I sit down. I just got Mr. Bannister's
8 memorandum on Friday. But in his memorandum he makes an
9 argument about a conflict of interest. Two points about
10 that, Your Honor.

11 Number one, I put the complaint in the very front of
12 the -- of this because there is no allegation of conflict
13 of interest in the complaint, none whatsoever. There's no
14 mention of any expert opinion in the affidavit about a
15 conflict of interest.

16 THE COURT: What is the alleged conflict?

17 MR. HOWARD: Apparently, what he's trying to say is
18 that because Janet Butcher's son at some point along the
19 same time that she was representing Theresa Brown was being
20 represented in a custody battle by George Speedy, and she
21 was helping to prepare pleadings in that case in order to
22 hold costs down, that somehow that presents a conflict of
23 interest for her representation of Ms. Brown in this case.

24 Now, that's his innuendo in various questions. But
25 it's not alleged in the complaint, number one.

1 And, number two, I asked, again, in the last
2 deposition of Susan Edwards -- because he asked her a
3 couple of general questions about should a lawyer divulge
4 a conflict of interest to his client?

5 So I got -- you know, at the end of that, his
6 questions, I asked her: Have you investigated any
7 allegation factually of a conflict of interest in this
8 case?

9 She said, No.

10 I said, Do you intend to offer any opinion at trial
11 about a conflict of interest in this case?

12 She said, No.

13 So there is no expert opinion that would support any
14 allegation of that. And why it's in Mr. Bannister's
15 memorandum of law, I do not understand, because it was not
16 alleged, and there's no evidence to support it, and there's
17 no expert opinion to support it.

18 Thank you, Your Honor.

19 THE COURT: All right. Mr. Bannister, do you have
20 anything?

21 (Pause.)

22 THE COURT: Mr. Bannister.

23 MR. BANNISTER: Your Honor, when this action -- the
24 underlying action was initiated in a divorce, Bob Hallman
25 represented Mr. Brown and Ron Moak, then from Janet

1 Butcher's law firm, represented Theresa Brown. Ron Moak
2 left the firm. Janet Butcher took over representation of
3 Theresa Brown.

4 One issue that's very clear concerning -- and Mr.
5 Howard brought it up, is the credibility of Mr. Brown and
6 the witness, Harold Christenson.

7 Janet Butcher testified in deposition that they were
8 not credible.

9 THE COURT: Who did?

10 MR. BANNISTER: The defendant, Janet Butcher ---

11 THE COURT: Okay.

12 MR. BANNISTER: --- testified in her deposition that
13 those witnesses were not credible.

14 So to say that there was a possibility that my client
15 would not have gotten alimony had they proceeded with the
16 trial, you know, I don't think that that can be argued,
17 especially when she's saying that those witnesses were not
18 credible.

19 Your Honor, the excerpts from the depositions and the
20 affidavits of Susan Edwards are here. She said that my
21 client would have gotten alimony. She did not testify ---

22 THE COURT: Did she say that?

23 MR. BANNISTER: In her affidavit and in the deposition
24 testimony, Your Honor.

25 THE COURT: What about her affidavit -- you've handed

1 up her affidavit. Where does it say that?

2 (Pause.)

3 THE COURT: She believes -- all right. Number 9 she
4 says, In my ---

5 MR. BANNISTER: I believe 8 and 9.

6 THE COURT: My expert opinion, Ms. Brown would have
7 been entitled to a substantial sum of alimony each month.

8 MR. BANNISTER: That's correct, Your Honor.

9 THE COURT: Okay.

10 MR. BANNISTER: And although we didn't determine the
11 exact amount of damages, that would be left to a jury in
12 this case to determine the exact amount of damages that my
13 client has suffered because of the malpractice of Ms.
14 Butcher.

15 I understand Mr. Howard's reliance upon the fact that
16 my client walked into the courtroom and said, This is my
17 agreement.

18 There is substantial deposition testimony that before
19 they walked into the courtroom, that there was no
20 agreement.

21 Ms. Butcher said to my client, The judge does not want
22 to hear your case. You're not going to get any alimony.
23 If you make the judge mad, you will not get as much in
24 equitable division. You'll have to pay all of the
25 attorney's fees including your ex's. These were threats

1 and coercion.

2 And when my client requested Ms. Butcher to fight with
3 her, not agreeing to any of this in those meetings in the
4 women's rest room, Ms. Butcher's response was to walk away.

5 So that when they did walk in the courtroom, my client
6 was under such emotional distress that she did respond to
7 the judge, who she was afraid of, in the manner so that --
8 as she did.

9 Subsequently as shown in the deposition testimony ---

10 THE COURT: Of who?

11 MR. BANNISTER: Of my client.

12 THE COURT: All right. Show me where you talk about.

13 MR. BANNISTER: Well ---

14 THE COURT: I've got the deposition.

15 MR. BANNISTER: Okay. There are numerous references,
16 Your Honor. As far as the coercion, it's page 165 through
17 167.

18 THE COURT: Hold on.

19 (Pause.)

20 THE COURT: What are you referring to? I'm looking at
21 the pages you're talking about.

22 (Pause.)

23 THE COURT: You say she threatened her, page 167?

24 MR. BANNISTER: Yes, sir. On page 165, line 22, my
25 client says, There were no negotiations.

1 There weren't?

2 No, sir.

3 Okay. Well, what happened then?

4 Janet came into the room -- on the next page. She
5 told me what was happening. There was no negotiation.

6 She tell you -- and it goes on down stating what Janet
7 said to her. And there wasn't any negotiations. Janet was
8 making statements about it, this is the way it's going to
9 be. And when my client requested that Janet fight for her,
10 Janet walked away.

11 THE COURT: Okay.

12 MR. BANNISTER: My client cried the whole day; that's
13 in deposition testimony also.

14 Janet Butcher testified in her deposition that my
15 client was sniffing in the courtroom.

16 Your Honor, if a client in an underlying action has a
17 hearing, Mr. Howard's indicating that a client can never
18 sue a lawyer for malpractice because the cases would be so
19 intertwined. And, yet, in the same memorandum he cites
20 cases where a lawyer can sue a client, and what are the
21 elements that a plaintiff has to prove in a legal
22 malpractice action.

23 Your Honor, although there is not a specific
24 allegation in the complaint about the conflict of interest
25 -- and the obvious reason for that is we didn't find out

1 about the conflict of interest until after the complaint
2 was filed. But there is an allegation that the defendant
3 was supposed to act and have care for her client that other
4 attorneys would under the same or similar circumstances.

5 THE COURT: What is the conflict of interest that you
6 allege?

7 MR. BANNISTER: Your Honor, there is definitely one
8 conflict of interest and a potential conflict of interest
9 or the appearance of one. The appearance of possible
10 conflict of interest was that Janet Butcher and George
11 Speedy used to practice in the same law firm.

12 THE COURT: Okay.

13 MR. BANNISTER: My client never heard that. The true
14 conflict of interest was that Janet Butcher and George
15 Speedy were representing Janet's son at the time of this
16 divorce hearing in April of 2007.

17 THE COURT: Representing her son?

18 MR. BANNISTER: That is correct, Your Honor.

19 THE COURT: In what?

20 MR. BANNISTER: In a domestic relations action between
21 Janet's son Bob and his wife or ex-wife at the time.

22 THE COURT: Okay.

23 MR. BANNISTER: And my client never heard about that.

24 And so the -- Mr. Howard puts in his memorandum and we
25 agree that the facts and circumstances -- I mean, evidence

1 -- facts and evidence have to be construed in the light
2 most favorable in our case to us. And we believe that the
3 coercion that Janet Butcher placed upon my client is
4 sufficient grounds for this case to go to the jury.

5 THE COURT: All right.

6 MR. HOWARD: Very, very briefly, Your Honor. Mr.
7 Bannister sent our -- sent us a letter with a demand many
8 months before he filed his lawsuit in which he raised a
9 conflict of interest. And I think it was even in -- he
10 initially thought he had a -- had to comply with the
11 medical malpractice format of a pre-suit notice of intent
12 to file suit. And I believe it was contained within the
13 allegations of that.

14 And so, you know, to say it was a mistake or that it
15 was learned afterwards is just not accurate.

16 But even if it was, Judge, there is absolutely no
17 evidence even taking what he just asserted, it's not
18 factually supported. But even if you take what he just
19 asserted today as his basis for a conflict of interest,
20 under South Carolina law, that's not a conflict of
21 interest. Either the fact that you have formerly practiced
22 law with somebody who you now years later are in a
23 courtroom opposing -- is not a basis for a conflict of
24 interest nor is the fact that two lawyers may be working
25 together on one case and working against each other on

1 another case. It would be a conflict if Mr. Butcher was in
2 litigation -- her son was in litigation with Ms. Brown.
3 But the two cases have nothing to do with each other.

4 But, thirdly and most importantly, there's no expert
5 testimony to support. And we're at summary judgment.
6 We've given -- you know, taken all the depositions. He
7 only has the one expert, and she specifically states ~~that~~ may
8 I open the deposition, Your Honor? It's right here. The
9 real thin one. The real thin one.

10 THE COURT: Oh, there are two of them?

11 MR. HOWARD: Yes, sir.

12 (Pause.)

13 MR. HOWARD: Redirect examination. First thing. You
14 were asked about an opinion with regard to conflict of
15 interest or potential conflict of interest. Is that in
16 relation to some issue in this case?

17 Answer. I know that early on when Theresa came to
18 Vicky, I believe she expressed that she learned after the
19 divorce that George and Janet -- maybe Janet's son had been
20 represented by George or there was some sort of a familial
21 representation issue. And I'm assuming that was what we're
22 talking about.

23 Question. So you're not aware of any factual
24 underpinning for a conflict of interest at this point?

25 Answer. I am aware -- which is what I am explaining

1 to you, yes.

2 Question. Let me rephrase my question. But do you
3 know of a fact matter by which you assert there is a
4 conflict of interest that Janet Butcher had in this case?

5 Answer. The only thing that I know is that Theresa
6 raised that as an issue when she met with Vicky because she
7 had learned after the fact that George had represented
8 Janet's son, I believe.

9 All right. So if I understand you correctly, then you
10 have not looked in to that from a factual point of view to
11 make an opinion as to whether there was or was not a
12 conflict of interest?

13 Answer. I have not, other than just speaking with
14 her.

15 Question. And so if we were, for example, in the
16 trial of this case, you would not be rendering an opinion
17 that there was or was not a conflict of interest?

18 Answer. I have not been asked to render an opinion
19 about that.

20 So there is no expert opinion to support that
21 allegation, even if it were an allegation in the complaint,
22 Your Honor.

23 THE COURT: All right.

24 MR. HOWARD: And Mr. Bannister says that because the
25 expert says in her opinion she would have been entitled to

1 substantial alimony, that that's sufficient. That is not
2 the case law, Your Honor. Under Harris Teeter, and under
3 all of our cases, that is purely speculative and there is
4 no amount that anyone opines as an expert is what a
5 reasonable judge would have done; and that's what the
6 standard is.

7 I would leave you with this quote. Well, I won't.
8 I'll let you read it. I'll shut up.

9 THE COURT: You sounded like you were about to finish
10 a political statement.

11 MR. HOWARD: There you have it. I would point out to
12 you factually that Ms. Brown -- you know, counsel argued
13 about things like you may have to pay his attorney's fees.
14 You might not get as much. All of those things are well
15 within the realm of what can happen in a trial; that's why
16 a trial is a risk.

17 As it turned out with the settlement, she gets \$5,000
18 in attorney fees from her husband. But she -- if she'd
19 gone to trial, she'd have had another day, day and a half
20 worth of attorney fees to pay her own attorney, plus she
21 could have lost that and she could have ended up paying, in
22 the realm of possibility, her husband's attorney fees.

23 The point being, that unless an expert says it is
24 unreasonable as a matter of law for that attorney to have
25 offered that advice, it is not a legal malpractice case.

1 There's no evidence of that. Thank you.

2 THE COURT: Thank you very much. Mr. Howard, you
3 handed up this notebook.

4 MR. HOWARD: Yes, sir.

5 THE COURT: Did you mean to hand up this umbrella as
6 well?

7 MR. HOWARD: Your Honor, I did not. I apologize to
8 you.

9 THE COURT: Thank you very much, counsel. I'll let
10 you know.

11 --- End of transcript of record ---

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1 I, the undersigned Dianne A. Rutledge, official court
2 reporter for the Fifth Judicial Circuit of The State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of the record of
5 the proceedings had and evidence introduced in the hearing
6 of the captioned case, relative to appeal, in the Circuit
7 Court for Kershaw County, South Carolina on the 6th day of
8 September 2011.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11

12

January 13, 2012

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Court Reporter

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

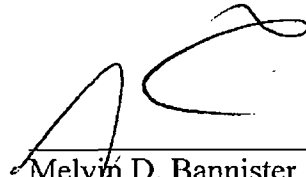
Case No. 2010-DR-28-311

Theresa Brown Appellant

Janet Butcher and the Butcher Law Firm, P.A. Respondents

CERTIFICATE OF COUNSEL

I hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Melvin D. Bannister
Attorney for the Appellant

September 6, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2010-CP-28-311

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Theresa Brown Appellant

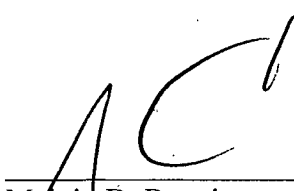
Janet Butcher and the Butcher Law Firm, P.A. Respondent

Certificate of Service

I certify that I have served three (3) copies of the Record on Appeal on
William L. Howard, Sr. and Russell G. Hines, by regular mail, on October 29, 2012.

William L. Howard, Sr.
Russell G. Hines
P.O. Box 993 (29402)
25 Calhoun Street, Suite 400
Charleston, SC 29401

by regular mail on October 29 2012.



Melvin D. Bannister
Attorney for the Appellant