THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

In the Matter of the Estate of Reba P. Hinson, Probate # 2008-ES-12-297, Circuit Court # 2010-CP-12-201,

---

Mell Woods . . . . . Appellant,

v.

Robert H. Breakfield, as Personal Representative of the Estate of Reba P. Hinson, ... Respondent.

RECORD ON APPEAL

Court Of Appeals Internal Tracking Number: 2011-201066

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

Moses Koon & Brackett, PC
B. Michael Brackett
Attorney for Respondent
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Columbia, S.C. 29202

Respondent Telephone (803) 461-2300

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STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHESTER

C/A NO: 2008-ES-12-0297 (Chester County)
2010-ES-46-0265 (York County)

IN THE MATTER OF: THE ESTATE OF REBA P. HINSON

LOIS H. RODDEY
JUDGE OF PROBATE
2010 APR 20 A 10: 35
PROBATE COURT
CHESTER COUNTY S.C.

ORDER

A hearing was held on April 12, 2010 at 11:00 AM at the York County Probate Court on the pending Petitions/Motions of Mr. Mell Woods. In attendance were Mr. Woods, appearing *pro se*, and the Personal Representative, Robert Breakfield, Esquire, and his attorney Mike Brackett. This is a Chester County estate in which the Chester County Probate Judge has recused herself, and the undersigned has been assigned by Court Administration to preside over contested matters in this estate. For record keeping, the estate has also been assigned a York County Probate Court estate number.

Before the Court on April 12, 2010 were Mr. Woods' Petition for Removal of Personal Representative, filed with an accompanying Motion for Removal of Personal Representative, and Mr. Woods' Petition, more accurately a Rule 60 Motion, to Vacate the Probate Court's February 18, 2009 Order with an accompanying motion that the Rule 60 proceeding be removed to Circuit Court. The Court took judicial notice of the content of the Court's file, including without limitation, the executed and filed Form 300, the various Last Wills or alleged Last Wills of the decedent, and a letter to the Court from Mr. Woods that predated the appointment of the Personal Representative.

Petition for Removal of Personal Representative

Removal of a personal representative is governed by S.C. Code Ann. §62-3-611. Mr. Woods put forward two grounds for the involuntary removal of the Personal Representative:

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"misadministration [sic] of estate by failing to post bond, and by probating the wrong will."

Mr. Woods failed to persuade the Court that cause exists for Mr. Breakfield's removal with respect to the posting of bond. The decedent's last will, admitted to probate by Order dated February 18, 2009, does not require bond, and the Court's February 18, 2009 Order appointing Mr. Breakfield to serve as Personal Representative expressly provided that "no bond required." Additionally, in an earlier hearing in which the subject of bond was addressed, the Court did not require the posting of bond, but required the Personal Representative to keep funds in escrow for payment of estate expenses and not to distribute the funds for any other purpose pending further order of the court.

Likewise, Mr. Woods failed to persuade the Court that cause exists for Mr. Breakfield's removal with respect to the alleged probating of the wrong will. Initially, the Court finds that Mr. Woods is not named, in any capacity, in any of the Last Wills that have been filed with the Court. His status as a claimant, having filed a claim that was disallowed by the Personal Representative but that has not yet been heard and allowed by the Court, does not give Mr. Woods standing to object to or contest a decedent's last will. To have standing, one must generally have a personal stake in the subject of the lawsuit, i.e., one must be a real party in interest. Evins v. Richland County Historic Preservation Comm., 532 S.E.2d 876 (S.C. 2000). A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. Sloan v. Friends of the Hunley, Inc., 630 S.E.2d 474 (S.C. 2006). Generally, a creditor of the decedent cannot contest her will. 3 Bowe-Parker: Page on Wills §26.60. Other authorities supporting this principle of law include: 3 Bowe-Parker: Page on Wills §26.52 (one who would not take more if the will in question were held to be invalid than he would take if it were held to be valid cannot, by the weight of authority, contest the will in question);

Baker v. Henderson, 69 S.E.2d 278 (Ga. 1952) (if petitioners will not be injured or benefitted by the establishment and probate of the alleged copy will, they are strangers to it and are not proper parties to the litigation); Estate of Keener, 521 N.E.2d 232 (Ill. App. 1988) (even if the latest will was invalid, earlier wills failed to name the contestant, so he was not entitled to contest); Matter of Wharton, 453 N.Y.S.2d 308 (1982) (generally a person who is not a distributee of the decedent and who will receive no part of a decedent's estate if a will is denied probate, will not be permitted to file objections to probate. The exception is when a person is named in a prior will and his interest under the prior will is greater than under the propounded will).

Additionally, cause for removal does not exist because the Form 300 on file disclosed the existence of the June 23, 1998 Last Will and the existence of two other possible or purported Last Wills dated April 5, 2003, and the Court's Order of Formal Testacy dated February 23, 1998 expressly ordered that the decedent's Last Will dated June 23, 1998 be admitted formally to probate. Consequently, the decision about which last will to admit to probate was made by the Court and not by the Personal Representative. Accordingly, it is

ORDERED that Mr. Mell Woods' Petition for Removal of the Personal Representative is denied.

Rule 60 Motion to Vacate the Court's February 18, 2009 Order of Formal Testacy and Motion to Remove Rule 60 Motion to Circuit Court

Mr. Woods' Petition to Vacate the February 18, 2009 Order of Formal Testacy, in which the court ordered that the decedent's last will dated June 23, 1998 be admitted to probate, is treated by the Court as a Rule 60(b) motion. The Court gleans from the motion that Mr. Woods alleges fraud with respect to matters presented to the Court that resulted in said order ordering the June 23, 1998

last will be admitted to probate.

The Court first considered the motion to remove this proceeding to circuit court. Removal of probate proceedings to circuit court is governed by S.C. Code Ann. §62-1-302. For the following reasons, the Court concludes that the motion to remove the matter to circuit court must be denied.

The Rule 60 motion to vacate is not a subject matter identified in the statute as qualifying for removal to circuit court. Additionally, the motion to remove the matter to circuit court must be denied because the power to grant Rule 60 relief "is possessed solely by the court that rendered the judgment." Coleman v. Dunlap, 413 S.E.2d 15 (S.C. 1992). In this case, the Chester County Probate Court issued the February 18, 2009 Order now challenged by Mr. Woods, and the Chester County Probate Court is the only court with Rule 60 powers with respect to that Order. The circuit court would not have subject matter jurisdiction. Accordingly, it is

ORDERED that Mr. Woods' motion to remove the Rule 60 proceeding to circuit court is denied.

With respect to the motion to vacate the February 18, 2009 Order of Formal Testacy, it too must be denied. Mr. Woods, the movant, was not a party to the proceeding that resulted in the issuance of the February 18, 2009 Order he now tries to challenge pursuant to Rule 60(b). A person who was not a party to the underlying proceeding lacks standing to make a Rule 60(b) motion. Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §2865, citing among other authorities, U. S. v. 8136 S. Dobson St., Chicago, Ill., 125 F.3d 1076 (7th Cir. 1997), *cert. den.* 523 U. S. 1111; King v. State Bd. of Elections, 979 F. Supp. 582 (N. D. Ill. 1996). A more recent opinion very clearly explains that the plain language of Rule 60(b) only allows relief to a party or a party's legal representative, and a nonparty has no right to use Rule 60(b) to modify [or vacate] a

#4

consent decree agreed upon by the parties when no such relief is sought by any of the parties themselves. Ericsson, Inc. v. Interdigital Communications Corp., 418 F.3d 1217 (Fed. Cir. 2005).[1]

Other considerations with respect to Mr. Woods' lack of standing are addressed hereinabove, and are equally applicable to his Rule 60 motion.

And, even if Mr. Woods had standing to make the motion, he did not present sufficient evidence to prove that the February 18, 2009 Order of Formal Testacy was the product of a fraud on the Court. A Rule 60 motion is addressed to the discretion of the court. Thompson v. Hammond, 362 S.E.2d 879 (S.C. App. 1987). The burden is on the party seeking relief to show the applicability of one of the qualifying grounds. Paul Davis Systems, Inc. v. Deepwater of Hilton Head, LLC, 607 S.E.2d 358 (S.C. App. 2004). Mr. Woods presented no witnesses and no admissible documentary evidence other than calling the Court's attention to documents already in the court's file.

Accordingly, it is ORDERED that Mr. Wood's Motion for Rule 60 relief is denied.

IT IS SO ORDERED.

John P. Gettys
Special Probate Judge for Chester County

April 19, 2010
York, SC

[1] Where South Carolina cases have not specifically addressed a matter governed by the South Carolina Rules of Civil Procedure, South Carolina courts may seek guidance from federal cases. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 404 S.E.2d 200 (1991).

2010CP1200162

LOIS H. RODDEY
JUDGE OF PROBATE

STATE OF SOUTH CAROLINA IN THE PROBATE COURT

COUNTY OF CHESTER 2010 FEB 16 A 10:47 C/A NO: 2008-ES-12-00297

PROBATE COURT
CHESTER COUNTY, S.C.

IN THE MATTER OF: THE ESTATE OF EVA P. HINSON

Order Granting Claimant's Motion for Removal to Circuit Court

Claimant Mell Woods' Motion to remove his Petition for Allowance of Claim to circuit court was heard on February 3, 2010. In attendance were Mr. Woods, appearing pro se; the Personal Representative, Robert Breakfield; and the Personal Representative's attorney, Mike Brackett.

Claimant Mell Woods filed a claim against the estate on November 9, 2009. The Personal Representative disallowed the claim by notice dated and served November 10, 2009. On December 9, 2009 Mr. Woods filed and served a Petition for Allowance of Claim, a Demand for Jury Trial and a Motion to Remove his action for allowance of claim to Circuit Court. On or about December 24, 2009, the Personal Representative filed and served his Return to Mr. Woods' motion to remove, and filed and served a motion to dismiss portions of Mr.Woods' Petition.

On February 3, 2010, immediately prior the hearing, Mr. Woods filed an "Amendment of Claim" that rendered portions of the Personal Representative's Return moot.

Mr. Woods' Motion to Remove his Petition to circuit court is governed by S.C. Code Ann. §62-1-302(d). After the parties were unable to reach agreement on the issues before the Court, and after hearing from the parties, this Court concluded that claimant Woods' motion should be granted and that according to the removal statute cited above the circuit court must decide the Personal Representative's motions and determine which causes of action, if any, must remain in the circuit court and which causes of action, if any, should be remanded to the probate court. Accordingly, it is

ORDERED that claimant Mell Woods' Motion to Remove his Petition for Allowance of Claim is granted, and pursuant to §62-1-302(d) Mr. Woods' claim proceedings are hereby removed to the Chester County Court of Common Pleas. This decision is without prejudice to the Personal Representative's pending motions.

IT IS SO ORDERED.

John P. Gettys, Special Probate Judge for Chester County

February 10, 2010

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JUDGE OF PROBATE
CHESTER COUNTY, S.C.

07

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

2010-CP-12-0201
(Appeal from Probate Court)

In the Matter of the Estate of Reba P. Hinson

Mell Woods,

Appellant,

v.

Robert H. Breakfield, Esquire, as
Personal Representative,

Respondent.

Order Affirming Probate Court

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2011 JUL 21 A 11:43
CLERK OF COURT
CHESTER CO. S.C.

This is an appeal from Probate Court. The hearing on Appellant's grounds of appeal was held on July 8, 2011. In attendance were the Appellant, appearing *pro se*, and the Respondent and his attorney Mike Brackett. Available at the hearing was the circuit court's file which included the Probate Court's Return as required by S.C. Code Ann. §62-1-308(b). The Appellant argued that §62-1-308 requires the Probate Court to certify and deliver its entire file to the Circuit Court, and Appellant objected to going forward with the hearing until the entire file from Probate Court was filed in the Circuit Court. Respondent countered that only those contents of the Probate Court file that are relevant to the particular proceeding or order in the Probate Court from which the appeal is taken must be included in the Return. The language of §62-1-308 convinces the Court that Respondent is correct. Appellant could not identify anything in the Probate Court's file that was not included in the Return that Appellant claimed would prejudice his appeal if not included in the Return. Appellant's objection that the Return was incomplete was overruled.

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The record from the Probate Court and the arguments of the parties establish the following history: the action involved in this appeal was commenced by the Appellant's Petition for Removal of Personal Representative dated January 22, 2010. Attached to the Petition was a document titled "Motion for Removal of Personal Representative." The Petition identified the grounds for removal as "Misadministration of estate by failing to post bond, and by probating the wrong will." The Motion for Removal identified the grounds as failure to give bond after a demand for bond was made, and other "mis-management items," not identified in the motion with any particularity.

Appellant thereafter filed his "Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above-Styled Case on February 18, 2009; [and] Motion For Removal to Circuit Court." This pleading was dated February 17, 2010. Although the Probate Court denied the relief sought in the Petition to Vacate Order and the Motion to Remove the proceeding to Circuit Court, the Appellant did not appeal those rulings.

The Personal Representative filed and served an Answer to the Petition for Removal of Personal Representative. The Personal Representative also filed and served a consolidated Motion to Dismiss the Petition to Vacate Order and a Return to the Motion to Remove the Petition to Vacate to Circuit Court. The hearing on the Appellant's two Petitions and related motions was held in the Probate Court on April 12, 2010.[1] Following the hearing the Probate Judge issued his Order dated April 19, 2010. The Order contained three rulings: (1) it denied the Appellant's Petition for Removal of the Personal Representative for cause; (2) it denied the motion to remove to Circuit Court the Petition to Vacate; and (3) it denied Appellant's Petition to Vacate the Probate Court's

[1] The hearing was held in York County because the Chester County Probate Judge recused herself from the proceeding and the York County Probate Judge was appointed to serve as Special Probate Judge for Chester County in matters related to this estate.

09

February 18, 2009 Order of Formal Testacy.[2]

In his Notice of Appeal filed on April 30, 2010, Appellant identified two subjects as "partial grounds" for the appeal: (1) the Probate Judge did not recuse himself when he had knowledge that a family member had some past involvement in the matter, and (2) that the Probate Judge refused to issue subpoenas for witnesses that the Appellant wanted to subpoena to the hearing.

On June 4, 2010 the Appellant filed two "additional grounds" for his appeal: (3) that the probate court erred in not removing the Personal Representative for his failure to provide bond, and (4) that the probate court erred in failing to rule that the wrong will is being probated.

Appeals from probate court to circuit court are heard and decided according to the rules governing appeals to the higher appellate courts. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 31 (2d ed.2002) and cases cited therein. The circuit court is to apply the same standard of review that the Court of Appeals or Supreme Court would apply on appeal. Id. The hearing in the circuit court must be strictly on appeal, and no new evidence may be presented. S.C. Code Ann. §62-1-308(d).

CLERK OF COURT
CHESTER CO. S.C.
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Ground 3. During the hearing the Appellant, on the record, orally withdrew his ground of appeal no. three, the ground alleging error with respect to bond. The hearing proceeded on the three remaining grounds of appeal.

Ground 1. On the issue of recusal, the record indicates that no motion or request for recusal was made to the probate judge. This subject was not raised to and ruled upon by the trial court and was first raised in the Appellant's partial grounds of appeal. The subject was not addressed in the Probate Court's April 19, 2010 Order, and it was not raised by the Appellant in a Rule 59 motion.

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[2] As indicated above, rulings 2 and 3 were not appealed.

Consequently, it is not preserved for appeal. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 55 (2d ed.2002), citing Hubbard v. Rowe, 5 S.E.2d 187 (S.C. 1939) (questions presented for appellate review must first have been fairly and properly raised in the lower court and passed upon by that court); and I'On, L.L.C. v. Town of Mt. Pleasant, 526 S.E.2d 716 (S.C. 1993) (if the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a Rule 59 motion to alter or amend the judgment in order to preserve the issue for appellate review).

Ground 2. Likewise, on the issue of the probate judge not issuing subpoenas for Appellant's use, no objection or motion on the subject was raised at the April 12, 2010 probate court hearing, the Appellant did not request a continuance of the hearing for the purpose of serving subpoenas for witness attendance, the issue was not raised to and ruled upon by the trial court and was first raised in the Appellant's partial grounds of appeal, the issue was not addressed in the Probate Court's April 19, 2010 Order, and it was not raised by the Appellant in a Rule 59 motion. Additionally, the record of the April 12, 2010 hearing reveals that the Appellant did not identify who he would have subpoenaed, nor did he make a proffer of what the witness(es) were expected to offer in the way of relevant and admissible evidence. Appellant did not identify what prejudice he would suffer without the witnesses. Consequently, based on the authorities cited above, this ground of appeal was not preserved for appellate review.

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CLERK OF COURT
CHESTER CO. S.C.

Ground 4. With respect to the issue of the Probate Court's decision not to remove the Respondent as Personal Representative because he was probating the wrong will, the Appellant has failed to carry his burden to demonstrate to this Court that the Probate Court committed an error in

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not removing the Respondent on the ground alleged. [3]

The Probate Court was correct in holding that Appellant did not, and does not, have standing to object to, to veto, or to contest the decedent's last will. Notwithstanding that Appellant claims to be a creditor of the estate, by his own admission to the Court he is not named as a beneficiary or devisee in any instrument purported to be a Last Will of decedent Reba Hinson. Quoting from the Probate Court's April 19, 2010 Order:

> To have standing, one must generally have a personal stake in the subject of the lawsuit, i.e., one must be a real party in interest. Evins v. Richland County Historic Preservation Comm., 532 S.E.2d 876 (S.C. 2000). A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. Sloan v. Friends of the Hunley, Inc., 630 S.E.2d 474 (S.C. 2006). Generally, a creditor of the decedent cannot contest her will. 3 Bowe-Parker: Page on Wills §26.60. Other authorities supporting this principle of law include: 3 Bowe-Parker: Page on Wills §26.52 (one who would not take more if the will in question were held to be invalid than he would take if it were held to be valid cannot, by the weight of authority, contest the will in question); Baker v. Henderson, 69 S.E.2d 278 (Ga. 1952) (if petitioners will not be injured or benefitted by the establishment and probate of the alleged copy will, they are strangers to it and are not proper parties to the litigation); Estate of Keener, 521 N.E.2d 232 (Ill. App. 1988) (even if the latest will was invalid, earlier wills failed to name the contestant, so he was not entitled to contest); Matter of Wharton, 453 N.Y.S.2d 308 (1982) (generally a person who is not a distributee of the decedent and who will receive no part of a decedent's estate if a will is denied probate, will not be permitted to file objections to probate. The exception is when a person is named in a prior will and his interest under the prior will is greater than under the propounded will).

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CHESTER CO. S.C.

Additionally, Respondent is probating the Last Will that was ordered by the Probate Court

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[3] The Appellant's issue on appeal no. 4 is actually misstated. The Probate Court Order that admitted the particular Last Will to probate (the Last Will that Appellant labels the "wrong will") was the Probate Court's Order dated February 18, 2009. Appellant tried to vacate that Order, but in the April 19, 2010 Order, the Probate Court denied such relief because Appellant had no standing to seek to vacate the Order and, alternatively, he made an insufficient showing for Rule 60 (b) relief. Appellant has not appealed that portion of the April 19, 2010 Order. In the appeal now pending, the Appellant is really appealing the Probate Court's refusal to remove the Respondent as PR because he is probating the wrong will.

to be admitted to probate and, in so doing, is abiding by, and not disregarding, an order of the court.

Accordingly, for the reasons stated hereinabove, the Chester County Probate Court's Order dated April 19, 2010 is affirmed, the Appellant's appeal is dismissed, and this matter is remanded to the Probate Court for continued estate administration according to applicable law and procedure.

IT IS SO ORDERED.

Brooks P. Goldsmith, Judge

July 17, 2011.

CLERK OF COURT
CHESTER CO S.C.
2011 JUL 21 A 11:44
FILED

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT SIXTH CIRCUIT COURT
COUNTY OF CHESTER	)	
Kathy H. Huffstickle,	)	Case No. 1986-ES-12-188
In the Matter of: Levie Hoyt Hinson,	)	ORDER
Petitioner.	)	
vs.	)	
Lois H. Griffin, Respondent.	)	

LOIS H. RODDEY
JUDGE OF PROBATE
2007 OCT 30 A 11:54
PROBATE COURT
CHESTER COUNTY S.C.

LOIS H. RODDEY
JUDGE OF PROBATE
2007 OCT 16 A 9:11
PROBATE COURT
CHESTER COUNTY S.C.

This matter came before the Court on August 9, 2007, for a hearing on the Petition of Kathy H. Huffstickle dated May 23, 2007, seeking to set aside an amended real estate conveyance filed by the Probate Court on March 8, 2007. It appears that Levie Hoyt Hinson died on August 1, 1986, leaving a Last Will and Testament. Item I of Levie Hoyt Hinson's Will reads as follows:

> "I will, devise and bequeath unto my beloved wife, Reba P. Hinson all of my personal property of every kind and description including cash money. At her death, the remainder if any, to our beloved children. Name: William C. Hinson deceased his heirs, Lois H. Griffin, John C. Hinson, and Kathy H. Huffstickle, share and share alike."

Item II of the Will reads as follows:

> "I will, devise and bequeath unto my beloved wife, Reba P. Hinson all my real estate, in fee simple, as long as she lives then to our bodily heirs forever."

Item II of the Will appears to leave a Life Estate to Reba P. Hinson in all of Levie Hoyt Hinson's real estate then to the bodily heirs forever. The issue in this case turns upon a determination of the intention of Levie Hoyt Hinson in using the language "bodily heirs". It was the contention of the Petitioner that the deceased intended to leave to his bodily heirs the property in question and that Lois H. Griffin was not his bodily heir. It was the contention of Lois H. Griffin that Kathy H. Huffstickle was not a bodily heir of

A TRUE COPY
Lois H. Roddey
JUDGE OF PROBATE
CHESTER COUNTY, S.C.

the parents and that she did not inherit any real estate. It was an alternate contention of Kathy H. Huffstickle that she was the only joint child of Levie Hoyt Hinson and Reba P. Hinson so she is the only bodily heir.

It appears that Levie Hoyt Hinson fathered William C. Hinson and John C. Hinson prior to his marriage to Reba P. Hinson. It appears that Reba P. Hinson gave birth to Lois H. Griffin prior to her marriage to Levie Hoyt Hinson. There was conflicting testimony as to whether or not Kathy H. Huffstickle was the child of Levie Hoyt Hinson and Reba P. Hinson. The defense presented witnesses that Kathy H. Huffstickle was actually a child of the sister of Reba P. Hinson. Kathy H. Huffstickle stated that to her knowledge she was the child of Levie Hoyt Hinson and Reba P. Hinson. A birth certificate was introduced into evidence showing Reba P. Hinson and Levie Hoyt Hinson as the parents of Kathy H. Huffstickle.

Item I of the Will lists each of the children of Levie Hoyt Hinson and Reba P. Hinson. I find that Levie Hoyt Hinson intended to leave the real estate to all of the children listed in Item I and used the term bodily heirs in Item II of the Will interchangeably with the children in Item I of the Will. I further find that he intended to include Kathy H. Huffstickle and Lois H. Griffin as children and bodily heirs.

IT IS SO THEREFORE ORDERED

A. That the amended real estate conveyance of March 8, 2007, is affirmed,

B. That the real property consisting of 92 acres referred to in the Petition as tax map no 158-0-0-3 is hereby declared to be owned, as tenants in common, by the bodily heirs of Levie Hoyt Hinson,

C. That the bodily heirs of Levie Hoyt Hinson are hereby declared to be John C. Hinson, Lois H. Griffin, Kathy H. Huffstickle, and the heirs of William C. Hinson, and

D. That the heirs of William C. Hinson are William Levy Hinson, John Daniel Hinson, Charles Jerry Hinson, Robert Harold Hinson, William

Calvin Hinson, Etta Elaine Hinson, Linda Kay Hinson, and Darrell Wayne Hinson.

AND IT SO ORDERED,

October 15th, 2007
Chester, South Carolina

Lois H. Roddey
Chester County Probate Judge

PROBATE COURT–REAL ESTATE CONVEYANCES

AMENDED

STATE OF SOUTH CAROLINA,

County of Chester, March 8, 2007

Estate of Levie Hoyt Hinson

DECEASED

HEIRS AT LAW- DEVISEES	BRIEF DECRIPTION
Reba P. Hinson, Route 1, Box 264-A, Fort Lawn, SC (Life Estate")	92 Acres - South of Fort Lawn off Hwy. #21 - Map NO. 158-0-0-3 - Chester Co., SC (20 acres used for Commercial use)
Remainderment:	
John C. Hinson	
Lois H. Griffin	
Kathy H. Huffstickle	
William C. Hinson(deceased) His Heirs:	
William Levy Hinson	
John Daniel Hinson	
Charles Jerry Hinson	
Robert Harold Hinson	
Michael Dennis Hinson	
William Calvin Hinson	
Etta Elaine Hinson	
Linda Kay Hinson	
Darrell Wayne Hinson	

No. 183

RCES1200180

Lisa H. Ridley

Judge of Probate Chester County

17

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	2010-CP-12-0201 (Appeal from Probate Court)

In the Matter of the Estate of Reba P. Hinson

Mell Woods,

Appellant,

v.

ORDER AFFIRMING
PROBATE COURT

Robert H. Breakfield, Esquire, as
Personal Representative,

Respondent.

This is an appeal from Probate Court. The hearing on Appellant's grounds of appeal was held on September 8, 2010. In attendance were the Appellant, appearing pro se, and the Respondent and his attorney Mike Brackett. The record from the Probate Court and the arguments of the parties establish the following history: The action involved in this appeal was commenced by the Appellant's Petition for Removal of Personal Representative dated January 22, 2010. Attached to the Petition was a document titled "Motion for Removal of Personal Representative." The Petition identified the grounds for removal as "Misadministration of estate by failing to post bond, and by probating the wrong will." The Motion for Removal identified the grounds as failure to give bond after a demand for bond was made, and other "mis-management items," not identified in the motion with any particularity.

Appellant thereafter filed his "Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above-Styled Case on February 18, 2009; [and] Motion For Removal

to Circuit Court." This pleading was dated February 17, 2010. [1]

The Personal Representative filed and served an Answer to the Petition for Removal of Personal Representative. The Personal Representative also filed and served a consolidated Motion to Dismiss the Petition to Vacate Order and a Return to the Motion to Remove the Petition to Vacate to Circuit Court.

The hearing on the Appellant's two Petitions and related motions was held in the Probate Court on April 12, 2010.[2] Following the hearing the Probate Judge issued his Order dated April 19, 2010. The Order contained three rulings: (1) it denied the Appellant's Petition for Removal of the Personal Representative for cause; (2) it denied the motion to remove to Circuit Court the Petition to Vacate; and (3) it denied Appellant's Petition to Vacate the Probate Court's February 18, 2009 Order of Formal Testacy.[3]

In his Notice of Appeal filed on April 30, 2010, Appellant identified two subjects as "partial grounds" for the appeal: (1) the Probate Judge did not recuse himself from the matter when he had knowledge that a family member had some past involvement in the matter, and (2) that the Probate Judge refused to issue subpoenas for witnesses that the Appellant wanted to subpoena to the hearing.

On June 4, 2010 the Appellant filed two "additional grounds" for his appeal: (3) that the probate court erred in not removing the Personal Representative for his failure to provide bond,

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[1] Although the Probate Court denied the relief sought in the Petition to Vacate Order and the Motion to Remove the proceeding to Circuit Court, the Appellant did not appeal those rulings.

[2] The hearing was held in York County because the Chester County Probate Judge recused herself from the proceeding and the York County Probate Judge was appointed to serve as Special Probate Judge for Chester County in matters related to this estate.

[3] As indicated in footnote 1 above, rulings 2 and 3 were not appealed.

and (4) that the probate court erred in failing to rule that the wrong will is being probated.

Appeals from probate court to circuit court are heard and decided according to the rules governing appeals to the higher appellate courts. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 31 (2d ed.2002) and cases cited therein. The circuit court is to apply the same standard of review that the Court of Appeals or Supreme Court would apply on appeal. Id. The hearing in the circuit court must be strictly on appeal, and no new evidence may be presented. S.C. Code Ann. §62-1-308(d).

During the hearing the Appellant, on the record, orally withdrew his ground of appeal no. three, the ground alleging error with respect to bond. The hearing proceeded on the three remaining grounds of appeal.

On the issue of recusal, the record indicates that no motion or request for recusal was made to the probate judge. This subject was not raised to and ruled upon by the trial court and was first raised in the Appellant's partial grounds of appeal. The subject was not addressed in the Probate Court's April 19, 2010 Order, and it was not raised by the Appellant in a Rule 59 motion. Consequently, it is not preserved for appeal. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 55 (2d ed.2002), citing Hubbard v. Rowe, 5 S.E.2d 187 (S.C. 1939) (questions presented for appellate review must first have been fairly and properly raised in the lower court and passed upon by that court); and I'On, L.L.C. v. Town of Mt. Pleasant, 526 S.E.2d 716 (S.C. 1993) (if the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a Rule 59 motion to alter or amend the judgment in order to preserve the issue for appellate review).

Likewise, on the issue of the probate judge not issuing subpoenas for appellant's use, no objection or motion on the subject was raised at the probate court hearing, the issue was not raised to and ruled upon by the trial court and was first raised in the Appellant's partial grounds of appeal, the issue was not addressed in the Probate Court's April 19, 2010 Order, and it was not raised by the Appellant in a Rule 59 motion. Additionally, the record of the April 12, 2010 hearing reveals that the Appellant did not identify who he would have subpoenaed, nor did he make a proffer of what the witness(es) were expected to offer in the way of relevant and admissible evidence. Consequently, based on the authorities cited above, this ground of appeal was not preserved for appellate review.

With respect to the issue of the Probate Court's decision as to which Last Will was to be admitted to probate, an action challenging a last will is at law. Estate of Hicks, 327 S.E.2d 343 (S.C. 1985). In law cases, this court, as an appellate court, has jurisdiction merely for correction of errors of law and will not disturb the findings of the probate judge unless they are found to be without evidence which reasonably supports the findings. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 176 (2d ed.2002). In this instance, the Appellant has failed to carry his burden to demonstrate to this Court that the Probate Court committed an error of law in ruling that the decedent's June 23, 1998 last will was to be admitted to probate. Evidence in the record of the April 12, 2010 hearing shows that the admission of the decedent's June 23, 1998 last will to probate was pursuant to a family settlement agreement among the decedent's heirs and/or devisees, not including the Appellant who is a stranger to the estate.

Additionally, the Probate Court's conclusion that the Appellant lacks standing to object

to or contest the decedent's last will is well supported by persuasive authorities and precedent.

Quoting from the Probate Court's April 19, 2010 Order:

> To have standing, one must generally have a personal stake in the subject of the lawsuit, i.e., one must be a real party in interest. Evins v. Richland County Historic Preservation Comm., 532 S.E.2d 876 (S.C. 2000). A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. Sloan v. Friends of the Hunley, Inc., 630 S.E.2d 474 (S.C. 2006). Generally, a creditor of the decedent cannot contest her will. 3 Bowe-Parker: Page on Wills §26.60. Other authorities supporting this principle of law include: 3 Bowe-Parker: Page on Wills §26.52 (one who would not take more if the will in question were held to be invalid than he would take if it were held to be valid cannot, by the weight of authority, contest the will in question); Baker v. Henderson, 69 S.E.2d 278 (Ga. 1952) (if petitioners will not be injured or benefitted by the establishment and probate of the alleged copy will, they are strangers to it and are not proper parties to the litigation); Estate of Keener, 521 N.E.2d 232 (Ill. App. 1988) (even if the latest will was invalid, earlier wills failed to name the contestant, so he was not entitled to contest); Matter of Wharton, 453 N.Y.S.2d 308 (1982) (generally a person who is not a distributee of the decedent and who will receive no part of a decedent's estate if a will is denied probate, will not be permitted to file objections to probate. The exception is when a person is named in a prior will and his interest under the prior will is greater than under the propounded will).

Accordingly, for the reasons stated hereinabove, the Chester County Probate Court's Order dated April 19, 2010 is affirmed, the Appellant's appeal is dismissed, and this matter is remitted to the Probate Court for continued estate administration according to applicable law and procedure.

IT IS SO ORDERED.

Clifton Newman, Judge

September 30, 2010

22

March 19, 2011

Mell Woods
P.O. Box 2603
Lancaster SC 29721

Honorable Clifton Newman
South Carolina Circuit Court Judge
P.O. Box 516
Kingstree SC 29556

Re: Letter from Mr. Brackett concerning a Chester County Case heard back in October, Brackett's letter attached for ready reference.

Dear Judge Newman:

This is the case where the Probate Court Clerks are not capable of processing an appeal to circuit court. The clerks will not ask Court Administration about what to do -- they prefer all of their advice from Brackett, an adverse party. But such is what Brackett does best. Brackett somehow thinks someone has appointed him to go all over the state telling clerks and judges what to do, and the tone of all of his pleadings and correspondence is that no one in South Carolina knows how to do anything except Brackett.

I am quite satisfied with the Ruling of the Court that Brackett is complaining about. I do not want to participate in any telephone hearings, or do any of the other things he has suggested. My position is that it has been more than 30 days since Brackett learned of the Court's Ruling, and since he did not appeal, the law of the case rule has attached.

And as far as Brackett implying that everyone is holding up an estate, such is not true either. Brackett can expedite the matter by simply getting off the case. Local attorneys can settle the matter in a week -- I guarantee it.

Sincerely,

Mell Woods

Copy To
Mr. Brackett

Mike Brackett

From: Mike Brackett
Sent: Wednesday, March 16, 2011 3:59 PM
To: 'cnewmanj@sccourts.org'
Cc: 'cnewmanlc@sccourts.org'; 'Robert Breakfield'
Subject: Woods v. Breakfield, as PR 2010-CP-12-0201

Judge Newman,

You heard Mr. Woods' appeal from probate court in Chester last September. You issued an Order affirming the probate court. Mr. Woods filed a motion for reconsideration grounded in part on the fact that the probate court had not made a certified return of the relevant probate court record to the circuit court. In January, 2011 you issued an Order granting the motion for reconsideration on the ground that the probate court had not made the required return to the circuit court. The appeal was put back on the Chester non-jury roster, and it was scheduled for a hearing today. Judge Kinard, sua sponte, ruled that he could not hear the appeal because you have already heard the appeal, have ruled on it, and subsequently granted a motion for reconsideration. Mr. Woods agreed and would not consent to Judge Kinard hearing the appeal.

I understand that you will be holding court in Kershaw County on March 30, 31 and April 1. Can you work in the hearing on Mr. Woods' appeal? I will serve the required notice and will have the Chester County Clerk of Court deliver to you the probate court's return.

Thank you for your attention to this request. Because I have not been able to communicate with Mr. Woods by email, I am printing this email and putting it in the mail to him today.

Mike Brackett
T - 803.461.2312
F - 803.461.2309

Mailed to Mell Woods

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTER	)	2010-CP-12-0201
	)	(Appeal from Probate Court)
	)	
In the Matter of the Estate of Reba P. Hinson	)	
	)	
Mell Woods,	)	
	)	
Appellant,	)	ORDER GRANTING APPELLANT'S RULE 59(e) MOTION
	)	
v.	)	
	)	
Robert H. Breakfield, Esquire, as Personal Representative,	)	
	)	
Respondent.	)	

CLERK OF COURT
CHESTER, S.C.
2011 JAN 31 P 1:03
FILED

This matter came before the Court as an appeal of a Chester County Probate Court Order dated April 19, 2010. The hearing on Appellant's grounds for appeal was held on September 8, 2010 whereby this Court affirmed the Probate Court Order. Appellant subsequently filed a Motion for Reconsideration of that Order.

After considering the motion and applicable law pursuant to S.C. Code Ann. § 62-1-308(b), I find that a proper return was not made by the Probate Court as required by law. It is therefore ordered that the Motion for Reconsideration is hereby GRANTED.

AND IT IS SO ORDERED.

January 27, 2011
Columbia, South Carolina

Clifton Newman,
Presiding Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTER	)	2010-CP-12-0201
	)	(Appeal from Probate Court)
	)	
In the Matter of the Estate of Reba P. Hinson	)	
	)	
Mell Woods,	)	
	)	
Appellant,	)	ORDER GRANTING APPELLANT'S RULE 59(e) MOTION
	)	
v.	)	
	)	
Robert H. Breakfield, Esquire, as Personal Representative,	)	
	)	
Respondent.	)	

FILED
JAN 31 P 1:03
CLERK OF COURT
CHESTER S.C.

This matter came before the Court as an appeal of a Chester County Probate Court Order dated April 19, 2010. The hearing on Appellant's grounds for appeal was held on September 8, 2010 whereby this Court affirmed the Probate Court Order. Appellant subsequently filed a Motion for Reconsideration of that Order.

After considering the motion and applicable law pursuant to S.C. Code Ann. § 62-1-308(b), I find that a proper return was not made by the Probate Court as required by law. It is therefore ordered that the Motion for Reconsideration is hereby GRANTED.

AND IT IS SO ORDERED.

January 27, 2011
Columbia, South Carolina

Clifton Newman,
Presiding Judge

True and correct copy of original paper on file in this office.
Clerk of Court
Chester County, SC
Date May 9, 2011

State of South Carolina
The Circuit Court of the Third Judicial Circuit

Clifton Newman
Judge

Post Office Box 192
Columbia, South Carolina 29202
Phone: (803) 576-1770
Fax: (803) 576-1772
cnewmanj@sccourts.org

January 28, 2011

The Honorable Sue K. Carpenter
Clerk of Court
140 Main Street
Post Office Box 580
Chester, South Carolina 29706

RE: Case No.: 2010-CP-12-0201

Dear Ms. Carpenter:

Enclosed, please find the Order Granting Appellant's Rule59(e) Motion. Please file and it and serve it on all parties. Thank you for your assistance in this matter.

Very truly yours,

Teckla S. Womack
Law Clerk to The Honorable Clifton Newman

Enclosed: Order Granting Appellant's Rule 59(e) Motion

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

2010-CP-12-0201
(Appeal from Probate Court)

In the Matter of the Estate of Reba P. Hinson

Mell Woods,

Appellant,

v.

Robert H. Breakfield, Esquire, as Personal Representative,

Respondent.

Order Amending Prior Order Granting Appellant's Rule 59(e) Motion

FILED
2011 MAY 20 A 11:25
CLERK OF COURT
CHESTER CO S.C.

By Order dated January 27, 2011, the undersigned granted the Appellant's Motion for Reconsideration. On the Court's own motion, the undersigned now amends the January 27, 2011 Order to provide that the Motion for Reconsideration is granted; that the Order dated September 30, 2010 which was the subject of the Motion for Reconsideration is hereby vacated; that the undersigned does not retain jurisdiction to hear the Appellant's appeal; and that the appeal be returned to the Chester County non-jury docket.

IT IS SO ORDERED.

C Newman

Clifton Newman, Judge

Camden, SC

May 18, 2011

STATE OF SOUTH CAROLINA PROBATE COURT

COUNTY OF CHESTER

LOIS H. RODDEY
JUDGE OF PROBATE

2010 JAN 12 A 9:04

PROBATE COURT
CHESTER COUNTY S.C.

IN THE MATTER OF: ESTATE OF REBA P. HINSON

CASE NUMBER: 2008ES1200297

ORDER FOR HEARING

IT IS HEREBY ORDERED that a hearing in this matter be set for:

DATE: FEBRUARY 3, 2010

TIME: 11:00 A.M.

PLACE: CHESTER COUNTY PROBATE COURT

HEARING SCHEDULED BY COURT TO CONSIDER MOTION FOR REMOVAL TO CIRCUIT COURT.

Executed this 11th day of January 2010.

John P. Gettys, Special Probate Judge

1-12-10

Judge Gettys said he was going to call the attorneys and tell them not to bring their clients

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF CHESTER	)	
Estate of Reba P. Hinson	)	
	)	**ORDER**
No. 2008ES1200297	)	
	)	

LOIS H. RODDEY
JUDGE OF PROBATE
2009 DEC 17 A 8:27
PROBATE COURT
CHESTER COUNTY S.C.

This Order modifies the Probate Court Letter of Instruction dated November 12, 2009 to Robert H. Breakfield, Personal Representative for the Estate of Reba P. Hinson.

The Personal Representative may distribute to the estate beneficiaries cash and property. However, the Personal Representative shall retain at least $200,000.00 in estate assets pending the resolution of the claim of Mell Woods against the Estate of Reba P. Hinson.

The Personal Representative shall have the authority to expend estate assets for normal operating expenses for administrative purposes, including the power to retain attorneys and accountants for the purpose of defending the Estate against any claims against the Estate.

The Honorable John P. Gettys
Probate Judge

Date: 12/17/09

STATE OF SOUTH CAROLINA IN THE PROBATE COURT

LOIS H. RODDEY
JUDGE OF PROBATE

COUNTY OF CHESTER C/A NO: 2008-ES-12-00297

2010 FEB 16 A 10:47

PROBATE COURT
CHESTER COUNTY, S.C.

IN THE MATTER OF: THE ESTATE OF REBA P. HINSON

Order Granting Claimant's Motion for Removal to Circuit Court

Claimant Mell Woods' Motion to remove his Petition for Allowance of Claim to circuit court was heard on February 3, 2010. In attendance were Mr. Woods, appearing pro se; the Personal Representative, Robert Breakfield; and the Personal Representative's attorney, Mike Brackett.

Claimant Mell Woods filed a claim against the estate on November 9, 2009. The Personal Representative disallowed the claim by notice dated and served November 10, 2009. On December 9, 2009 Mr. Woods filed and served a Petition for Allowance of Claim, a Demand for Jury Trial and a Motion to Remove his action for allowance of claim to Circuit Court. On or about December 24, 2009, the Personal Representative filed and served his Return to Mr. Woods' motion to remove, and filed and served a motion to dismiss portions of Mr. Woods' Petition.

On February 3, 2010, immediately prior the hearing, Mr. Woods filed an "Amendment of Claim" that rendered portions of the Personal Representative's Return moot.

Mr. Woods' Motion to Remove his Petition to circuit court is governed by S.C. Code Ann. §62-1-302(d). After the parties were unable to reach agreement on the issues before the Court, and after hearing from the parties, this Court concluded that claimant Woods' motion should be granted and that according to the removal statute cited above the circuit court must decide the Personal Representative's motions and determine which causes of action, if any, must remain in the circuit court and which causes of action, if any, should be remanded to the probate court. Accordingly, it is

ORDERED that claimant Mell Woods' Motion to Remove his Petition for Allowance of Claim is granted, and pursuant to §62-1-302(d) Mr. Woods' claim proceedings are hereby removed to the Chester County Court of Common Pleas. This decision is without prejudice to the Personal Representative's pending motions.

IT IS SO ORDERED.

John P. Gettys, Special Probate Judge for
Chester County

February 10, 2010

31

The Supreme Court of South Carolina

LOIS H. RODDEY
JUDGE OF PROBATE

2010 MAR 18 P 4:31

PROBATE COURT
CHESTER COUNTY S.C.

ORDER

I find that the Honorable Lois Roddey, Judge of Probate for Chester County, is disqualified from any further hearings In Re: Estate of Reba Pettit Hinson, and therefore is unable to sit as judge of probate in this matter.

Pursuant to the provisions of S.C. Const. Art. V, §4, and S.C. Code Ann. §14-23-1080 (Supp. 1997),

IT IS ORDERED that the Honorable John Gettys Judge of Probate for York County, be, and hereby is, appointed as special probate court judge to sit in the above matter. As such special probate court judge, he shall have all the powers and duties appertaining to a probate court judge for Chester County for the handling of the above matter.

JEAN H. TOAL, CHIEF JUSTICE

BY: Rosalyn Frierson
Rosalyn Frierson, Director
South Carolina Court Administration

March 11, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: CHESTER)
) REQUEST FOR RECUSAL
IN THE MATTER OF: REBA PETTIT HINSON)
) CASE NUMBER: 2008ES1200297

I request to be recused from the above listed case in its entirety [XX]

OR

I request to be recused from this portion of the above listed case.

(1) Administration ☐

(2) Litigation ☐

Describe the Litigation: _____

_____

_____

I request to be recused because of Conflict of Interest: ☐

Explanation: (Optional): _____

_____

_____

Attorney(s) Involved:

Name of Attorney: _____
Address: _____

_____

Name of Attorney: _____
Address: _____

DATE: MARCH 4, 2010

Lois H. Roddey
LOIS H. RODDEY , Probate Court Judge

South Carolina Court Administration

South Carolina Supreme Court

Columbia, South Carolina

ROSALYN FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-1821
E-MAIL: Rfrierson@sccourts.org

March 11, 2010

The Honorable John Gettys
P.O. Box 219
York, SC 29745

LOIS H. RODDEY
JUDGE OF PROBATE
2010 MAR 18 P 4:31
PROBATE COURT
CHESTER COUNTY S.C.

RE: Estate of Reba Pettit Hinson
Case No: 2009-ES-12-00008

Dear Judge Gettys:

Enclosed is a copy of an order of Chief Justice Jean H. Toal dated March 11, 2010. This order provides for the appointment of you as a special probate court judge for Chester County in the matter of the above referenced case.

Should you have any questions in the above case, please contact this office.

Sincerely,

Rosalyn Frierson

RF/lbb
Enclosure

cc: The Honorable Lois Roddey

YORK COUNTY PROBATE COURT

John P. Gettys, Judge of Probate
Post Office Box 219, York, SC 29745
Tel: (803) 684-8513 Fax: (803) 684-8536

March 12, 2010

Mr. B. Michael Brackett
Moses, Koon & Brackett
Attorneys at Law
Post Office Box 100261
Columbia, South Carolina 29202-3261

Mr. Mell Woods
Post Office Box 2603
Lancaster, South Carolina 29721

RE: Estate of Reba P. Hinson
Chester County Case No. 2008ES1200297
York County Case No. 2010ES4600265

Dear Mr. Brackett and Mr. Woods:

Judge Roddey has recused herself in the captioned matter and I have been appointed to hear all matters dealing with the case. Enclosed is copy of the order.

In the future, all hearings in this matter will be held in the York County Probate Court at #1 E. Liberty Street, York, South Carolina. Any original filings should be made with the Chester County Probate Court with a copy of all filings mailed to me and to the other party at the above addresses.

I have requested that the Chester County court provide me with a copy of the entire file for this estate. I plan to schedule a hearing for all matters currently before the court within the next few weeks. Please review your calendars for the weeks of April 12 and April 19 and advise me if you are available those two weeks.

Sincerely yours,

John P. Gettys
Judge of Probate

Enclosure(s)

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE MATTER OF:

REBA P. HINSON

IN THE PROBATE COURT

CASE: 2008ES1200297

MELL WOODS,
Claimant.

PROBATE COURT
CHESTER COUNTY, S.C.
2009 DEC -9 P 4:41
LOIS H. FOOTE
JUDGE OF PROBATE

MOTION FOR REMOVAL TO CIRCUIT COURT

NOW COMES, Mell Woods, a party in the above case and moves that the claim denied by the present personal representative on November 10, 2009, be heard in the Circuit Court for Chester County, in front of a jury.

1.

Reference is made to SC Statute 61-302(6)(d)(5) and the South Carolina Supreme Court Case at 380 S.C. 466.

Mell Woods

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

STATE OF SOUTH CAROLINA IN THE PROBATE COURT

COUNTY OF CHESTER C/A NO: 2008-ES-12-00297

IN THE MATTER OF: THE ESTATE OF REBA P. HINSON

Personal Representative's Return to Motion for Removal to Circuit Court; And Personal Representative's Motion to Dismiss

Return to Motion for Removal

Claimant Mell Woods filed a claim against the estate on November 9, 2009. The Personal Representative disallowed the claim by notice dated and served November 10, 2009. On December 9, 2009 Mr. Woods filed and served a Petition for Allowance of Claim, a Demand for Jury Trial and a Motion to Remove his action for allowance of claim to Circuit Court.

The Motion to Remove is governed by S.C. Code Ann. §62-1-302(d). Before removal is allowed, the Probate Court must find that the conditions for removal have been satisfied.

Claimant's November 9, 2009 statement of claim is a jumbled, mish-mash of allegations. His Form 371PC describes the basis of claim as "see attached." The attachment is a typed "statement of claim" setting forth 12 numbered paragraphs. The introductory paragraph describes the basis of claim as "quantum meruit; constructive fraud causing a constructive trust to arise; nuisance." Paragraph 12 of the attachment appears to allege an equitable claim for improvements.

To determine whether an action is in law or in equity, the court must discern the main purpose of the suit. Baughman v. AT&T, 298 S.C. 127, 378 S.E.2d 599 (1989).[1] The main purpose should generally be ascertained from the body *of the complaint*. Insurance Fin. Servs., Inc. v. South Carolina Ins. Co., 271 S.C. 289, 247 S.E.2d 315 (1978). The nature of the issues raised by the pleadings and the character of the relief sought determine the character of the action as legal or equitable. Bell v. Mackey, 191 S.C. 105, 3 S.E.2d 816 (1939).

Quantum Meruit. Although quantum meruit is mentioned in the Statement of Claim as a basis for the claim, the detailed allegations in the attachment to the claim do not allege any facts relevant to a quantum meruit claim. The claim is simply devoid of allegations on which a quantum meruit claim can rest. Nevertheless, quantum meruit is an equitable remedy, QHG of Lake City, Inc. v. McCutcheon, 600 S.E.2d 105 (S.C. App. 2004), for which a jury trial is not allowed, Loyola Federal Savings Bank. v. Thomasson Properties, 456 S.E.2d 453 (S.C. App. 1995) (no right ro a jury

[1] See Jean Hoefer Toal, Shanin Vafai and Robert A. Muckenfuss, Appellate Practice in South Carolina 178 (2d ed. 2002).

trial in equitable actions). Consequently, the cause of action alleging quantum meruit is not removable.

Equitable claim for Improvements. The claim for improvements is not a claim under the Betterment Statute, S.C. Code Ann. §27-27-10, et seq. (1991) or under the ejectment statute, §27-27-70 (1991), because under either statute, the claim may only be made defensively in response to an action against the improver for possession of the land. C&S Nat'l Bank v. Modern Homes Const. Co., 149 S.E.2d 326 (S.C. 1966). Mr. Woods has not alleged a statutory claim because his is not a defensive claim in response to an action by the owner; rather, it is a direct claim under the equity jurisdiction of the court.

In C&S Nat'l Bank v. Modern Homes Const. Co., the South Carolina Supreme Court held that the Betterment Statute does not provide the only remedy by which the rights of an improver of the land of another may be protected. Equity may grant a remedy when the particular facts and equities of the case demonstrate that both parties can be made whole. Without explaining the factors or analysis to be employed in judging the equities, the court cited cases from other jurisdictions and two ALR annotations. Consequently, any claim by Mr. Woods for improvements is an equitable claim for which there is no right to a jury trial, and which is not removable to Circuit Court.

Constructive Fraud. To establish constructive fraud, all elements of actual fraud except the element of intent must be established.'" Pitts v. Jackson Nat'l Life Ins. Co., 352 S.C. 319, 333, 574 S.E.2d 502, 509 (Ct.App. 2002) (quoting Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct.App. 1993)). "Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud while intent to deceive is an essential element of actual fraud." Ardis, 314 S.C. at 516. Actual fraud is distinguished from constructive fraud by the presence or absence of the intent to deceive. Pitts, 352 S.C. at 334, 574 S.E.2d at 509. "However, in a constructive fraud case, where there is no confidential or fiduciary relationship, and an arm's length transaction between mature, educated people is involved, there is no right to rely." Ardis, 314 S.C. at 516, 431 S.E.2d at 270.

A Plaintiff must allege more than a "bare claim of conspiracy" using "labels and conclusions." Loubser v. Thacker, 440 F.3d 449 (7th Cir. 2006) (a conspiracy claim differs from other claims in having a degree of vagueness that makes a bare claim of conspiracy wholly uninformative to the defendant); Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955 (2007), (although a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions. . .); Beanal v. Freeport-McMoran, Inc., 197 F.3d 161 (5th Cir. 1999) (a bare bones allegation that a wrong occurred and which does not plead any of the facts giving rise to the injury does not provide adequate notice).[2]

---

[2] Because South Carolina cases have not specifically addressed the pleading requirements for civil conspiracy under the Rules of Civil Procedure, South Carolina courts may seek guidance from federal cases. Gardner v. Newsome Chevrolet-Buick, Inc., 404 S.E.2d 200 (S.C. 1991).

Therefore, the complaint/statement of claim with respect to a cause of action for constructive fraud cannot survive a Rule 12(b)(6) motion and should be dismissed.

Nuisance. There are no allegations in the statement of claim that can remotely be construed as alleging a nuisance on the part of the decedent. A Rule 12(b)(6) motion for failure to state facts sufficient to state a claim for nuisance is well grounded.

Personal Representative's Motion to Dismiss

Please take notice that the Personal Representative, through his undersigned attorney, moves the Chester County Probate Court for an Order dismissing the Claimant's Statement of Claim to the extent that Claimant purports to state a claim for constructive fraud, nuisance and quantum meruit. The motion is made pursuant to Rule 12(b)(6), SCRCP, on the ground that the statement of claim sets forth absolutely no allegations with respect to the elements of those causes of action.

A ruling on a Rule 12(b)(6) motion must be based solely on the allegations of the complaint (statement of claim). Sloan Const. Co., Inc. v. Southco Grassing, Inc., 629 S.E.2d 372 (S.C. App. 2006). The court must decide the motion on the facts alleged and reasonable inferences deducible from those alleged facts. Slack v. James, 589 S.E.2d 772 (S.C. App. 2003).

This motion will be supported by all matters of record herein and by relevant authorities of this and other jurisdictions. There is no duty of prior consultation with respect to this motion.

Conclusion

The motion to remove to the claim to circuit court should be denied. As to the claims of quantum meruit and equitable claim for improvements, those are equitable and are not removable.

As to constructive fraud, nuisance and quantum meruit, no claims have been sufficiently alleged to even constitute a claim on those theories. Once those claims are dismissed, as they must be, there will be nothing left to be removed with respect to those claims.

The Probate Court should retain the claim for equitable improvements and hear that claim in due course, after a reasonable time for discovery.

B. Michael Brackett, Esquire
1333 Main Street, Suite 650
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
Attorney for the Personal Representative

Dec 23, 2009

TATE OF SOUTH CAROLINA

PROBATE COURT

OUNTY OF CHESTER

THE MATTER OF *THE ESTATE OF REBA P. HINSON*

ASE NUMBER **2008-ES-12-00297**

PROOF OF DELIVERY

On the 23rd day of December, 2009, I delivered copies of **The Personal Representative's Return to aimant's Motion for Removal, including the PR's Motion to Dismiss**

opy of which is attached hereto and incorporated herein, by the following method (check appropriate box):

- ☐ personal delivery
- ☒ ordinary first class mail
- ☐ certified mail
- ☐ registered mail

ach of the following persons at the address shown:

NAME	ADDRESS
Woods, pro se	P. O. Box 2603, Lancaster, SC 29721

ORN to before me this 23rd day of December, 2009

ry Public for South Carolina

ommission Expires: 12-15-15

Signature: B. Michael Brackett

Name: B. Michael Brackett

Address: Moses Koon & Brackett, PC

P. O. Box 100261, Columbia, SC 29202-3261

Telephone(O):

(H):

Signature:

Name:

Address:

Telephone(O):

(H):

40

#120PC (1/91)
401, 3-1003, general

MOSES KOON & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 650 (29201)
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Direct Dial: (803) 461-2312
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February 11, 2010

LOIS H. RODDEY
JUDGE OF PROBATE
2010 FEB 12 A 11: 33
PROBATE COURT
CHESTER COUNTY S.C.

The Honorable Lois H. Roddey
Chester County Probate Judge
P. O. Drawer 580
Chester, SC 29706

RE: Estate of Reba P. Hinson
08-ES-12-0297
Our File Number - 12085.1

Dear Judge Roddey:

Enclosed for filing please find Judge Gettys' Order dated February 10, 2010 granting Claimant Mell Woods' Motion to Remove Claim Proceedings to the Circuit Court. By copy of this letter, a copy of the enclosed Order is being served on Mr. Woods.

With respect to the removal of claim proceedings to Circuit Court, I respectfully suggest that the Probate Court provide certified copies of the following documents to the Circuit Court for filing there:

1) Mell Woods' Claim dated/filed on or about November 9, 2009.

2) Personal Representative's Disallowance of Claim dated November 10, 2009.

3) Mr. Woods' Petition for Allowance of Claim, Demand for Jury Trial and Motion to Remove to Circuit Court, filed on or about December 9, 2009.

4) Personal Representative's Return to the Motion to Remove and the Personal Representative's Motion to Dismiss, filed on or about December 24, 2009.

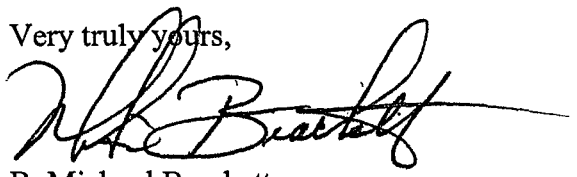
5) Claimant Woods' Amendment of Claim, filed on or about February 3, 2010.

6) Order Granting Motion for Removal dated February 10, 2010.

41

Please return a clocked copy of the enclosed Order using the envelope provided.

Very truly yours,



B. Michael Brackett

BMB/lta
Enclosure

cc. Robert P. Breakfield, Esquire
Mr. Mell Woods

YORK COUNTY PROBATE COURT

John P. Gettys, Judge of Probate
Post Office Box 219, York, SC 29745
Tel: (803) 684-8513 Fax: (803) 684-8536

February 22, 2010

Mr. Mell Woods
Post Office Box 2603
Lancaster, South Carolina 29721

RE: Estate of Reba P. Hinson
Case No. 2008ES1200297

Dear Mr. Woods:

Please make available to the Chester County Probate Court a list of the filings you wish to have certified for the transfer of your claim to Circuit Court. All filings to be certified must be copied by court personnel. I understand that Mr. Brackett has provided his list to the court and upon receipt of your list we will provide certification as soon as possible.

I further understand that you have filed a petition to remove the Personal Representative and a motion. I am prepared to hear these matters at the earliest convenient date.

Sincerely Yours,

John P. Gettys
Judge of Probate

cc: B. Michael Brackett, Esquire.

LOIS H. RODDEY
JUDGE OF PROBATE

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

PROBATE COURT

2010 MAR -2 P 4:05

PROBATE COURT
CHESTER COUNTY S.C.

IN THE MATTER OF: ESTATE OF REBA P. HINSON

Case Number: 2008ES1200297

Designation of Record

In addition to the items selected by the estate attorney, please include the following items for Mell Woods when sending the Record to the circuit court:

Date Document Filed

Dec. 15, 2008 Pet. for Formal Testacy & Appt. 7 pgs.;

Jan. 25, 2010 Motion to remove administrator;

Feb. 17, 2010 Filing of Will for Record;

Feb. 17, 2010 Petition to vacate Court Order;

Mar. 02, 2010 Amendment to Pet. to vacate Court Order;

Mar. 02, 2010 Motion to Publish fact of two, or more Wills [SC Probate Code 62-9-901];

This 02 day of March, 2010.

Mell Woods

Copy to Brackett,
and Judge Gettys.

(1)

June 27, 2007

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

The Honorable Lois Roddey
Judge of Chester County Probate Court
Chester County Courthouse
Chester, South Carolina

LOIS H. RODDEY
JUDGE OF PROBATE
2007 JUN 28 P 1:46
PROBATE COURT
CHESTER COUNTY S.C.

Hand Delivered.

Dear Judge Roddey:

This is in regard to Mrs. Reba Hinson. Mrs. Hinson died late last year and there is nothing on file concerning her estate. Perhaps there is nothing to file, however I have an interest in knowing if the estate is going to be probated. I spoke to you about this several months ago and you checked and verified that nothing had been filed. And I am sure nothing was there on the day I talked to you about this. However since that time, some of the Hinson heirs have been talking about seeing certain papers that have been prepared for filing. If you have any informal letters, papers, documents, or anything that is not in the record yet, please furnish these to me under the South Carolina Freedom of Information Act.

Request for Records Under the South Carolina Freedom of Information Act:

You are requested to release to the undersigned requestor, *All the papers, cards, tapes, photographs, maps, books, or other documentary material*
retained by you in regard to Mrs. Reba Hinson;
everything that is filed in the Court Record and is available for public inspection is not meant to be part of this request. Please note that this request is to view and inspect the actual records, but is not a request for *copies* [at the present time]. The listed records are public and subject to release under current South Carolina statutory and case law; and no record released will be used for a commercial purpose.

Sincerely,

Mell Woods

Mell Woods

LOIS H. RODDEY
JUDGE OF PROBATE

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

PROBATE COURT
2010 MAR -2 P 4:05

PROBATE COURT
CHESTER COUNTY S.C.

IN THE MATTER OF: ESTATE OF REBA P. HINSON

Case Number: 2008ES1200297

Amendment

to the verified Petition to Vacate the Chester County Probate Court Order entered in the above-styled case on February 18, 2009; Motion for Removal to Circuit Court, Filed on February 17, 2010;

1.

The Verified Petition filed on February 17, 2010, is hereby adopted by reference, and incorporated herein; the following is added:

2.

According to the South Carolina Probate Code Section 62-1-302(a)(6)(d) cases with the following matters must be removed from the Probate Court to the Circuit Court for *de novo* hearing upon the motion of a party, or upon the Court's own motion, to wit:

(1) formal proceedings for the probate of wills and for the appointment of general personal representatives;

(1)

(2) construction of wills;

(3) actions to try title;

(4) trusts;

(5) claims of at least $5,000.00;

3.

Since this case, and the other ones already pending in Chester County Common Pleas Court, among the same parties, and involving at least one or more of the above five items, coupled with the fact that there is now another will to deal with, it would just make more sense to just get all of the cases into one court, and get them settled;

4.

The Aiken County Probate Court on its own motion took one look at James Brown's file (the singer), and removed it to the circuit court; some cases are just handled better outside of the Probate Court;

(2)

Fulmer v. CAIN 380 S.C. 466

REVERSED AND REMANDED.

PLEICONES, BEATTY and KITTREDGE, JJ., concur.

TOAL, C.J., concurring in a separate opinion.

Chief Justice Toal

I agree with the majority's holding that this interlocutory order was not immediately appealable. I write separately, however, to express my view that the probate court properly consolidated the two cases. Both matters involve the estate of Mary Fulmer, similar questions of law and fact exist, and consolidation of the actions will promote judicial economy and reduce the risk of inconsistent rulings. Furthermore, it is my view that considering the nature of this consolidated action, Respondent has an absolute right to remove this case to circuit court following the personal representative's amendment to the pleading. Not only does the consolidated action relate to an amount in controversy of at least $5,000, but also it involves a formal proceeding for the probate of Fulmer's will. See S.C. Code Ann. § 62-1-302(d)(1) and (5) (2007) (providing that any action or proceeding filed in the probate court and relating to formal proceedings for the probate of wills and actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value must be removed to the circuit court).

Respectfully submitted,

This 02 day of March, 2010.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

OF SOUTH CAROLINA)
)
OUNTY OF: Chester)
)
N THE MATTER OF: Reba P. Hinson)
)
)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2008ES1200297

On the 02 day of March, 20 10, I mailed or delivered the following document,
Amendment to Pet. to vacate Court order

☑ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the court and incorporated herein,

LOIS H. ROBDEY
JUDGE OF PROBATE

2010 MAR -2 P 4:06

PROBATE COURT
CHESTER COUNTY S.C.

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery ☑ ordinary first class mail
☐ certified mail ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
B. Michael Brackett	P.O. Box 100261 Columbia, SC 29202

SWORN to before me this 02 day of March, 20 10

Gloria Diane Woods
Notary Public for South Carolina
My Commission Expires: Jan. 8, 2018

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

Signature:
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O):
(H):
E-mail:

Signature:
Name:
Address:
Telephone (O):
(H):
E-mail:

50

M #120PC (2/2004)
401, 62-3-1003, general

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

2010-CP-12-0201
(Appeal from Probate Court)

In the Matter of the Estate of Reba P. Hinson

Mell Woods,

Appellant,

v.

Robert H. Breakfield, Esquire, as Personal Representative,

Respondent.

Respondent's Memorandum of Law In Support of Affirming Probate Court

FILED
2011 MAR 14 A 11:25
CLERK OF COURT
CHESTER CO S.C.

This is an appeal from the Chester County Probate Court's Order dated April 19, 2010. **(Exhibit A.)** The first hearing on Appellant's grounds of appeal was held on September 8, 2010, Judge Clifton Newman presiding. At the hearing the Appellant objected to going forward with the hearing because the Probate Court had not made its Return to the Circuit Court pursuant to §62-1-308(b). Judge Newman ordered that the probate court deliver its entire Reba Hinson estate file to the circuit court courtroom for use during the hearing. The file was delivered for the use of the parties, attorneys and the circuit court.

By Order dated September 30, 2010 the Circuit Court affirmed the Probate Court's April 19, 2010 Order and dismissed the appeal. **(Exhibit B)**. Appellant filed and served a Rule 59(e) motion for reconsideration raising, among other arguments, that the appeal had been "heard without benefit of a certified record from the Probate court." **(Exhibit C)**. By Order dated January 27, 2011, Appellant's motion for reconsideration was granted on the ground that a proper return was not made

by the Probate Court." **(Exhibit D).** The undersigned as attorney for Respondent took the initiative to have the Probate Court's Return delivered to the Circuit Court. **(Exhibit E.)** The Probate Court has confirmed that the Return was delivered. **(Exhibit F.)** The hearing on the appeal has been rescheduled for March 16, 2011.

The record from the Probate Court and the arguments of the parties will establish the following history: The action involved in this appeal was commenced by the Appellant's Petition for Removal of Personal Representative dated January 22, 2010. Attached to the Petition was a document titled "Motion for Removal of Personal Representative." The Petition identified the grounds for removal as "Misadministration [sic] of estate by failing to post bond, and by probating the wrong will." The Motion for Removal identified the grounds as failure to give bond after a demand for bond was made, and other "mis-management items," not identified in the motion with any particularity.

Appellant thereafter filed his "Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above-Styled Case on February 18, 2009; [and] Motion For Removal to Circuit Court." This pleading was dated February 17, 2010. [1]

The Personal Representative filed and served an Answer to the Petition for Removal of Personal Representative. The Personal Representative also filed and served a consolidated Motion to Dismiss the Petition to Vacate Order and a Return to the Motion to Remove the Petition to Vacate to Circuit Court.

---

[1] Although the Probate Court denied the relief sought in the Petition to Vacate Order and the Motion to Remove the proceeding to Circuit Court, the Appellant did not appeal those rulings.

The hearing on the Appellant's two Petitions and related motions was held in the Probate Court on April 12, 2010.[2] Following the hearing the Probate Judge issued his Order dated April 19, 2010. **(Exhibit A.)** The Order contained three rulings: (1) it denied the Appellant's Petition for Removal of the Personal Representative for cause; (2) it denied the motion to remove to Circuit Court the Petition to Vacate; and (3) it denied Appellant's Petition to Vacate the Probate Court's February 18, 2009 Order of Formal Testacy.[3]

In his Notice of Appeal filed on April 30, 2010, Appellant identified two subjects as "partial grounds" for the appeal: (1) the Probate Judge did not recuse himself from the matter when he had knowledge that a family member had some past involvement in the matter, and (2) that the Probate Judge refused to issue subpoenas for witnesses that the Appellant wanted to subpoena to the hearing.

On June 4, 2010 the Appellant filed two "additional grounds" for his appeal: (3) that the probate court erred in not removing the Personal Representative for his failure to provide bond, and (4) that the probate court erred in failing to rule that the wrong will is being probated.

Appeals from probate court to circuit court are heard and decided according to the rules governing appeals to the higher appellate courts. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 31 (2d ed.2002) and cases cited therein. The circuit court is to apply the same standard of review that the Court of Appeals or Supreme Court

---

[2] The hearing was held in York County because the Chester County Probate Judge recused herself from the proceeding and the York County Probate Judge was appointed to serve as Special Probate Judge for Chester County in matters related to this estate.

[3] As indicated in footnote 1 above, rulings 2 and 3 were not appealed.

would apply on appeal. Id. The hearing in the circuit court must be strictly on appeal, and no new evidence may be presented. S.C. Code Ann. §62-1-308(d).

During the hearing on September 8, 2010 the Appellant, on the record, orally withdrew his ground of appeal no. three, the ground alleging error with respect to bond. The hearing proceeded on the three remaining grounds of appeal.

On the issue of recusal, the record indicates that no motion or request for recusal was made to the probate judge. This subject was not raised to and ruled upon by the trial court and was first raised in the Appellant's partial grounds of appeal. The subject was not addressed in the Probate Court's April 19, 2010 Order, and it was not raised by the Appellant in a Rule 59 motion. Consequently, it is not preserved for appeal. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 55 (2d ed.2002), citing Hubbard v. Rowe, 5 S.E.2d 187 (S.C. 1939) (questions presented for appellate review must first have been fairly and properly raised in the lower court and passed upon by that court); and I'On, L.L.C. v. Town of Mt. Pleasant, 526 S.E.2d 716 (S.C. 1993) (if the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a Rule 59 motion to alter or amend the judgment in order to preserve the issue for appellate review).

Likewise, on the issue of the probate judge not issuing subpoenas for appellant's use, no objection or motion on the subject was raised at the probate court hearing, the issue was not raised to and ruled upon by the trial court and was first raised in the Appellant's partial grounds of appeal, the issue was not addressed in the Probate Court's April 19, 2010 Order, and it was not raised by the Appellant in a Rule 59 motion. Additionally, the record of the April 12, 2010 hearing reveals that the Appellant did not identify who he would have subpoenaed, nor did he make a proffer of what the

witness(es) were expected to offer in the way of relevant and admissible evidence. Consequently, based on the authorities cited above, this ground of appeal was not preserved for appellate review.

With respect to the issue of the Probate Court's decision as to which Last Will was to be admitted to probate, an action challenging a last will is at law. Estate of Hicks, 327 S.E.2d 343 (S.C. 1985). In law cases, this court, as an appellate court, has jurisdiction merely for correction of errors of law and will not disturb the findings of the probate judge unless they are found to be without evidence which reasonably supports the findings. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 176 (2d ed.2002). In this instance, the Appellant has failed to carry his burden to demonstrate to this Court that the Probate Court committed an error of law in ruling that the decedent's June 23, 1998 last will was to be admitted to probate. Evidence in the record of the April 12, 2010 hearing shows that the admission of the decedent's June 23, 1998 last will to probate was pursuant to a family settlement agreement among the decedent's heirs and/or devisees, not including the Appellant who is a stranger to the estate.

Additionally, the Probate Court's conclusion that the Appellant lacks standing to object to or contest the decedent's last will is well supported by persuasive authorities and precedent. Quoting from the Probate Court's April 19, 2010 Order:

> To have standing, one must generally have a personal stake in the subject of the lawsuit, i.e., one must be a real party in interest. Evins v. Richland County Historic Preservation Comm., 532 S.E.2d 876 (S.C. 2000). A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. Sloan v. Friends of the Hunley, Inc., 630 S.E.2d 474 (S.C. 2006). Generally, a creditor of the decedent cannot contest her will. 3 Bowe-Parker: Page on Wills §26.60. Other authorities supporting this principle of law include: 3 Bowe-Parker: Page on Wills §26.52 (one who would not take more if the will in question were held to be invalid than he would take if it were held to be valid cannot, by the weight of authority, contest the will in question); Baker v. Henderson, 69 S.E.2d 278 (Ga.

1952) (if petitioners will not be injured or benefitted by the establishment and probate of the alleged copy will, they are strangers to it and are not proper parties to the litigation); Estate of Keener, 521 N.E.2d 232 (Ill. App. 1988) (even if the latest will was invalid, earlier wills failed to name the contestant, so he was not entitled to contest); Matter of Wharton, 453 N.Y.S.2d 308 (1982) (generally a person who is not a distributee of the decedent and who will receive no part of a decedent's estate if a will is denied probate, will not be permitted to file objections to probate. The exception is when a person is named in a prior will and his interest under the prior will is greater than under the propounded will).

Accordingly, for the reasons stated hereinabove, the Chester County Probate Court's Order dated April 19, 2010 should be affirmed, the Appellant's appeal should be dismissed, and this matter should be remanded to the Probate Court for continued estate administration according to applicable law and procedure.

B. Michael Brackett
Moses Koon & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondent

March 14, 2011

FILED
2011 MAR 14 A 11:25
CLERK OF COURT
CHESTER CO S.C.

56

LOIS H. RODDEY
JUDGE OF PROBATE

2009 DEC 15 A 9:32

PROBATE COURT
CHESTER COUNTY S.C.

December 11, 2009

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

Honorable John P. Gettys, (an admitted S.C. attorney),
Judge of Probate Court
P.O. Box 219
York, SC 29745

Re: Chester County Probate Court, Hinson Estate

Dear Judge Gettys:

I have re-numbered the paragraphs of the letter of November 20, 2009, from Robert H. Breakfield, to you. I did this so that I may clearly respond to the letter.

Response to paragraph 1:

The hearing set-up by Breakfield is not necessary, since the claim involves the issues of Quantum Meruit, Constructive Fraud, (meaning fraud by accident), causing a constructive trust to arise, and Nuisance/Outrage. These are fact issues and are not suitable for summary adjudication in a three minute hearing as hoped for by Breakfield. In any event, the claim part of the case has already been removed to Circuit Court.

Response to paragraph 2:

Claimant did receive Mr. Breakfield's letter on November 25, 2009.

Response to paragraph 3, (numbered 1 by Breakfield):

Part of number three is true, and part not true, and this is where it gets serious. Breakfield states: "My appointment was supported by the various lawyers that represented the heirs of the decedent." Anyone can go to the case file and see that it is Ned Gregory, II., who engineered the appointment of Breakfield. The problem is that Ned Gregory, II., filled out a Form #300PC which contains outright lies, and delivered it to Breakfield for his signature. That part of the form is attached hereto, and marked "Exhibit B". There is another will, and Gregory was well aware of it when the form was drawn. The will being probated by Breakfield has been revoked by Mrs. Hinson, and claimant has proof of it. Ned Gregory, II., is a document forger, and has been in trouble with the S.C. State Bar about such activities; please see the case at 306 S.C. 270, In The Matter of Ned Gregory, II., Respondent, a copy of which is attached for the Court's ready reference.

The sum total of this is that Breakfield, in combination with Ned Gregory, II., are both in front of the Court on false pretenses. Ned Gregory, II., drew the revoked will, and put a clause in it that Mrs. Hinson did not want, and when she spotted it, she revoked that will, and drew her own.

Response to paragraph 4:

Yes there was an action in which Mr. Hinson's will was "re-probated"; however, the whole proceeding is defective because it was not advertised as it should have been. In addition, Mrs. Hinson drew Mr. Hinson's will, and it is unlikely that a woman would deliberately bind an estate in such a manner.

This will, that everyone is trying to make into a "life estate" devise never conveyed a life estate anyway, and anyone who knows even an ounce of law can instantly recognize that there never was any "life estate".

Response to No. 5:

Five is partly true except to point out that Mrs. Hinson never stated that she held only a life estate in the land, because she in fact held herself out to be the owner in fee.

Response to No. 6:
Six is true.

Response to No. 7:
Seven is true.

Response to No. 8:

Yes, there are at least two unnecessary litigations being carried on. The reason for this, is that the wrong will is being probated by Breakfield.

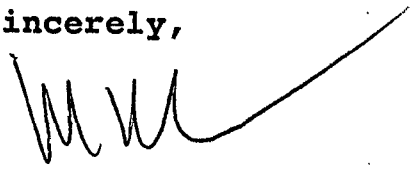
Response to No. 9:

Breakfield may not have had any direct dealings, but since he is in combination with Ned Gregory, II., as above, he does share responsibility for the whole mess.

Response to No. 10:

Yes, it would be helpful for everyone to review the Probate file, but Breakfield has never done so.

Sincerely,



Mell Woods

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476
breakfieldb@comporium.net

Exhibit A

November 20, 2009

The Honorable John P. Gettys
Probate Judge
P. O. Box 219
York, SC 29745

Re: E/O Reba Hinson (Chester)

Dear Judge Gettys,

(1) Your court will hear a claim presented by Mr. Mel Woods at a hearing scheduled before the Probate Court of Chester County, South Carolina on December 15, 2009 at 3:30 p.m.

(2) In order to save time and provide a context for this claim and the general progress of the administration of this Estate, I have provided the following information, which has been provided to Mr. Mel Woods.

(3) 1) Reba Hinson died on January 3, 2007. The Probate Judge did not immediately appoint a Personal Representative because of conflicts among the devisees and heirs of the Estate. I was appointed by Judge Lois Roddey on February 18, 2009. My appointment was supported by the various lawyers that represented the heirs of the decedent. This case has had a substantial controversy concerning real estate that was owned by the decedent's spouse and the decedent.

(4) 2) The Probate Court of Chester County was petitioned to rule as to the heirs of Mrs. Hinson's deceased spouse, Levie Hoyt Hinson. I have enclosed a copy of Judge Roddey's Order that clarified and ended the controversy as to who the heirs of a 92-acre tract of land that Mrs. Hinson was a life estate holder.

(5) 3) Mr. Woods' claim concerns his connection with the lease of a portion of the 92-acres tract that the decedent, Reba Hinson, held a life estate that was devised to her by Levie Hoyt Hinson.

4) Over the years, Mrs. Hinson had rented portions of the 92-acres to various tenants. Mr. Woods was a tenant of Mrs. Hinson. I have provided by one of Mrs. Hinson's devisees a copy of a memorandum of lease that appears to have been signed by Reba Hinson and Mell Woods on May 6, 2002.

Based upon my review of Mr. Woods' claim, it appears that his claim against the Estate of Reba Hinson arises as a result of his tenancy on the Hinson land. It would appear that Mr. Woods may have constructed buildings on the property.

The 92-acres passed to the devisees of Mr. Levie Hinson's Will at the death of Mrs. Hinson. It is my understanding that several lawyers are involved in an effort to partition the 92-acres among the remaindermen devisees.

As the Personal Representative of the Estate of Reba Hinson, I have had no dealings with the 92-acre tract because Mrs. Hinson's life estate was extinguished at the death of Reba Hinson.

It may be helpful for you to review the Probate file in Chester County. Because of the controversy surrounding this case, I have made an effort to provide Judge Roddey with periodic updates of my progress in this matter.

With kindest regards,

Robert H. Breakfield

RHB/psd
Enclosures

C: Beneficiaries of Estate
Mell Woods

EXHIBIT B

IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- ☐ The original is attached
- ☒ The original is in the Court's possession
- ☐ An authenticated copy of a will probated in another jurisdiction is attached
- ☐ An authenticated copy of a will not probated in another jurisdiction is attached
- ☐ The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

☒ Yes ☐ NO If no, please explain on page 3.

3. The date of execution of the will was: June 23, 1998
codicil(s): N/A

4. Are you aware of any instrument or document amending or revoking the will?

X → ☒ NO ☐ YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

X → ☒ YES ☐ NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

X → ☒ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheet.)

Note to 4, 5, 6 - The handwritten document apparently written by Decendent dated April 5, 2003 and the typed document dated April 5, 2003 and witnessed April 24, 2003, were not validly executed; therefore, were not considered to have revoked the Last Will and Testament dated June 23, 1998.

IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

2. Priority for this appointment is:
   - ☐ named as Primary Personal Representative in will or nominee of Primary Personal Representative
   - ☐ named as Alternate Personal Representative in will or nominee of Alternate Personal Representative
   - ☐ named as nominee of Primary and/or Alternate Personal Representative
   - ☐ other devisee of decedent, or nominee (describe):_____ or nominee of said devisee
   - ☐ surviving spouse of decedent, or nominee of said spouse
   - ☐ other heir of decedent (describe):_____
   - ☐ creditor (Forty-five days after death must have passed), or nominee of creditor
   - ☐ other (describe):_____
   - ☒ nominee of any of the above

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the signed's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

RN to before me this 24th day of
January, 20 08

y Public for South Carolina
ommission Expires: 1-21-2009

Signature: Robert H Breakfield
Name: Robert Harold Breakfield
Address: 1590-02 Constitution Blvd, PO Box 36061
Rock Hill, South Carolina 29732
E-mail:
Telephone (O): (803) 329-4920
(H):

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☐ GRANTED ☐ DENIED informally
____ day of _____, 20 _____.

_____, Probate Court Judge

IN THE MATTER OF GREGORY, 306 S.C. 270, 411 S.E.2d 430 (S.C. 11/12/1991)

[1] South Carolina Supreme Court

[2] 23510

[3] 306 S.C. 270, 411 S.E.2d 430, 1991.SC.0040213< http://www.versuslaw.com>

[4] November 12, 1991

[5] **IN THE MATTER OF NED GREGORY, II, RESPONDENT.**

[6] Atty. Gen. T. Travis Medlock and Asst. Atty. Gen. James G. Bogle, Jr., Columbia, for petitioner.

[7] Thomas H. Pope, III, of Pope and Hudgens, P.A., Newberry, for respondent.

[8] Per curiam.

[9] Heard Sept. 23, 1991.

[10] Decided Nov. 12, 1991.

[11] This is a disciplinary proceeding in which respondent Ned Gregory, II is alleged to have committed various acts of misconduct in violation of provisions of the Code of Professional Responsibility.*fn1

[12] In January 1990 respondent desired to take out a loan to repair and renovate his law office. He contacted a representative of a credit union, and was told to submit a loan application as well as a copy of his current income tax return. Respondent's CPA had not yet prepared respondent's tax return for the 1989 tax year, so respondent proceeded to prepare a return for submission with the loan package. He assembled a federal income tax form 1040 that contained misstated earned income figures. He also incorrectly claimed his three children by a previous marriage as exemptions, as well as misrepresenting rental income and other figures. Respondent then superimposed a copy of his CPA's signature from an earlier tax return over the preparer's signature block on the false form.

[13] As a result, it appeared the CPA had prepared the return. Respondent then placed the entire loan package in his "out" box for delivery to the credit union the next day by his runner.

[14] Respondent testified before the Panel that after he left his law office he began to have doubts about his actions. He did not return to his law office to retrieve the package, even though his residence is only a few miles away. Respondent testified that he intended to retrieve the false tax return in the morning. When he reached

his law office the next day, however, his runner had already picked up the package for delivery.

[15] When the loan officer reviewed respondent's loan package, he noticed certain figures on the false tax return were not documented. He then telephoned the CPA whose name appeared on the form. The CPA denied preparing any tax return for the 1989 tax year. Consequently, respondent's application was denied based on insufficient verifiable income.

[16] A hearing was held before a Panel of the Board of Commissioners on Grievances and Discipline on December 18, 1990, to determine whether respondent's falsifying his income tax return and placing a facsimile of the CPA's signature thereon constituted unethical conduct. Respondent testified that he did not intend to defraud the credit union because he had sufficient assets to repay the loan. Nevertheless, the Panel concluded that respondent filed a false tax return with a financial institution and misappropriated the name of the CPA with an intent to deceive the credit union. The Panel recommended a public reprimand.

[17] The Panel found in mitigation that respondent's misconduct was not connected with his law practice and did not harm a client. The Panel also noted that the respondent was contrite and his misconduct seemed to be an isolated incident. Respondent appears to have been forgiven for his misdeeds by the individuals affected. Both the credit union and CPA currently maintain favorable business relationships with respondent.

[18] The matter came before the Executive Committee on July 19, 1991. The Executive Committee adopted the Panel's findings and conclusions of law. The Executive Committee, by a vote of six to one, recommended a definite suspension of sixty days be imposed on respondent.

[19] Initially, we note that the recommendations of the Panel and Executive Committee are persuasive. However, the ultimate authority to discipline attorneys and the manner of discipline rests with this Court. In re Rowland, 293 S.C. 17, 358 S.E.2d 387 (1987).

[20] We have reviewed the record and accept the findings of the Panel and Executive Committee, as well as respondent's own admission, that respondent prepared a false tax return, affixed a facsimile of his CPA's signature to the return, and submitted the false tax return to a lending institution. This is extremely serious misconduct. Respondent's actions are not excused by his assertion that the acts were undertaken for the sole benefit of respondent, unrelated to his law practice, and did not harm a client. Attorneys are subject to discipline for matters not strictly related to the practice of law. In re Tedder, 296 S.C. 500, 374 S.E.2d 294 (1988).

[21] Respondent's conduct violates Rule 32, Sup. Ct. Rules, Code of Professional Responsibility, in the following particulars:

[22] (1) DR 1-102(A)(1) (prohibits a lawyer from violating a Disciplinary Rule);

[23] (2) DR 1-102(A)(3) (prohibits a lawyer from engaging in illegal conduct involving moral turpitude);

[24] (3) DR 1-102(A)(4) (prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation);

[25] (4) DR 1-102(A)(6) (prohibits a lawyer from engaging in conduct that adversely reflects upon his fitness to practice law).

[26] See also Rule 407, SCACR, Rules of Professional Conduct, Rule 8.4.

[27] Every member of the Bar found guilty of misconduct is disciplined in accord with the seriousness of the misconduct. Paragraph 7(A), Rule on Disciplinary Procedure; see also Rule 413(7)(A), SCACR. "Misconduct" includes acts by an attorney which violate standards of professional conduct promulgated by this Court, regardless of whether the acts occur in the course of an attorney-client relationship, as well as acts which tend to bring the legal profession into disrepute. Paragraph 5, Rule on Disciplinary Procedure; see also Rule 413(5)(B) and (C), SCACR. We find respondent has committed conduct warranting discipline.

[28] Respondent not only committed a very serious offense, he implicated an innocent third party by his misconduct. We admonish respondent in the strongest terms that his behavior was reprehensible. We hold the appropriate sanction to be a public reprimand.

[29] Public reprimand.

[30] GREGORY, C.J., concurring in part and dissenting in part in separate opinion.

[31] I concur in the majority's conclusion respondent's conduct constitutes an ethical violation. I disagree, however, with the sanction imposed. In my view, respondent's falsification of his income tax return, including the misrepresentation that a CPA had signed it, merits a definite suspension of sixty days as recommended by the Executive Committee. I therefore respectfully dissent from the majority's imposition of a public reprimand.

[32] GREGORY, Chief Justice, concurring in part; dissenting in part:

Opinion Footnotes

---

[33] *fn1 The conduct occurred before the September 1, 1990 effective date of Rule 407, SCACR, Rules of Professional Conduct. Therefore, prior Rule 32, Sup. Ct. Rules, Code of Professional Responsibility, applies.

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Statement of Claim:

In the matter of Reba P. Hinson,
Probate Case Number 2008ES1200297
Circuit Court Case Number _____
State of South Carolina
County of Chester

Claimant: Mell Woods

Basis of claim: Quantum Meruit; Constructive Fraud causing a constructive trust to arise; Nuisance.

1.

During life, Mrs. Reba P. Hinson rented to claimant a certain lot within her subdivision on the Catawba River;

2.

Mrs. Hinson always dealt with the land and the public as if she was the owner in fee of all the land;

3.

Mrs Hinson even as much left a will in which

her desires as to how the land was to be split up is described in detail;

4.

Mrs. Hinson's Last Will and Testament has never been offered for probate;

5.

The will being probated by the Chester County Probate Court was revoked by Mrs Hinson on or about April 05, 2003; the will being probated is clearly marked in the upper right hand corner New Will Made Up meaning that she was disatisifed with some of the language placed in the will by the Ned Gregory law firm;

6.

Ned Gregory, II., is a document forger; if anyone is unclear about this, please see the case at 306 S.C. 270, In The Matter of Ned Gregory, II. Respondent;

7.

The will that is currently being probated by the Chester County Probate Court, dated June 23, 1998, was drawn by, witnessed by, and "notorized" by, Ned Gregory, II., the same document forger described by the South Carolina Supreme Court in the case at 306 S.C. 270;

8.

In the will dated June 23, 1998, Ned Gregory, II., uses self serving verbiage, such as "he has sworn himself", and where he resides at; the public is not concerned about the verbiage; however, it is concerned about what comes out of the mind of an adjucated document forger;

Somehow, Mrs Hinson had found out the problems Ned Gregory, II., had with the State Bar; by year 2002, Mrs Hinson hired a surveyor, and set about getting her property surveyed; Mrs. Hinson asked claimant if maps of her place would keep fighting down between the kids as to which one got which piece of land; claimant told her it would certainly help but she still would need to refer to the maps in her will; this is where the part about the Ned Gregory, II., will came to light, when she heard of Gregory's problems with the State Bar, Mrs. Hinson went through the will drawn by Gregory with a fine tooth comb, and stated the several things that she found wrong with the Gregory will, and stated that she was going to revoke it;

10.

Claimant told Mrs. Hinson there were other attorneys who are straight up and could draft a will to her satisfaction, Greg Delleney, and Hamilton for example; however, Mrs. Hinson was so upset with lawyers in general, she stated that she was probably going to draw her own will using the surveyor maps as guides, instead of the wording of a lawyer; claimant pointed out that could be risky business, but then Mrs. Hinson stated that she personally drew her husband's will just before he died twenty-five years ago;

11.

The Chester County Probate Court "re-probated" the will of Mrs Hinson's husband years later and came to the conclusion that Mrs. Hinson had only a Life's Estate, and therefore owned no real estate.

Claimant has personal knowledge that Mrs. Hinson never intended for a life's estate to arise; however, this is the basis of the claim; there are valuable improvements on the land that claimant was renting from Mrs. Hinson, and if Mrs. Hinson held only a life's estate, then each improvement automatically became the property of the remaindermen, unbeknownst to Mrs. Hinson, or claimant.

Please note:
Attached to this claim is the will of Mrs. Hinson which she made on April 05, 2003, and which she had typed and signed in front of two witness AND a notary on 04-24-03. The Court is in possession of the original. The attached has been re-typed from the original.

Private Last Will

April 05, 2003

Last Will and Testament of Reba P. Hinson:

1. I will and direct that my executors hereinafter shall from the first money coming into their hands from my estate to pay my just debts if any: doctors, hospital, ambulances, as soon as possible after he, or she is qualified.

The cash if any will be divided equal between my four children named: Lois S. Griffin, Kathy E. Huffstickle, John C. Hinson, and William C. Hinson's heirs, (he is deceased).

At my death, I, Reba P. Hinson bequest to my daughter Lois S. Griffin, the certificate at Spratt's Bank in Chester, South Carolina, to be given at my death to be put in a trust fund? for her as needed. She will have no income to be used as needed. Why? She has no land bordering the river except one small area. The other children have a yearly income off of tracts numbered one (Kathy Huffstickle), John C. Hinson, number two, William C. Hinson's heir's, number three; John C. Hinson, tract number two, William C. Hinson's heir's, tract number three.

Lois [Griffin] will inherit tract #4 which is the homestead. This land was given to me by my Father and Mother, Shufford and Hattie Pettit out of my Father's estate. I, Reba P. Hinson myself

bought my sister's (Ruth Dority's), inheritance, and my brother's (Albert W. Pettit's), inheritance of my Father's property; I, Reba P. Hinson, paid for this land with my money.

At my death, I will to Lois S. Griffin, my automobile, my rings, watch, all jewelry. I ask that all household goods stay in my house until Lois S. Griffin's death; then to be divided between the four children, or their heirs: Lois S. Griffin, Kathy E. Huffstickle, John C. Hinson, William C. Hinson's heirs, (William C. Hinson is already deceased).

As for the land that my husband had, to be divided as follows:

(lot #1) tract of land to Kathy Huffstickle;

(lot #2) tract of land to John C. Hinson;

(lot #3) tract of land to William C. Hinson's heirs [William C. Hinson is deceased];

(lot #4) tract of land with homestead on it to Lois S. Griffin; tract #4 is the same land that I inherited from my Father and Mother: Shufford Pettit, and Hattie Pettit; tract #4 was never in my Husband's estate, and I, Reba P. Hinson, bought my sister's part of the Pettit Estate; I also bought my brother's part of my Father's estate myself, with my money; today, this tract of land is known as #4.

WITNESS:

(Signed by Witness No. 1)

_____

(Signed By Witness No. 2)

_____

Dated: 4/24/03 (by the Notary)

_____

Signed by Mrs. Hinson

_____

Reba P. Hinson

(Signed by Notary)

_____ 4/24/03

Notary Public

My Commission Expires
July 24, 2012

LOIS H. RODDEY
JUDGE OF PROBATE

2010 FEB -3 A 10:56

PROBATE COURT
CHESTER COUNTY S.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE PROBATE COURT
CASE: 2008ES1200297

IN THE MATTER OF:
REBA P. HINSON

MELL WOODS,
CLAIMANT.

AMENDMENT OF CLAIM

Pursuant to Rule 15(c) SCRCP, claimant hereby amends the claim filed in the above-styled case on November 10, 2009;

1.

The nuisance claim is amended as follows:
The estate operates, and Mrs Hinson, while in life, allowed a certain residence to exist on the property which has no septic tank, or any approved method of disposal; this particular residence sits on the banks of Fishing Creek Lake, in Chester County, and the land is made of fill, old tires, metal, unknown waste, busted commodes, and the like; the plumbing for this particular residence is arranged so when a commode is flushed, everything is flushed straight into the rubble

pile described above; raw sewage then leaches into the lake; there is a fishing pier owned by claimant which sits very near the outfall points for the sewage, and during certain times of the year there is odor; this is the same fact situation as described in Lever v. Wilder Mobile Homes, Inc., 283 S.C. 452;

2.

The constructive trust claim is hereby recast as one for conversion, an action at law, the reason it is conversion is because the administrator of the estate continues to probate the wrong will, the legal effect of filling out sworn papers and filing them with the Court is fraud upon the Court, and there is no statute of limitation where extrinsic fraud is practiced; the present administrator in combination with Ned Gregory, converted claimant's building to the use of the remainderman just as soon as the Probate Judge relied on the false statements to admit the wrong will to probate; Mrs. Hinson had her estate set up in such

(2)

a way as to enable a smooth transition with no fighting Ned Gregory, II., has been trying to dismantle everything she did, just as soon as he found out that Mrs. Hinson had revoked the bogus will now being probated; In The Matter of Ned Gregory, II. Respondent, 306 S.C. 270; as to extrinsic fraud, Chewning v. Ford Motor Company, 354 S.C. 72;

3.

Claimant is being damaged every day by the actions Ned Gregory and his puppet, the present administrator, and so are the Hinsons; the intent is to bleed the estate dry; and they have stirred at least two Circuit Court cases in addition to this claim, one is a partition case being run by Claude Coleman, a fellow who in a reported case gave a bidder only fifteen minutes to pay a large deposit at a judicial sale, just because he did not like the man; so that is what is going to happen here, the whole place is probably going to be sold by Coleman, with the Hinsons left out;

(3)

As to the 12(b)(6) motion filed by Brackett, claimant never did file any claim under the betterment statute; the present claims are as above, and are for damages, restitution, and outrage, and are actions at law with a jury trial demanded;

Respectfully submitted,

This 01 day of February, 2010.

Mell Woods

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

(4)

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: Chester)
) PROOF OF DELIVERY
IN THE MATTER OF: Reba P Hinson)
) CASE NUMBER: 2009ES2100297

LOIS H. ROUDEY
JUDGE OF PROBATE
2010 FEB -3 A 10:57
CHESTER COUNTY, S.C.

On the 1 day of February, 20 10, I mailed or delivered the following document, Amendment of claim filed November 10, 2009

☑ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the court and incorporated herein,

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery
☐ certified mail
☑ ordinary first class mail And fax
☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
B. Michael Brackett	P.O. Box 100261 Columbia, SC 29202

SWORN to before me this 1 day of February, 20 10

Gloria Diane Woods
Notary Public for South Carolina
My Commission Expires: Jan. 8, 2018

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

Signature:
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O):
(H):
E-mail:

Signature:
Name:
Address:
Telephone (O):
(H):
E-mail:

FORM #120PC (2/2004)
62-1-401, 62-3-1003, general

E OF SOUTH CAROLINA)
NTY OF: Chester) IN THE PROBATE COURT
E MATTER OF: Reba P. Hinson) STATEMENT OF CREDITOR'S CLAIM
) CASE NUMBER: 2008ES1200297

edent's Date of Death (if known)
edent's Last Mailing Address:

Creditor: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone:

is of claim: See Attachment

ount of claim $ $120,000 One twenty

e claim will become due (if not already due): Now due, 20

ure of uncertainty as to amount of claim and due date, if any: NONE

scription of any security as to claim: None

2009 NOV -6 P 4:58
PROBATE COURT
CHESTER COUNTY, S.C.
LOIS H. RODDEY
JUDGE OF PROBATE

Signature:
Title: Claimer
Date: 11-04-2009

STRUCTIONS: Claims must be filed with the Probate Court of this county and delivered or mailed to the Personal Representative appointed to administer the estate (see section 62-3-803, 62-3-804, and 62-3-806 on next page.)

RM #371PC (1/91)
3-804, 62-5-428

Statement of Claim:

In the matter of Reba P. Hinson,
Probate Case Number 2008ES1200297
Circuit Court Case Number _____
State of South Carolina
County of Chester

LOIS H. RODDEY
JUDGE OF PROBATE
2009 NOV -9 P 4:58
PROBATE COURT
CHESTER COUNTY, S.C.

Claimant: Mell Woods

Basis of claim: Quantum Meruit; Constructive Fraud causing a constructive trust to arise; Nuisance.

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2.

Mrs. Hinson always dealt with the land and the public as if she was the owner in fee of all the land;

3.

Mrs Hinson even as much left a will in which

her desires as to how the land was to be split up is described in detail;

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Mrs. Hinson's Last Will and Testament has never been offered for probate;

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Claimant has personal knowledge that Mrs. Hinson never intended for a life's estate to arise; however, this is the basis of the claim; there are valuable improvements on the land that claimant was renting from Mrs. Hinson, and if Mrs. Hinson held only a life's estate, then each improvement automatically became the property of the remaindermen, unbeknownst to Mrs. Hinson, or claimant.

Please note:
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Private Last Will

April 05, 2003

LOIS H. RODDEY
JUDGE OF PROBATE
2003 NOV -6 P 3:08
PROBATE COURT
CHESTER COUNTY, S.C.

Last Will and Testament of Reba P. Hinson:

1. I will and direct that my executors hereinafter shall from the first money coming into their hands from my estate to pay my just debts if any: doctors, hospital, ambulances, as soon as possible after he, or she is qualified.

The cash if any will be divided equal between my four children named: Lois S. Griffin, Kathy E. Huffstickle, John C. Hinson, and William C. Hinson's heirs, (he is deceased).

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bought my sister's (Ruth Dority's), inheritance, and my brother's (Albert W. Pettit's), inheritance of my Father's property; I, Reba P. Hinson, paid for this land with my money.

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WITNESS:

(Signed by Witness No. 1)

_____

(Signed By Witness No. 2)

_____

Dated: 4/24/03 (by the Notary)

_____

Signed by Mrs. Hinson

_____

Reba P. Hinson

(Signed by Notary)

_____ 4/24/03

Notary Public

My Commission Expires
July 24, 2012

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF CHESTER

IN THE MATTER OF ESTATE OF REBA P. HINSON

CASE NUMBER 2008es1200297

NOTICE OF DISALLOWANCE OF CLAIM

LOIS H. RODDEY
JUDGE OF PROBATE

2009 NOV 13 P 12: 20

PROBATE COURT
CHESTER COUNTY S.C.

TO:

Name: Mell Woods
Address: P. O. Box 2603
Address: Lancaster, SC 29721

The undersigned, as the Personal Representative appointed to administer this estate, disallows (check one) X ALL ☐ _____ of your claim for $120,000.00 presented on November 10, 2009. Failure to protest this disallowance of your claim, i.e., failing to file your petition for its allowance (form #373PC) in the Probate Court and failing to commence a proceeding on the claim within thirty days after the mailing of this Notice of Disallowance of Claim, shall result in your claim or the disallowed portion of your claim being forever barred.

Executed this 10 day of Nov 2009

Signature: _____
Name: Robert H. Breakfield
Address: P. O. Box 36061
Rock Hill, SC 29732
Telephone(O): 803-329-4920
(H): _____

92

FORM #372PC (7/87)
SCPC 3-806, 5-428

STATE OF SOUTH CAROLINA)

) COUNTY OF: Chester) IN THE PROBATE COURT

INTHE MATTER OF: Reba P. Hinson) **FILING OF A WILL FOR RECORD**

) CASE NUMBER: 2008ES1200297

Applicant/Petitioner: Mell Woods
Address: P.O. Box 2603 Lancaster, SC 29721
Telephone:

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Nature of interest of undersigned:
Creditor, and member of the public as described in Chewning V. Ford Motor CO., 354 S.C. 72.

2. Decedent information:

Name: Reba Pettit Hinson
Social Security Number: [redacted]
Date of Birth: July 3, 1915
Date of Death: January 3, 2007
Age at date of death: 91
Domicile at date of death: Chester (county) South Carolina (state)

3. Venue for this proceeding is proper in this county because:

☑ Decedent was domiciled in this county at date of death.
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.
☐ Decedent has a right to take legal action in this county because:

PROBATE COURT CHESTER COUNTY S.C.
2010 FEB 17 P 4:51
LOIS H. ROBDEY JUDGE OF PROBATE

4a. Names and addresses of devisees, including dates of birth of minors:

Name	Date of Birth	Address	Relationship to Decedent
Lois Hinson	4-14-33	1399 Beaver Dam Rd Richburg SC 29729	un Known
Kathy Hinson Huffstickle	12-4-52	5715 Lake View Cir, Ft Lawn, SC 29714	daughter
John Calhoun Hinson	5-9-28	1563 Hinton Rd Great Falls, SC 29055	son
William Levy Hinson	3-19-47	909 Stone Oak Court Sanford NC 27330	grandson
John Daniel Hinson	4-19-48	1683 Poor Boy Rd Great Falls, SC 29055	grandso.

(use additional sheet if necessary)

4b. Names and addresses of intestate heirs who are not devisees, including date of births of minors:

Name	Date of Birth	Address	Relationship to Decedent

(use additional sheet if necessary)

Supplement to 4a:

Charles Jerry Hinson
237 Laura Lot 21
Florence, SC 29506
12-20-49 grandson

Robert Harold Hinson
P.O. Box 72
McConnells, SC 29726
12-3-50 grandson

William Calvin Hinson, Jr.
118 Nella Street
Chester, SC 29706
7-17-53 grandson

Etta Elaine H. Hensley
6 Church Street
Great Falls, SC 29055
7-31-54 granddaughter

continue on next page

Linda Kay H. Stanford
6969 Snowy Owl Road
Kershaw, SC 29067
2-6-56 granddaughter

Darrell Wayne Hinson
P.O. Box 163
Fort Lawn, SC 29714
4-5-61 grandson

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of the Will (if one exists), or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)
☑ No ☐ Yes If yes, please explain on page 3.

6. To the best of my knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
☑ No ☐ Yes If yes, please explain on page 3.

7. Has a guardian or conservator ever been appointed for this person?
☑ No ☐ Yes If yes, please explain on page 3.

8. Has a personal representative of the decedent been appointed prior to this date by a court in this state or elsewhere?
☐ No ☑ Yes If yes, please state details, including name and address of such Personal Representative, on page 3. Robert H. Breakfield
P.O. Box 36061
Rock Hill, SC 29732

9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
☐ No ☑ Yes If yes, please state details, including name and addresses, on page 3.
Probate of wrong will
case no: 2008ES1200297

10. Have more than ten years passed since the decedent's death?
☑ No ☐ Yes If yes, please state circumstances authorizing tardy probate on page 3.

11. The decedent died with a personal estate of about the value of $ 600,000.00 and real estate of about the value of $ 800,000.00.

12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other that the one(s) attached hereto, relating to property in this state?
☑ No ☐ Yes If yes, please explain on page 3 and then proceed to Section II.

I. PLEASE COMPLETE THIS SECTION REGARDING THE WILL:

1. Regarding the decedent's will:

☐ the original is attached
☑ the original is in the Court's possession
☐ an authenticated copy of a will probated in another jurisdiction is attached
☐ an authenticated copy of a will not probated in another jurisdiction is attached
☑ the will is lost, destroyed, or otherwise unavailable; however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?
☑ Yes ☐ No If no, please explain below.

3. The date of execution of the will was: April 24, 2003.
codicil(s): _____

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Are you aware of any instrument or document amending or revoking the will?
☒ No ☐ Yes If yes, please explain below.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?
☒ Yes ☐ No If no, please explain below.

6. Do you believe the will defined in "1" above, is the decedent's last will?
☒ Yes ☐ No If no, please explain below.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I AND II HERE.
(If more space is required, use additional sheet.)

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PLEASE COMPLETE VERIFICATION.

Pursuant to Section 62-2-901, S.C. Code of Laws, 1976, as amended, the undersigned delivers the Will of the above referenced decedent and hereby requests that the will be filed as unprobated will.

The undersigned, being sworn, states that the facts set forth in the foregoing statement are ~~true to the best of the undersigned's knowledge, information and belief,~~ and hereby submits to the Court's jurisdiction in this matter.
TRUE based upon PERSONAL KNOWLEDGE

SWORN to before me this 17
day of February, 20 10
Gloria Diane Woods
Notary Public for South Carolina
My Commission Expires: Jan. 8, 2018

Signature:
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O):
(H):

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

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Private Last Will

April 05, 2003

Last Will and Testament of Reba P. Hinson:

1. I will and direct that my executors hereinafter shall from the first money coming into their hands from my estate to pay my just debts if any: doctors, hospital, ambulances, as soon as possible after he, or she is qualified.

The cash if any will be divided equal between my four children named: Lois S. Griffin, Kathy E. Huffstickle, John C. Hinson, and William C. Hinson's heirs, (he is deceased).

At my death, I, Reba P. Hinson bequest to my daughter Lois S. Griffin, the certificate at Spratt's Bank in Chester, South Carolina, to be given at my death to be put in a trust fund? for her as needed. She will have no income to be used as needed. Why? She has no land bordering the river except one small area. The other children have a yearly income off of tracts numbered one (Kathy Huffstickle), John C. Hinson, number two, William C. Hinson's heir's, number three; John C. Hinson, tract number two, William C. Hinson's heir's, tract number three.

Lois [Griffin] will inherit tract #4 which is the homestead. This land was given to me by my Father and Mother, Shufford and Hattie Pettit out of my Father's estate. I, Reba P. Hinson myself

bought my sister's (Ruth Dority's), inheritance, and my brother's (Albert W. Pettit's), inheritance of my Father's property; I, Reba P. Hinson, paid for this land with my money.

At my death, I will to Lois S. Griffin, my automobile, my rings, watch, all jewelry. I ask that all household goods stay in my house until Lois S. Griffin's death; then to be divided between the four children, or their heirs: Lois S. Griffin, Kathy E. Huffstickle, John C. Hinson, William C. Hinson's heirs, (William C. Hinson is already deceased).

As for the land that my husband had, to be divided as follows:

(lot #1) tract of land to Kathy Huffstickle;

(lot #2) tract of land to John C. Hinson;

(lot #3) tract of land to William C. Hinson's heirs [William C. Hinson is deceased];

(lot #4) tract of land with homestead on it to Lois S. Griffin; tract #4 is the same land that I inherited from my Father and Mother: Shufford Pettit, and Hattie Pettit; tract #4 was never in my Husband's estate, and I, Reba P. Hinson, bought my sister's part of the Pettit Estate; I also bought my brother's part of my Father's estate myself, with my money; today, this tract of land is known as #4.

WITNESS:

(Signed by Witness No. 1)

_____

(Signed By Witness No. 2)

_____

Dated: 4/24/03 (by the Notary)

_____

Signed by Mrs. Hinson

_____

Reba P. Hinson

(Signed by Notary)

_____ 4/24/03

Notary Public

My Commission Expires
July 24, 2012

TE OF SOUTH CAROLINA)
COUNTY OF: Chester)
IN THE MATTER OF: Reba P. Hinson)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2008ES1200297

On the 17 day of February, 2010, I mailed or delivered the following document,
Filing of a Will for record

☑ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the court and incorporated herein,

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery ☑ ordinary first class mail
☐ certified mail ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
B. Michael Brackett	P.O. Box 100261 Columbia, SC 29202

LOIS H. ROBBEY
JUDGE OF PROBATE
2010 FEB 17 P 4:51
PROBATE COURT
CHESTER COUNTY, S.C.

SWORN to before me this 17 day of February, 20 10
Gloria Diane Woods
Notary Public for South Carolina
My Commission Expires: Jan. 8, 2018

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

Signature:
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O):
(H):
E-mail:

Signature:
Name:
Address:
Telephone (O):
(H):
E-mail:

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FORM #120PC (2/2004)
62-1-401, 62-3-1003, general

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: CHESTER)
)
IN THE MATTER OF: Reba Pettit Hinson)
) CASE NUMBER: 2008ES1200297

APPLICATION FOR

INFORMAL

☐ PROBATE OF WILL
☐ APPOINTMENT

(check any that apply)

PETITION FOR

FORMAL

☒ TESTACY
☒ APPOINTMENT

Applicant/Petitioner: Robert Harold Breakfield
Address: 1590-02 Constitution Blvd. (Post Office 36061)
Telephone: Rock Hill, South Carolina 29732

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.

No relationship. I have been nominated by Lois Hinson, a Primary Personal Representative named in the Will of Reba P. Hinson, executed on June 23, 1998.

PROBATE COURT CHESTER COUNTY S.C. 2008 DEC 15 P 4:08 LOIS H. RODDEY JUDGE OF PROBATE

2. Decedent Information

Name: Reba Pettit Hinson
Social Security Number: [redacted]
Date of Birth: July 3, 1915
Date of Death: January 3, 2007
Age at date of death: 91
Domicile at date of death: Chester (county) South Carolina (state)

3. Venue for this proceeding is proper in this county because:

☒ Decedent was domiciled in this county at date of death.
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.
☐ Decedent has a right to take legal action in this county because:

_____

4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Decedent
Lois Hinson Griffin	4-14-33	1414 Catawba Street, Ft. Lawn, SC 29714	daughter
Kathy Hinson Huffstickle	12-4-52	5715 Lake View Cir., Ft. Lawn, SC 29714	daughter
John Calhoun Hinson	5-9-28	1563 Hinton Dr., Great Falls, SC 29055	son
William Levy Hinson	3-19-47	909 Stone Oak Court, Sanford, NC 27330	grandson

(use additional sheet if necessary)

John Daniel Hinson
5621 Footlose Road
Fort Lawn, SC 29714

Charles Jerry Hinson
237 Laura Lot 21
Florence, SC 29506

Robert Harold Hinson
Post Office Box 72
McConnells, SC 29706

William Calvin Hinson, Jr.
118 Nella Street
Chester, South Carolina 29706

Etta Elaine H. Hensley
6 Church Street
Great Falls, SC 29055

Linda Kay H. Stanford
6969 Snowy Owl Road
Kershaw, SC 29067

Darrell Wayne Hinson
Post Office Box 163
Fort Lawn, SC 29714

4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent
None			

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a guardian or conservator ever been appointed for this person?

☒ NO ☐ YES If yes, please explain on page 3.

8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses of such Personal Representative, on page 3.

10. Have more than ten years passed since the decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The decedent died with a personal estate of about the value of $308,000.00 and real estate of about the value of N/A. (A full inventory and appraisement, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.

12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?

☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

p. 105

IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

2. Priority for this appointment is:
   - ☐ named as Primary Personal Representative in will or nominee of Primary Personal Representative
   - ☐ named as Alternate Personal Representative in will or nominee of Alternate Personal Representative
   - ☐ named as nominee of Primary and/or Alternate Personal Representative
   - ☐ other devisee of decedent, or nominee (describe):_____ or nominee of said devisee
   - ☐ surviving spouse of decedent, or nominee of said spouse
   - ☐ other heir of decedent (describe): _____
   - ☐ creditor (Forty-five days after death must have passed), or nominee of creditor
   - ☐ other (describe): _____
   - ☒ nominee of any of the above

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 24th day of November, 20 08

Notary Public for South Carolina
My Commission Expires: 1-21-2009

Signature: _____
Name: Robert Harold Breakfield
Address: 1590-02 Constitution Blvd, PO Box 36061
Rock Hill, South Carolina 29732
E-mail:
Telephone (O): (803) 329-4920
(H):

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☐ GRANTED ☐ DENIED informally this _____ day of _____, 20 _____.

_____
, Probate Court Judge

IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- ☐ The original is attached
- ☒ The original is in the Court's possession
- ☐ An authenticated copy of a will probated in another jurisdiction is attached
- ☐ An authenticated copy of a will not probated in another jurisdiction is attached
- ☐ The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

☒ Yes ☐ NO If no, please explain on page 3.

3. The date of execution of the will was: June 23, 1998
codicil(s): N/A

4. Are you aware of any instrument or document amending or revoking the will?

☒ NO ☐ YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

☒ YES ☐ NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

☒ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheet.)

Note to 4, 5, 6 - The handwritten document apparently written by Decendent dated April 5, 2003 and the typed document dated April 5, 2003 and witnessed April 24, 2003, were not validly executed; therefore, were not considered to have revoked the Last Will and Testament dated June 23, 1998.

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ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: February 18, 2009

TIME: 2:00 PM

PLACE: Chester County Probate Court, 1476 JA Cochran By-Pass, Chester, South Carolina

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this 5th day of Jan, 2009.

Lois H. Roddey
Lois H. Roddey, Probate Court Judge

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☒ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated, / , be admitted formally to probate.

June 23, 1998

Executed this 18th day of Feb., 2009.

Lois H. Roddey
LOIS H. RODDEY, Probate Court Judge

SEE ATTACHED ORDER

ORDER OF APPOINTMENT

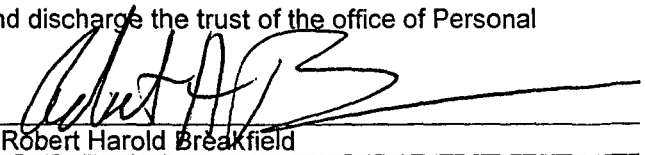
IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance. No Bond Required.

Executed this 18th day of Feb., 2009.

Lois H. Roddey
LOIS H. RODDEY, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: 
Name: Robert Harold Breakfield
Address: 1590-02 Constitution Blvd. PO Box 36061
Rock Hill, South Carolina 29732
E-mail:
Telephone (O): (803) 329-4920
(H):

Signature:
Name:
Address:

E-mail:
Telephone (O):
(H):

Attorney:
Address:

E-mail:
Telephone (O):

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LOIS H. RODDEY
JUDGE OF PROBATE

2010 MAR -2 P 4:05

PROBATE COURT
HESTER COUNTY S.C.

STATE OF SOUTH CAROLINA **PROBATE COURT**
COUNTY OF CHESTER

IN THE MATTER OF: ESTATE OF REBA P. HINSON

Case Number: 2008ES1200297

Motion under South Carolina Probate Code Section 62-2-901; DELIVERY AND SUPRESSION OF WILLS:

Verified under personal knowledge standard

1.

The cited statute mandates that anyone in possession of a will for safekeeping, or any purpose, must deliver the will to the Judge of the proper Probate Court for safekeeping within 30 days of the learning of the death of a decedent, and makes it a misdemeanor to not do so;

2.

The above statute goes on further and makes it against the law for anyone to conceal a will to keep it from being probated;

3.

The actual will of Mrs. Hinson, the one with the later date which revoked the will now being probated, was actually concealed in the probate file itself; it was stuck way in the back in a section where miscellaneous papers were kept and bound together so that the papers did not appear to be part of the active probate case;

4.

One day movant finally found the will and asked for a certified copy of it out of fear that this real will might go missing; movant was rebuffed by one of the "legal assistants" to Judge Roddey, who stated that the part of the file where the will was, was not "official" because the papers in that part of the file had never been "clocked-in"; this conduct violates the public policy of South Carolina as articulated by South Carolina statute 62-1-305 which states a clerk

"must" issue a certified copy of "any" paper in a file;

5.

In addition to the above, the Probate Code, Section 62-2-901, requires that every Probate Judge, after 30 days have expired since a will has been deposited with "him", take proactive measures and publish in a newspaper in the county FIFTEEN times, the fact that the Probate Judge is holding a will, or wills, that are not being offered for probate; in this case more than twenty-four months elapsed and the Probate Court, Judge Roddey, Judge, never advertised these facts as required by statute; had the proper procedure been followed the wrong will would have never been offered for probate;

6.

WHEREFORE, Mell Woods, as the moving party herein, and as a stakeholder of the estate, a claimant and

creditor of the estate, hereby moves that the Chester County Probate Court Clerks be required to place in the local newspaper which is published two times a week, a notice to the effect that the decedent, Mrs. Hinson, left at least two wills, and also, any other wills which may be unknown to the moving party, which have been presented to the Chester County Probate Court, for seven weeks, plus one other week, for a total of EIGHT WEEKS, the fact that more than one will is on file for the decedent, Mrs. Reba P. Hinson;

7.

This should be done, number one, because the law requires it, and two, the case file is completely devoid of any document to show that the Probate Court, Judge Roddey, Judge, exercised any discretion whatsoever in picking which will to probate;

(4)

Respectfully submitted,

This 02 day of March, 2010.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

AFFIDAVIT AND VERIFICATION OF MOTION:

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER:

Mell Woods being first duly sworn deposes and states on oath that every fact recited in the foregoing MOTION TO PUBLISH THE FACT THAT MORE THAN ONE WILL EXISTS is the truth; affiant makes this affidavit upon his own personal knowledge;

Further, affiant saith not.

Mell Woods

Sworn to and subscribed before me,

this 02 day of March, 2010.

Gloria Diane Woods

Gloria Diane Woods, Notary Public for South Carolina
Commission expires: Jan. 08, 2018

GLORIA DIANE WOODS SOUTH CAROLINA NOTARY PUBLIC SEAL OF OFFICE

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STATE OF SOUTH CAROLINA)
COUNTY OF: Chester)
IN THE MATTER OF: Reba P. Hinson)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2008ES1200297

On the 02 day of March, 20 10, I mailed or delivered the following document,
Motion to publish fact of two, or more Wills [SC Probate Code 62-9-901]

☑ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the court and incorporated herein.

LOIS H. RODDEY
JUDGE OF PROBATE
2010 MAR -2 P 4:06
PROBATE COURT
CHESTER COUNTY S.C.

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery ☑ ordinary first class mail
☐ certified mail ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
B. Michael Brackett	P.O. Box 100261 Columbia, S.C. 29202

SWORN to before me this 02 day of March, 20 10

Gloria Diane Woods
Notary Public for South Carolina
My Commission Expires: Jan. 8, 2018

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

Signature:
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O):
(H):
E-mail:

Signature:
Name:
Address:
Telephone (O):
(H):
E-mail:

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FORM #120PC (2/2004)
62-1-401, 62-3-1003, general

CUS™ Terms | Search Within | Original Results (1 - 1) | Go | Advanced...

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1 of 1

Shepardize® | TOA

Schroder v. Antipas, 215 S.C. 552 (Copy w/ Cite)

Pages: 6

*215 S.C. 552, *; 56 S.E.2d 354, **;*
*1949 S.C. LEXIS 116, ****

SCHRODER v. ANTIPAS ET AL.

16281

SUPREME COURT OF SOUTH CAROLINA

215 S.C. 552; 56 S.E.2d 354; 1949 S.C. LEXIS 116

November 15, 1949, Decided

PRIOR HISTORY: [***1] Action by Emma R. Schroder, individually and as executrix of the will of Jacob H. Schroder, deceased, against Gus Antipas and others for specific performance of a contract to purchase realty.

The Court of Common Pleas of Charleston, William H. Grimball, J., held that the effect of the will of plaintiff's deceased husband was to vest in plaintiff a life estate in the realty to be conveyed with remainder at her death to a named church corporation in trust for the use stated in will, and the plaintiff appealed.

The Supreme Court, Stukes, J., held that as the first portion of the will by clear and unmistakable terms devised in the fee to the plaintiff, a purported gift over by the balance of the will, was not intended to cut down the quantity or quality of the estate given and reversed the judgment, and remanded the case with directions.

DISPOSITION: Judgment reversed and case remanded.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff widow appealed an order of the Court of Common Pleas of Charleston (South Carolina), which granted judgment in favor of defendant buyers in an action for specific performance of a contract to purchase realty. The widow contended that the trial court erred in finding that the decedent's will vested in the widow a life estate in the realty to be conveyed with remainder at her death to a named beneficiary, instead of an estate in fee.

OVERVIEW: The decedent's will was probated and his widow qualified as executrix. The widow subsequently bargained with the buyers to sell a parcel of the devised real estate. However the buyers questioned the widow's ability to convey fee simple title to the property under the will. The widow filed an action against the buyers for specific performance of the contract to purchase the realty. The trial court dismissed the action and held that the effect of the will was to vest in the widow a life estate in the property, with remainder at her death to a church corporation. The widow appealed. The court reversed and remanded and held that the ruling was in error because the first portion of the will by clear and unmistakable terms devised a fee simple estate to the widow. Such a devise in the will could not be cut down or qualified by words in a subsequent clause. The words of the purported gift to the church did not raise an irresistible inference that the decedent intended to cut down the fee simple estate which he had earlier in his will given to the widow by unequivocal technical and legal terms.

OUTCOME: The court reversed and remanded the judgment of the trial court.

CORE TERMS: testator's, cut down, doubtful, devise, import, devised, church, aiding, executrix, rules of

construction, irresistible, unequivocal, remainder, gift, life time, questioned, ministry, worthy, exceptional cases, ascertained, expressing, fee-simple, quantity, enlarged, unknown, laymen, entire estate, administrators, ascertainable, testament

LEXISNEXIS® HEADNOTES

Hide

Estate, Gift & Trust Law > Wills > Interpretation > General Overview

HN1 One of the soundest rules of construction, founded by the sages of the law, the wisdom of which has been approved by succeeding generations as affording security and certainty to estates, is that, where an estate or interest is given in words of clear and ascertained legal signification, it shall not be enlarged, cut down, or destroyed by super-added words in the same or subsequent clauses, unless they raise an irresistible inference that such was the intention. More Like This Headnote | *Shepardize:* Restrict By Headnote

Estate, Gift & Trust Law > Wills > Interpretation > General Overview

HN2 When a gift is made in one clause of a will in clear and unequivocal terms, the quantity or quality of the estate given should not be cut down or qualified by words of doubtful import found in a subsequent clause. To have that effect, the subsequent words should be at least as clear in expressing that intention as the words in which the interest is given. More Like This Headnote | *Shepardize:* Restrict By Headnote

Estate, Gift & Trust Law > Trusts > General Overview
Estate, Gift & Trust Law > Wills > Interpretation > General Overview

HN3 The rule, as we understand it, both of law and of common sense, is that, where an absolute and unqualified estate is first created in words which import absolute and uncontrollable ownership, words relied upon to show that the testator intended to cut down such an estate, or to affect it with any trust, must not only be mandatory, but must, in themselves, show the manner in which they are to operate, so that the purpose of the testator may clearly appear, how or in what degree he intended to cut down the estate previously created, or what was the precise nature of the trust he intended to impress upon it. More Like This Headnote | *Shepardize:* Restrict By Headnote

Estate, Gift & Trust Law > Estates Created by Trusts & Wills > General Overview
Estate, Gift & Trust Law > Wills > Interpretation > General Overview
Real Property Law > Estates > Present Estates > Fee Simple Estates

HN4 Where an estate is once given by words of clear and ascertained legal significance, it will neither be enlarged nor cut down by superadded words in the same or subsequent clauses of the will, unless they raise an irresistible inference that such was the intention of the testator. If there is anything well settled it is that a court will not cut down an estate once granted absolutely in fee by limitations contained in subsequent parts of a will, unless the intent to limit the devise is manifested clearly and unmistakably. If the expression relied upon to limit a fee once devised be doubtful, the doubt should be resolved in favor of the absolute estate. More Like This Headnote | *Shepardize:* Restrict By Headnote

Estate, Gift & Trust Law > Estates Created by Trusts & Wills > Estates in Fee
Estate, Gift & Trust Law > Wills > Interpretation > General Overview

HN5 Legal terms are none the less meaningful when used by laymen unless in exceptional cases the context clearly indicates the contrary. Not overlooked is the primary rule that the testator's intention should prevail when ascertainable from the will and not counter to law. More Like This Headnote | *Shepardize:* Restrict By Headnote

HEADNOTES / SYLLABUS

Sho

COUNSEL: Messrs. M. Martin Davis and I. H. Jacobson, of Charleston, for Appellant, cite: As to the will devising fee simple title: 32 S.W.2d 591, 593, 326 Mo. 710; 69 C. J. 443, Sec. 1504; 117 N.E. 1049, 281 Ill. 421. As to the

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principle of law that words of advice, recommendation, or desire do not create a [***2] devise, nor will they operate as to raise a trust in equity: 13 S.E.2d 483; 77 S.C. 454, 457, 458, 58 S.E. 420; 2 Hill Eq. 483, 490; 5 S.C. 450, 459; 41 S.C. 291, 298, 19 S.E. 670. As to an estate once given not being cut down or qualified by words of doubtful import found in a subsequent clause: 87 S.C. 55, 60, 68 S.E. 966, 30 L.R.A., N. S., 115; 93 S.C. 213, 214, 76 S.E. 468; 126 F. 701, 61 C. C. A. 619; 7 S.E. 447; 69 C. J. 717; 102 S.C. 7, 86 S.E. 211; 2 Bligh 1. As to the rule that an estate by implication cannot be raised in direct contradiction to and denial of an express estate: 1 McC. Eq. 60. As to there being no intention to create a trust: 65 C. J. Sec. 47; 136 N.E. 589; 137 S.C. 380, 135 S.E. 469; 119 S.E. 383. As to testator being bound by his use of legal phrases and technical words: 1 Bay 80; 161 S.C. 235, 159 S.E. 546.

Mr. Thomas P. Bussey, of Charleston, for Respondent, Gus Antipas, cites: As to the words used by testator in a subsequent clause being sufficiently definite and certain enough to cut down a fee simple estate first devised: 210 S.C. 319, 42 S.E.2d 529; 137 S.C. 380, 135 S.E. 469; 204 S.C. 50, 28 S.E.2d 800; 104 S.C. 441, 89 S.E. 405.

Messrs. [***3] Robert M. Hollings and J. D. G. Meyer, of Charleston, for Respondents, United Lutheran Church in America and John Doe and Richard Roe, cite: As to the cardinal rule for construction of wills: 102 S.C. 7, 86 S.E. 211; 195 S.C. 431, 12 S.E.2d 10; 211 S.C. 544, 34 S.E.2d 787.

JUDGES: TAYLOR H. STUKES, J. D. GORDON BAKER, C. J., E. L. FISHBURNE, CLAUDE A. TAYLOR and G. DEWEY OXNER, JJ., concurred.

OPINION BY: STUKES

OPINION

[**354] [*555] STUKES, Justice.

Jacob H. Schroder, a childless corner grocer at Charleston, prepared and executed his will dated May 17, 1916. He died August 2, 1920, and the will was probated August 7, 1920, and appellant, his widow, qualified as executrix. Recently she bargained to sell a parcel of the [**355] devised real estate to the respondent, Gus Antipas, who questioned her ability to convey the fee-simple title and this action for specific performance ensued. The questioned terms of the will follow (original spelling and punctuation preserved): "I give devise and bequeath my entire estate real and personal mixed and of every kind and desciption whatsoever which I may own or be in any wise entitled to at the time of my death unto my wife Emma R. Schroder her [***4] heirs executors administrators and assignis for ever. I hereby announce constutute and appoint my Said wife Emma R. Schroder Sole executrix of this my last will and testament. During her life time and after her death said estate is to be given to the United Synod of the Southern Evangelical Lutheran Church for aiding worthy Young men for the Gospel Ministry in said Synod."

Other respondents, defendants below, are the successor of the United Synod, named in the will, and fictitious representatives of all unknown young men who might benefit under the terms of the will and the summons was published as to them, in accord with the statute. All parties are represented by counsel and the answer of the Church included appearance in behalf of the unknown defendants as representatives of the class to which they belong. Thus all with any possible interest in the property under the will are parties to the action and will be concluded by the judgment. This course was directed in a former appeal. See 214 S.C. 87, 51 S.E.2d 365.

[*556] The trial court decided that the effect of the will was to vest in appellant a life estate in the property, with remainder at her death to the [***5] Church, a corporation, in trust for the use stated in the will. This we think was error because the first portion of the will by clear and unmistakable terms devised the fee to appellant.

In *Adams v. Verner*, 102 S.C. 7, 86 S.E. 211, 212, many of our older decisions were reviewed and also similar, earlier English cases and the rule was stated, as follows: HN1↑"On the other hand, one of the soundest rules of construction, founded by the sages of the law, the wisdom of which has been approved by succeeding generations as affording security and certainty to estates, is that, where an estate or interest is given in words of clear and ascertained legal signification, it shall not be enlarged, cut down, or destroyed by super-added words in the same or subsequent clauses, unless they raise an irresistible inference that such was the intention."

Concise statement of the rule is also found in *Walker v. Alverson*, 87 S.C. 55, 68 S.E. 966, 968, 30 L.R.A., N. S., 115, as follows: HN2 "When a gift is made in one clause of a will in clear and unequivocal terms, the quantity or quality of the estate given should not be cut down or qualified by words of doubtful import found [***6] in a subsequent clause. To have that effect, the subsequent words should be at least as clear in expressing that intention as the words in which the interest is given."

Cases, among others, in which the principle has been applied with regularity in this State are: *Howze v. Barber*, 29 S.C. 466, 470, 7 S.E. 817; *Jennings v. Talbert*, 77 S.C. 454, 58 S.E. 420; *Smith v. Smith*, 93 S.C. 213, 76 S.E. 468; *Lawrence v. Burnett*, 109 S.C. 416, 96 S.E. 144; *Cureton v. Little*, 119 S.C. 31, 111 S.E. 803; *Hutto v. Ray*, 192 S.C. 364, 6 S.E.2d 747; *Newnham v. Forest Hills, Inc.*, 195 S.C. 431, 12 S.E.2d 10; *Tiencken v. Zerbst*, 196 S.C. 438, 13 S.E.2d 483; *Peecksen v. Peecksen*, 211 S.C. 543, 34 S.E.2d 787.

[*557] This court said, per Justice McIver, in *Howze v. Barber, supra*, 29 S.C. 466, 470, 7 S.E. 817, 819, in applying the stated rule: HN3 "The rule, as we understand it, both of law and of common sense, is that, where an absolute and unqualified estate is first created in words which import absolute and uncontrollable ownership, [***7] words relied upon to show that the testator intended to cut down such an estate, or to affect it with any trust, must not only be mandatory, but must, in themselves, show the manner in which they are to operate, so that the purpose of the testator may clearly appear, how or in what degree he intended to cut down the estate previously created, or what was the precise nature [**356] of the trust he intended to impress upon it. 2 Story, Eq. Jur. § 1069; 2 Pom. Eq. Jur. § 1014 *et seq.*; *Howard v. Carusi*, 109 U.S. 725, 3 S. Ct. 575 [27 L. Ed. 1089]; *Lesesne v. Witte*, 5 S.C. 450."

The language of Justice Hydrick in *Lawrence v. Burnett, supra*, 109 S.C. 416, 96 S.E. 144, 146, was: "Now, bearing in mind the well-settled rule that HN4 where an estate is once given by words of clear and ascertained legal significance, it will neither be enlarged nor cut down by superadded words in the same or subsequent clauses of the will, unless they raise an irresistible inference that such was the intention of the testator * * *."

Justice Cothran, in writing the opinion in *Werber v. Moses*, 117 S.C. 157, 108 S.E. 396, 398, quoted with [***8] approval the following from *McClellan v. Mackenzie*, 6 Cir., 126 F. 701, 61 C.C.A. 619: "If there is anything well settled it is that a Court will not cut down an estate once granted absolutely in fee by limitations contained in subsequent parts of a will, unless the intent to limit the devise is manifested clearly and unmistakably. If the expression relied upon to limit a fee once devised be doubtful, the doubt should be resolved in favor of the absolute estate."

The principle was plainly inapplicable to the will construed in *Wates v. Fairfield Forest Products Co.*, 210 S.C. 319, [*558] 42 S.E.2d 529, a case depended upon by respondent, but it was recognized and stated in positive terms.

The purported gift to the Synod does not meet these tests. Set off by periods, after the absolute devise to testator's wife and the intervening appointment of her as executrix, it reads: "During her life time and after her death said estate is to be given to the United Synod * * * for aiding worthy Yong men for the Gospel Ministry in said Synod."

It is not a remainder, the words negative that; yet the words relate to the future--"is to be given." Is it a suggestion [***9] to the wife to give from the estate to the Synod during her lifetime? If it should be held effective to create a remainder, what of the fund? Could the principal of the estate be used by the Synod "for aiding Yong men", or only the income? And what form of aid and at what time, for education, support, or what? Other questions might be asked which would likewise demonstrate the uncertainty of the words. Unquestionably they are of doubtful import. They do not raise an irresistible inference that the testator intended by them to cut down the fee-simple estate which he had earlier in his will given to his wife by unequivocal terms, indeed technical, legal terms. And HN5 legal terms are none the less meaningful when used by laymen unless in exceptional cases the context clearly indicates the contrary. 34 South Eastern Digest, Wills, Key 457, page 380 *et seq.* Late, well-reasoned decisions to the point are *Jarecky v. Jarecky*, 194 S.C. 456, 9 S.E.2d 922, and *Bonds v. Hutchison*, 199 S.C. 197, 18 S.E.2d 661.

Not overlooked is the primary rule that the testator's intention should prevail when ascertainable from the will and not counter to law. But in a court's [***10] search for the testamentary intention it has to be guided by the time-tested rules of construction and the rule applicable here leaves no room for argument. The questioned provision, as construed by the trial court, is wholly irreconcilable with the prior perfect devise of the whole estate;

and it is ineffective **[*559]** because of that and because of its doubtful import. It must be disregarded.

In opposition to this view respondent relies upon the tenet often applied that all parts of a will should be considered in pursuit of testator's intention if practicable, but in cases such as this and those cited *supra* the latter, inconsistent and uncertain provision cannot be given effect to cut down the prior complete disposition. In cases where rules of construction clash that most nearly applicable must be followed, which makes it impracticable to follow the other. The decisions referred to in the circuit decree as supporting it and the additional authorities **[**357]** contained in respondents' brief have been carefully examined and we think none of them in conflict with the conclusion which has been reached.

The judgment is reversed and the respondent Antipas will be required **[***11]** to comply with his contract of purchase, for which purpose the case is remanded to the Court of Common Pleas.

BAKER, C. J., and FISHBURNE, TAYLOR and OXNER, JJ., concur.

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1 of 1

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Schroder v. Antipas, 215 S.C. 552 (Copy w/ Cite)

Pages: 6

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December 29, 2009

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

Mr. B. Michael Brackett
P.O. Box 100261
Columbia SC 29202

LOIS H. RODDEY
JUDGE OF PROBATE
2010 JAN 12 A 9:04
PROBATE COURT
CHESTER COUNTY S.C.

Re: Hinson Estate, your file # 12085.1

Dear Sir:

I am in receipt of the papers you filed in this case, dated December 23, 2009. In your motion, you complain that my claim is not "clear" enough and is therefore not any good. Since we now have notice pleading, instead of common-law pleading, it is clear enough – you know the nature of the claims that are filed. In any event, under Rule 15(c), I will amend the claims and supply lots of facts.

IN THE MEANTIME, I WILL APPRECIATE IT IF YOU WILL STOP CONTACTING JUDGE GETTYS ABOUT THIS CASE. Judge Gettys does not believe in ex parte communication, and neither do I. This means copying letters to him, and sending him pleadings. He has clerks who show him the pleadings he wants to see. I am copying this letter to him, *but this is the last time*, and I object to you continuing to do so. Your client is the one that started the Judge-writing. This case is not going to be tried by letter.

As to your statement in your un-numbered motion that there is nothing in the claim that could be "remotely" construed as a nuisance, well here are the facts about the nuisance. The estate operates, and Mrs. Hinson, while in life, allowed a certain residence to exist on the property which does not have a septic tank, or any approved method of waste disposal. This particular residence sits on the banks of Fishing Creek Lake, in Chester County, and the land is made of fill, old tires, metal, unknown waste, busted commodes, and the like. The plumbing for this particular residence is arranged so when a commode is flushed, everything is flushed straight into the rubble pile as described above, which then leaches directly into the lake. We have a fishing pier very near the outfall points for the sewage, and during certain times of the year there is odor, and you better not fall in. If there is any reason in your mind to disbelieve that this is not a cause of action in South Carolina, then I refer you to the 1984 case of: Lever v. Wilder Mobile Homes, Inc., 283 S.C. 452.

The last time I checked South Carolina is within the federal, Fourth Circuit. I object to having to respond to something from the FIFTH circuit, the Beanal case which is something about a gold mine in Indonesia, and some sort of federal law called the Torture Victim Protection Act which gives a civil action for "torture and extra-judicial killings", of humans. Do you really believe that anyone in South Carolina cares anything about this, except maybe you?

You need to get serious and stop the silly stuff. I have already made some serious allegations about what has been going on in this case. In case these allegations have not been made known to you through your client, here they are again. Attorney fraud has occurred in this case. There's been some perjury, and a fraud upon the Court. The fraud is most serious, it is EXtrinsic, not the other kind simply intrinsic. The following is from Ray H. Chewning, Jr. v. Ford Motor Company, 354 S.C. 72:

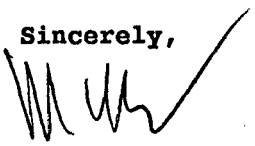
> "Attorney fraud calls into question the integrity of the judiciary and erodes public confidence in the fairness of our system of justice. Accordingly, where an attorney embarks on a scheme to either suborn perjury or intentionally conceal documents, extrinsic fraud constituting a fraud upon the court occurs."

And, I do not know if your client told you, but he has been probating the WRONG will, and if this result is not a fraud upon the court, and the public, I wish you would state what is.

The Chewning case went on for at least ten years with Ford hiring liars, and the attorneys covering it up, but you know what, the above case is the fruit of a 12(b)(6) motion and the moral of this story is that one day, lies will catch up with you.

I wish you would clean your pleading up, it has some bad cites anyway, and then we can talk about the real parts of this case.

Sincerely,



Mell Woods

Copy to Judge Gettys, but this is the last time unless instructed otherwise.

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS FOR THE COUNTY OF CHESTER

MELL WOODS,

APPELLANT,

v.

ROBERT BREAKFIELD,
PERSONAL REPRESENTATIVE FOR
THE ESTATE OF REBA P. HINSON,

RESPONDENT.

CIVIL ACTION

CIRCUIT COURT NUMBER:

LOIS H. RODDEY
JUDGE OF PROBATE
2008 APR 30 P 4:55
PROBATE COURT
CHESTER COUNTY S.C.

Appeal to Circuit Court From an adverse ruling of the Chester County Probate Court, Hon. John P. Gettys, Presiding

Probate Court Number: 2008 ES 1200 297

1.

This is formal notice to everyone concerned that the above-styled matter is hereby appealed to the circuit court for Chester County pursuant to South Carolina Statute 62-1-308 (a), of the Probate Code;

2.

Within thirty-five days the full grounds for this appeal will be filed with the Court;

PARTIAL GROUNDS are as follows John P. Gettys, Sr., ruled on the case with the knowledge that a family member, John P. Gettys, Jr., was an attorney of record on the case for an adverse party, and (2) John P. Gettys, Sr., refused to allow appellant the subpoena power of the Court, and so stated on the record.

Respectfully submitted,

This 30 day of April, 2010.

Mell Woods, Appellant

P.O. Box 2603
Lancaster, S.C. 29721

BLANK

BLANK

STATE OF SOUTH CAROLINA)
COUNTY OF: Chester)
IN THE MATTER OF: Reba P. Hinson)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2008ES1200297

On the 30 day of April, 20 10, I mailed or delivered the following document, Appeal to Circuit Court

☑ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the court and incorporated herein,

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery ☑ ordinary first class mail
☐ certified mail ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
B. Michael Brackett	P.O. Box 100261 Columbia SC 29202
Hon. John P. Gettys	P.O. Box 219 York SC 29745
John P. Gettys, Jr	P.O. Box 707 Rock Hill, SC 29731
Robert H. Breakfield	P.O. Box 36061 Rock Hill, SC 29732

PROBATE COURT
CHESTER COUNTY S.C.
2010 APR 30 P 4:55
LOIS H. RODDEY
JUDGE OF PROBATE

SWORN to before me this 30 day of April, 20 10

Gloria Diane Woods
Notary Public for South Carolina
My Commission Expires: Jan. 8, 2018

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

Signature:
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O):
(H):
E-mail:

Signature:
Name:
Address:
Telephone (O):
(H):
E-mail:

FORM #120PC (2/2004)
62-1-401, 62-3-1003, general

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

PROBATE COURT
ON APPEAL TO CIRCUIT COURT

IN THE MATTER OF: ESTATE OF REBA P. HINSON

Case Number: 2008ES1200297 (Probate Court)

2010CP1200201 (Circuit Court)

LOIS H. RODDEY
JUDGE OF PROBATE
2010 JUN -4 P 4:35
PROBATE COURT
CHESTER COUNTY, S.C.

ADDITIONAL GROUNDS FOR APPEALING THE COURT ORDER OF THE HONORABLE JOHN P. GETTYS, PROBATE JUDGE:

1.

The Court committed error in not removing Robert Breakfield as personal representative after claimant Mell Woods filed a claim against the estate and demanded bond; bond is required by S.C. Statute 62-3-605 for any claim in excess of $1,000.00, and the statute as written, does not give the Court any discretion in the matter;

The Court committed error by not ruling that the wrong will is being is being probated; the will being probated was revoked by Mrs. Hinson, and another one drawn up so that there would be no fighting; but since the wrong one is being used there are at least two civil suits now pending in the circuit court which are the end result of this mistake, one is a pure spite case among the Hinsons, and the other is a petition to partition land, which is useless also, because Mrs. Hinson partitioned the land by use of surveyors, with the hope there would no fighting;

Respectfully submitted, this 04 day of June, 2010.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

STATE OF SOUTH CAROLINA)
COUNTY OF: Chester)
IN THE MATTER OF: Reba P. Hinson)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2008ES1200297
circuit Court 2010CP1200201

On the 4th day of June, 2010, I mailed or delivered the following document,
Additional Grounds for appealing the Court order of the Hon. John P. Gettys, Probate Judge

☑ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the court and incorporated herein,

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery ☑ ordinary first class mail
☐ certified mail ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
B. Michael Brackett	P.O. Box 100261 Columbia, SC 29202

PROBATE COURT
CHESTER COUNTY, S.C.
2010 JUN -4 P 4:35
LOIS H. RODDEY
JUDGE OF PROBATE

SWORN to before me this 4 day of June, 20 10

Gloria Deane Woods
Notary Public for South Carolina
My Commission Expires: Jan. 8, 2018

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

Signature:
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O):
(H):
E-mail:

Signature:
Name:
Address:
Telephone (O):
(H):
E-mail:

132

FORM #120PC (2/2004)
62-1-401, 62-3-1003, general

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

2010-CP-12-0201
(Appeal from Probate Court)

In the Matter of the Estate of Reba P. Hinson

Mell Woods,

Appellant,

v.

Robert H. Breakfield, Esquire, as Personal Representative,

Respondent.

Respondent's Memorandum of Law In Support of Affirming Probate Court

FILED
2011 JUL 11 A 11:06
CLERK OF COURT
CHESTER CO S.C.

Background

This is an appeal from the Chester County Probate Court's Order dated April 19, 2010. **(Exhibit A.)** The first hearing on Appellant's grounds of appeal was held on September 8, 2010, Judge Clifton Newman presiding. At the hearing the Appellant objected to going forward with the hearing because the Probate Court had not made its Return to the Circuit Court pursuant to §62-1-308(b). Judge Newman ordered that the probate court deliver its entire Reba Hinson estate file to the circuit court courtroom for use during the hearing. The file was delivered for the use of the parties, attorneys and the circuit court.

By Order dated September 30, 2010 the Circuit Court affirmed the Probate Court's April 19, 2010 Order and dismissed the appeal. **(Exhibit B).** Appellant filed and served a Rule 59(e) motion for reconsideration raising, among other arguments, that the appeal had been "heard without benefit of a certified record from the Probate court." **(Exhibit C).** By Order dated January 27, 2011,

Appellant's motion for reconsideration was granted on the ground that a proper return was not made by the Probate Court." **(Exhibit D)**. The undersigned as attorney for Respondent took the initiative to have the Probate Court's Return delivered to the Circuit Court. **(Exhibit E.)** The Probate Court has confirmed that the Return was delivered. **(Exhibit F.)** By Order dated May 18, 2011, Judge Newman amended his January 27, 2011 Order to not only grant the Motion for Reconsideration but to also vacate the September 30, 2010 Order and to return the appeal to the roster for a new hearing. **(Exhibit G.)** The hearing on the appeal has been rescheduled for July 8, 2011.

The record from the Probate Court and the arguments of the parties will establish the following history: The action involved in this appeal was commenced by the Appellant's Petition in probate court for Removal of Personal Representative dated January 22, 2010. Attached to the Petition was a document titled "Motion for Removal of Personal Representative." The Petition identified the grounds for removal as "Misadministration [sic] of estate by failing to post bond, and by probating the wrong will." The Motion for Removal identified the grounds as failure to give bond after a demand for bond was made, and other "mis-management items," not identified in the motion with any particularity.

Appellant thereafter filed his "Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above-Styled Case on February 18, 2009; [and] Motion For Removal to Circuit Court." This pleading was dated February 17, 2010. [1]

The Personal Representative filed and served an Answer to the Petition for Removal of Personal Representative. The Personal Representative also filed and served a consolidated Motion

[1] Although the Probate Court denied the relief sought in the Petition to Vacate Order and the Motion to Remove the proceeding to Circuit Court, as explained hereinbelow, the Appellant did not appeal those rulings.

to Dismiss the Petition to Vacate Order and a Return to the Motion to Remove the Petition to Vacate to Circuit Court.

The hearing on the Appellant's two Petitions and related motions was held in the Probate Court on April 12, 2010.[2] Following the hearing Probate Judge John P. Gettys issued his Order dated April 19, 2010. **(Exhibit A.)** The Order contained three rulings: (1) it denied the Appellant's Petition for Removal of the Personal Representative for cause; (2) it denied the motion to remove to Circuit Court the Petition to Vacate; and (3) it denied Appellant's Petition to Vacate the Probate Court's February 18, 2009 Order of Formal Testacy.[3]

Issues on Appeal

In his Notice of Appeal filed on April 30, 2010, Appellant identified two subjects as "partial grounds" for the appeal: (1) the Probate Judge did not recuse himself from the matter when he had knowledge that a family member had some past involvement in the matter, and (2) that the Probate Judge refused to issue subpoenas for witnesses that the Appellant wanted to subpoena to the hearing.

On June 4, 2010 the Appellant filed two "additional grounds" for his appeal: (3) that the probate court erred in not removing the Personal Representative for his failure to provide bond, and (4) that the probate court erred in failing to rule that the wrong will is being

[2] The hearing was held in York County because the Chester County Probate Judge recused herself from the proceeding and the York County Probate Judge was appointed to serve as Special Probate Judge for Chester County in matters related to this estate.

[3] As indicated in footnote 1 above, rulings 2 and 3 were not appealed.

probated.[4]

Appeal From Probate Court to Circuit Court

Appeals from probate court to circuit court are heard and decided according to the rules governing appeals to the higher appellate courts. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 31 (2d ed.2002) and cases cited therein. The circuit court is to apply the same standard of review that the Court of Appeals or Supreme Court would apply on appeal. Id. The hearing in the circuit court must be strictly on appeal, and no new evidence may be presented. S.C. Code Ann. §62-1-308(d).

Issue on Appeal No. 1- Recusal

On the issue of recusal, the record indicates that no motion or request for recusal was made to the probate judge. This subject was not raised to and ruled upon by the trial court and was first raised in the Appellant's partial grounds of appeal. The subject was not addressed in the Probate Court's April 19, 2010 Order, and it was not raised by the Appellant in a Rule 59 motion. Consequently, it is not preserved for appeal. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 55 (2d ed.2002), citing Hubbard v. Rowe, 5 S.E.2d 187 (S.C. 1939) (questions presented for appellate review must first have been fairly and

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[4] The Appellant's issue on appeal no. 4 is actually misstated. The Probate Court Order that admitted the particular Last Will to probate (the Last Will that Appellant labels the "wrong will") was the Probate Court's Order dated February 18, 2009. Appellant tried to vacate that Order, but in the April 19, 2010 Order, the Probate Court denied such relief because Appellant had no standing to seek the vacate the Order and, alternatively, he made an insufficient showing for Rule 60 (b) relief. Appellant has not appealed that portion of the April 19, 2010 Order. In the appeal now pending, the Appellant is really appealing the Probate Court's refusal to remove the Respondent as PR because he is probating the wrong will.

properly raised in the lower court and passed upon by that court); and I'On, L.L.C. v. Town of Mt. Pleasant, 526 S.E.2d 716 (S.C. 1993) (if the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a Rule 59 motion to alter or amend the judgment in order to preserve the issue for appellate review).

Issue on Appeal No. 2- Subpoenas

Likewise, on the issue of the probate judge not issuing subpoenas for Appellant's use, no objection or motion on the subject was raised at the probate court hearing, the issue was not raised to and ruled upon by the trial court and was first raised in the Appellant's partial grounds of appeal, the issue was not addressed in the Probate Court's April 19, 2010 Order, and it was not raised by the Appellant in a Rule 59 motion. Additionally, the record of the April 12, 2010 hearing reveals that the Appellant did not identify who he would have subpoenaed, nor did he make a proffer of what the witness(es) were expected to offer in the way of relevant and admissible evidence. Consequently, based on the authorities cited above, this ground of appeal was not preserved for appellate review.

Issue on Appeal No. 3 - Failure to Remove PR for not Providing Bond

At the April 12, 2010 hearing, Appellant was asked by the Court: "Mr. Woods, tell me why you want Mr. Breakfield removed." (hearing transcript, p. 4, l. 14-15.) The Appellant identified two grounds: the Respondent, as personal representative, is supposed to give bond (hearing transcript, p. 4, l. 20-23) and he (the PR) is probating the wrong will. (hearing transcript, p, 9. l. 15-22.)

In its April 19, 2010 Order, the Probate Court held that the bond issue had already been addressed by the court and that the Respondent was in compliance with the Court's prior order with

respect to posting bond. The April 19, 2010 Order makes particular mention that the decedent's Last Will does not require bond, that the prior Order appointing Mr. Breakfield to serve as personal representative expressly provided "no bond required," and that the Court had earlier exercised its discretion to rule that bond was not required but that the personal representative must hold funds in escrow. In addition to the fact that the Respondent was found to be in compliance with the Court's various Orders addressing bond, the Appellant presented no evidence of damage or prejudice caused by the absence of bond. Consequently, the Probate Court held that the Appellant had not made a sufficient case for the involuntary removal of the Respondent as PR for failing to post bond.

Issue on Appeal No. 4 - Failure to Remove the PR for Probating the Wrong Will

With respect to the issue of the Probate Court's decision as to which Last Will was to be admitted to probate, an action challenging a last will is at law. Estate of Hicks, 327 S.E.2d 343 (S.C. 1985). In law cases, this court, as an appellate court, has jurisdiction merely for correction of errors of law and will not disturb the findings of the probate judge unless they are found to be without evidence which reasonably supports the findings. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 176 (2d ed.2002). Evidence in the record of the April 12, 2010 hearing shows that the admission of the decedent's June 23, 1998 last will to probate was pursuant to a family settlement agreement among the decedent's heirs and/or devisees, not including the Appellant who is a stranger to the estate. The April 19, 2010 Order stated that " . . . the decision about which last will to admit to probate was made by the Court and not by the Personal Representative."

Additionally, the Probate Court's conclusion that the Appellant lacks standing to object to or contest the decedent's last will is well supported by persuasive authorities and precedent. Quoting from the Probate Court's April 19, 2010 Order:

> To have standing, one must generally have a personal stake in the subject of the lawsuit, i.e., one must be a real party in interest. Evins v. Richland County Historic Preservation Comm., 532 S.E.2d 876 (S.C. 2000). A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. Sloan v. Friends of the Hunley, Inc., 630 S.E.2d 474 (S.C. 2006). Generally, a creditor of the decedent cannot contest her will. 3 Bowe-Parker: Page on Wills §26.60. Other authorities supporting this principle of law include: 3 Bowe-Parker: Page on Wills §26.52 (one who would not take more if the will in question were held to be invalid than he would take if it were held to be valid cannot, by the weight of authority, contest the will in question); Baker v. Henderson, 69 S.E.2d 278 (Ga. 1952) (if petitioners will not be injured or benefitted by the establishment and probate of the alleged copy will, they are strangers to it and are not proper parties to the litigation); Estate of Keener, 521 N.E.2d 232 (Ill. App. 1988) (even if the latest will was invalid, earlier wills failed to name the contestant, so he was not entitled to contest); Matter of Wharton, 453 N.Y.S.2d 308 (1982) (generally a person who is not a distributee of the decedent and who will receive no part of a decedent's estate if a will is denied probate, will not be permitted to file objections to probate. The exception is when a person is named in a prior will and his interest under the prior will is greater than under the propounded will).

Accordingly, the Probate Court held that the Appellant had not made a sufficient case for the involuntary removal of the Respondent as PR for probating the wrong will.

Conclusion

For the reasons stated hereinabove, the Chester County Probate Court's Order dated April 19, 2010 should be affirmed, the Appellant's appeal should be dismissed, and this matter should be remanded to the Probate Court for continued estate administration according to applicable law and procedure.

B. Michael Brackett
Moses Koon & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondent

July 6, 2011

CLERK OF COURT
CHESTER CO S.C.
2011 JUL 11 A 11:06
FILED

STATE OF SOUTH CAROLINA IN THE PROBATE COURT

COUNTY OF CHESTER C/A NO: 2008-ES-12-00297

IN THE MATTER OF: THE ESTATE OF REBA P. HINSON

Personal Representative's Motion to Dismiss Mell Woods' Petition to Vacate Order

AND

Personal Representative's Return to Mell Woods' Motion to Remove Petition to Circuit Court

LOIS H. RODDEY
JUDGE OF PROBATE
2010 FEB 23 A 10:51
PROBATE COURT
CHESTER COUNTY S.C.

Please take notice that the Personal Representative, through his undersigned attorney, moves the court for an order dismissing claimant Mell Woods' Petition (Motion) to Vacate Order, said Petition being dated and served February 17, 2010. This motion is made pursuant to Rule 60(b), SCRCP, and Rule 12(b)(6), SCRCP, on the ground that the movant does not have standing to move for Rule 60(b) relief and on the ground that the petitioner has failed to allege facts sufficient to constitute a cause of action because the petitioner is not the real party in interest and lacks standing to object to or to challenge the court's February 18, 2009 Order, found on page 5 of 5 of the Form 300 Petition for Formal Testacy and Appointment, or to object to or participate in proceedings to determine the decedent's operative last will and testament.[1]

I. Motion to Remove Rule 60 petition/motion to Circuit Court must be denied. (1) The Probate Court must deny Mr. Woods' motion to remove the Rule 60(b) petition [or motion] to circuit

[1] Mr. Woods' pleading is titled as a Petition for Rule 60(b) relief , but Rule 60(b) relief is by motion. The personal representative will address both in this Motion and Return.

court because it is not a subject matter that is removable to circuit court. S.C. Code Ann. §62-1-302(d) sets out the subjects that are removable to circuit court, and a Rule 60(b) petition or motion is not listed. This is bolstered by the fact that Rule 60(b) relief is equitable in nature and is to be administered upon equitable principles. Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §2857, citing among other authorities, MIF Realty v. Rochester Associates, 92 F.3d 752 (8th Cir. 1996); Di Vito v. Fidelity & Deposit Co. of Maryland, 361 F.2d 936 (7th Cir. 1966); and Velez v. Vassallo, 203 F. Supp. 2d 312 (S.D.N.Y. 2002). [2] There is no right to a jury trial in equitable proceedings. Although in modern practice the distinction between legal and equitable actions is not as pronounced as in the past, it is still important to certain procedural matters, such as the right to a jury trial. Even in modern practice, it is still the law that there is no right to a jury trial in equitable actions. Loyola Federal Savings Bank. v. Thomasson Properties, 318 S.C. 92, 456 S.E.2d 453 (Ct. App. 1995).

(2) Additionally, the Motion to remove the matter to circuit court must be denied because the power to grant such relief "is possessed solely by the court that rendered the judgment." Coleman v. Dunlap, 413 S.E.2d 15 (S.C. 1992). In this case, the Chester County Probate Court issued the February 18, 2009 Order now challenged by Mr. Woods, and the Chester County Probate Court is the only court with Rule 60 powers with respect to that Order.

---

[2] Where South Carolina cases have not specifically addressed a matter governed by the South Carolina Rules of Civil Procedure, South Carolina courts may seek guidance from federal cases. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 404 S.E.2d 200 (1991).

II. The Petition/Motion for Rule 60(b) relief must be dismissed.

(1) Procedural ground for dismissal. A person who was not a party to the underlying proceeding lacks standing to make a Rule 60(b) motion. Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §2865, citing among other authorities, U. S. v. 8136 S. Dobson St., Chicago, Ill., 125 F.3d 1076 (7th Cir. 1997), *cert. den.* 523 U. S. 1111; King v. State Bd. of Elections, 979 F. Supp. 582 (N. D. Ill. 1996). A more recent opinion very clearly explains that the plain language of Rule 60(b) only allows relief to a party or a party's legal representative, and a nonparty has no right to use Rule 60(b) to modify [or vacate] a consent decree agreed upon by the parties when no such relief is sought by any of the parties themselves. Ericsson, Inc. v. Interdigital Communications Corp., 418 F.3d 1217 (Fed. Cir. 2005).

(2) Substantive ground for dismissal. A claim that a party is not a real party in interest may be brought under Rule 12(b)(6). 2 James Wm. Moore et al., Moore's Federal Practice ¶ 12.34[4][a] (Matthew Bender 3d ed., 2009). And, a complaint that fails to allege facts sufficient to demonstrate standing is subject to dismissal under Rule 12(b)(6) for failure to state a claim. Sacks v. Office of Foreign Assets Control, 466 F.3d 764, 771 (9th Cir. 2006).

Rule 12(b)(6) promotes the early and simultaneous presentation and determination of preliminary defenses. 5BWright & Miller, Federal Practice and Procedure: Civil 3d §1349. A ruling on a Rule 12(b)(6) motion must be based solely on the allegations of the complaint. Sloan Const. Co., Inc. v. Southco Grassing, Inc., 629 S.E.2d 372 (S.C. App. 2006). The court must decide the motion on the facts alleged and reasonable inferences deducible from those alleged facts. Slack v. James, 589 S.E.2d 772 (S.C. App. 2003). However, the Court may also consider items subject to judicial notice without converting the Rule 12(b)(6) motion to a summary judgment motion, 5B Wright & Miller, Federal Practice and Procedure: Civil 3d §1357, such as matters of public record,

Norfolk Southern Ry. Co. v. Shulimson Bros. Co., 1 F. Supp. 2d 553 (W.D.N.C. 1998), prior judicial proceedings, Briggs v. Newberry County School Dist., 838 F. Supp. 232 (D.C.S.C. 1992), affirmed 989 F.2d 491 (4th Cir. 1993), and decisions of other courts. Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group, Ltd., 181 F.3d 410 (3d Cir. 1999).

To have standing, one must generally have a personal stake in the subject of the lawsuit, i.e., one must be a real party in interest. Evins v. Richland County Historic Preservation Comm., 532 S.E.2d 876 (S.C. 2000). A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. Sloan v. Friends of the Hunley, Inc., 630 S.E.2d 474 (S.C. 2006).

Question: is Mell Woods a real party in interest with respect to the February 18, 2009 Order that he seeks to vacate or with respect to the issue of which of the decedent's last wills is entitled to probate? The answer is no.

A creditor of the decedent cannot contest her will. 3 Bowe-Parker: Page on Wills §26.60.

Additionally, "interested persons" may apply to the probate court for determination of issues arising under Title 62, Article 3. S. C. Code Ann. §62-3-105. A formal testacy proceeding (litigation to determine whether a decedent left a valid last will), S. C. Code Ann. §62-1-201(43) and §62-3-401, may be commenced by an interested person. Id.

> Interested person is defined in the probate code as follows:
> (20) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others **having a property right** in or claim against a trust estate or the estate of a decedent, ward, or protected person **which may be affected by the proceeding**. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

S. C. Code Ann. §62-1-201(43) (emphasis added).

Does Mr. Woods' pleading demonstrate the existence of a property right that may be affected by the February 18, 2009 order or by the issue of which of decedent's last wills is entitled to probate?

1. Two last wills have been filed with the probate court: June 23, 1998 Last Will and Testament of Reba Pettit Hinson, and a document headed "Private Last Will" bearing the typed date April 5, 2003 but purportedly signed on April 24, 2003. There are signed and unsigned copies of the April 2003 Last Will. The court's February 18, 2009 order admitted the June 23, 1998 Last Will to probate.

2. Mell Woods is not a devisee under either Last Will. His name does not appear in either Last Will. He is a stranger to each of the Last Wills.

3. Mr. Woods has filed a claim against the estate, but at the time of the February 18, 2009 Order Mr. Woods had not then filed a claim and was a total stranger to the estate. After filing his claim in November 2009, Mr. Woods was a claimant and was not, and still is not, a creditor whose claim has been allowed by either the personal representative or the court. It is in the capacity of a mere unproven or unallowed claimant that Mr. Woods now seeks to vacate orders that predate his claim and to object to the devisees' and the court's determination of which Last Will to admit to probate.

Under these facts, Mr. Woods has no property interest that can be affected by the February 18, 2009 Order and the Order's resolution of which last will to probate. Assuming, without admitting, that Mr. Woods can eventually prove a claim against the estate, the February 18, 2009 Order and the issue of which Last Will governs the estate, does not affect Mr. Woods' property interests. The two wills name the same four devisees, the decedent's children, and the difference between the two wills is how the estate assets are divided among the four children. The size of the estate is not affected by which Last Will is probated, and the sequence of or relative priority for

payments from the estate (the payment of allowed claims prior to distributions to devisees) remains the same. Mr. Woods' claim, if allowed, would be entitled to payment before distributions to the devisees could be made. S. C. Code Ann. §62-3-805 and §62-3-902. Whatever property interest Mr. Woods might have, if any, is unaffected by which Last Will is probated.

Other authorities supporting this principle of law in analogous situations include: 3 Bowe-Parker: Page on Wills §26.52 (one who would not take more if the will in question were held to be invalid than he would take if it were held to be valid cannot, by the weight of authority, contest the will in question); Baker v. Henderson, 69 S.E.2d 278 (Ga. 1952) (if petitioners will not be injured or benefitted by the establishment and probate of the alleged copy will, they are strangers to it and are not proper parties to the litigation); Estate of Keener, 521 N.E.2d 232 (Ill. App. 1988) (even if the latest will was invalid, earlier wills failed to name the contestant, so he was not entitled to contest); Matter of Wharton, 453 N.Y.S.2d 308 (1982) (generally a person who is not a distributee of the decedent and who will receive no part of a decedent's estate if a will is denied probate, will not be permitted to file objections to probate. The exception is when a person is named in a prior will and his interest under the prior will is greater than under the propounded will).

Conclusion

For the reasons set forth above, the court should deny Mr. Woods' Motion for Removal to circuit court and dismiss his Petition [more accurately his motion] for Rule 60(b) relief with respect to the February 18, 2009 Order.

B. Michael Brackett, Esquire
1333 Main Street, Suite 650
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
Attorney for the Personal Representative

Feb. 22, 2009

STATE OF SOUTH CAROLINA	*	
COUNTY OF CHESTER	*	IN THE PROBATE COURT
	*	CASE: 2008ES1200297
IN THE MATTER OF:	*	
REBA P. HINSON	*	MELL WOODS
	*	Claimant

LOIS H. RODDEY
JUDGE OF PROBATE
2008 JAN 25 P 4:56
PROBATE COURT
CHESTER COUNTY, S.C.

Motion For Removal of Personal Representative

1.

South Carolina Statutes 62-3-605, and 62-3-606, require that a personal representative give bond where a demand has been made, and within thirty days thereafter. The personal representative in the above case has failed to do so. The cited statutes clearly state that this factor alone is enough for removal.

2.

In addition, there are other mis-management items which have already been made known to the Court, that claimant would show to be enough for removal.

3.

Claimant has talked to one of the senior heirs of the Hinson family, and this person would serve as

personal representative of the estate, and not take the statutory fee for doing so, and if he needs any help, claimant will help him, and also without fee. In this way, claimant believes the whole estate will be quickly settled. Some members of the Hinson family are elderly, and time is running out for them.

WHEREFORE, claimant prays for the removal of Robert H. Breakfield as personal representative.

Respectfully submitted,

This 22 Day of January, 2010.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: Chester)

PETITION FOR REMOVAL OF PERSONAL REPRESENTATIVE

HE MATTER OF: Reba P. Hinson)
) CASE NUMBER: 2008ES1200297

Petitioner: Mell Woods

1. Nature of interest of undersigned: creditor

2. I request an Order for the removal of R.H. Breakfield, Personal Representative in the estate because:
Misadministration of estate by failing to post bond, and by probating the wrong will.

Executed this 22 day of January, 20 10.

Sworn to before me
this 22 day of January 2010
Gloria Diane Woods
Notary Public for
South Carolina
My Commission Exp.
Jan. 8, 2018

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

Signature: Mell Woods
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O):
(H):

Attorney:
Address:
Telephone:

LOIS H. RODDEY
JUDGE OF PROBATE
2010 JAN 25 P 4:56
PROBATE COURT
CHESTER COUNTY S.C.

ORDER FOR HEARING

IT IS ORDERED that a hearing on this matter be set for:

DATE: _____
TIME: _____
PLACE: _____

Pursuant to SCPC Section 3-611, the petitioner is ordered to give notice of this hearing by copy of this petition and order to the Personal Representative, the attorney of record and _____ as follows:

_____
_____
_____

LOIS H. RODDEY
JUDGE OF PROBATE

2010 FEB 17 P 4:50

PROBATE COURT
CHESTER COUNTY S.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

PROBATE COURT

IN THE MATTER OF: ESTATE OF REBA P. HINSON

Case Number: 2008ES1200297

VERIFIED PETITION TO VACATE THE CHESTER COUNTY PROBATE COURT ORDER ENTERED IN THE ABOVE-STYLED CASE ON FEBRUARY 18, 2009;

MOTION FOR REMOVAL TO CIRCUIT COURT.

NOW COMES Mell Woods, as a creditor of the Estate of Reba P. Hinson, and as a member of the public to show to the Honorable Probate Court of Chester County, and to the Honorable Court of Common Pleas for Chester County, the following facts to wit:

1.

Through use of the device of attorney fraud by a member of the South Carolina Bar, to wit: Ned Gregory, II., a fraud upon the Probate Court of Chester County, South Carolina has occurred;

2.

Petitioner, makes all of the within, and forgoing charges of his own personal knowledge after having examined all of the court documents in the case, interviewing some of the parties, and recollecting conversations with the decedent, Mrs. Reba P. Hinson;

3.

During year, 1998, decedent, Reba P. Hinson, went to Ned Gregory, II., to get a will drawn; Gregory drew a will, but put language inside it which decedent did not want; Gregory has been disciplined by the State Bar and Supreme Court for forging documents; please see In The Matter of Ned Gregory, II., Respondent, 360 S.C. 270, in this regard;

4.

Somehow, decedent, Mrs. Hinson found out about Gregory and the South Carolina Supreme Court, and started to believe that Gregory was, (is?), a crook;

5.

Decedent had a conversation with petitioner in which decedent stated that Gregory was trying to circumvent the entire estate set up by decedent, and Mr. Levie H. Hinson, her deceased husband;

6.

Decedent stated that she was going to remedy the whole situation by revoking the Gregory will, and writing her own will, which she did do, petitioner has personal knowledge of this, and swears to this;

7.

This petition is filed <u>within</u> twelve months of the entry of the order sought to be vacated;

8.

There has been no final order approving distribution of the estate;

9.

Petitioner was unaware that the wrong will was being offered for probate by Gregory, and his puppet, Robert H. Breakfield, until recently; and petitioner was never notified of what was going on;

10.

This whole mess is predicated upon the "reprobating" of Mr. Hinson's will from 32 years ago in which the Probate Court came to the conclusion, with the aid of Gregory, that Mrs. Hinson held only a "life's estate" under Mr. Hinson's will; this is not true either since an examination of Mr. Hinson's will shows clearly that words of purchase were inserted in the instrument before anything was mentioned about a life estate; the law favors the earliest vesting of an estate as possible, and, when the term in fee simple is used, thats it — the estate is granted, and vested, and Ned Gregory, II., cannot use superadded words to take it away; Schroder v. Antipas, 215 S.C. 552;

CONCLUSION

The fruit of all the attorney fraud recited herein is as follows:

3 Civil Actions pending in

Chester County Circuit Court

Action one: petition to partition land, assigned to Claude Coleman, who will just sell the whole place one day; Case #: 2008-CP-12-00475;

Action two: a spite case among the heirs, in which Gregory is involved; Case #: 2009-CP-12-00527;

Action three: a claim against the Estate by this petitioner; Case #: 2009- number not assigned yet;

EACH OF WHICH IS THE DIRECT RESULT OF THE WRONG WILL BEING PROBATED;

WHEREFORE, petitioner prays that the Order of Probate Court admitting the wrong will to probate be vacated, that these matters be transferred to the Circuit Court where case consolidation can occur; and that this whole nightmare quickly be brought to an end;

Respectfully Submitted,

This 17 day of February, 2010.

Mell Woods, petitioner

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

AFFIDAVIT AND VERIFICATION OF PETITION:

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER:

Mell Woods being first duly sworn deposes and states on oath that every fact recited in the foregoing PETITION TO VACATE is the truth; affiant makes this affidavit upon his own personal knowledge;

Further, affiant saith not.

Sworn to and subscribed before me,

This 17 day of February, 2010.

Gloria Diane Woods

Gloria Diane Woods, Notary Public for South Carolina
Commission expires: Jan. 8, 2018

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

STATE OF SOUTH CAROLINA)
COUNTY OF Chester)
IN THE MATTER OF: Reba P. Hinson)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2008ES1200297

On the 17 day of February, 2010, I mailed or delivered the following document, Verified Petition to vacate the Chester County Probate Court.

☑ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the court and incorporated herein,

LOIS H. RODDEY
JUDGE OF PROBATE
2010 FEB 17 P 4:51
PROBATE COURT
CHESTER COUNTY S.C.

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery ☑ ordinary first class mail
☐ certified mail ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
B. Michael Brackett	P.O. Box 100261 Columbia, SC 29202

SWORN to before me this 17 day of February, 20 10

Gloria Diane Woods
Notary Public for South Carolina
My Commission Expires: Jan. 8, 2018

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

Signature:
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O):
(H):
E-mail:

Signature:
Name:
Address:
Telephone (O):
(H):
E-mail:

FORM #120PC (2/2004)
62-1-401, 62-3-1003, general

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHESTER

C/A NO: 2008-ES-12-00297

LOIS H. RODDEY
JUDGE OF PROBATE
2010 JAN 29 A 11:03
PROBATE COURT
CHESTER COUNTY S.C.

IN THE MATTER OF: THE ESTATE OF REBA P. HINSON

Answer of Robert H. Breakfield, as Personal Representative, to the Petition for Removal of Personal Representative

Robert H. Breakfield, as Personal Representative of the Estate of Reba P. Hinson, answers the Petition for Removal of Personal Representative filed by claimant Mell Woods, by alleging:

For a First Defense

1. The PR denies that he is required to post bond. The decedent's Last Will does not require bond; the Court's Order dated February 18, 2009 (Form 300PC, page 5 of 5) appointing this defendant as Personal Representative expressly does not require a bond; and a review of the Court's file does not reveal that a Demand for Bond has been filed and served.

2. The PR denies that the wrong Last Will is being probated. The Court's Order dated February 18, 2009 (Form 300PC, page 5 of 5) finding that the decedent died testate expressly identifies the decedent's Last Will that is to be admitted to probate, specifically the Last Will dated June 23, 1998.

FILED
2010 FEB 1 P 3:26
CLERK OF COURT
CHESTER CO S.C.

For a Second Defense

3. Upon information and belief, claimant Woods alleges that a "Private Last Will" bearing the date April 05, 2003 is the decedent's Last Will entitled to probate. (copies of the alleged "private last will," both the handwritten and typed versions, are attached hereto and incorporated herein as Exhibit A.)

4. Claimant Woods is not named as a devisee in either last will; he is not an heir of the decedent; and as a general claimant/creditor of the estate, he has no pecuniary interest that will be adversely affected by the issue of which last will is entitled to probate. Therefore, claimant Woods has no standing to object to matters related to the validity or probate of either last will. His claim, if he eventually is successful in proving his claim, will have the same relative priority for payment without regard to which Last Will is probated pursuant to §62-3-805.

A TRUE COPY
Lois H. Roddey
JUDGE OF PROBATE
CHESTER COUNTY, S.C.

B. Michael Brackett, Esquire
1333 Main Street, Suite 650
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
Attorney for Robert H. Breakfield, Personal Representative

January 28, 2010

LOIS H. RODDEY
JUDGE OF PROBATE

2010 JAN 29 A 11:03

PROBATE COURT
CHESTER COUNTY S.C.

158

Private Last Will

April 5 2003

LOIS H. RODDEY
JUDGE OF PROBATE
2003 JAN 29 A 11:03
PROBATE COURT
CHESTER COUNTY, S.C.

Last Will and Testment of Reba P . Hinson

1. IWill and direct that my Exeecutors hereinafte shall from the first money coming into there hands from my estate pay my just debts if any , Doctors , Hospile , Amblanceas soon as possible after he or she is qualified .

The cash if any will be divided equal between my four children named 1 ~~Lois~~ Lois S, Griffin ,Kathy E Huffstickle ,John C. Hinson William C. Hinson heirs (he is deceased).

At my death I Reba P. Hinson bequest to my daughter Lois S. Griffin certificate at Spratts Bank in Chester ,S.C.to be giving at my death to be put in trust fund for her as need . She will have no income to be used as need . Why ? . She has no land bording the riverexcept one small area. The other children have a yearly in_ come off of track number one Kathy ,John C.,William C. Hinson, heirs .John C. #2 Tract William C.heirs track # 3.

Lois will inheret track # 4 which is the homestead . That land was given to me by my father and mother Shufford and Hettie Pettit ¼ of my father estate . I Reba P. Hinson my selfbought my sister Ruth Dority her inherts.and my brother ¼ Albert W. Pettit of his inherts of my father property.

At my death I will to Lois S. Griffin my Automobile ,rings watches all jewely .I ask that all household goods stay in my house until Lois S. Griffin death.To be divided between the four children or their heirs ,Lois heirs ,Kathy ,JohnC. Williams C. Heirs.

As for the land that my husband had to be divided as following.

Lot # 1 track of land toKathy Huffstickle.

lot # 2track of land to JohnC.Hinson

Lot # 3 track of land to William C. Hinsons heirs .

Lot #4 track of land with home stead on it.

Whitch was property that I inherited from my father property Shufford and Hettie Pettit.

I Reba P. Hinson bought my sister part of father property I also bought my brother property of my father property my self with my money. This track of land is known as track land as# 4

witness

Patricia A. Evans

Patricia Purdy

4/24/03

Reba P Hinson

Reba P. Hinson

4/24/03

notory

My Commission Expires
July 24, 2012

Private Will of Reba P Hinson 4-24-03

4

Recently private Last Will
as of April 5- 2003
Last Will and testment of Rela
Pettit Hinson

1. I will and direct that my Executor hereinafter shall from the first money coming into their hands from my Estate pay all my just debts if any doctors, hospital, ambulance as soon as possible, after he or she is qualified. The cash if any will be devided equal between my four children name 11 Lois S. Griffin Kathy E. Huffstickle, John C. Hinson William C Hinson Heirs (he is deceased)

at my death I bequest to my daughter Lois S. Huffin Certificate at Spratts Bank in Chester, S.C. to be given at my death to be put in Trust fund! She will not have a income

Kathy, John, William C Hinson ⅛ - 2 - 3 Tracts of land ⅛ 2, 11, Hinson

Tract #1 Lois S. Griffin

Tract #2 Kathy E. Huffstickle

Tract #3 John C. Hinson

Tract #4 William C Hinson Heirs

Tract #5 Lois S. Griffin

Tract #6 Kathy E. Huffstickle

Tract #7 John C. Hinson

Tract #8 William C Hinson Heirs

Tract #9 Lois S. Griffin

Tract #10 Kathy E. Huffstickle

Tract #11 John C. Hinson

Tract #12 William C Hinson Heirs

Tract

brothers part I Reba P Hinson paid for it with my money.

also I ask that all household goods stay in my house until Lois S Huffin death to be devided between the four Children or their heirs, Name Lois S Huffin heirs, Kathy Huffstickle, John C Hinson William C Hinson (deceased) heirs

At my death I will to Lois Huffin my automobile, my rings, Watch, and Jewelry.

As for land that was willed to me my lifetime by Lewie Hoyt Hinson my husband as follows

1. Lot #1 Kathy Huffstickle
2. Lot #2 John C Hinson
3. Lot #3 William C Hinson (deceased) his heirs.

Lewie Hoyt Hinson desire was for Lois S Hinson to have track number 4 which is the Homestead and the land that is in Reba P Hinson only. Track #4.

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

2010-CP-12-0201
(Appeal from Probate Court)

In the Matter of the Estate of Reba P. Hinson

Mell Woods,

Appellant,

v.

Robert H. Breakfield, Esquire, as Personal Representative,

Respondent.

Respondent's Brief

FILED
2010 SEP -7 A 11:37
CLERK OF COURT
CHESTER CO S.C.

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2010 SEP -7 A 11:37
CLERK OF COURT
CHESTER CO S.C.

Background

This is an appeal from Probate Court. The Appellant has heretofore appeared *pro se*. The Appellant first filed a claim against the Estate of Reba Hinson.[1] The claim action was removed to circuit court by Order of the Chester County Probate Court dated February 10, 2010, and the action was assigned circuit court case number 2010-CP-0168. The Personal Representative's Motion to Dismiss in that action is scheduled for a hearing also on September 8, 2010.

The action involved in this appeal was commenced by the Appellant's Petition for Removal of Personal Representative dated January 22, 2010. **(Tab 1)**. Attached to the Petition is a document titled "Motion for Removal of Personal Representative." The Petition identified the grounds for removal as "Misadministration of estate by failing to post bond, and by probating the wrong will." The Motion for Removal identified the grounds as failure to give bond after a demand for bond was

[1] The claim proceeding is separate from this appeal, but related for the purpose of explaining the procedural history.

made, and other "mis-management items" not identified with any particularity.

Appellant thereafter filed his "Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above-Styled Case on February 18, 2009; [and] Motion For Removal to Circuit Court." **(Tab 2)**. This pleading was dated February 17, 2010.

The Personal Representative filed and served an Answer to the Petition for Removal of Personal Representative. **(Tab 3)**. The Personal Representative also filed and served a consolidated Motion to Dismiss the Petition to Vacate Order and a Return to the Motion to Remove the Petition to Vacate to Circuit Court. **(Tab 4)**.

The hearing on the Appellant's two Petitions and related motions was held in the Probate Court on April 12, 2010. [2] The transcript of the hearing is attached at **Tab 5.** The Probate Judge thereafter issued his Order dated April 19, 2010. **(Tab 6)**. The Order made three rulings: (1) it denied the Appellant's Petition for Removal of Personal Representative; (2) it denied the motion to remove to Circuit Court the Petition to Vacate; and (3) it denied Appellant's Petition to Vacate the Probate Court's February 18, 2009 Order of Formal Testacy.[3]

Appeals from Probate Court

Appeals from probate court to circuit court are heard and decided according to the rules governing appeals to the higher appellate courts. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 31 (2d ed.2002) and cases cited therein. The

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[2] The hearing was held in York County because the Chester County Probate Judge recused herself from the proceeding and the York County Probate Judge was appointed to serve as Special Probate Judge for Chester County in matters related to this estate.

[3] The Petition to Vacate was treated by the Probate Court as a Rule 60(b) motion. The February 18, 2009 Order is attached at **Tab 7.**

circuit court is to apply the same standard of review that the Court of Appeals or Supreme Court would apply on appeal. Id. The hearing in the circuit court must be strictly on appeal, and no new evidence may be presented. S.C. Code Ann. §62-1-308(d).

Scope and Standard of Review

(1). Removal of Personal Representative. An action to remove a personal representative is in equity. Blackmon v. Weaver, 621 S.E.2d 42 (S.C. App. 2005). In an action in equity, tried by the judge alone, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. Townes Associates, Ltd. v. City of Greenville, 221 S.E.2d 773 (S.C. 1976); however, the appellate court is not required to disregard the findings of the trial judge, Calcutt v. Calcutt, 320 S.E.2d 55 (S.C. App. 1984), or to ignore the fact that the trial judge is in the better position to evaluate witness credibility. Albert v. Blackwell, 311 S.E.2d 101 (S.C. App. 1984).

(2). Removal of a Probate Court Matter to Circuit Court. The removal of the Rule 60 motion to circuit court is governed by S.C. Code Ann. §62-1-302(d). The interpretation of a statute (in this case whether §62-1-302(d) permits or requires removal of a Rule 60 motion to circuit court) is a matter of law for the court. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 180 (2d ed.2002). In law cases, the appellate court is not a fact-finding court; it stands merely to correct errors of law. State v. Torrence, 4511 S.E.2d 883 (S.C. 1994).

(3). Rule 60(b) Motion to Vacate Order. Rule 60 relief from judgment lies within the trial court's discretion and is reviewed on appeal under the abuse of discretion standard. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 198 (2d ed.2002); BB&T v. Taylor, 633 S.E.2d 501 (S.C. 2006). An abuse of discretion arises when the trial court was controlled by an error of law or when the order is without evidentiary support. Hillman v. Pinion,

554 S.E.2d 427 (S.C. App. 2001).

Argument

The Probate Court's April 19, 2010 Order correctly analyzes and decides the issues presented, and said Order should be affirmed, and said Order can, and should be, adopted and incorporated by this Court as its decision on the appeal.

Removal of Personal Representative. At the hearing, Appellant was asked by the Court: "Mr. Woods, tell me why you want Mr. Breakfield removed." (Tab 5, transcript, p. 4, l. 14-15). The Appellant identified two grounds: the Respondent, as personal representative, is supposed to give bond (Tab 5, transcript, p. 4, l. 20-23) and he is probating the wrong will. (Tab 5, transcript, p. 9, l. 15-22).

The Probate Court decided in its Order that the bond issue had already been addressed by the Probate Court and that Respondent was in compliance with the Court's prior order with respect to posting bond. The Order finds that the decedent's Last Will does not require bond, that the Order appointing Mr. Breakfield to serve as personal representative expressly provided "no bond required," and that the Court had earlier exercised its discretion to rule that bond was not required but that the personal representative must hold funds in escrow. (Tab 6, p. 2, first paragraph; and Tab 5, p. 8, l. 3 to p. 9, l. 14). Appellant presented no evidence of damage or prejudice caused by the absence of a bond.

Appellant's second ground for removal of the personal representative was that the wrong will was being probated. The Probate Court found that Appellant was not an heir or devisee in the estate and was not a real party in interest. Consequently, appellant had no standing to object to or contest the decedent's last will. (Tab 6, p. 2, second paragraph). Additionally, the Court found that the decision as to which last will would be admitted to probate was the court's decision and not the

decision of the personal representative. (Tab 6, p. 3, first full paragraph). On the issue of the involuntary removal of the personal representative, the Probate Court was absolutely correct and should be affirmed.

Removal of Petition to Vacate to Circuit Court. Appellant filed a Petition (Rule 60 motion) to vacate an earlier Order of the Probate Court[4] and moved for the removal of the Petition to Circuit Court. (Tab 2).

When questioned by the Probate Judge about his reason for wanting to remove his Petition/Motion to Circuit Court, Appellant said it was for reasons of judicial economy: "because they have two other lawsuits pending over there" (Tab 5, transcript, p. 10, l. 4-9 and p. 12, l. 10-25).

The Probate Court ruled that the Probate Code's removal statute, S.C. Code Ann. §62-1-302, does not provide for removal of Rule 60 motions. Additionally, the Probate Court concluded that removal may not be made because the power to grant Rule 60 relief is possessed solely by the court that rendered the judgment that is being challenged, citing Coleman v. Dunlap, 413 S.E.2d 15 (S.C. 1992), in this case the Probate Court. On the issue of removing the Petition/Motion for Rule 60 relief to Circuit Court , the Probate Court was absolutely correct and should be affirmed.

(3). Petition/Rule 60(b) Motion to Vacate Order. The Probate Court did not abuse its discretion when it denied Appellant's Petition/Motion to Vacate. The Petition/Motion alleges that the February 18, 2009 Order of Formal Testacy was procured through the "device of attorney fraud." (Tab 2, p. 1, ¶ 1). The allegations of fraud are directed toward attorney Ned Gregory who allegedly rendered estate planning services for the decedent, and the allegations appear to allege that the decedent changed her last will but that Gregory has acted to prevent the true last will from being

[4] The earlier Order that Appellant is seeking to vacate was the Probate Court's February 18, 2009 Order of Formal Testacy in which Mr. Breakfield was appointed as personal representative, a particular last will was admitted to probate, and the court ordered that "no bond required." (Tab 7, p. 5).

probated.

The Probate Court denied the Motion for the following reasons (Tab 6, p. 5-6):

- The Appellant lacks standing to make a Rule 60(b) motion because he was not a party to the proceeding that led to the February 18, 2009 Order.
- The Appellant is not a devisee or heir of the decedent, and therefore is a stranger to the estate without standing to participate in matters related to the determination of testacy or intestacy, or related to the determination of which testamentary instrument is entitled to be admitted to probate.
- Appellant did not produce sufficient evidence to prove that the February 18, 2009 Order of Formal Testacy was the product of a fraud on the court.

The Probate Court's decision was not controlled by an error of law, and there is evidence in the record, or an absence of evidence attributable to the Appellant, supporting the decision. On the issue of the Petition/Motion for Rule 60 relief, the Probate Court was absolutely correct in denying the motion and its decision should be affirmed.

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CLERK OF COURT
CHESTER CO S.C.

Conclusion

The Probate Court's April 19, 2010 Order should be affirmed in its entirety, and the Respondent's costs in this appeal should be taxed against the Appellant.

B. Michael Brackett, Esquire
1333 Main Street, Fourth Floor, Suite 650
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
Attorney for Defendant-Respondent

Columbia, South Carolina
September 3, 2010

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS FOR THE COUNTY OF CHESTER

MELL WOODS,

APPELLANT,

v.

ROBERT BREAKFIELD,
PERSONAL REPRESENTATIVE FOR
THE ESTATE OF REBA P. HINSON,

RESPONDENT.

CIVIL ACTION

CIRCUIT COURT NUMBER: 2010CP1202202

FILED
2010 APR 30 P 4:35
CLERK OF COURT
CHESTER CO S.C.

Appeal to Circuit Court From an adverse ruling of the Chester County Probate Court, Hon. John P. Gettys, Presiding

Probate Court Number: 2008 ES 1200 297

1.

This is formal notice to everyone concerned that the above-styled matter is hereby appealed to the circuit court for Chester County pursuant to South Carolina Statute 62-1-308 (a), of the Probate Code;

2.

Within thirty-five days the full grounds for this appeal will be filed with the Court;

PARTIAL GROUNDS are as follows John P. Gettys, Sr., ruled on the case with the knowledge that a family member, John P. Gettys, Jr., was an attorney of record on the case for an adverse party, and (2) John P. Gettys, Sr., refused to allow appellant the subpoena power of the Court, and so stated on the record.

Respectfully submitted,

This 30 day of April, 2010.

Mell Woods, Appellant

P.O. Box 2603
Lancaster, S.C. 29721

FILED
2010 APR 30 P 4:35
CLERK OF COURT
CHESTER CO. S.C.

ROLINA)
Chester)
TER OF: Reba P. Hinson)
)
)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2008ES1200297

On the 30 day of April, 20 10, I mailed or delivered the following document,
Appeal to Circuit Court

☑ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the court and incorporated herein,

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery ☑ ordinary first class mail
☐ certified mail ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
B. Michael Brackett	P.O. Box 100261 Columbia SC 29202
Hon. John P. Gettys	P.O. Box 219 York SC 29745
John P. Gettys, Jr	P.O. Box 707 Rock Hill, SC 29731
Robert H. Breakfield	P.O. Box 36061 Rock Hill, SC 29732

SWORN to before me this 30 day of April, 20 10

Gloria Diane Woods
Notary Public for South Carolina
My Commission Expires: Jan. 8, 2018

GLORIA DIANE WOODS SOUTH CAROLINA NOTARY PUBLIC SEAL OF OFFICE

Signature:
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O):
(H):
E-mail:

Signature:
Name:
Address:
Telephone (O):
(H):
E-mail:

172

FORM #120PC (2/2004)
62-1-401, 62-3-1003, general

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

PROBATE COURT
ON APPEAL TO CIRCUIT COURT

IN THE MATTER OF: ESTATE OF REBA P. HINSON

Case Number: 2008ES1200297 (Probate Court)

2010CP1200201 (Circuit Court)

FILED
2010 JUN -4 P 4:43
CLERK OF COURT
CHESTER CO S.C.

ADDITIONAL GROUNDS FOR APPEALING THE COURT ORDER OF THE HONORABLE JOHN P. GETTYS, PROBATE JUDGE:

1.

The Court committed error in not removing Robert Breakfield as personal representative after claimant Mell Woods filed a claim against the estate and demanded bond; bond is required by S.C. Statute 62-3-605 for any claim in excess of $1,000.00, and the statute as written, does not give the Court any discretion in the matter;

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2010 JUN -4 P 4:13
CLERK OF COURT
CHESTER CO. S.C.

The Court committed error by not ruling that the wrong will is being is being probated; the will being probated was revoked by Mrs. Hinson, and another one drawn up so that there would be no fighting; but since the wrong one is being used there are at least two civil suits now pending in the circuit court which are the end result of this mistake, one is a pure spite case among the Hinsons, and the other is a petition to partition land, which is useless also, because Mrs. Hinson partitioned the land by use of surveyors, with the hope there would no fighting;

Respectfully submitted, this 04 day of June, 2010.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: Chester)

PROOF OF DELIVERY

IN THE MATTER OF: Reba P. Hinson)
)
CASE NUMBER: 2008ES1200297
circuit Court 2010CP1200201

On the 4th day of June, 2010, I mailed or delivered the following document, Additional Grounds for Appealing the Court order of the Hon. John P. Getty Probate Judge

☑ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the court and incorporated herein,

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery ☑ ordinary first class mail
☐ certified mail ☐ registered mail

FILED
2010 JUN -4 P 4:44
CLERK OF COURT
CHESTER CO S.C.

to each of the following persons at the address shown:

NAME	ADDRESS
B. Michael Brackett	P.O. Box 100261 Columbia, SC 29202

SWORN to before me this 4 day of June, 20 10

Gloria Diane Woods
Notary Public for South Carolina
My Commission Expires: Jan. 8, 2018

GLORIA DIANE WOODS SOUTH CAROLINA NOTARY PUBLIC SEAL OF OFFICE

Signature: [signature]
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O):
(H):
E-mail:

Signature:
Name:
Address:
Telephone (O):
(H):
E-mail:

STATE OF SOUTH CAROLINA)
COUNTY OF: Chester)
IN THE MATTER OF: Reba P. Hinson)

IN THE PROBATE COURT

PETITION FOR REMOVAL OF PERSONAL REPRESENTATIVE

CASE NUMBER: 2008ES1200297

FILED
2011 FEB 11 P 3:25
CLERK OF COURT
CHESTER CO. S.C.

Petitioner: Mell Woods

1. Nature of interest of undersigned: creditor

2. I request an Order for the removal of R.H. Breakfield, Personal Representative in the estate because:
Misadministration of estate by failing to post bond and by probating the wrong will.

Executed this 22 day of January, 2010.

Sworn to before me
this 22 day of January 2010
Gloria Diane Woods
Notary Public for
South Carolina
My Commission Exp.
Jan. 8, 2018

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

Signature: _____
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O): _____
(H): _____
Attorney: _____
Address: _____
Telephone: _____

FILED
2010 JAN 25 P 4:56
LOIS H. RODDEY
JUDGE OF PROBATE
CHESTER COUNTY S.C.

ORDER FOR HEARING

IT IS ORDERED that a hearing on this matter be set for:

DATE: _____
TIME: _____
PLACE: _____

Pursuant to SCPC Section 3-611, the petitioner is ordered to give notice of this hearing by copy of this petition and order to the Personal Representative, the attorney of record and _____ as follows:

A TRUE COPY
Lois H. Roddey
JUDGE OF PROBATE
CHESTER COUNTY, S.C.

FORM #331PC (7/87)
62-3-611

STATE OF SOUTH CAROLINA)
COUNTY OF: Chester)
IN THE MATTER OF: Reba P. Hinson)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2008ES1200297

On the 22nd day of January, 2010, I mailed or delivered the following document, Petition for removal of personal representative

☑ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the court and incorporated herein,

LOIS H. RODDEY
JUDGE OF PROBATE
2010 JAN 25 P 4:56
PROBATE COURT
CHESTER COUNTY S.C.

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery ☑ ordinary first class mail
☐ certified mail ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
B. Michael Brackett	P.O. Box 100261 Columbia, SC 29202

SWORN to before me this 22 day of January, 20 10

Gloria Diane Woods
Notary Public for South Carolina
My Commission Expires: Jan. 8, 2018

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

Signature: Mell Woods
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O):
(H):
E-mail:

FILED
2011 FEB 11 P 3:26
CLERK OF COURT
CHESTER CO. S.C.

Signature:
Name:
Address:
Telephone (O):
(H):
E-mail:

177

FORM #120PC (2/2004)
62-1-401, 62-3-1003, general

TE OF SOUTH CAROLINA)
JNTY OF: Chester) COPY

IN THE PROBATE COURT

HE MATTER OF: Reba P. Hinson)

PETITION FOR REMOVAL OF PERSONAL REPRESENTATIVE

) CASE NUMBER: 2008ES1200297

tioner: Mell Woods

Nature of interest of undersigned: creditor

I request an Order for the removal of R.H. Breakfield, Personal Representative in the estate because:
Misadministration of estate by failing to post bond, and by probating the wrong will.

Executed this 22 day of January, 20 10.

Sworn to before me
this 22 day of January 2010

Gloria Diane Woods

Notary Public for
South Carolina

My Commission Exp.
Jan. 8, 2018

Signature: Mell Woods
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721

Telephone (O):
(H):

Attorney:
Address:

Telephone:

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

ORDER FOR HEARING

IT IS ORDERED that a hearing on this matter be set for:

ATE:
ME:
LACE:

Pursuant to SCPC Section 3-611, the petitioner is ordered to give notice of this hearing by copy of this petition nd order to the Personal Representative, the attorney of record and _____ as follows:

RM #331PC (7/87)
3-611

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER
IN THE MATTER OF THE ESTATE OF
REBA P. HINSON, PROBATE NUMBER: 2008-ES-12-00297

MELL WOODS,

PLAINTIFF-CLAIMANT,

V.

ROBERT H. BREAKFIELD, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF REBA P. HINSON,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2010- CP- 12-00201

FILED
2010 SEP -8 A 11:25
CLERK OF COURT
CHESTER CO.

APPEAL TO CIRCUIT COURT

NOW COMES, Mell Woods, appellant herein and shows to the honorable circuit court that the above appeal is not ripe for hearing simply because the record from the probate court has never been assembled, returned to, and certified as required by South Carolina Statute 62-1-308(b); this constitutes a major flaw in this proceeding and appellant insists that the law be followed; the probate court is the proper entity to file the record, and not the opposing counsel; appellant objects to any proceeding going forward until the full record from the probate court is received and filed in;

Paragraph one.

South Carolina Statute 62-1-308(b) is nothing new; the statute has been around for a while, the current version is attached and marked "exhibit A"; and the version from the 1952 Code is attached also, and marked "exhibit B"; the '52 version is the same as today, except for one sentence: "Such return may be compelled by attachment."; this has been removed from the statute, so there is nothing appellant can do except wait on the probate court;

Paragraph two.

Appellant relies on the law and also Howell v. Littlefield Et Al, 211 S.C. 462, attached for ready reference by this Court, to show some light of what is expected of appellant by South Carolina; (on pgs. 6 & 7 marked in red, and also the concurrence, pgs. 9 & 10);

Paragraph three.

Once the the full record is brought up from the probate court, appellant will be able to point to at least twenty four serious mistakes in the proceeding, four of which will amount to extrinsic fraud, by court officers, things such as subornation of perjury, intentional concealment of documents, and in general actions designed to keep appellant from fully exhibiting and trying his case, with the net result being that appellant has been deprived of an opportunity to be heard;

Respectfully submitted,

This ___ day of September, 2010.

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2010 SEP -8 A 10: 25
CLERK OF COURT
CHESTER CO S.C.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

Except as provided in subsection (g), appeals from the probate court must be to the circuit court and are governed by the following rules:

62-1-308

(a) A person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the circuit court in the same county. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court. The grounds of appeal must be filed in the office of the probate court and a copy served on all parties within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court.

(b) Within thirty days after the grounds of appeal has been filed in the office of the probate court, as provided in subsection (a), the probate court shall make a return to the appellate court of the testimony, proceedings, and judgment and file it in the appellate court. Upon final disposition of the appeal, all papers included in the return must be forwarded to the probate court.

EX A

(c) When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals, or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken.

(d) When the return has been filed in the circuit court as provided in subsection (b), the court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.

(e) The final decision and judgment in cases appealed, as provided in this code, shall be certified to the probate court by the circuit court, court of appeals, or Supreme Court, as the case may be, and the same proceedings shall be had in the probate court as though the decision had been made in the probate court.

CLERK OF COURT CHESTER CO SC 2010 SEP 8 AM 10:45

(f) A judge of a probate court must not be admitted to have any voice in judging or determining an appeal from his decision or be permitted to act as attorney or counsel.

(g) If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules.

SECTION 62-1-309. Election and term of judges.

The judges of the probate court shall be elected by the qualified electors of the respective counties for the term of four years in the manner specified by Section 14-23-1020.

PART 4.

NOTICE, PARTIES, AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

SECTION 62-1-401. Notice; method and time of giving.

EX B

Ex parte Gregory, 58 S. C. 114, 36 S. E. 433.

The action of a probate court, although erroneous, is valid until reversed.—Anderson v. Bowers, 170 F. (2d) 676.

Quoted in Watson v. Pollitzer, 72 S. C. 387, 51 S. E. 914; Johnson v. Johnson, 160 S. C. 158, 158 S. E. 264.

Cited in In re Mayo's Estate, 60 S. C. 401, 38 S. E. 634; Ex parte Apeler, 35 S. C. 417, 14 S. E. 931; Henson v. Wolfe, 130 S. C. 273, 125 S. E. 293; Reed v. Lemacks, 207 S. C. 137, 35 S. E. (2d) 34; Thompson v. Anderson, 208 S. C. 208, 37 S. E. (2d) 581; Howell v. Littlefield, 211 S. C. 462, 46 S. E. (2d) 47.

§ 7-203. Probate court to make return to appellate court.

Within thirty days after such grounds of appeal shall have been filed in the office of the probate court, as provided in § 7-202, the probate court shall make a return to the appellate court of the testimony, proceedings and judgment and file the same in the appellate court. Such return may be compelled by attachment. Upon the appeal being finally disposed of all such papers included in the return shall be returned to the probate court.

1942 Code § 231; 1932 Code § 231; Civ. P. '22 § 188; Civ. P. '12 § 64; Civ. P. '02 § 58; 1870 (14) 60; 1939 (41) 111.

Duty imposed on probate court.—An important effect of the amendment of 1939 was to relieve the appellant of the burden and expense of procuring a certified copy of the record and filing it in the appellate court. Instead it was made the duty of the probate court to file the originals comprising the record, which shall constitute the return to the appellate court. The filing shall be within thirty days after filing in the probate court of notice and grounds of appeal and may be compelled by attachment. There is no provision for penalty upon appellant for failure of the probate judge to perform his duty under the statute. Howell v. Littlefield, 211 S. C. 462, 46 S. E. (2d) 47.

their appeal to the court of common pleas, are entitled to rely upon the presumption that the judge of probate would perform his duty in the time required by the provisions of this section. The presumption continues until knowledge of the neglect is acquired. Howell v. Littlefield, 211 S. C. 462, 46 S. E. (2d) 47.

If appeal is withdrawn prior to filing return probate jurisdiction is not lost.—The jurisdiction of the probate court continues until the record shows that it is lost. Where the notice of appeal is revoked prior to the filing of the return as herein provided for, the probate court still has jurisdiction to revoke its grant of letters of administration. In re Jones' Estate, 102 S. C. 110, 86 S. E.

*211 S.C. 462, *; 46 S.E.2d 47, **;*
*1947 S.C. LEXIS 121, ****

HOWELL v. LITTLEFIELD ET AL.

16025

SUPREME COURT OF SOUTH CAROLINA

211 S.C. 462; 46 S.E.2d 47; 1947 S.C. LEXIS 121

December 30, 1947, Decided

PRIOR HISTORY: [*1]** Appeal from Common Pleas Circuit Court of Greenville County; G. B. Greene, Judge.

Proceeding by Annie Texas Howell, as executrix of the will of Joel Clarence Berry, deceased, for probate of the will, contested by Lydia Berry Littlefield and another. From a judgment confirming a jury's verdict of no will, proponent appeals.

Affirmed.

DISPOSITION: Judgment affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant, the executrix of the will of deceased, sought review of a judgment from the Common Pleas Circuit Court of Greenville County (South Carolina), which confirmed a jury's verdict of no will in favor of respondents, the testator's children, in a will contest.

OVERVIEW: The testator died leaving his will. He was survived by two daughters, to whom the will contained bequests, with the balance of his property, real and personal, to his two sisters and two brothers in equal shares,

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER In the Matter of the Estate of Reba P. Hinson Mell Woods, ☐Plaintiff, v. Robert H. Breakfield, as Personal Representative of the Estate of Reba P. Hinson, ☒Defendant.	Case No.:2010-CP-12-0201 **MOTION AND ORDER INFORMATION FORM AND COVER SHEET**

Attorney for Defendant:	**Attorneys for Plaintiff:**
B. Michael Brackett, SC Bar #838 Moses Koon & Brackett, PC Post Office Box 100261 Columbia, SC 29202-3261 **telephone:** 803-461-2312 **fax:** 803-461-2309	Mell Woods P. O. Box 2603 Lancaster, SC 29721 Plaintiff, pro se

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion/Order: Motion for Appeal Costs
Estimated Time Needed: 15 MIN. **Court Reporter Needed:** NO

SECTION II: Motion/Order Type

☐ Written Motion/Order attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

B. Michael Brackett — October 12, 2010
Signature of Attorney for Defendant — Date Submitted

SECTION III: Motion/Order Fee

☐ PAID - AMOUNT: _____
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed Order submitted at request of the court; or reduced to writing from motion made in open court per judge's instruction - Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

☐ Motion/Order Fee to be paid upon filing of the attached order
☐ Other:

_____
JUDGE
CODE: _____ Date: _____

CLERK'S VERIFICATION **DATE FILED**

Collected by: _____
☐ MOTION/ORDER FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

2010-CP-12-0201
(Appeal from Probate Court)

In the Matter of the Estate of Reba P. Hinson

Mell Woods,

Appellant,

v.

Robert H. Breakfield, Esquire, as Personal Representative,

Respondent.

Respondent's Motion for Appeal Costs

FILED
CHESTER CO. S.C.
2010 OCT 13 P 2:25

To: the above-named Appellant.

Please take notice that the Respondent, through his undersigned attorney, moves the court for an Order awarding Respondent allowable costs as the prevailing party in Appellant's unsuccessful appeal from Probate Court, decided by Order dated September 30, 2010 and filed on October 5, 2010.

This motion is made pursuant to S.C. Code Ann. §62-1-308 and Rule 222, SCACR, on the ground that costs should be taxed against the Appellant because the appeal resulted in the Probate Court's judgment being affirmed. This motion will be supported by all matters of record herein and by relevant authorities of this and other jurisdictions. The undersigned certifies that prior consultation with the opposing pro se party would serve no useful purpose in this instance.

B. Michael Brackett
Moses Koon & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2312
Attorney for Respondent

October 12, 2010

186

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER
IN THE MATTER OF THE ESTATE OF REBA P. HINSON, Probate No: 2008-ES-12-00297

MELL WOODS,

PLAINTIFF-CLAIMENT,

V.

ROBERT H. BREAKFIELD, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF REBA P. HINSON,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2010-CP-12-00201

FILED
2010 NOV -9 P 4:37
CLERK OF COURT
CHESTER CO. S.C.

MOTION TO RECONSIDER, AND TO ALTER OR AMEND JUDGMENT

NOW COMES Mell Woods, party in the above-styled case, and moves that the Honorable Circuit Court for the SIXTH Judicial Circuit reconsider the Order entered in this case by Clifton Newman, presiding on September 08, 2010, for the following reasons to wit:

1.

The Court failed to rule on certain motions that were in the file and should have been ruled on by the Court;

2.

This motion is timely; although Judge Newman heard the case on September 08, 2010, no one got around to filing a court order with the clerk of court until about a month later, and then about another month later, or on October 31, to be exact, the moving party in this case received a copy of the court order from the defense attorney, Mr. Brackett, via the U.S. Mail; this Motion to Reconsider, and to Alter or Amend Judgment is being filed with the clerk, and served on defense counsel within ten days of the receipt of the court order on October 31, 2010;

3.

The appeal from Probate Court to Circuit Court was heard without benefit of a certified record from the Probate Court as the law requires; plaintiff objected to any such thing being done, in writing,

before the case was called; however over objection, both written and oral, the Circuit Court proceeded to hear the case without a certified record; the Court seemed to be more swayed by the huffing and puffing of the defense counsel, Mr. Brackett, rather than the law; Mr. Brackett stated to the Court that he had handled many appeals to circuit court from probate, and that he had "always" got up the record, and more, or less, supervised the probate court in in the performance of the statutory duties assigned to that court; such is not the law however, and the law about a probate record is not "new", in fact since copy machines are now accepted, moving party supplies the actual law from the 1952 S.C. Code, and the following is the same law as today, except for one small stipulation: *"Such return may be compelled by attachment"*; [which has been removed from the present law], here is the text of the

law from page 365, 1952 Code of Laws:

Ex parte Gregory, 58 S. C. 114, 36 S. E. 433.

The action of a probate court, although erroneous, is valid until reversed.—Anderson v. Bowers, 170 F. (2d) 676.

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Cited in In re Mayo's Estate, 60 S. C. 401, 38 S. E. 634; Ex parte Apeler, 35 S. C. 417, 14 S. E. 931; Henson v. Wolfe, 130 S. C. 273, 125 S. E. 293; Reed v. Lemacks, 207 S. C. 137, 35 S. E. (2d) 34; Thompson v. Anderson, 208 S. C. 208, 37 S. E. (2d) 581; Howell v. Littlefield, 211 S. C. 462, 46 S. E. (2d) 47.

§ 7-203. Probate court to make return to appellate court.

Within thirty days after such grounds of appeal shall have been filed in the office of the probate court, as provided in § 7-202, the probate court shall make a return to the appellate court of the testimony, proceedings and judgment and file the same in the appellate court. Such return may be compelled by attachment. Upon the appeal being finally disposed of all such papers included in the return shall be returned to the probate court.

1942 Code § 231; 1932 Code § 231; Civ. P. '22 § 188; Civ. P. '12 § 64; Civ. P. '02 § 58; 1870 (14) 60; 1939 (41) 111.

Duty imposed on probate court.—An important effect of the amendment of 1939 was to relieve the appellant of the burden and expense of procuring a certified copy of the record and filing it in the appellate court. Instead it was made the duty of the probate court to file the originals comprising the record, which shall constitute the return to the appellate court. The filing shall be within thirty days after filing in the probate court of notice and grounds of appeal and may be compelled by attachment. There is no provision for penalty upon appellant for failure of the probate judge to perform his duty under the statute. Howell v. Littlefield, 211 S. C. 462, 46 S. E. (2d) 47.

Presumption that probate court would perform duty.—The appellants from the judgment of the probate court, having complied with § 7-202 respecting the taking of their appeal to the court of common pleas, are entitled to rely upon the presumption that the judge of probate would perform his duty in the time required by the provisions of this section. The presumption continues until knowledge of the neglect is acquired. Howell v. Littlefield, 211 S. C. 462, 46 S. E. (2d) 47.

If appeal is withdrawn prior to filing return probate jurisdiction is not lost.—The jurisdiction of the probate court continues until the record shows that it is lost. Where the notice of appeal is revoked prior to the filing of the return as herein provided for, the probate court still has jurisdiction to revoke its grant of letters of administration. In re Jones' Estate, 102 S. C. 110, 86 S. E. 203.

Quoted in Watson v. Pollitzer, 72 S. C. 387, 51 S. E. 914; Johnson v. Johnson, 160 S. C. 158, 158 S. E. 264.

§ 7-204. Proceedings stayed by appeal.

When an appeal according to law is taken from any sentence or decree of the probate court all proceedings in pursuance of the order, sentence or decree appealed from shall cease until the judgment of the circuit or Supreme Court is had; but if the appellant in writing waives his appeal before the entry of such judgment, proceedings may be had in the probate court as if no appeal had been taken.

1942 Code § 232; 1932 Code § 232; Civ. P. '22 § 189; Civ. P. '12 § 65; Civ. P. '02 § 59; 1870 (16) 61.

Pending an appeal from its decree of "no will" probate court cannot appoint an administrator.—An appeal from an order or decree of the probate court shall act as a supersedeas, therefore during the pendency of an appeal from the probate court of a decree of no will, the probate court cannot grant letters of administration, as that would involve a determination of the question on appeal. In re Seay's Estate, 63 S. C. 130, 41 S. E. 17. See, also, Wolfe v. Bank of Anderson, 128 S. C. 174, 122 S. E. 592.

CODE OF LAWS
OF
SOUTH CAROLINA
1952

IN EIGHT VOLUMES

ANNOTATED

Prepared under the supervision and direction of the Code Commissioner and the Committee on Statutory Laws of the General Assembly of South Carolina

VOLUME 1

THE MICHIE COMPANY
Charlottesville, Va.
THE LAWYERS CO-OPERATIVE PUBLISHING CO.
Rochester, N. Y.
1952

191

(5)

4.

So now that it can be readily seen that appellant has no duty whatsoever in compiling, transmitting, or CERTIFYING the record on appeal to the Circuit Court, as an appeals court, and where the court order drawn up by Michael Brackett for the judge to sign specifically refers to the record, where in fact there is no record, it follows that the entire proceeding is controlled by an error of law manufactured by the defense counsel;

5.

There is much more to the "history" of the proceeding recited by the defense counsel in the court order; the case is all about attorney fraud; namely Ned Gregory, II., In The Matter of Ned Gregory, II., Respondent, 360 S.C. 270; Gregory is a document forger, and participated in the forging of documents

in THIS case, and under oath; specifically, Gregory drew a document used to suborn perjury, with the end result of the wrong will being probated in this case; such conduct fits the definition of EX-trinsic fraud practiced upon South Carolina Courts, and is no different from that of the defense counsel in the Ford case, Chewning v. Ford Motor Co., 354 S.C. 72; more to the point is: why did the original Judge recuse herself, and the reason is directly related to Gregory's forging and manipulation of her court;

6.

In addition, appellant moves that the circuit court reconsider the order entered in this case, for reason of there not being a certified record of the proceedings below available for the court's use, and the fact that the record itself has at times been concealed, left out, and not

brought out until the last minute where the record is of no use to the adverse party; example, in this very case, on the morning of the hearing in this case in circuit court, moving party found the "record" of this case still residing at the Chester County Probate Court, where it should not have been, but should have, according to law, been on file at the circuit court, IN ADDITION, there was no court reporter transcript present in the file, but LO & BEHOLD, the same afternoon one of the probate clerks appeared in the Circuit Court courtroom with the un-certified record clutched in her hand, THERE IT WAS, the missing transcript, right on top;

7.

As proof of appellant's allegations about the record appellant shows that the Chester County Circuit Court is not now, and never has been, in

(8)

possession of a full certified record of the proceedings in the probate court below; the record was taken back to the probate court and is retained there, in violation of S.C. Law, instead of being transmitted to the circuit court, and kept by the circuit court, as required by statute;

8.

There are several reasons for this unfortunate state of facts; the first is simple incompetence; the second is the manipulation of courts by forgers and members of the bar who assume teaching roles with the net result being that the present Chester County Probate Clerks will never transmit and certify the entire record of the proceedings below because the clerks have been advised that the record contains full evidence of criminal activity, and the probate staff will never perform this duty without Circuit Court intervention;

WHEREFORE, plaintiff moves that the the Chester County Probate Clerks be directed to produce the full and original record of the probate proceedings below, and transmit it to the Chester County Circuit Court, and leave it at the circuit court until this proceeding is over; that a new hearing be held after the record is transmitted to the circuit court, or in the alternative, A RECEIVER be appointed to see to it that the law is complied with.

Respectfully submitted,

This 09 day of November, 2010.

FILED
2010 NOV -9 P 4:31
CLERK OF COURT
CHESTER CO S.C.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER
IN THE MATTER OF THE ESTATE OF REBA P. HINSON, Probate No: 2008-ES-12-00297

MELL WOODS,

PLAINTIFF-CLAIMENT,

V.

ROBERT H. BREAKFIELD, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF REBA P. HINSON,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2010-CP-12-00

168, and 201

FILED
2010 NOV -9 P 4:37
CLERK OF COURT
CHESTER CO S.C.

CERTIFICATE OF SERVICE

I hereby certify that I have served defendant with a true copy of the within and foregoing MOTION, by depositing a copy of same in the U.S. Mail, with sufficient postage, addressed to the counsel of record for defendant,

This 09 day of November, 2010.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

2010-CP-12-0201
(Appeal from Probate Court)

In the Matter of the Estate of Reba P. Hinson

Mell Woods,

Appellant,

v.

Robert H. Breakfield, Esquire, as
Personal Representative,

Respondent.

NOTICE OF HEARING

To: Mell Woods, Appellant

Date of Hearing: March 16, 2011

Time: 2:00 PM

Place: Chester County Courthouse
140 Main St.
Chester, SC

Matter to be heard: Appellant's Appeal from Probate Court. Grounds of Appeal were filed on April 30, 2010 and June 4, 2010.

B. Michael Brackett, Esquire
1333 Main Street, Suite 650
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
Attorney for Respondent Personal Representative

Columbia, South Carolina
February 24, 2011

Chester County, South Carolina
LOIS H. RODDEY, JUDGE OF PROBATE
POST OFFICE DRAWER 580
CHESTER, SOUTH CAROLINA 29706

February 11 2010

Mrs. Sue Carpenter
Clerk of Court
P. O. Drawer 580
Chester, SC 29706

Re: Estate of Reba P. Hinson
Case No. 2008ES1200297

Dear Mrs. Carpenter:

According to SC Code Ann. 62-1-308(b) when an appeal is taken from Probate Court to Circuit Court, "the Probate Court shall make a return to the Appellate Court of the testimony, proceedings and judgment and file it in the Appellate Court". Enclosed please find the following certified documents for the appeal that Mell Woods has filed concerning an Order issued by Judge Gettys, as Special Probate Judge for Chester County, dated April 19, 2010:

1. Petition for Removal of Personal Representative dated January 22, 2010.
2. Answer of Robert H. Breakfield, as Personal Representative, to the Petition for Removal of Personal Representative filed January 29, 2010.
3. Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above – Styled Case on February 18, 2009: Motion for Removal to Circuit Court.
4. Personal Representative's Motion to Dismiss Mell Woods' Petition to Vacate Order and Personal Representative's Return to Mell Woods' Motion to Remove Petition to Circuit Court.
5. Transcript of Proceedings, York, South Carolina, April 12, 2010.
6. Judge Getty's Order, dated April 19, 2010 and filed April 20, 2010.

Please let us know if there are any other documents that you need.

Yours truly,

Lois H. Roddey

Lois H. Roddey
Judge of Probate

tbz

cc: Mr. B. Michael Brackett
Mr. Mell Woods

Enclosures

EXHIBIT
F

199

TELEPHONE (803) 385-2604 • FAX (803) 581-5180.

MOSES KOON & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 650 (29201)
Post Office Box 100261
Columbia, South Carolina 29202-3261

Telephone (803) 461-2300
Facsimile (803) 461-2309

B. Michael Brackett
Direct Dial: (803) 461-2312
Email: mbrackett@mkb-law.com

February 2, 2011

The Honorable Lois H. Roddey
Chester County Probate Judge
P. O. Drawer 580
Chester, SC 29706

RE: Estate of Reba P. Hinson
08-ES-12-0297
Mell Woods Appeal of April 19, 2010 Order to Circuit Court
Our File Number - 12085.1

Dear Judge Roddey:

Judge Gettys, as Special Probate Judge for Chester County, issued an Order dated April 19, 2010 in response to a petition or motion filed by Mell Woods. Mr. Woods appealed that Order to Circuit Court.

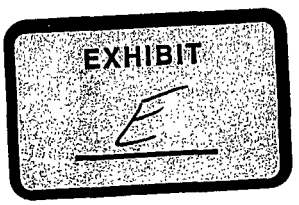
According to S.C. Code Ann. §62-1-308(b), when an appeal is taken from probate court to circuit court, "the probate court shall make a return to the appellate court of the testimony, proceedings, and judgment and file it in the appellate court."

As attorney for the Respondent-Personal Representative, I request that your office promptly file the probate court's return with Ms. Carpenter, the Clerk of Court.

Using the language of the statute to identify what must be included in the return, I suggest that the following be included:

1. Mr. Woods' "Petition for Removal of Personal Representative" dated January 22, 2010. (Form 331PC). This Petition includes the Proof of Delivery and an attached two-page typed "Motion for Removal of Personal Representative" also signed by Mr. Woods.

2. "Answer of Robert H. Breakfield, as Personal Representative, to the Petition for Removal of Personal Representative," filed on January 29, 2010, including the attached Exhibit A and the Proof of Delivery.



200

3. Mr. Woods' "Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above-Styled Case on February 18, 2009; Motion for Removal to Circuit Court." This is a six-page typed document signed by Mr. Woods on February 17, 2010.

4. "Personal Representative's Motion to Dismiss Mell Woods' Petition to Vacate Order and Personal Representative's Return to Mell Woods' Motion to Remove Petition to Circuit Court." This document is six pages and was filed on February 23, 2010.

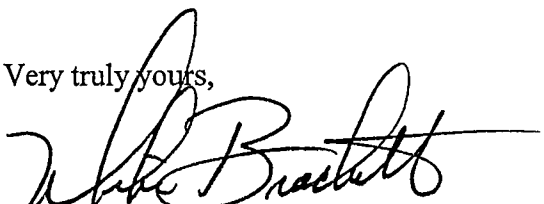
5. "Transcript of Proceedings, York, South Carolina, April 12, 2010." The transcript was made by Court Reporter William H. White. The copy I have is 36 pages in length, including the reporter's certificate.

6. Judge Getty's Order, dated April 19, 2010 and filed April 20, 2010 (5 pages).

If Mr. Woods thinks that other materials should be included in the return, he may advise you of that fact. I will appreciate your office confirming with me that the return has been delivered to the Clerk of Court and describing exactly what was included in the return.

Thank you very much for your courtesy and assistance.

Very truly yours,



B. Michael Brackett

BMB/bmb

cc: The Honorable Brooks P. Goldsmith
The Honorable Sue Carpenter
Robert H. Breakfield, Esquire
Mr. Mell Woods

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTER	)	2010-CP-12-0201
	)	(Appeal from Probate Court)
	)	
In the Matter of the Estate of Reba P. Hinson	)	
	)	
Mell Woods,	)	
	)	
Appellant,	)	ORDER GRANTING APPELLANT'S RULE 59(e) MOTION
	)	
v.	)	
	)	
Robert H. Breakfield, Esquire, as Personal Representative,	)	
	)	
Respondent.	)	

FILED
JAN 31 P 1:03
CLERK OF COURT
CHESTER CO. S.C.

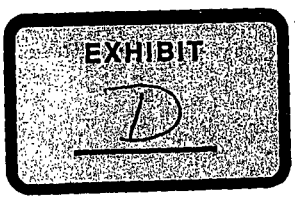
This matter came before the Court as an appeal of a Chester County Probate Court Order dated April 19, 2010. The hearing on Appellant's grounds for appeal was held on September 8, 2010 whereby this Court affirmed the Probate Court Order. Appellant subsequently filed a Motion for Reconsideration of that Order.

After considering the motion and applicable law pursuant to S.C. Code Ann. § 62-1-308(b), I find that a proper return was not made by the Probate Court as required by law. It is therefore ordered that the Motion for Reconsideration is hereby GRANTED.

AND IT IS SO ORDERED.

January 27, 2011
Columbia, South Carolina

Clifton Newman,
Presiding Judge



STATE OF SOUTH CAROLINA COUNTY OF CHESTER IN THE MATTER OF THE ESTATE OF REBA P. HINSON, Probate No: 2008-ES-12-00297 MELL WOODS, PLAINTIFF-CLAIMENT, V. ROBERT H. BREAKFIELD, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF REBA P. HINSON, DEFENDANT.	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT CIVIL CASE NO. 2010-CP-12-00201

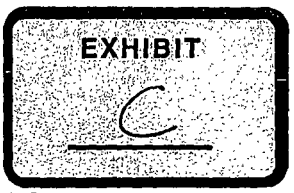
COPY

MOTION TO RECONSIDER, AND TO ALTER OR AMEND JUDGMENT

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Quoted in Watson v. Pollitzer, 72 S. C. 387, 51 S. E. 914; Johnson v. Johnson, 160 S. C. 158, 158 S. E. 264.

§ 7-204. Proceedings stayed by appeal.

When an appeal according to law is taken from any sentence or decree of the probate court all proceedings in pursuance of the order, sentence or decree appealed from shall cease until the judgment of the circuit or Supreme Court is had; but if the appellant in writing waives his appeal before the entry of such judgment, proceedings may be had in the probate court as if no appeal had been taken.

1942 Code § 232; 1932 Code § 232; Civ. P. '22 § 189; Civ. P. '12 § 65; Civ. P. '02 § 59; 1870 (16) 61.

Pending an appeal from its decree of "no will" probate court cannot appoint an administrator.—An appeal from an order or decree of the probate court shall act as a supersedeas, therefore during the pendency of an appeal from the probate court of a decree of no will, the probate court cannot grant letters of administration, as that would involve a determination of the question on appeal. In re Seay's Estate, 63 S. C. 130, 41 S. E. 17. See also, Wolfe v. Bank of Anderson, 128 S. C. 174, 122 S. E. 592.

206

CODE OF LAWS
OF
SOUTH CAROLINA
1952

IN EIGHT VOLUMES

ANNOTATED

Prepared under the supervision and direction of the Code Commissioner and the Committee on Statutory Laws of the General Assembly of South Carolina

VOLUME 1

THE MICHIE COMPANY
Charlottesville, Va.
THE LAWYERS CO-OPERATIVE PUBLISHING CO.
Rochester, N. Y.
1952

207

4.

So now that it can be readily seen that appellant has no duty whatsoever in compiling, transmitting, or CERTIFYING the record on appeal to the Circuit Court, as an appeals court, and where the court order drawn up by Michael Brackett for the judge to sign specifically refers to the record, where in fact there is no record, it follows that the entire proceeding is controlled by an error of law manufactured by the defense counsel;

5.

There is much more to the "history" of the proceeding recited by the defense counsel in the court order; the case is all about attorney fraud; namely Ned Gregory, II., In The Matter of Ned Gregory, II., Respondent, 360 S.C. 270; Gregory is a document forger, and participated in the forging of documents

in THIS case, and under oath; specifically, Gregory drew a document used to suborn perjury, with the end result of the wrong will being probated in this case; such conduct fits the definition of EX-trinsic fraud practiced upon South Carolina Courts, and is no different from that of the defense counsel in the Ford case, Chewning v. Ford Motor Co., 354 S.C. 72; more to the point is: why did the original Judge recuse herself, and the reason is directly related to Gregory's forging and manipulation of her court;

6.

In addition, appellant moves that the circuit court reconsider the order entered in this case, for reason of there not being a certified record of the proceedings below available for the court's use, and the fact that the record itself has at times been concealed, left out, and not

brought out until the last minute where the record is of no use to the adverse party; example, in this very case, on the morning of the hearing in this case in circuit court, moving party found the "record" of this case still residing at the Chester County Probate Court, where it should not have been, but should have, according to law, been on file at the circuit court, IN ADDITION, there was no court reporter transcript present in the file, but LO & BEHOLD, the same afternoon one of the probate clerks appeared in the Circuit Court courtroom with the un-certified record clutched in her hand, THERE IT WAS, the missing transcript, right on top;

7.

As proof of appellant's allegations about the record appellant shows that the Chester County Circuit Court is not now, and never has been, in

possession of a full certified record of the proceedings in the probate court below; the record was taken back to the probate court and is retained there, in violation of S.C. Law, instead of being transmitted to the circuit court, and kept by the circuit court, as required by statute;

8.

There are several reasons for this unfortunate state of facts; the first is simple incompetence; the second is the manipulation of courts by forgers and members of the bar who assume teaching roles with the net result being that the present Chester County Probate Clerks will never transmit and certify the entire record of the proceedings below because the clerks have been advised that the record contains full evidence of criminal activity, and the probate staff will never perform this duty without Circuit Court intervention;

WHEREFORE, plaintiff moves that the the Chester County Probate Clerks be directed to produce the full and original record of the probate proceedings below, and transmit it to the Chester County Circuit Court, and leave it at the circuit court until this proceeding is over; that a new hearing be held after the record is transmitted to the circuit court, or in the alternative, A RECEIVER be appointed to see to it that the law is complied with.

Respectfully submitted,

This 09 day of November, 2010.

COPY

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

2010-CP-12-0201
(Appeal from Probate Court)

In the Matter of the Estate of Reba P. Hinson

Mell Woods,

Appellant,

v.

Robert H. Breakfield, Esquire, as Personal Representative,

Respondent.

ORDER AFFIRMING PROBATE COURT

CLERK OF COURT
CHESTER CO S.C.
2010 OCT -5 A 11:34
FILED

This is an appeal from Probate Court. The hearing on Appellant's grounds of appeal was held on September 8, 2010. In attendance were the Appellant, appearing pro se, and the Respondent and his attorney Mike Brackett. The record from the Probate Court and the arguments of the parties establish the following history: The action involved in this appeal was commenced by the Appellant's Petition for Removal of Personal Representative dated January 22, 2010. Attached to the Petition was a document titled "Motion for Removal of Personal Representative." The Petition identified the grounds for removal as "Misadministration of estate by failing to post bond, and by probating the wrong will." The Motion for Removal identified the grounds as failure to give bond after a demand for bond was made, and other "mis-management items," not identified in the motion with any particularity.

Appellant thereafter filed his "Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above-Styled Case on February 18, 2009; [and] Motion For Removal

EXHIBIT
B

to Circuit Court." This pleading was dated February 17, 2010. [1]

The Personal Representative filed and served an Answer to the Petition for Removal of Personal Representative. The Personal Representative also filed and served a consolidated Motion to Dismiss the Petition to Vacate Order and a Return to the Motion to Remove the Petition to Vacate to Circuit Court.

The hearing on the Appellant's two Petitions and related motions was held in the Probate Court on April 12, 2010.[2] Following the hearing the Probate Judge issued his Order dated April 19, 2010. The Order contained three rulings: (1) it denied the Appellant's Petition for Removal of the Personal Representative for cause; (2) it denied the motion to remove to Circuit Court the Petition to Vacate; and (3) it denied Appellant's Petition to Vacate the Probate Court's February 18, 2009 Order of Formal Testacy.[3]

In his Notice of Appeal filed on April 30, 2010, Appellant identified two subjects as "partial grounds" for the appeal: (1) the Probate Judge did not recuse himself from the matter when he had knowledge that a family member had some past involvement in the matter, and (2) that the Probate Judge refused to issue subpoenas for witnesses that the Appellant wanted to subpoena to the hearing.

On June 4, 2010 the Appellant filed two "additional grounds" for his appeal: (3) that the probate court erred in not removing the Personal Representative for his failure to provide bond,

---

[1] Although the Probate Court denied the relief sought in the Petition to Vacate Order and the Motion to Remove the proceeding to Circuit Court, the Appellant did not appeal those rulings.

[2] The hearing was held in York County because the Chester County Probate Judge recused herself from the proceeding and the York County Probate Judge was appointed to serve as Special Probate Judge for Chester County in matters related to this estate.

[3] As indicated in footnote 1 above, rulings 2 and 3 were not appealed.

and (4) that the probate court erred in failing to rule that the wrong will is being probated.

Appeals from probate court to circuit court are heard and decided according to the rules governing appeals to the higher appellate courts. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 31 (2d ed.2002) and cases cited therein. The circuit court is to apply the same standard of review that the Court of Appeals or Supreme Court would apply on appeal. Id. The hearing in the circuit court must be strictly on appeal, and no new evidence may be presented. S.C. Code Ann. §62-1-308(d).

During the hearing the Appellant, on the record, orally withdrew his ground of appeal no. three, the ground alleging error with respect to bond. The hearing proceeded on the three remaining grounds of appeal.

On the issue of recusal, the record indicates that no motion or request for recusal was made to the probate judge. This subject was not raised to and ruled upon by the trial court and was first raised in the Appellant's partial grounds of appeal. The subject was not addressed in the Probate Court's April 19, 2010 Order, and it was not raised by the Appellant in a Rule 59 motion. Consequently, it is not preserved for appeal. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 55 (2d ed.2002), citing Hubbard v. Rowe, 5 S.E.2d 187 (S.C. 1939) (questions presented for appellate review must first have been fairly and properly raised in the lower court and passed upon by that court); and I'On, L.L.C. v. Town of Mt. Pleasant, 526 S.E.2d 716 (S.C. 1993) (if the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a Rule 59 motion to alter or amend the judgment in order to preserve the issue for appellate review).

Likewise, on the issue of the probate judge not issuing subpoenas for appellant's use, no objection or motion on the subject was raised at the probate court hearing, the issue was not raised to and ruled upon by the trial court and was first raised in the Appellant's partial grounds of appeal, the issue was not addressed in the Probate Court's April 19, 2010 Order, and it was not raised by the Appellant in a Rule 59 motion. Additionally, the record of the April 12, 2010 hearing reveals that the Appellant did not identify who he would have subpoenaed, nor did he make a proffer of what the witness(es) were expected to offer in the way of relevant and admissible evidence. Consequently, based on the authorities cited above, this ground of appeal was not preserved for appellate review.

With respect to the issue of the Probate Court's decision as to which Last Will was to be admitted to probate, an action challenging a last will is at law. Estate of Hicks, 327 S.E.2d 343 (S.C. 1985). In law cases, this court, as an appellate court, has jurisdiction merely for correction of errors of law and will not disturb the findings of the probate judge unless they are found to be without evidence which reasonably supports the findings. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 176 (2d ed.2002). In this instance, the Appellant has failed to carry his burden to demonstrate to this Court that the Probate Court committed an error of law in ruling that the decedent's June 23, 1998 last will was to be admitted to probate. Evidence in the record of the April 12, 2010 hearing shows that the admission of the decedent's June 23, 1998 last will to probate was pursuant to a family settlement agreement among the decedent's heirs and/or devisees, not including the Appellant who is a stranger to the estate.

Additionally, the Probate Court's conclusion that the Appellant lacks standing to object

to or contest the decedent's last will is well supported by persuasive authorities and precedent.

Quoting from the Probate Court's April 19, 2010 Order:

> To have standing, one must generally have a personal stake in the subject of the lawsuit, i.e., one must be a real party in interest. Evins v. Richland County Historic Preservation Comm., 532 S.E.2d 876 (S.C. 2000). A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. Sloan v. Friends of the Hunley, Inc., 630 S.E.2d 474 (S.C. 2006). Generally, a creditor of the decedent cannot contest her will. 3 Bowe-Parker: Page on Wills §26.60. Other authorities supporting this principle of law include: 3 Bowe-Parker: Page on Wills §26.52 (one who would not take more if the will in question were held to be invalid than he would take if it were held to be valid cannot, by the weight of authority, contest the will in question); Baker v. Henderson, 69 S.E.2d 278 (Ga. 1952) (if petitioners will not be injured or benefitted by the establishment and probate of the alleged copy will, they are strangers to it and are not proper parties to the litigation); Estate of Keener, 521 N.E.2d 232 (Ill. App. 1988) (even if the latest will was invalid, earlier wills failed to name the contestant, so he was not entitled to contest); Matter of Wharton, 453 N.Y.S.2d 308 (1982) (generally a person who is not a distributee of the decedent and who will receive no part of a decedent's estate if a will is denied probate, will not be permitted to file objections to probate. The exception is when a person is named in a prior will and his interest under the prior will is greater than under the propounded will).

Accordingly, for the reasons stated hereinabove, the Chester County Probate Court's Order dated April 19, 2010 is affirmed, the Appellant's appeal is dismissed, and this matter is remitted to the Probate Court for continued estate administration according to applicable law and procedure.

IT IS SO ORDERED.

FILED
2010 OCT -5 A 11:34
CLERK OF COURT
CHESTER CO S.C.

Clifton Newman, Judge

September 30, 2010

COPY

STATE OF SOUTH CAROLINA IN THE PROBATE COURT

COUNTY OF CHESTER C/A NO: 2008-ES-12-0297 (Chester County)
2010-ES-46-0265 (York County)

IN THE MATTER OF: THE ESTATE OF REBA P. HINSON

PROBATE COURT
CHESTER COUNTY, S.C.
FILED
2010 APR 20 A 10:35
2011 MAR 1 A 11: 2
LOIS H. RODDEY
JUDGE OF PROBATE
CLERK OF COURT
CHESTER CO. S.C.

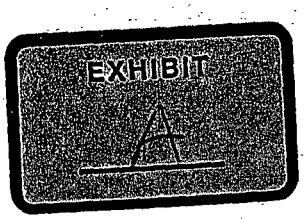
ORDER

A hearing was held on April 12, 2010 at 11:00 AM at the York County Probate Court on the pending Petitions/Motions of Mr. Mell Woods. In attendance were Mr. Woods, appearing *pro se*, and the Personal Representative, Robert Breakfield, Esquire, and his attorney Mike Brackett. This is a Chester County estate in which the Chester County Probate Judge has recused herself, and the undersigned has been assigned by Court Administration to preside over contested matters in this estate. For record keeping, the estate has also been assigned a York County Probate Court estate number.

Before the Court on April 12, 2010 were Mr. Woods' Petition for Removal of Personal Representative, filed with an accompanying Motion for Removal of Personal Representative, and Mr. Woods' Petition, more accurately a Rule 60 Motion, to Vacate the Probate Court's February 18, 2009 Order with an accompanying motion that the Rule 60 proceeding be removed to Circuit Court. The Court took judicial notice of the content of the Court's file, including without limitation, the executed and filed Form 300, the various Last Wills or alleged Last Wills of the decedent, and a letter to the Court from Mr. Woods that predated the appointment of the Personal Representative.

Petition for Removal of Personal Representative

Removal of a personal representative is governed by S.C. Code Ann. §62-3-611. Mr. Woods put forward two grounds for the involuntary removal of the Personal Representative:



"misadministration [sic] of estate by failing to post bond, and by probating the wrong will."

Mr. Woods failed to persuade the Court that cause exists for Mr. Breakfield's removal with respect to the posting of bond. The decedent's last will, admitted to probate by Order dated February 18, 2009, does not require bond, and the Court's February 18, 2009 Order appointing Mr. Breakfield to serve as Personal Representative expressly provided that "no bond required." Additionally, in an earlier hearing in which the subject of bond was addressed, the Court did not require the posting of bond, but required the Personal Representative to keep funds in escrow for payment of estate expenses and not to distribute the funds for any other purpose pending further order of the court.

Likewise, Mr. Woods failed to persuade the Court that cause exists for Mr. Breakfield's removal with respect to the alleged probating of the wrong will. Initially, the Court finds that Mr. Woods is not named, in any capacity, in any of the Last Wills that have been filed with the Court. His status as a claimant, having filed a claim that was disallowed by the Personal Representative but that has not yet been heard and allowed by the Court, does not give Mr. Woods standing to object to or contest a decedent's last will. To have standing, one must generally have a personal stake in the subject of the lawsuit, i.e., one must be a real party in interest. Evins v. Richland County Historic Preservation Comm., 532 S.E.2d 876 (S.C. 2000). A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. Sloan v. Friends of the Hunley, Inc., 630 S.E.2d 474 (S.C. 2006). Generally, a creditor of the decedent cannot contest her will. 3 Bowe-Parker: Page on Wills §26.60. Other authorities supporting this principle of law include: 3 Bowe-Parker: Page on Wills §26.52 (one who would not take more if the will in question were held to be invalid than he would take if it were held to be valid cannot, by the weight of authority, contest the will in question);

#7

Baker v. Henderson, 69 S.E.2d 278 (Ga. 1952) (if petitioners will not be injured or benefitted by the establishment and probate of the alleged copy will, they are strangers to it and are not proper parties to the litigation); Estate of Keener, 521 N.E.2d 232 (Ill. App. 1988) (even if the latest will was invalid, earlier wills failed to name the contestant, so he was not entitled to contest); Matter of Wharton, 453 N.Y.S.2d 308 (1982) (generally a person who is not a distributee of the decedent and who will receive no part of a decedent's estate if a will is denied probate, will not be permitted to file objections to probate. The exception is when a person is named in a prior will and his interest under the prior will is greater than under the propounded will).

Additionally, cause for removal does not exist because the Form 300 on file disclosed the existence of the June 23, 1998 Last Will and the existence of two other possible or purported Last Wills dated April 5, 2003, and the Court's Order of Formal Testacy dated February 23, 1998 expressly ordered that the decedent's Last Will dated June 23, 1998 be admitted formally to probate. Consequently, the decision about which last will to admit to probate was made by the Court and not by the Personal Representative. Accordingly, it is

ORDERED that Mr. Mell Woods' Petition for Removal of the Personal Representative is denied.

Rule 60 Motion to Vacate the Court's February 18, 2009 Order of Formal Testacy and Motion to Remove Rule 60 Motion to Circuit Court

Mr. Woods' Petition to Vacate the February 18, 2009 Order of Formal Testacy, in which the court ordered that the decedent's last will dated June 23, 1998 be admitted to probate, is treated by the Court as a Rule 60(b) motion. The Court gleans from the motion that Mr. Woods alleges fraud with respect to matters presented to the Court that resulted in said order ordering the June 23, 1998

last will be admitted to probate.

The Court first considered the motion to remove this proceeding to circuit court. Removal of probate proceedings to circuit court is governed by S.C. Code Ann. §62-1-302. For the following reasons, the Court concludes that the motion to remove the matter to circuit court must be denied.

The Rule 60 motion to vacate is not a subject matter identified in the statute as qualifying for removal to circuit court. Additionally, the motion to remove the matter to circuit court must be denied because the power to grant Rule 60 relief "is possessed solely by the court that rendered the judgment." Coleman v. Dunlap, 413 S.E.2d 15 (S.C. 1992). In this case, the Chester County Probate Court issued the February 18, 2009 Order now challenged by Mr. Woods, and the Chester County Probate Court is the only court with Rule 60 powers with respect to that Order. The circuit court would not have subject matter jurisdiction. Accordingly, it is

ORDERED that Mr. Woods' motion to remove the Rule 60 proceeding to circuit court is denied.

With respect to the motion to vacate the February 18, 2009 Order of Formal Testacy, it too must be denied. Mr. Woods, the movant, was not a party to the proceeding that resulted in the issuance of the February 18, 2009 Order he now tries to challenge pursuant to Rule 60(b). A person who was not a party to the underlying proceeding lacks standing to make a Rule 60(b) motion. Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §2865, citing among other authorities, U. S. v. 8136 S. Dobson St., Chicago, Ill., 125 F.3d 1076 (7th Cir. 1997), *cert. den.* 523 U. S. 1111; King v. State Bd. of Elections, 979 F. Supp. 582 (N. D. Ill. 1996). A more recent opinion very clearly explains that the plain language of Rule 60(b) only allows relief to a party or a party's legal representative, and a nonparty has no right to use Rule 60(b) to modify [or vacate] a

#4

consent decree agreed upon by the parties when no such relief is sought by any of the parties themselves. Ericsson, Inc. v. Interdigital Communications Corp., 418 F.3d 1217 (Fed. Cir. 2005).[1]

Other considerations with respect to Mr. Woods' lack of standing are addressed hereinabove, and are equally applicable to his Rule 60 motion.

And, even if Mr. Woods had standing to make the motion, he did not present sufficient evidence to prove that the February 18, 2009 Order of Formal Testacy was the product of a fraud on the Court. A Rule 60 motion is addressed to the discretion of the court. Thompson v. Hammond, 362 S.E.2d 879 (S.C. App. 1987). The burden is on the party seeking relief to show the applicability of one of the qualifying grounds. Paul Davis Systems, Inc. v. Deepwater of Hilton Head, LLC, 607 S.E.2d 358 (S.C. App. 2004). Mr. Woods presented no witnesses and no admissible documentary evidence other than calling the Court's attention to documents already in the court's file.

Accordingly, it is ORDERED that Mr. Wood's Motion for Rule 60 relief is denied.

IT IS SO ORDERED.

John P. Gettys
Special Probate Judge for Chester County

April 19, 2010
York, SC

[1] Where South Carolina cases have not specifically addressed a matter governed by the South Carolina Rules of Civil Procedure, South Carolina courts may seek guidance from federal cases. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 404 S.E.2d 200 (1991).

COPY

STATE OF SOUTH CAROLINA IN THE PROBATE COURT

COUNTY OF CHESTER C/A NO: 2008-ES-12-0297 (Chester County)
2010-ES-46-0265 (York County)

IN THE MATTER OF: THE ESTATE OF REBA P. HINSON

PROBATE COURT
CHESTER COUNTY, S.C.
2010 APR 20 A 10:35
LOIS H. RODDEY
JUDGE OF PROBATE

ORDER

A hearing was held on April 12, 2010 at 11:00 AM at the York County Probate Court on the pending Petitions/Motions of Mr. Mell Woods. In attendance were Mr. Woods, appearing *pro se*, and the Personal Representative, Robert Breakfield, Esquire, and his attorney Mike Brackett. This is a Chester County estate in which the Chester County Probate Judge has recused herself, and the undersigned has been assigned by Court Administration to preside over contested matters in this estate. For record keeping, the estate has also been assigned a York County Probate Court estate number.

Before the Court on April 12, 2010 were Mr. Woods' Petition for Removal of Personal Representative, filed with an accompanying Motion for Removal of Personal Representative, and Mr. Woods' Petition, more accurately a Rule 60 Motion, to Vacate the Probate Court's February 18, 2009 Order with an accompanying motion that the Rule 60 proceeding be removed to Circuit Court. The Court took judicial notice of the content of the Court's file, including without limitation, the executed and filed Form 300, the various Last Wills or alleged Last Wills of the decedent, and a letter to the Court from Mr. Woods that predated the appointment of the Personal Representative.

#1

Petition for Removal of Personal Representative

Removal of a personal representative is governed by S.C. Code Ann. §62-3-611. Mr. Woods put forward two grounds for the involuntary removal of the Personal Representative:

EXHIBIT A

misadministration [sic] of estate by failing to post bond, and by probating the wrong will."

Mr. Woods failed to persuade the Court that cause exists for Mr. Breakfield's removal with respect to the posting of bond. The decedent's last will, admitted to probate by Order dated February 18, 2009, does not require bond, and the Court's February 18, 2009 Order appointing Mr. Breakfield to serve as Personal Representative expressly provided that "no bond required." Additionally, in an earlier hearing in which the subject of bond was addressed, the Court did not require the posting of bond, but required the Personal Representative to keep funds in escrow for payment of estate expenses and not to distribute the funds for any other purpose pending further order of the court.

Likewise, Mr. Woods failed to persuade the Court that cause exists for Mr. Breakfield's removal with respect to the alleged probating of the wrong will. Initially, the Court finds that Mr. Woods is not named, in any capacity, in any of the Last Wills that have been filed with the Court. His status as a claimant, having filed a claim that was disallowed by the Personal Representative but that has not yet been heard and allowed by the Court, does not give Mr. Woods standing to object to or contest a decedent's last will. To have standing, one must generally have a personal stake in the subject of the lawsuit, i.e., one must be a real party in interest. Evins v. Richland County Historic Preservation Comm., 532 S.E.2d 876 (S.C. 2000). A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. Sloan v. Friends of the Hunley, Inc., 630 S.E.2d 474 (S.C. 2006). Generally, a creditor of the decedent cannot contest her will. 3 Bowe-Parker: Page on Wills §26.60. Other authorities supporting this principle of law include: 3 Bowe-Parker: Page on Wills §26.52 (one who would not take more if the will in question were held to be invalid than he would take if it were held to be valid cannot, by the weight of authority, contest the will in question);

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Baker v. Henderson, 69 S.E.2d 278 (Ga. 1952) (if petitioners will not be injured or benefitted by the establishment and probate of the alleged copy will, they are strangers to it and are not proper parties to the litigation); Estate of Keener, 521 N.E.2d 232 (Ill. App. 1988) (even if the latest will was invalid, earlier wills failed to name the contestant, so he was not entitled to contest); Matter of Wharton, 453 N.Y.S.2d 308 (1982) (generally a person who is not a distributee of the decedent and who will receive no part of a decedent's estate if a will is denied probate, will not be permitted to file objections to probate. The exception is when a person is named in a prior will and his interest under the prior will is greater than under the propounded will).

Additionally, cause for removal does not exist because the Form 300 on file disclosed the existence of the June 23, 1998 Last Will and the existence of two other possible or purported Last Wills dated April 5, 2003, and the Court's Order of Formal Testacy dated February 23, 1998 expressly ordered that the decedent's Last Will dated June 23, 1998 be admitted formally to probate. Consequently, the decision about which last will to admit to probate was made by the Court and not by the Personal Representative. Accordingly, it is

ORDERED that Mr. Mell Woods' Petition for Removal of the Personal Representative is denied.

Rule 60 Motion to Vacate the Court's February 18, 2009 Order of Formal Testacy and Motion to Remove Rule 60 Motion to Circuit Court

#3

Mr. Woods' Petition to Vacate the February 18, 2009 Order of Formal Testacy, in which the court ordered that the decedent's last will dated June 23, 1998 be admitted to probate, is treated by the Court as a Rule 60(b) motion. The Court gleans from the motion that Mr. Woods alleges fraud with respect to matters presented to the Court that resulted in said order ordering the June 23, 1998

last will be admitted to probate.

The Court first considered the motion to remove this proceeding to circuit court. Removal of probate proceedings to circuit court is governed by S.C. Code Ann. §62-1-302. For the following reasons, the Court concludes that the motion to remove the matter to circuit court must be denied.

The Rule 60 motion to vacate is not a subject matter identified in the statute as qualifying for removal to circuit court. Additionally, the motion to remove the matter to circuit court must be denied because the power to grant Rule 60 relief "is possessed solely by the court that rendered the judgment." Coleman v. Dunlap, 413 S.E.2d 15 (S.C. 1992). In this case, the Chester County Probate Court issued the February 18, 2009 Order now challenged by Mr. Woods, and the Chester County Probate Court is the only court with Rule 60 powers with respect to that Order. The circuit court would not have subject matter jurisdiction. Accordingly, it is

ORDERED that Mr. Woods' motion to remove the Rule 60 proceeding to circuit court is denied.

With respect to the motion to vacate the February 18, 2009 Order of Formal Testacy, it too must be denied. Mr. Woods, the movant, was not a party to the proceeding that resulted in the issuance of the February 18, 2009 Order he now tries to challenge pursuant to Rule 60(b). A person who was not a party to the underlying proceeding lacks standing to make a Rule 60(b) motion. Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §2865, citing among other authorities, U. S. v. 8136 S. Dobson St., Chicago, Ill., 125 F.3d 1076 (7th Cir. 1997), *cert. den.* 523 U. S. 1111; King v. State Bd. of Elections, 979 F. Supp. 582 (N. D. Ill. 1996). A more recent opinion very clearly explains that the plain language of Rule 60(b) only allows relief to a party or a party's legal representative, and a nonparty has no right to use Rule 60(b) to modify [or vacate] a

consent decree agreed upon by the parties when no such relief is sought by any of the parties themselves. Ericsson, Inc. v. Interdigital Communications Corp., 418 F.3d 1217 (Fed. Cir. 2005).[1]

Other considerations with respect to Mr. Woods' lack of standing are addressed hereinabove, and are equally applicable to his Rule 60 motion.

And, even if Mr. Woods had standing to make the motion, he did not present sufficient evidence to prove that the February 18, 2009 Order of Formal Testacy was the product of a fraud on the Court. A Rule 60 motion is addressed to the discretion of the court. Thompson v. Hammond, 362 S.E.2d 879 (S.C. App. 1987). The burden is on the party seeking relief to show the applicability of one of the qualifying grounds. Paul Davis Systems, Inc. v. Deepwater of Hilton Head, LLC, 607 S.E.2d 358 (S.C. App. 2004). Mr. Woods presented no witnesses and no admissible documentary evidence other than calling the Court's attention to documents already in the court's file.

Accordingly, it is ORDERED that Mr. Wood's Motion for Rule 60 relief is denied.

IT IS SO ORDERED.

John P. Gettys
Special Probate Judge for Chester County

April 19, 2010
York, SC

[1] Where South Carolina cases have not specifically addressed a matter governed by the South Carolina Rules of Civil Procedure, South Carolina courts may seek guidance from federal cases. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 404 S.E.2d 200 (1991).

COPY

TATE OF SOUTH CAROLINA

OUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

2010-CP-12-0201
(Appeal from Probate Court)

1 the Matter of the Estate of Reba P. Hinson

Aell Woods,

Appellant,

v.

Robert H. Breakfield, Esquire, as
Personal Representative,

Respondent.

ORDER AFFIRMING
PROBATE COURT

FILED
2010 OCT -5 A 11:34
CLERK OF COURT
CHESTER CO S.C.

This is an appeal from Probate Court. The hearing on Appellant's grounds of appeal was held on September 8, 2010. In attendance were the Appellant, appearing pro se, and the Respondent and his attorney Mike Brackett. The record from the Probate Court and the arguments of the parties establish the following history: The action involved in this appeal was commenced by the Appellant's Petition for Removal of Personal Representative dated January 22, 2010. Attached to the Petition was a document titled "Motion for Removal of Personal Representative." The Petition identified the grounds for removal as "Misadministration of estate by failing to post bond, and by probating the wrong will." The Motion for Removal identified the grounds as failure to give bond after a demand for bond was made, and other "mis-management items," not identified in the motion with any particularity.

Appellant thereafter filed his "Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above-Styled Case on February 18, 2009; [and] Motion For Removal

EXHIBIT
B

to Circuit Court." This pleading was dated February 17, 2010. [1]

The Personal Representative filed and served an Answer to the Petition for Removal of Personal Representative. The Personal Representative also filed and served a consolidated Motion to Dismiss the Petition to Vacate Order and a Return to the Motion to Remove the Petition to Vacate to Circuit Court.

The hearing on the Appellant's two Petitions and related motions was held in the Probate Court on April 12, 2010.[2] Following the hearing the Probate Judge issued his Order dated April 19, 2010. The Order contained three rulings: (1) it denied the Appellant's Petition for Removal of the Personal Representative for cause; (2) it denied the motion to remove to Circuit Court the Petition to Vacate; and (3) it denied Appellant's Petition to Vacate the Probate Court's February 18, 2009 Order of Formal Testacy.[3]

In his Notice of Appeal filed on April 30, 2010, Appellant identified two subjects as "partial grounds" for the appeal: (1) the Probate Judge did not recuse himself from the matter when he had knowledge that a family member had some past involvement in the matter, and (2) that the Probate Judge refused to issue subpoenas for witnesses that the Appellant wanted to subpoena to the hearing.

On June 4, 2010 the Appellant filed two "additional grounds" for his appeal: (3) that the probate court erred in not removing the Personal Representative for his failure to provide bond,

---

[1] Although the Probate Court denied the relief sought in the Petition to Vacate Order and the Motion to Remove the proceeding to Circuit Court, the Appellant did not appeal those rulings.

[2] The hearing was held in York County because the Chester County Probate Judge recused herself from the proceeding and the York County Probate Judge was appointed to serve as Special Probate Judge for Chester County in matters related to this estate.

[3] As indicated in footnote 1 above, rulings 2 and 3 were not appealed.

nd (4) that the probate court erred in failing to rule that the wrong will is being probated.

Appeals from probate court to circuit court are heard and decided according to the rules governing appeals to the higher appellate courts. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 31 (2d ed.2002) and cases cited therein. The circuit court is to apply the same standard of review that the Court of Appeals or Supreme Court would apply on appeal. Id. The hearing in the circuit court must be strictly on appeal, and no new evidence may be presented. S.C. Code Ann. §62-1-308(d).

During the hearing the Appellant, on the record, orally withdrew his ground of appeal no. three, the ground alleging error with respect to bond. The hearing proceeded on the three remaining grounds of appeal.

On the issue of recusal, the record indicates that no motion or request for recusal was made to the probate judge. This subject was not raised to and ruled upon by the trial court and was first raised in the Appellant's partial grounds of appeal. The subject was not addressed in the Probate Court's April 19, 2010 Order, and it was not raised by the Appellant in a Rule 59 motion. Consequently, it is not preserved for appeal. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 55 (2d ed.2002), citing Hubbard v. Rowe, 5 S.E.2d 187 (S.C. 1939) (questions presented for appellate review must first have been fairly and properly raised in the lower court and passed upon by that court); and I'On, L.L.C. v. Town of Mt. Pleasant, 526 S.E.2d 716 (S.C. 1993) (if the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a Rule 59 motion to alter or amend the judgment in order to preserve the issue for appellate review).

Likewise, on the issue of the probate judge not issuing subpoenas for appellant's use, no objection or motion on the subject was raised at the probate court hearing, the issue was not raised to and ruled upon by the trial court and was first raised in the Appellant's partial grounds of appeal, the issue was not addressed in the Probate Court's April 19, 2010 Order, and it was not raised by the Appellant in a Rule 59 motion. Additionally, the record of the April 12, 2010 hearing reveals that the Appellant did not identify who he would have subpoenaed, nor did he make a proffer of what the witness(es) were expected to offer in the way of relevant and admissible evidence. Consequently, based on the authorities cited above, this ground of appeal was not preserved for appellate review.

With respect to the issue of the Probate Court's decision as to which Last Will was to be admitted to probate, an action challenging a last will is at law. Estate of Hicks, 327 S.E.2d 343 (S.C. 1985). In law cases, this court, as an appellate court, has jurisdiction merely for correction of errors of law and will not disturb the findings of the probate judge unless they are found to be without evidence which reasonably supports the findings. Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 176 (2d ed.2002). In this instance, the Appellant has failed to carry his burden to demonstrate to this Court that the Probate Court committed an error of law in ruling that the decedent's June 23, 1998 last will was to be admitted to probate. Evidence in the record of the April 12, 2010 hearing shows that the admission of the decedent's June 23, 1998 last will to probate was pursuant to a family settlement agreement among the decedent's heirs and/or devisees, not including the Appellant who is a stranger to the estate.

Additionally, the Probate Court's conclusion that the Appellant lacks standing to object

) or contest the decedent's last will is well supported by persuasive authorities and precedent.

)uoting from the Probate Court's April 19, 2010 Order:

> To have standing, one must generally have a personal stake in the subject of the lawsuit, i.e., one must be a real party in interest. Evins v. Richland County Historic Preservation Comm., 532 S.E.2d 876 (S.C. 2000). A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action. Sloan v. Friends of the Hunley, Inc., 630 S.E.2d 474 (S.C. 2006). Generally, a creditor of the decedent cannot contest her will. 3 Bowe-Parker: Page on Wills §26.60. Other authorities supporting this principle of law include: 3 Bowe-Parker: Page on Wills §26.52 (one who would not take more if the will in question were held to be invalid than he would take if it were held to be valid cannot, by the weight of authority, contest the will in question); Baker v. Henderson, 69 S.E.2d 278 (Ga. 1952) (if petitioners will not be injured or benefitted by the establishment and probate of the alleged copy will, they are strangers to it and are not proper parties to the litigation); Estate of Keener, 521 N.E.2d 232 (Ill. App. 1988) (even if the latest will was invalid, earlier wills failed to name the contestant, so he was not entitled to contest); Matter of Wharton, 453 N.Y.S.2d 308 (1982) (generally a person who is not a distributee of the decedent and who will receive no part of a decedent's estate if a will is denied probate, will not be permitted to file objections to probate. The exception is when a person is named in a prior will and his interest under the prior will is greater than under the propounded will).

Accordingly, for the reasons stated hereinabove, the Chester County Probate Court's Order dated April 19, 2010 is affirmed, the Appellant's appeal is dismissed, and this matter is remitted to the Probate Court for continued estate administration according to applicable law and procedure.

IT IS SO ORDERED.

FILED
2010 OCT -5 A 11:34
CLERK OF COURT
CHESTER CO S.C.

Clifton Newman, Judge

September 30, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER
IN THE MATTER OF THE ESTATE OF REBA P. HINSON, Probate No: 2008-ES-12-00297

MELL WOODS,

PLAINTIFF-CLAIMENT,

V.

ROBERT H. BREAKFIELD, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF REBA P. HINSON,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2010-CP-12-00201

COPY

MOTION TO RECONSIDER, AND TO ALTER OR AMEND JUDGMENT

NOW COMES Mell Woods, party in the above-styled case, and moves that the Honorable Circuit Court for the SIXTH Judicial Circuit reconsider the Order entered in this case by Clifton Newman, presiding on September 08, 2010, for the following reasons to wit:

1.

The Court failed to rule on certain motions that were in the file and should have been ruled on by the Court;

EXHIBIT C

2.

This motion is timely; although Judge Newman heard the case on September 08, 2010, no one got around to filing a court order with the clerk of court until about a month later, and then about another month later, or on October 31, to be exact, the moving party in this case received a copy of the court order from the defense attorney, Mr. Brackett, via the U.S. Mail; this Motion to Reconsider, and to Alter or Amend Judgment is being filed with the clerk, and served on defense counsel within ten days of the receipt of the court order on October 31, 2010;

3.

The appeal from Probate Court to Circuit Court was heard without benefit of a certified record from the Probate Court as the law requires; plaintiff objected to any such thing being done, in writing,

before the case was called; however over objection, both written and oral, the Circuit Court proceeded to hear the case without a certified record; the Court seemed to be more swayed by the huffing and puffing of the defense counsel, Mr. Brackett, rather than the law; Mr. Brackett stated to the Court that he had handled many appeals to circuit court from probate, and that he had "always" got up the record, and more, or less, supervised the probate court in in the performance of the statutory duties assigned to that court; such is not the law however, and the law about a probate record is not "new", in fact since copy machines are now accepted, moving party supplies the actual law from the 1952 S.C. Code, and the following is the same law as today, except for one small stipulation: *"Such return may be compelled by attachment"*; [which has been removed from the present law], here is the text of the

law from page 365, 1952 Code of Laws:

Ex parte Gregory, 58 S. C. 114, 36 S. E. 433.

The action of a probate court, although erroneous, is valid until reversed.—Anderson v. Bowers, 170 F. (2d) 676.

Quoted in Watson v. Pollitzer, 72 S. C. 387, 51 S. E. 914; Johnson v. Johnson, 160 S. C. 158, 158 S. E. 264.

Cited in In re Mayo's Estate, 60 S. C. 401, 38 S. E. 634; Ex parte Apeler, 35 S. C. 417, 14 S. E. 931; Henson v. Wolfe, 130 S. C. 273, 125 S. E. 293; Reed v. Lemacks, 207 S. C. 137, 35 S. E. (2d) 34; Thompson v. Anderson, 208 S. C. 208, 37 S. E. (2d) 581; Howell v. Littlefield, 211 S. C. 462, 46 S. E. (2d) 47.

§ 7-203. Probate court to make return to appellate court.

Within thirty days after such grounds of appeal shall have been filed in the office of the probate court, as provided in § 7-202, the probate court shall make a return to the appellate court of the testimony, proceedings and judgment and file the same in the appellate court. Such return may be compelled by attachment. Upon the appeal being finally disposed of all such papers included in the return shall be returned to the probate court.

1942 Code § 231; 1932 Code § 231; Civ. P. '22 § 188; Civ. P. '12 § 64; Civ. P. '02 § 58; 1870 (14) 60; 1939 (41) 111.

Duty imposed on probate court.—An important effect of the amendment of 1939 was to relieve the appellant of the burden and expense of procuring a certified copy of the record and filing it in the appellate court. Instead it was made the duty of the probate court to file the originals comprising the record, which shall constitute the return to the appellate court. The filing shall be within thirty days after filing in the probate court of notice and grounds of appeal and may be compelled by attachment. There is no provision for penalty upon appellant for failure of the probate judge to perform his duty under the statute. Howell v. Littlefield, 211 S. C. 462, 46 S. E. (2d) 47.

Presumption that probate court would perform duty.—The appellants from the judgment of the probate court, having complied with § 7-202 respecting the taking of their appeal to the court of common pleas, are entitled to rely upon the presumption that the judge of probate would perform his duty in the time required by the provisions of this section. The presumption continues until knowledge of the neglect is acquired. Howell v. Littlefield, 211 S. C. 462, 46 S. E. (2d) 47.

If appeal is withdrawn prior to filing return probate jurisdiction is not lost.—The jurisdiction of the probate court continues, until the record shows that it is lost. Where the notice of appeal is revoked prior to the filing of the return as herein provided for, the probate court still has jurisdiction to revoke its grant of letters of administration. In re Jones' Estate, 102 S. C. 110, 86 S. E. 203.

Quoted in Watson v. Pollitzer, 72 S. C. 387, 51 S. E. 914; Johnson v. Johnson, 160 S. C. 158, 158 S. E. 264.

§ 7-204. Proceedings stayed by appeal.

When an appeal according to law is taken from any sentence or decree of the probate court all proceedings in pursuance of the order, sentence or decree appealed from shall cease until the judgment of the circuit or Supreme Court is had; but if the appellant in writing waives his appeal before the entry of such judgment, proceedings may be had in the probate court as if no appeal had been taken.

1942 Code § 232; 1932 Code § 232; Civ. P. '22 § 189; Civ. P. '12 § 65; Civ. P. '02 § 59; 1870 (16) 61.

Pending an appeal from its decree of "no will" probate court cannot appoint an administrator.—An appeal from an order or decree of the probate court shall act as a supersedeas, therefore during the pendency of an appeal from the probate court of a decree of no will, the probate court cannot grant letters of administration, as that would involve a determination of the question on appeal. In re Seay's Estate, 63 S. C. 130, 41 S. E. 17. See, also, Wolfe v. Bank of Anderson, 128 S. C. 174, 122 S. E. 592.

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CODE OF LAWS
OF
SOUTH CAROLINA
1952

IN EIGHT VOLUMES

ANNOTATED

Prepared under the supervision and direction of the Code Commissioner and the Committee on Statutory Laws of the General Assembly of South Carolina

VOLUME 1

THE MICHIE COMPANY
Charlottesville, Va.
THE LAWYERS CO-OPERATIVE PUBLISHING CO.
Rochester, N. Y.
1952

237

4.

So now that it can be readily seen that appellant has no duty whatsoever in compiling, transmitting, or CERTIFYING the record on appeal to the Circuit Court, as an appeals court, and where the court order drawn up by Michael Brackett for the judge to sign specifically refers to the record, where in fact there is no record, it follows that the entire proceeding is controlled by an error of law manufactured by the defense counsel;

5.

There is much more to the "history" of the proceeding recited by the defense counsel in the court order; the case is all about attorney fraud; namely Ned Gregory, II., In The Matter of Ned Gregory, II., Respondent, 360 S.C. 270; Gregory is a document forger, and participated in the forging of documents

in THIS case, and under oath; specifically, Gregory drew a document used to suborn perjury, with the end result of the wrong will being probated in this case; such conduct fits the definition of EX-trinsic fraud practiced upon South Carolina Courts, and is no different from that of the defense counsel in the Ford case, Chewning v. Ford Motor Co., 354 S.C. 72; more to the point is: why did the original Judge recuse herself, and the reason is directly related to Gregory's forging and manipulation of her court;

6.

In addition, appellant moves that the circuit court reconsider the order entered in this case, for reason of there not being a certified record of the proceedings below available for the court's use, and the fact that the record itself has at times been concealed, left out, and not

brought out until the last minute where the record is of no use to the adverse party; example, in this very case, on the morning of the hearing in this case in circuit court, moving party found the "record" of this case still residing at the Chester County Probate Court, where it should not have been, but should have, according to law, been on file at the circuit court, IN ADDITION, there was no court reporter transcript present in the file, but LO & BEHOLD, the same afternoon one of the probate clerks appeared in the Circuit Court courtroom with the un-certified record clutched in her hand, THERE IT WAS, the missing transcript, right on top;

7.

As proof of appellant's allegations about the record appellant shows that the Chester County Circuit Court is not now, and never has been, in

possession of a full certified record of the proceedings in the probate court below; the record was taken back to the probate court and is retained there, in violation of S.C. Law, instead of being transmitted to the circuit court, and kept by the circuit court, as required by statute;

8.

There are several reasons for this unfortunate state of facts; the first is simple incompetence; the second is the manipulation of courts by forgers and members of the bar who assume teaching roles with the net result being that the present Chester County Probate Clerks will never transmit and certify the entire record of the proceedings below because the clerks have been advised that the record contains full evidence of criminal activity, and the probate staff will never perform this duty without Circuit Court intervention;

WHEREFORE, plaintiff moves that the the Chester County Probate Clerks be directed to produce the full and original record of the probate proceedings below, and transmit it to the Chester County Circuit Court, and leave it at the circuit court until this proceeding is over; that a new hearing be held after the record is transmitted to the circuit court, or in the alternative, A RECEIVER be appointed to see to it that the law is complied with.

Respectfully submitted,

This 09 day of November, 2010.

COPY

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

STATE OF SOUTH CAROLINA COUNTY OF CHESTER In the Matter of the Estate of Reba P. Hinson Mell Woods, Appellant, v. Robert H. Breakfield, Esquire, as Personal Representative, Respondent.	IN THE COURT OF COMMON PLEAS 2010-CP-12-0201 (Appeal from Probate Court) ORDER GRANTING APPELLANT'S RULE 59(e) MOTION

FILED
JAN 31 P 1:03
CLERK OF COURT
CHESTER CO. S.C.

This matter came before the Court as an appeal of a Chester County Probate Court Order dated April 19, 2010. The hearing on Appellant's grounds for appeal was held on September 8, 2010 whereby this Court affirmed the Probate Court Order. Appellant subsequently filed a Motion for Reconsideration of that Order.

After considering the motion and applicable law pursuant to S.C. Code Ann. § 62-1-308(b), I find that a proper return was not made by the Probate Court as required by law. It is therefore ordered that the Motion for Reconsideration is hereby GRANTED.

AND IT IS SO ORDERED.

January 27, 2011
Columbia, South Carolina

Clifton Newman,
Presiding Judge

EXHIBIT
D

MOSES KOON & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 650 (29201)
Post Office Box 100261
Columbia, South Carolina 29202-3261

phone (803) 461-2300
fax (803) 461-2309

B. Michael Brackett
Direct Dial: (803) 461-2312
Email: mbrackett@mkb-law.com

February 2, 2011

The Honorable Lois H. Roddey
Chester County Probate Judge
P. O. Drawer 580
Chester, SC 29706

RE: Estate of Reba P. Hinson
08-ES-12-0297
Mell Woods Appeal of April 19, 2010 Order to Circuit Court
Our File Number - 12085.1

Dear Judge Roddey:

Judge Gettys, as Special Probate Judge for Chester County, issued an Order dated April 19, 2010 in response to a petition or motion filed by Mell Woods. Mr. Woods appealed that Order to Circuit Court.

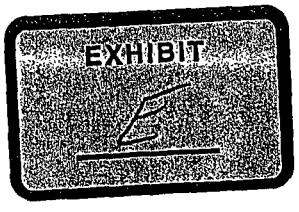
According to S.C. Code Ann. §62-1-308(b), when an appeal is taken from probate court to circuit court, "the probate court shall make a return to the appellate court of the testimony, proceedings, and judgment and file it in the appellate court."

As attorney for the Respondent-Personal Representative, I request that your office promptly file the probate court's return with Ms. Carpenter, the Clerk of Court.

Using the language of the statute to identify what must be included in the return, I suggest that the following be included:

1. Mr. Woods' "Petition for Removal of Personal Representative" dated January 22, 2010. (Form 331PC). This Petition includes the Proof of Delivery and an attached two-page typed "Motion for Removal of Personal Representative" also signed by Mr. Woods.

2. "Answer of Robert H. Breakfield, as Personal Representative, to the Petition for Removal of Personal Representative," filed on January 29, 2010, including the attached Exhibit A and the Proof of Delivery.



3. Mr. Woods' "Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above-Styled Case on February 18, 2009; Motion for Removal to Circuit Court." This is a six-page typed document signed by Mr. Woods on February 17, 2010.

4. "Personal Representative's Motion to Dismiss Mell Woods' Petition to Vacate Order and Personal Representative's Return to Mell Woods' Motion to Remove Petition to Circuit Court." This document is six pages and was filed on February 23, 2010.

5. "Transcript of Proceedings, York, South Carolina, April 12, 2010." The transcript was made by Court Reporter William H. White. The copy I have is 36 pages in length, including the reporter's certificate.

6. Judge Getty's Order, dated April 19, 2010 and filed April 20, 2010 (5 pages).

If Mr. Woods thinks that other materials should be included in the return, he may advise you of that fact. I will appreciate your office confirming with me that the return has been delivered to the Clerk of Court and describing exactly what was included in the return.

Thank you very much for your courtesy and assistance.

Very truly yours,

B. Michael Brackett

BMB/bmb

cc: The Honorable Brooks P. Goldsmith
The Honorable Sue Carpenter
Robert H. Breakfield, Esquire
Mr. Mell Woods

Chester County, South Carolina
LOIS H. RODDEY, JUDGE OF PROBATE
POST OFFICE DRAWER 580
CHESTER, SOUTH CAROLINA 29706

February 11 2010

Mrs. Sue Carpenter
Clerk of Court
P. O. Drawer 580
Chester, SC 29706

Re: Estate of Reba P. Hinson
Case No. 2008ES1200297

Dear Mrs. Carpenter:

According to SC Code Ann. 62-1-308(b) when an appeal is taken from Probate Court to Circuit Court, "the Probate Court shall make a return to the Appellate Court of the testimony, proceedings and judgment and file it in the Appellate Court". Enclosed please find the following certified documents for the appeal that Mell Woods has filed concerning an Order issued by Judge Gettys, as Special Probate Judge for Chester County, dated April 19, 2010:

1. Petition for Removal of Personal Representative dated January 22, 2010.
2. Answer of Robert H. Breakfield, as Personal Representative, to the Petition for Removal of Personal Representative filed January 29, 2010.
3. Verified Petition to Vacate the Chester County Probate Court Order Entered in the Above – Styled Case on February 18, 2009: Motion for Removal to Circuit Court.
4. Personal Representative's Motion to Dismiss Mell Woods' Petition to Vacate Order and Personal Representative's Return to Mell Woods' Motion to Remove Petition to Circuit Court.
5. Transcript of Proceedings, York, South Carolina, April 12, 2010.
6. Judge Getty's Order, dated April 19, 2010 and filed April 20, 2010.

Please let us know if there are any other documents that you need.

Yours truly,

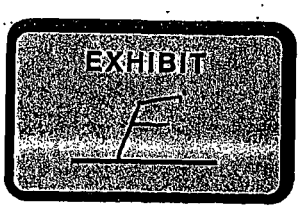
Lois H. Roddey

Lois H. Roddey
Judge of Probate

tbz

cc: Mr. B. Michael Brackett
Mr. Mell Woods

Enclosures



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TELEPHONE (803) 385-2604 • FAX (803) 581-5180

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

2010-CP-12-0201
(Appeal from Probate Court)

In the Matter of the Estate of Reba P. Hinson

Mell Woods,

Appellant,

v.

Robert H. Breakfield, Esquire, as Personal Representative,

Respondent.

Order Amending Prior Order Granting Appellant's Rule 59(e) Motion

FILED
2011 MAY 20 A 11: 25
CLERK OF COURT
CHESTER CO. S.C.

By Order dated January 27, 2011, the undersigned granted the Appellant's Motion for Reconsideration. On the Court's own motion, the undersigned now amends the January 27, 2011 Order to provide that the Motion for Reconsideration is granted; that the Order dated September 30, 2010 which was the subject of the Motion for Reconsideration is hereby vacated; that the undersigned does not retain jurisdiction to hear the Appellant's appeal; and that the appeal be returned to the Chester County non-jury docket.

IT IS SO ORDERED.

Clifton Newman, Judge

Camden, SC

May 18, 2011

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EXHIBIT G

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

Mell Woods,

Plaintiff,

vs.

John D. Hinson, Christine E. Jones, John C. Hinson, Kathy Huffstickle, Robert H. Hinson, Darrell W. Hinson, Charles J. Hinson, William L. Hinson, Elaine H. Hensley, William C. Hinson, Jr., John Does, (1-5), Jane Does, (1-2),

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-12-00595
And Case 2010-CP-12-168,
also Case 2010-CP-12-201,
and Case 2011-CP-12-323,
also Case 2011-CP-12-291.

PLAINTIFFS' RESPONSE TO:

Defendants' Motion for Summary Judgment

CLERK OF COURT
CHESTER CO S.C.
2011 OCT 20 P 4:24
FILED

1. Defendant's counsel, Mr. Brackett is attempting to move for summary judgment in five cases, instead of the one listed at the beginning of his motion; this is artifice, and trickery;

2. In addition, Mr. Brackett fails to inform the trial court that two of the cases he lists in the body of his motion, No.'s 168, and 201, are presently pending in the South Carolina Court of Appeals;

3. And if the above is not sufficient enough, Brackett has gone so far as to have his client, Mr. Brakefield, and also a member of the SC Bar, to swear to the following:

> "17. All of Plaintiff's claims have been dismissed by procedural motions or summary judgment motion. (See 2010-CP-12-0168, including an Order from the Court of Appeals dismissing Plaintiff's appeal to that Court)."

4. If the above is true, then where is the remittitur?

5. Mr. Brackett, lists case number 2011-CP-12-323 in the body of his motion; number 323, is a Trespass to Try Title case, and adverse possession case, a law case, and a jury trial case; plaintiff has already responded to Mr. Brackett's summary judgment motion in the Trespass to Try Case, and objects to having to do so twice;

6. Number 2010-CP-12-595, contains a verified complaint based upon the personal knowledge of the affiant, the facts contained in the verified complaint are enough to carry the case to a jury, regardless of the opinion of Mr. Brackett;

Respectfully submitted,

This 12 day of October, 2011.

Mell Woods

FILED
2011 OCT 20 P 4:24
CLERK OF COURT
CHESTER CO S.C.

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

Certificate of Service:

I hereby certify that I served the defendants in the above-styled cases by sending a copy of the within and foregoing Response, by placing the Response in the U.S. Mail, first class, with sufficient postage, and addressed to:

Moses Koon & Brackett, PC
B. Michael Brackett
P.O. Box 100261
Columbia SC 29202

This 12 day of October, 2011.

Mell Woods

J.

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER
IN THE MATTER OF THE ESTATE OF
REBA P. HINSON, PROBATE NUMBER: 2008-ES-12-00297

MELL WOODS,

PLAINTIFF-CLAIMANT,

V.

ROBERT H. BREAKFIELD, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF REBA P. HINSON,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2010- CP- 12-00201

CLERK OF COURT
CHESTER, S.C.
2011 JUL 11 P 12:43
FILED

APPEAL TO CIRCUIT COURT

NOW COMES, Mell Woods, appellant herein and shows to the honorable circuit court that the above appeal is not ripe for hearing simply because the record from the probate court has never been assembled, returned to, and certified as required by South Carolina Statute 62-1-308(b); this constitutes a major flaw in this proceeding and appellant insists that the law be followed; the probate court is the proper entity to file the record, and not the opposing counsel; appellant objects to any proceeding going forward until the full record from the probate court is received and filed in;

25

Paragraph one.

South Carolina Statute 62-1-308(b) is nothing new; the statute has been around for a while, the current version is attached and marked "exhibit A"; and the version from the 1952 Code is attached also, and marked "exhibit B"; the '52 version is the same as today, except for one sentence: "Such return may be compelled by attachment."; this has been removed from the statute, so there is nothing appellant can do except wait on the probate court;

Paragraph two.

Appellant relies on the law and also Howell v. Littlefield Et Al, 211 S.C. 462, attached for ready reference by this Court, to show some light of what is expected of appellant by South Carolina; (on pgs. 6 & 7 marked in red, and also the concurrence, pgs. 9 & 10);

Paragraph five.

As to the Probate Judge refusing to allow his staff to issue subpoenas in blank as required by SCRCP 45(a)(3); this point was raised to, ruled upon, and referred to in the Probate Court Order at two places: once on page 29, lines 6-18, and at the beginning of the hearing, lines 7-13, page 04, where the Probate Judge stated on the record that he did refuse to issue subpoenas; this constitutes an error of law as it denies the party requesting the subpoenas the right of confrontation;

Respectfully submitted,

This 28 day of July, 2011.

Mell Woods

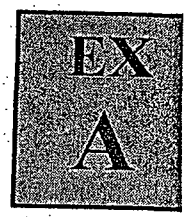
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Except as provided in subsection (g), appeals from the probate court must be to the circuit court and are governed by the following rules: 62-1-308

(a) A person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the circuit court in the same county. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court. The grounds of appeal must be filed in the office of the probate court and a copy served on all parties within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court.

(b) Within thirty days after the grounds of appeal has been filed in the office of the probate court, as provided in subsection (a), the probate court shall make a return to the appellate court of the testimony, proceedings, and judgment and file it in the appellate court. Upon final disposition of the appeal, all papers included in the return must be forwarded to the probate court.



(c) When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals, or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken.

(d) When the return has been filed in the circuit court as provided in subsection (b), the court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.

(e) The final decision and judgment in cases appealed, as provided in this code, shall be certified to the probate court by the circuit court, court of appeals, or Supreme Court, as the case may be, and the same proceedings shall be had in the probate court as though the decision had been made in the probate court.

(f) A judge of a probate court must not be admitted to have any voice in judging or determining an appeal from his decision or be permitted to act as attorney or counsel.

(g) If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules.

SECTION 62-1-309. Election and term of judges.

The judges of the probate court shall be elected by the qualified electors of the respective counties for the term of four years in the manner specified by Section 14-23-1020.

PART 4.

NOTICE, PARTIES, AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

SECTION 62-1-401. Notice; method and time of giving.

EX B

Ex parte Gregory, 58 S. C. 114, 36 S. E. 433.

The action of a probate court, although erroneous, is valid until reversed.—Anderson v. Bowers, 170 F. (2d) 676.

Quoted in Watson v. Pollitzer, 72 S. C. 387, 51 S. E. 914; Johnson v. Johnson, 160 S. C. 158, 158 S. E. 264.

Cited in In re Mayo's Estate, 60 S. C. 401, 38 S. E. 634; Ex parte Apeler, 35 S. C. 417, 14 S. E. 931; Henson v. Wolfe, 130 S. C. 273, 125 S. E. 293; Reed v. Lemacks, 207 S. C. 137, 35 S. E. (2d) 34; Thompson v. Anderson, 208 S. C. 208, 37 S. E. (2d) 581; Howell v. Littlefield, 211 S. C. 462, 46 S. E. (2d) 47.

§ 7-203. Probate court to make return to appellate court.

Within thirty days after such grounds of appeal shall have been filed in the office of the probate court, as provided in § 7-202, the probate court shall make a return to the appellate court of the testimony, proceedings and judgment and file the same in the appellate court. Such return may be compelled by attachment. Upon the appeal being finally disposed of all such papers included in the return shall be returned to the probate court.

1942 Code § 231; 1932 Code § 231; Civ. P. '22 § 188; Civ. P. '12 § 64; Civ. P. '02 § 58; 1870 (14) 60; 1939 (41) 111.

Duty imposed on probate court.—An important effect of the amendment of 1939 was to relieve the appellant of the burden and expense of procuring a certified copy of the record and filing it in the appellate court. Instead it was made the duty of the probate court to file the originals comprising the record, which shall constitute the return to the appellate court. The filing shall be within thirty days after filing in the probate court of notice and grounds of appeal and may be compelled by attachment. There is no provision for penalty upon appellant for failure of the probate judge to perform his duty under the statute. Howell v. Littlefield, 211 S. C. 462, 46 S. E. (2d) 47.

their appeal to the court of common pleas, are entitled to rely upon the presumption that the judge of probate would perform his duty in the time required by the provisions of this section. The presumption continues until knowledge of the neglect is acquired. Howell v. Littlefield, 211 S. C. 462, 46 S. E. (2d) 47.

If appeal is withdrawn prior to filing return probate jurisdiction is not lost.—The jurisdiction of the probate court continues until the record shows that it is lost. Where the notice of appeal is revoked prior to the filing of the return as herein provided for, the probate court still has jurisdiction to revoke its grant of letters of administration. In re Jones' Estate, 102 S. C. 110, 86 S. E.

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Howell v. Littlefield, 211 S.C. 462 (Copy w/ Cite) Pages: 9

*211 S.C. 462, *; 46 S.E.2d 47, **;*
*1947 S.C. LEXIS 121, ****

HOWELL v. LITTLEFIELD ET AL.

16025

SUPREME COURT OF SOUTH CAROLINA

211 S.C. 462; 46 S.E.2d 47; 1947 S.C. LEXIS 121

December 30, 1947, Decided

PRIOR HISTORY: [*1]** Appeal from Common Pleas Circuit Court of Greenville County; G. B. Greene, Judge.

Proceeding by Annie Texas Howell, as executrix of the will of Joel Clarence Berry, deceased, for probate of the will, contested by Lydia Berry Littlefield and another. From a judgment confirming a jury's verdict of no will, proponent appeals.

Affirmed.

DISPOSITION: Judgment affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant, the executrix of the will of deceased, sought review of a judgment from the Common Pleas Circuit Court of Greenville County (South Carolina), which confirmed a jury's verdict of no will in favor of respondents, the testator's children, in a will contest.

OVERVIEW: The testator died leaving his will. He was survived by two daughters, to whom the will contained bequests, with the balance of his property, real and personal, to his two sisters and two brothers in equal shares,

and one of the sisters was appointed as executrix. The executrix contended that the widow was incapacitated to contract a legal marriage with testator three years prior to the testator's death and that the license and ceremony was therefore void. On appeal, the court held that it was not necessary to test the sufficiency of the pleading to admit the challenged evidence of the marriage of testator into the probate court. The court need only consider the propriety of the admission of the same evidence in the subsequent trial de novo in the circuit court, in the light of the grounds of appeal. The court concluded without difficulty that it was properly admitted. Further, there was no provision for penalty upon the executrix for failure of the probate judge to perform his duty under the statute for the delayed filing. The court affirmed the judgment.

OUTCOME: The court affirmed the judgment, which confirmed a jury's verdict of no will in favor of the testator's children in a will contest.

CORE TERMS: probate, marriage, common pleas, testator, notice, widow, revocation, compelled, certified copy, attachment, void, trial de novo, admitting, executrix, definite, revoked, mutual agreement, official duty, adverse party, comprising, oversight, proponent, thereupon, removal, barrier, relieve, properly overruled, contestant's, married, woman's

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Family Law > Marital Termination & Spousal Support > Annulment > General Overview
Family Law > Marriage > Proof > Common Law Marriages > Elements > Agreements
Family Law > Marriage > Validity > Common Law Marriages

HN1 After the removal of the barrier by a previous wife's death the continued relation can not ripen into valid common law marriage without a new, mutual agreement therefor. More Like This Headnote | *Shepardize:* Restrict By Headnote

Civil Procedure > Appeals > Records on Appeal
Estate, Gift & Trust Law > Probate > Procedures in Probate > General Overview

HN2 S.C. Code § 231 (1932) provides: The person appealing shall procure and file in the Circuit Court to which such appeal is taken a certified copy of the record of the proceedings appealed from, and of the

grounds of the appeal filed in the Probate Court, together with the proper evidence that notice has been given the adverse party according to law. More Like This Headnote

Estate, Gift & Trust Law > Probate > Procedures in Probate > General Overview

HN3 S.C. Code § 231 (1942) provides as follows: Within 30 days after such grounds of appeal being filed in the office of the probate court, as provided in S.C. Code § 230, the probate court shall make a return to the appellate court of the testimony, proceedings and judgment and file the same in the appellate court. Such return may be compelled by attachment. Upon the appeal being finally disposed of, all such papers included in the return shall be returned to the probate court. More Like This Headnote | *Shepardize:* Restrict By Headnote

Legal Ethics > Judicial Conduct

HN4 The presumption is always in favor of the correct performance of his duty by an officer. The presumption is that no official person, acting under oath of office, will do aught which is against his official duty to do, or will omit aught which his official duty requires to be done. More Like This Headnote | *Shepardize:* Restrict By Headnote

Estate, Gift & Trust Law > Probate > Procedures in Probate > General Overview

HN5 If the person appealing from the proceedings of the probate court, as provided in this title, shall neglect to enter his appeal, the circuit court to which such appeal shall be taken, on motion, and producing attested copies of such appeal by the adverse party, shall affirm the proceedings appealed from, and may allow costs against the appellant. More Like This Headnote

HEADNOTES / SYLLABUS ⊕Show

COUNSEL: Messrs. Wyche, Burgess & Wofford, of Greenville, for Appellant, cite: As to necessity of filing record in the Court of Common Pleas, in appeals from Probate Court, within the statutory period: 125 S.C. 115, 118 S.E. 37; 149 S.C. 69, 146 S.E. 677. As to necessity of children pleading testator's subsequent marriage if they seek to benefit by the statutory provision of revocation: 194 S.C. 95; 95 S.C. 118.

Messrs. J. D. Lanford, W. E. Bowen, and Williams & Henry, all of Greenville, for Respondents, cite: As to presumption "that public officers will perform their duties": 195 S.C. 168, 10 S.E.2d 316. As to notice of appeal being sufficient to confer jurisdiction upon Court of Common Pleas: 144 S.C. 523, 142 S.E. 602. As to motion, made without notice, being invalid: 35 S.C. 420, 14 S.E. 932; **[***2]** 125 S.C. 115, 118 S.E. 37; 149 S.C. 69, 146 S.E. 677; 7 S.C. 235; 131 S.C. 117, 126 S.E. 430; 192 S.C. 58, 5 S.E.2d 459. As to necessity for service of notice of appeal: 161 S.C. 503, 159 S.E. 844. As to the case at bar being a case at law: 179 S.E. 326, 175 S.C. 367. As to there being no lawful marriage: 148 S.E. 228, 150 S.C. 411; 1 Rich. Eq. Cas. 85; 155 S.E. 285, 158 S.C. 71.

JUDGES: TAYLOR H. STUKES, J. D. GORDON BAKER, C. J., E. L. FISHBURNE, CLAUDE A. TAYLOR and G. DEWEY OXNER, JJ., concurred.

OPINION BY: STUKES

OPINION

[*464] **[**47]** STUKES, J.: Joel Clarence Berry of Greenville County died in 1945 leaving his will dated December 29, 1932. He was survived by two daughters, to whom the will contained bequests **[**48]** of $ 100.00 each, with the balance of his property, real and personal, to his two sisters and two brothers in equal shares, and one of the sisters was appointed as executrix. In such capacity she is the appellant here. Testator's children are the sole respondents.

Whether there is a surviving widow of testator, Laura Williams Edwards Berry, to whom he was married at Pickens Court House on October 5, 1942, was an issue of fact which was concluded in the affirmative by the verdict of the jury **[***3]** at the trial in the lower court. Testator's first wife, the mother of respondents, died several years before his second marriage in 1942.

The will was proved in common form in the Probate Court on May 16, 1945. On September 4th following, respondents gave notice that they required that the will be proved in due form of law. Sec. 8932, Code of 1942. Thereupon the executrix filed petition therefor and it and a summons were served upon respondents. The latter filed a return or reply in which they denied that the instrument propounded by the petitioner was the will of their father, and that if it was executed by him it was the result of undue influence, etc., and finally that if executed it was, quoting, "revoked and made null and void during the lifetime of Joel Clarence Berry, **[*465]** after which the same ceased to be of any force as the last will and

testament of the said Joel Clarence Berry". After hearing the testimony the Probate Court sustained the will and order was filed on May 6, 1946. On May 15th following, notice and grounds of appeal of the present respondents to the Court of Common Pleas were served upon counsel for petitioner and upon the Probate Judge. Code, Sec. 230. **[***4]** Upon call of the case in the Court of Common Pleas on January 27, 1947, counsel for the executrix, the proponent of the will, moved before the court, without prior notice, that the appeal from the Probate Court be dismissed upon the ground that there had been filed in the Court of Common Pleas no return of the proceedings and judgment in the Probate Court, as required by Code Sec. 231, whereby the Court of Common Pleas was without jurisdiction. During the argument of the motion the Probate Judge filed his proper return. Thereupon the court overruled the motion to dismiss the appeal and continued the case beyond the term.

Beginning March 24, 1947, the issue of will or no will was tried by jury in the Court of Common Pleas and resulted in a verdict of "no will", which the court confirmed by formal decree. From verdict and judgment this appeal was taken.

The third and fourth questions presented relate to the facts. If testator was legally married after the execution of his will and the wife survived without provision for her, as here, the will was thereby revoked. Code Sec. 8922.

Appellant contended that the widow was incapacitated to contract a legal marriage with testator in 1942 **[***5]** and that the license and ceremony was therefore void. She, then a widow, undertook in 1932 to marry one Crisp who had come to her Greenville County neighborhood from North Carolina. It turned out that he had a living wife there (with whom he kept in contact and attended her funeral in 1938) so that this attempted marriage was void. However, appellant adduced evidence to the effect that after the death **[*466]** of Crisp's wife in North Carolina he and the subsequent widow of testator lived in the relation of common law marriage and that he is still alive so that testator's widow was Crisp's wife in 1942 and therefore incompetent to marry testator. Crisp's existing marriage in North Carolina incapacitated him, of course, to contract another marriage, so his and the present widow's relation prior to his wife's death was unquestionably illegal. HN1 After the removal of the barrier by his wife's death the continued relation could not ripen into valid common law marriage without a new, mutual agreement therefor. *Bannister v. Bannister*, 150 S.C. 411, 148 S.E. 228; *Lemon v. Lemon*, 158 S.C. 71, 155 S.E. 285.

The latter was negatived by his deposition and by **[***6]** a part, at least, of the testimony of the widow. Evidence contra was adduced by appellant. This raised an

issue of fact which was for solution by the jury, under proper instructions by the court. There is no criticism of the court's charge to the jury; and the verdict determined **[**49]** the fact. There was, therefore, no error thereabout and the court properly overruled appellant's motion for a directed verdict in her favor.

The first question submitted by appellant concerns procedure and imputes error in the refusal of the Court to sustain her motion to dismiss the appeal from the Probate Court because of the failure of the latter to file return in the Court of Common Pleas before the appeal to that court was called for trial. The pertinent statute as it existed prior to 1939 was as follows, copied from the Code of 1932: "Sec. 231. HN2 The person appealing shall procure and file in the Circuit Court to which such appeal is taken a certified copy of the record of the proceedings appealed from, and of the grounds of the appeal filed in the Probate Court, together with the proper evidence that notice has been given the adverse party according to law".

This statute put the burden upon **[***7]** appellant to procure from the Probate Court a certified copy of the record and file it in **[*467]** the Circuit Court. There being no time specified for such it was held that it must be by the time of the "next stated session" of the circuit court, to which appeal was allowed by the next preceding section of the Code. Application of the statute in this form resulted in hardships upon appellants who had served and filed notices of appeal in good faith. Their appeals were dismissed for lack of filing of the records in the circuit court. *Fultz v. McKnight*, 125 S.C. 115, 118 S.E. 37; *Boggs-Tate Co. v. Bishop*, 149 S.C. 69, 146 S.E. 677.

Before 193

The code was amended by Act No. 71 of 1939, 41 Stat. 111, by revision of the quoted section so that it now is as incorporated in the 1942 Code, as follows: "Sec. 231. HN3 Within thirty (30) days after such grounds of appeal being filed in the office of the probate court, as provided in section 230, the probate court shall make a return to the appellate court of the testimony, proceedings and judgment and file the same in the appellate court. Such return may be compelled by attachment. Upon the appeal being finally disposed **[***8]** of, all such papers included in the return shall be returned to the probate court".

After 193

It is seen that an important effect of the amendment was to relieve the appellant of the burden and expense of procuring a certified copy of the record and filing it in the appellate court. Instead it was made the duty of the probate court to file the originals comprising the record, which shall constitute the return to the appellate court. The filing shall be within thirty days after filing in the probate court of notice and grounds of appeal and may be compelled by attachment. There

is no provision for penalty upon appellant for failure of the probate judge to perform his duty under the statute. It is undisputed in this instance that the probate court's delay was due to mere oversight and the return was filed as soon as the situation was brought to the judge's attention, indeed before arguments upon the motion to dismiss were concluded. The motion was properly denied. The decisions to which we have referred, relied upon by appellant, **[*468]** are no longer controlling in view of the statutory amendment of 1939, *supra.*

The appellants from the judgment of the Probate Court who are the respondents **[***9]** here, having complied with Sec. 230 of the Code respecting the taking of their appeal to the Court of Common Pleas were entitled to rely upon the presumption that the judge of probate would perform his duty in the time required by the provisions of Sec. 231; and the presumption continued until knowledge of the neglect was acquired. HN4 "'The presumption is always in favor of the correct performance of his duty by an officer * * *.' Throop on Public Officers, § 559. Also by the same author; 'The presumption is that no official person, acting under oath of office, will do aught which is against his official duty to do, or will omit aught which his official duty requires to be done.'" *Whitcomb v. Manderville,* 90 S.C. 384, 73 S.E. 775, 777. Other similar South Carolina decisions are collected in 14 S.E. Dig., Evidence, Key No. 82, 83.

The foregoing question has been considered and determined upon the merits of it, which possibly should not have been done. It might have been overruled upon the ground that appellant did not proceed pursuant to the applicable statute, and of **[**50]** course the entire procedure is statutory. The method by which an unperfected appeal from the **[***10]** Probate Court to the Court of Common Pleas may be terminated is prescribed by section 234, which was not followed in this case. It is as follows: HN5 "If the person appealing from the proceedings of the probate court, as provided in this title, shall neglect to enter his appeal, the circuit court to which such appeal shall be taken, on motion, and producing attested copies of such appeal by the adverse party, shall affirm the proceedings appealed from, and may allow costs against the appellant".

The last question for determination, the second stated in appellant's brief, is whether the trial court should have admitted evidence of the marriage of testator in **[*469]** 1942 in view of the general allegation in the return of the respondents in the probate court which has been quoted, to the effect that the purported will was "revoked and made null and void during the lifetime" of testator. It is noted that there was no allegation of the ground of the stated revocation, which it developed in the trial in the probate court was the marriage of testator subsequent to the execution of the will. There was no motion by appellant to

require the pleading to be made more definite and certain and **[***11]** issue was joined thereon in the probate court. Evidence was offered in the trial there of the marriage, indeed the widow testified, and decision upon the merits was made, without reference in the judgment of the Probate Court to any controversy between the parties as to the competency of this evidence.

The order of the Probate Court, in which it was held that the widow was the common law wife of another when she married the testator, is printed in the appeal record. It was of date May 6, 1946, and the appeal therefrom was called for trial in the Court of Common Pleas on January 27, 1947, and continued until March 24, 1947. Meanwhile, in the grounds of appeal (from the Probate Court) of the present respondents, served upon counsel for the present appellant on May 15, 1946, the third was: "That the Court erred in finding as a matter of fact that the alleged instrument, if the same ever amounted to a will of the said Joel Clarence Berry, was not annulled and made void by reason of the marriage contract by the said Joel Clarence Berry and Laura Edwards Berry". And the fourth proposed issue to be submitted to the jury, served at the same time, was as follows: "Did Orlando Crisp and Laura **[***12]** Edwards Berry establish the relation of common law husband and wife after March 6, 1938, prior to the marriage of Laura Edwards Berry and Joel Clarence Berry?" Under these circumstances there was, of course, no element of surprise of appellant at the circuit court trial in the tendered reason for the revocation of the will, which was pleaded (as hereinabove quoted) by the respondents in the **[*470]** probate court and there substantiated by proof and the adverse finding thereupon expressly challenged on appeal. See Code Sec. 490. The contention of appellant upon the point is thus quite technical. She was aware before the trial *de novo* in the Court of Common Pleas of the position of respondents with respect to the revocation of the will and had been so for the period from May, 1946, until March, 1947. Her objection to the evidence relating to the marriage, which it was successfully contended constituted, perforce the statute cited *supra,* a revocation of the will, was properly considered by the trial court in that light, and also properly overruled.

The principal purpose of all pleadings is to inform the pleader's adversary of the legal and factual positions which he will **[***13]** be required to meet upon trial. Liberal construction is enjoined by the code. Sec. 477. Revocation was certainly pleaded in this case. Had appellant desired to confine respondents to proof of one of the several methods of revocation, she should have moved in the Probate Court for an order requiring that the pleading be made definite and certain in that particular. Code, Sec. 478. Having instead proceeded there to trial of the issue, the later objection in the subsequent trial *de novo* in the circuit court is manifestly without merit. No authority has been cited which would tend to sustain it. The

problem appears to be novel in that it is not necessary to test the sufficiency of the pleading to admit the challenged evidence in the probate court. We need only consider the propriety **[**51]** of the admission of the same evidence in the subsequent trial *de novo* in the circuit court, in the light of the grounds of appeal. We conclude without difficulty that it was properly admitted.

Judgment affirmed.

FISHBURNE, TAYLOR and OXNER, JJ., concur.

CONCUR BY: BAKER

CONCUR

BAKER, CJ. (concurring in result).

I concur in the result of the opinion of Mr. Justice Stukes, in this case.

[*471] **[***14]** As I view the first question submitted by the appellant, the only difference in the statute law governing appeals from a Probate Court to a Court of Common Pleas such as in this case, existing at the time of this appeal, and the appeals in the cases cited in the opinion of Mr. Justice Stukes (*Fultz v. McKnight*, 125 S.C. 115, 118 S.E. 37, and *Boggs-Tate Co. v. Bishop*, 149 S.C. 69, 146 S.E. 677) is in Section 231 of the Code. It is pointed out in the main opinion that the important effect of the amendment was to relieve the appellant of the burden and expense of procuring a certified copy of the record and filing it in the appellate court. Instead, it was made the duty of the Probate Court to file the originals comprising the record, which would constitute the return to the appellate court. And it was further pointed out that the originals comprising the record must be filed in the appellate court within thirty days after the filing in the Probate Court of notice and grounds of appeal, and if not so filed, that the filing thereof may be compelled by attachment.

The main opinion further points out that there is no penalty upon the appellant for the failure **[***15]** of the Probate Judge to perform his duty under the statute, and that the failure of the Probate Judge to file the original papers in this case in the appellate court was a mere oversight; that when the situation was brought to the attention of the Probate Judge he immediately filed all necessary papers during the course of the argument of a motion to dismiss the appeal. The main opinion then reaches the conclusion that in view of the amended Section 231 of

the Code, the cases above referred to are no longer controlling.

When we consider the fact that Sections 230 and 231 of the Code have always been construed together, and that Section 234 was left intact when Section 231 was amended, the only effect of the amendment of Section 231 of the Code was to relieve the appellant of the duty of having certified copies of the record made and filed in the Circuit Court; and fixing a definite time limit within which the Probate Judge should file the original papers. It seems to me that the main opinion **[*472]** fails to give weight to a very significant portion of the amended statute wherein it is provided that should the Probate Judge fail to file the record as required, "such return may **[***16]** be compelled by attachment". The sentence from the statute just quoted would have no place therein unless it was intended to devolve the duty on the appellant to take proper action to compel the filing of the record if thirty days elapsed after notice of appeal and the record in the Probate Court had not been filed in the appellate court, by the Probate Judge, because the appellant necessarily had the right under the general law to proceed by mandamus if the Probate Judge refused to file the record upon the matter being called to his attention. In other words, I think that when there was inserted in the statute as amended the sentence "such return may be compelled by attachment", it was the intendment of the Legislature to place on the appellant the duty of seeing that the Probate Judge filed the record in the appellate court, and that such appellant could not rely merely upon the (sometimes violent) presumption that an official would perform his duty. It is my opinion that the cited cases are apposite, especially in view of the admitted fact that several terms of the Court of Common Pleas for Greenville County were convened and held prior to the appellant's undertaking to call this **[***17]** case for trial, and, of course, prior to the filing of the original record of the Probate Court in the Court of Common Pleas. I think that no duty was cast on the appellant to take any action until thirty days after the filing of notice of appeal had elapsed and the Probate Judge had failed to file the **[**52]** originals of the records. It was only thereafter, and within a reasonable time, that the appellant was compelled to take action by calling it to the attention of the judge of Probate that he had not filed the record in the Circuit Court, and in case of his refusal to do so, that then the duty devolved on the appellant to bring the necessary action to compel the filing thereof by the Judge of Probate.

I think, however, the foregoing notwithstanding, that the trial Judge properly refused the motion of appellant here to **[*473]** dismiss the appeal of the appellants from the Probate Court to the Court of Common Pleas in that no notice of a motion to dismiss the appeal was given to the adverse party; and at the time the motion to dismiss the appeal was made, the moving parties did not produce attested copies of the record of the proceedings in the Probate Court as provided

for **[***18]** by Section 234 of the Code of 1942, which Section is quoted in the main opinion.

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Per telephone conversation with Kathy Carpenter on January 24, 2008:

Kathy Carpenter, secretary for James W. Boyd, advised that February 28, 2008, at 2:00 PM is a good date for hearing on Reba P. Hinson. She is waiting to hear back from our office to confirm date and time.

January 24, 2008 at approximately 12:20 P.M. left a message for Mr. Ned Gregory, II to call our office as to possibility of a hearing on Reba P. Hinson on February 28, 2008 at 2:00 PM.

1/25/08 confirmed with Kathy Carpenter date for hearing on Reba P. Hinson as being set for February 28, 2008 at 2:00 P.M..

February 28, 2008

Bruce Poore is representing Robert Hinson and will be present this afternoon.

June 4, 2008
Admitting Will to Probate 4-23-03 will

Boyd, atty
Dragany, atty
Bogan, atty

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	SIXTH JUDICIAL CIRCUIT
		10-CP-46-00201
In the matter of the Estate of Reba P. Hinson	)	
Mell Woods	)	
VS.	)	TRANSCRIPT OF RECORD
Robert Breakfield, Esquire, as Personal Representative of Reba P. Hinson	)	

July 8, 2011
Lancaster, South Carolina

B E F O R E:

THE HONORABLE BROOKS GOLDSMITH

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I N D E X

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
(No testimony taken)				

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	ID	EV

(No Exhibits)

The Court - The first matter on the docket for the morning is 2010-CP-12-0201 in the matter of the Estate of Reba P. Hinson, Mell Woods, Appellant and Robert H. Breakfield, Personal Representative of Respondent. Mr. Woods, are you ready to proceed?

Mr. Woods - Yes, sir. Could I hand a paper up to the court?

The Court - Certainly.

(Document handed up to the court)

Mr. Woods - Having to do with this -- You supposed to stand up here at the table or ---

The Court - No. Why don't you have a seat. I'm just trying to find out if everybody's ready.

Mr. Woods - All right. Yes, sir, I'm ready.

The Court - Okay, and Mr. Brackett ---

Mr. Brackett - Yes, Your Honor.

The Court - --- you're ready? Do you have a copy then, Mr. Brackett, of this document just handed up to the court?

Mr. Brackett - Yes, sir. Yes, sir, he gave me a copy this morning.

The Court - Okay. Give me one second to look at that, Mr. Woods.

(Brief pause)

The Court - Let's see, as I understand it, Mr.

Woods, you -- you're saying that the case is not ready to be heard because there's never been a Return.

Mr. Woods - Yes, sir, this -- that's more or less what the problem we had the last time is the Probate Judge does not want to send a record to the Circuit Court and the Circuit -- And the statute clearly says in the record, the whole record and don't leave anything out -- leave it there until the case is over. Now, there is some -- a record in there that Mr. Break -- that Mr. Brackett's picked out that I didn't have -- It's not my job to get up the record. The statute says it's entirely on the Probate Judge to do this. I included the statute.

The Court - All right.

Mr. Woods - And it puts me at a disadvantage if I can't go to the Circuit Court and look at the record. The last time we had this hearing in front of Judge Newman, there was a transcript, but they had it concealed at the Probate Court and I couldn't see the transcript until after the hearing was over, then there it was. And I'm not saying Mr. Brackett concealed it, because they did it over there. Because I went over there that morning to look and there was no transcript and then I went back that afternoon and there it was right on top.

The Court - Well, let me ask you this. I'm looking at the court's file. I see a packet in here that

it has written on it a file from Probate Court.

Mr. Woods - That's not it. That's not nearly all of it, Judge. It would be -- it's nearly a foot thick and some of it is in the safe over there. There's a handwritten Will that's in the safe and -- but it's -- the statute clearly says in plain english to take the whole record over there and deposit it at the Circuit Court and leave it there until the case is over.

The Court - Mr. Brackett?

Mr. Brackett - Your Honor, the history -- the history is -- and I have attached some documents to the Respondent's Brief. I think you have those. There should be a Respondent's Brief, and there are attachments A through G. The history -- the history of the appeal, Your Honor, is that there was a hearing in the York -- I'm sorry -- the Chester County Probate Court on April the 12th ---

The Court - Okay.

Mr. Brackett - --- 2010. It resulted in an Order dated -- I think it was April the 19th of that year. Mr. Woods filed an appeal to the Circuit Court from those proceedings and only from those proceedings. It came up for a hearing in Chester County September -- I believe it was September the 8th of last year, 2010. Judge Newman was presiding. At that hearing Mr. Woods complained that

the Probate Court had not yet made a Return to the Circuit Court of the record of the proceedings of the April 12th hearing. And that complaint was correct. There had not been a Return made. Judge Newman ordered the Probate Court to send a clerk over with the entire file which happened. A clerk from the Probate Court showed up at the Circuit Court courtroom that day, brought the entire Probate Court file. Everybody had access to the file and could refer to anything in the file they wanted to. Arguments were made. Judge Newman then issued an Order dated September the 30th of 2010 that affirmed the Probate Court. Mr. Woods filed a Motion for Reconsideration again alleging that the Return had not been procedurally made, and he wanted the court to go back and reconsider that ruling. By an Order of Judge Newman issued in January of this year, he granted the Motion for Reconsideration on the grounds that there had not been a proper Return made.

The Court - Okay.

Mr. Brackett - Now, if you look at the submissions I've made to the Court, particularly Exhibit E ---

The Court - Exhibit which?

Mr. Brackett - E.

The Court - E?

Mr. Brackett - --- Echo, -- that is a letter

that I sent to the Probate Judge February the 2nd of this year ---

The Court - Okay.

Mr. Brackett - --- asking that she make the Return, that apparently Judge Newman was not satisfied with what had happened in September and he was -- he wanted a Return, so I asked the Probate Judge to please make the Return. I suggested based on the language of the statute what needed to be in the Return, and you'll note the last paragraph is if Mr. Woods thinks other material should be included he can advise you of that himself. I copied the letter on Mr. Woods. Then if you look at the next Exhibit, Exhibit F, that is the transmittal letter from the Probate Judge to the Circuit Court transmitting the Return from the April 12 proceedings.

The Court - Okay.

Mr. Brackett - And that's no doubt what you have in the packet in the court's file.

The Court - It appears to be.

Mr. Brackett - Now, Mr. Woods is incorrect when he says that the Return has to contain everything in the Probate Court's file. That is not the case. The only thing that needs to be in the Return are documents and records that are pertinent and relevant to the hearing and the Order that is being appealed. Any other proceeding,

any other record is irrelevant to the appeal, so what the -- what the Probate Court has provided are the records in its file that are relevant to the April 12, 2010 -- if I get my years right -- yes, April 12, 2010 hearing and the April 19, 2010 Order. So I would submit that everything's now here. If Mr. Woods wanted anything else in the record, he's had since February of this year to designate those items and to ask the Probate Court to send them. Apparently he hasn't done that, so the record is what it is. It has been returned by the Probate Court and I believe that we're now in the position for Mr. Woods to argue his appeal.

Mr. Woods - Your Honor, may I be heard?

The Court - Oh, absolutely.

Mr. Woods - Again, it's just Mr. Brackett's opinion about what should be in the record. That statute predates copy machines and it is from the 1800s or before that and what it meant was and it's never been changed, get the whole record up and take it to Circuit Court so it can be studied by the other party. That's the biggest thing about it. And what she has done is sent some certified -- some certified copies of some documents, but she's not certified that that's the record. There's a big difference in certifying the whole record and certifying some parts of it. And the parts was picked out by Mr.

Brackett. And I have no success in getting them to do anything other there, because they hide records from me. They hide Wills and they hide transcripts. And only Mr. Brackett can get these things. They'll send it to him down there at Columbia for him to look at, but they won't show it to me.

Mr. Brackett - Your Honor, the statute he refers to ---

Mr. Woods - He's got the statute right there.

Mr. Brackett - --- 62-1-308 is a part of the probate code that was passed in 1987. I mean this -- this is a ---

Mr. Woods - Your Honor, it's in the '52 code. I put a copy of that in there ---

The Court - We're going to have to ---

Mr. Brackett - No, sir, that statute's ---

The Court - Hold on. Let me -- Let me interject something here. We're going to have to talk one at a time.

Mr. Woods - All right, sir.

The Court - Our Court Reporter is not going to be able to accurately record if we're talking over each other.

Mr. Woods - All right. Sorry.

The Court - Let's start one at a time. Let me

go back and hear from Mr. Woods.

Mr. Woods - The point is if it's -- the record is taken and put in a neutral place, the Circuit Court office, then it's easy for somebody to go there and look at it. That's what court it's pending in. And over there in Chester -- I mean they've moved the thing way out there in the middle of -- the other side of town where it's inconvenient to go across the hall and look at it. But the statute literally says take the whole record, bind it up and take it to the Circuit Court. It doesn't say anything about keeping any copies or anything like that. It just says take them to the Circuit Court. When the Circuit Court's finished with it, they'll send it back to the Probate Court. But as of today, we still don't have a certified record. We've got some copies, some partials. We've got part of records that has been certified on a per document basis, but certification of the record means that they've examined the whole record and they're certifying this is the whole record. And they've never done that and -- And they'll never do it, because they're just -- They're not that well trained I don't guess or they won't read the statute. But I mean if I was to go over there and start telling them what to do like Mr. Brackett does, they'd probably have me put in jail. You know, so I'm doing best I can do.

The Court - Well, I understand your argument, but let me ask you this. What -- specifically, what is needed that -- to be sent forward from the Probate Court to the Circuit Court that has not been sent forward that would enable this Court, me -- me in this case -- to hear the issues on appeal?

Mr. Woods - Well, Judge, I don't know, because I -- I don't know what you have on the desk, but the file -- if I could use my hands -- is about this thick, and I don't think that's what you've got up there. They's all sorts of things in there that affects this case, things that I need to present, but I need the record. I need the whole record to be able to do it with, not the part that Mr. Brackett picked out. And the statute is real clear, it's not either party's job. It's not Mr. Brackett's job. It's not my job to tell the Probate Court which parts to get up, because it says the whole record.

Mr. Brackett - Your Honor, it does not say the whole record. It says, Probate Court shall make a Return to the Appellate Court of the testimony, proceedings and judgment and file it with the Appellate Court. It relates to a particular proceeding, testimony in that proceeding, the records related to that proceeding and the judgment related to that proceeding. Now, the entire Probate Court file is a matter of public record. It has been at Mr.

Woods' disposal now for three to four years. The Return that was filed that he got a copy -- he got a copy of the transmittal letter in February, so the Return -- it's been in the Circuit court -- has been a public record at Mr. Woods' disposal since February, and it's simply insufficient for him to come in here and say, well, there may be something, there might be something, there could be something in the Probate Court that would help me with my appeal, but I can't identify it for you right now. No, sir, that's just not -- That's just not sufficient. It's his appeal, Your Honor. He needs to prosecute ---

The Court - All right, well, let me look at -- let me look and see what I do have from the Probate Court. (Pause) All right, I've reviewed the packet that was sent in the manila envelope ---

Mr. Woods - Your Honor, but I ---

The Court - --- and -- Let me finish, Mr. Woods.

Mr. Woods - All right.

The Court - --- that indicates that it's the file from the Probate Court and is marked by the Clerk of Court as being filed February the 11th, 2011 and it does appear that it contains the documents referred to in the letter of Lois H. Roddey, Judge of the Probate Court dated February the 11th which is addressed to Sue Carpenter and also marked as Exhibit F in the Respondent's Memorandum of

Law. Let me ask you one more time then, Mr. Woods. What specific documents are necessary in your mind for the court to have? I understand you're saying everything else, but specifically ---

Mr. Woods - Well, one of them is a handwritten Will. I don't know if it's in there or not. And while I'm standing, can I make one little point about ---

The Court - Yes, sir.

Mr. Woods - I mean I put part of the 1952 code in there. I know it's out of date, but it's the same wording except they took out the part about such Return may be compelled by attachment. They took that out, somebody did, because that's just too severe, but it's on page -- well, it says Exhibit B right there -- that's a copy out of 1952 code and if the court could take judicial notice, they didn't have copy machines in 1952 and what they meant was, take the whole thing over there and give it to them. I mean it's never been updated where people just pick out pieces and this and that and what they want and just something on their side and that -- And down there at the bottom on that -- instead -- I've got the whole case attached to what they talking about, Howell vs. Littlefield.

The Court - I've got it.

Mr. Woods - The headnote there it says this

relieves the Appellant from going about having to get up the record and paying for it. Used to Appellant had to pay for it.

The Court - Right.

Mr. Woods - Apparently. But -- or -- or, you know, if it didn't get up to the Circuit Court like it's supposed to, then they'd throw the appeal out, but the burden is on the Probate Court just to bandage up the whole record and send it to the Circuit Court. I guess they figure it'll get lost when it gets there, but there are lots more important cases at the Circuit Court than what the one that we're talking about is. They just won't do their job. And it's hard for me to put the case up without the whole record. I mean I'd like to have another hearing with the whole record to see if -- to say it again so we can refer to it.

Mr. Brackett - He had the whole record last September.

Mr. Woods - I did -- Your Honor, there was the whole record there to here, but I mean as I -- as I stated initially, I went there that morning, parts of it were not there. They added it after lunch before they got there with it. That's what they do over there.

The Court - All right.

Mr. Woods - I'm talking about the Probate Court.

And I could've used that transcript, but I never get to see it until they show up in court with it.

The Court - Well, now included in the packet that I have here is a transcript.

Mr. Woods - There is now, but when they had the last hearing, they hid that transcript. I went over there several times looking to see was there a transcript. They hid it until -- until they sent for the file and then somebody got it out of a drawer and put it right there on top so it would be seen when it got to the Circuit Court. That's the reason the whole record needs to be put into a neutral place so it can be examined by the parties.

The Court - All right. Well --

Mr. Woods - In other words, my point is it needs to be over there at least thirty days so I can look at it ---

The Court - Okay, I understand your argument. I do not think that's what the statute says. I do not think that's what is intended by the statute. It is my belief that the statute intends for -- the Probate Court to forward to the Circuit Court sufficient portions of the documents and records in the Probate Court that relate to the matters on appeal and therefore, I am going to overrule your objection about the court hearing the case on the grounds stated. Now, what are the issues -- let me

find the -- let me find the -- (pause) ---

Mr. Brackett - Your Honor, I've identified the issues on appeal on page three of my memorandum.

The Court - Let me find the actual document filed by the Appellant so I can track it. Appeal to Circuit Court from an Adverse Ruling of the Chester County Probate Court with The Honorable John P. Gettys presiding, Mell Woods, Appellant, dated April the 30th, 2010? That's the one that ---

Mr. Woods - Yes, sir, I ---

The Court - That's the one I'm looking at.

Mr. Brackett - And there's also a second one, Your Honor, that was dated -- that was clocked in June the 4th and it says additional grounds for appealing the court Order.

The Court - Okay, hang on one minute. I see that. June the 4th? Okay.

Mr. Brackett - Yes, sir. Those two together I think set out his grounds of appeal.

The Court - All right, let -- just give me one second then, Mr. Brackett and Mr. Woods to look over these two documents.

Mr. Woods - All right.

(Brief pause)

The Court - All right, the first one that was

filed, the one dated April the 30th indicates that additional grounds would be filed but that partial grounds were that Judge Gettys -- let me make sure I got this right -- that John P. Gettys, Sr. ruled on a case with knowledge that a family member, that being John P. Gettys, Jr. was an attorney of record in the case for an adverse party and John P. Gettys, Sr. refused to allow Appellant to subpoena -- the subpoena power of the court. Help me out on that, Mr. Woods.

Mr. Woods - All right, I can speak to that. Can I be heard?

The Court - Yes, sir.

Mr. Woods - Judge Gettys -- and what he's talking about, Your Honor, I mean is Judge Gettys' son, Jr., he's signed in on these Hinson cases at the same time. All right, that's the background of that. And both of them knew about it. I found out about it later ---

The Court - Hold on just ---

Mr. Woods - --- by looking at the court record.

The Court - Hold on just one minute.

Mr. Woods - In other words, the Hinson case -- it's about five or six land suits; there's partition cases and everything else and Gettys, Jr. -- Morton and Gettys was signed in on it.

The Court - Now, did you bring that to the

attention of Judge Gettys?

Mr. Woods - I did not, because I didn't know about it until afterwards.

The Court - All right, and tell me specifically what it is that you later learned about.

Mr. Woods - I looked at the Circuit Court records over there and I found where Morton and Gettys was one of the attorneys signed in on the Hinson cases, you know. It's like there's several of them there and it affects this and it affects everything.

The Court - You mean in this probate case?

Mr. Woods - Yes, sir.

The Court - Okay.

Mr. Woods - It all revolves around -- It revolves around the Hinsons can't make up their mind about who gets what out there and it's -- and Morton and Gettys has been working on it for a while, but they quit shortly after this probate hearing that we had. I don't know the reasons.

The Court - All right. Let me -- let me take these matters one at a time. Mr. Brackett, on that issue?

Mr. Brackett - Your Honor, there is nothing in the record indicating that a recusal motion was ever made. The word recusal does not appear in the April 19 Order that's being appealed. It was simply not a subject that

was presented to the court, either at the time of the hearing or in the form of a Motion for Reconsideration. Mr. Woods has not as of this date presented anything to the court in the form of affidavit or any other -- any other suitable form that would indicate that John Gettys, Jr. had any significant role to play in any proceeding that was pending before Judge John Gettys, Sr. There's just been no showing of that. This is just something that's drawn out of thin air. The first time we hear about it is in the appeal document, in the Notice of Appeal. It is untimely. It is not preserved for review. The trial court was not asked to rule on it. For all those reasons that is simply not something that relief can be granted for now.

The Court - Okay.

Mr. Woods - Your Honor ---

The Court - Yes, sir, go ahead.

Mr. Woods - --- can I respond to that? It is true that I didn't bring it to Judge Gettys' attention because I didn't know about it, but he knew about it, and it seems to me he should've took himself off the case rather than ruling on the case. That's my point.

The Court - I got you.

Mr. Woods - But I mean -- I -- And this is not a place to give testimony and I'm not trying to do that,

but about the subpoena part, he is -- I think it's connected with Gettys, Jr. I mean can I -- Can I tell you about the subpoenas now or ---

Mr. Brackett - That's a separate ground, Your Honor.

The Court - Yes, let me come to that. We're getting ready to come to that in just a minute I think.

Mr. Woods - All right.

The Court - Before we leave this, though, let me ask Mr. Brackett, was John Gettys, Jr. an attorney of record in this case?

Mr. Brackett - No, sir, he was not, Your Honor.

The Court - I didn't think so.

Mr. Brackett - But just for the court's information, he was a potential candidate to serve as Personal Representative. He was one of the two, along with Mr. Breakfield, who they were -- who the Hinson families and their lawyers were looking for somebody who could serve as PR of the estate. He was mentioned as a possible candidate for that, but he was never appointed, never appeared as attorney of record in these proceedings and would never have had -- never would've been a conflict at all as best I can determine.

Mr. Woods - Your Honor, he -- he's trying to make out like that's the only way -- the Morton & Gettys

firm still has -- I think it's still pending over there, a partition case that they've signed in on.

The Court - What's pending over there? I didn't here you.

Mr. Woods - A partition -- to split up land.

The Court - Okay.

Mr. Woods - I mean that -- That was pending at the time and plus they -- the Hinsons will sue one another for -- I call them spite cases. I mean they'll sue one another about anything because the lawyers get them stirred up. I'm just trying to get the thing straightened out myself.

The Court - All right, let me ask -- let me ask you another question. Let's go to this issue about the subpoena power.

Mr. Woods - Yes, sir.

The Court - Again in the April 30th, 2010 document filed by Mr. Woods, there's an allegation that John P. Gettys, Sr. refused to allow the Appellate, Mr. Woods, the subpoena power of the court and what was that all about?

Mr. Woods - All right, sir, what it's about is -- you see in South Carolina -- I mean it's -- I guess they forget. I mean a lawyer can issue his own subpoenas, but I mean unless you're a licensed attorney, you've got to go

get the clerk to sign subpoenas. Now, I went and asked for blank subpoenas before the hearing, and it's in the transcript. Now, Mr. Brackett's fixing to tell you it ain't in the transcript, but it is. I got a -- question in paragraph five there I got the lines wrong. What I did -- I had to go see the judge when the clerk can do that. Whatever clerk you have can issue subpoenas. I went there to get me some blank subpoena which the Rule -- Rule 45 of the Rules of Civil Procedure, 45(a)(3) says you're entitled to blank subpoenas to be issued to you, and you fill them in, and especially where you've got a little small town like Chester or something -- I mean if you go there and tell them who it's going to be, you ain't going to never find that person. He'll take off to the other end of the county, so you're entitled to blank subpoenas and you're entitled to have them stamped and signed by the clerk. It's not a big thing, but when I got there to the Probate Court that day, Judge Gettys' clerk was off and Judge Gettys was sitting there in the front in the clerk's seat, you know where you -- the receptionist seat when you get there, and so I didn't have any choice other than to ask him about it, and he made out like he was going to give them to me to start with and then I didn't have a pencil. I went back out to my car to get a pencil to write them out with. I was going to write the names on

them, and then when I got back in there, he said I'm not signing them; I'm not going to sign them. I said, well, how do you expect me to subpoena anybody if -- I said I don't need for you to sign them anyway, just the clerk, that's all I need. It's a ministerial thing, but he -- he wouldn't let me see the clerk, and he wouldn't give me a subpoena. And so I don't know how we can have any sort of a trial without subpoenas.

The Court - Let me ask you this. You said -- you said that that's mentioned in the transcript?

Mr. Woods - Yes, sir.

The Court - Where is it?

Mr. Woods - It's on -- it's mentioned in two places.

The Court - Okay.

Mr. Woods - On page four.

The Court - Hold on one second. Page four.

Mr. Woods - I've got the transcript here if you want it if it ain't up there.

The Court - What line on page four?

Mr. Woods - On page four, line six -- line seven through thirteen.

The Court - Hold on just one second.

Mr. Woods - And then it ---

The Court - Okay, I see page four. Okay, I read

that. And the other page was what?

Mr. Woods - The other page is twenty-nine. It's further on back in there. On twenty-nine on line six through eighteen.

The Court - Twenty-nine -- all right, and page twenty-nine. Okay, I've got that.

Mr. Woods - All right, sir. And also -- I don't -- you know, I'm not trying to get you to read the whole transcript but the whole tone of the transcript is the judge is handling the hearing. Mr. Brackett has hardly anything to say. He's just hammering on my head about everything. It's sort of like a cross examination or an interrogation and I was doing the best I could do. It wasn't a hearing like this. But I'm not -- he -- and I think -- and truly what I think happened to the subpoenas, he was able to call Gettys, Jr. while I was out looking for the pen, and Gettys, Jr. told him that I didn't need subpoenas for that because it was going to stir the case up too much. That's what I think.

The Court - Well, let me ask you this.

Mr. Woods - Yes, sir.

The Court - I need to ask you really two questions about that -- about the subpoena issue. I do see where there's reference to it, and apparently the judge did not give you a subpoena or subpoenas ---

Mr. Woods - That's true. That's what it says.

The Court - --- as you requested. That's what it sounds like he said. Now, what -- the purpose of that would've accomplished -- the issuing of the subpoenas would've accomplished what?

Mr. Woods - Well, it's prejudice --- prejudices me because I couldn't -- I was going to subpoena some of the Hinsons because they signed among themselves -- It's probably in there too. They signed something they called private agreement among the heirs. I wanted to get them into court and see what that was. You see something in the record that looks like that? It should be in there.

The Court - I don't know. It's an agreement between ---

Mr. Woods - Well, it's an agreement among the heirs, but the problem with it, it violates the statute of Elizabeth. That's the part they leave out. And it's aimed at a creditor. It's aimed at me. It's got my name down here on the bottom, a potential -- what -- Let me read what it says. It says a potential creditor, Mell Wood, without the s on it. They talking about me. It's something that -- it was for no consideration. They took the property and changed it around and put it -- and trying to get it out of my reach so that I can't -- I can't do anything about it. That's one thing and the

other -- I don't want to say this. We said it before. And I'm not going to say it every time. And one of them was for Ned Gregory to sell, but that's all I'm going to say about it. Because he filled out some of the papers in the case and they're incorrect.

The Court - Did you tell the judge, though, at the hearing that you needed additional time to get those subpoenas issued or ---

Mr. Woods - Well ---

The Court - --- or that -- Let me finish. Let me finish. That you wanted the hearing continued. Did you tell him the purpose of the subpoenas? Did you tell him what -- in other words make a proffer of what these people would've said had you had them there?

Mr. Woods - That's one reason I mentioned the tone of the hearing. I mean he started in on me. He didn't give me much chance to say anything and the Appeals Court have ruled on several cases -- I mean if something's futile, you don't have to do it. I don't think it would've done a bit a good to ask him anything. And the way it was going, I mean he probably put me in jail or something. I mean I went to him ahead of time and asked for the subpoenas in a nice way and I couldn't get them. And it's -- I didn't make a motion about the subpoenas, no, sir, because it would've been futile. He would've

just kept on going anyway. But I mean it's clear that he didn't give it to them (sic) and then when I needed them on page twenty-six or whatever page it is, on page twenty-nine then I didn't have them. And I couldn't put my case up for that reason. I mean I don't know how you can have a case or a hearing or anything -- I'm not talking about this one, but I mean an initial hearing without subpoenas whenever you're entitled to a blank one, and the constitution says you're entitled to the right of confrontation. I just don't see how you can do it, but Gettys figures he can do it and I -- I don't know. I -- He may not even though that he's supposed to issue blank subpoenas. I don't, because like I say, a licensed attorney ordinarily issues his own subpoenas, which he's authorized to. He's signed in on a case. But I mean I explained to him because I needed them, Your Honor. I mean it would be -- I can't sign them myself. It would be illegal.

The Court - All right, let me hear from Mr. Brackett on the issue of subpoenas.

Mr. Brackett - Your Honor, you're beginning to get a flavor of this proceeding that in Mr. Wood's opinion, there's not a competent judge in Chester County and there's not a competent probate judge in York County. They're either totally clueless regarding the statutes or

they're unethical and they work behind his back and hide documents from him and they call people off the record. This is the kind of thing we've been dealing with in this case. The fact of the matter is, the transcript indicates Mr. Woods never made a motion, never made a request for a continuance, never put on the record or objected on the record that he had not gotten his subpoenas and he needed subpoenas for -- to present evidence. He never presented it in that manner to the trial judge. If you look at the April 19, 2010 order, the subject of subpoena is not addressed in that order. If Mr. Woods now claims that that was a -- that was a subject that he wanted ruled on at the hearing and it wasn't addressed in that April 19 order, it was Mr. Woods' duty to file a Rule 59 Motion for Reconsideration to preserve that subject for further appellate review. He didn't do that. There is no Motion for Reconsideration that followed the April Order. Now, my point is, he didn't ask for it. He doesn't know today -- I bet you Mr. Woods couldn't tell you today who he's going to subpoena and what they're going to say. He doesn't have a clue. He just wants some person, some member of the Hinson family -- He doesn't know if they're going to help him or hurt him, but nevertheless, he did not present his request to the court in the proper form and he hasn't preserved it for review. And for that

reason alone, that matter should be -- that matter should be denied and we should move on to ground number three.

Mr. Woods - Your Honor, ---

The Court - Yes, sir, go ahead.

Mr. Woods - --- can I be heard?

The Court - Yes, sir.

Mr. Woods - I mean the reason there's nothing mentioned in the Order about it is because it, as you are well aware, Mr. Brackett writes the Orders and he leaves -- always leaves out the parts that he doesn't want in there and his writing is slanted, too. I mean, of course, I guess that's his job, but the transcript clearly shows about the -- I mean the court announced that he was not going to give me a subpoena. I mean what else what you need? I mean anything else is futile. I mean you want me to stand there and tell him, you know, I don't like what you had to say and I want subpoenas anyway? I mean you might as well just shut-up, but that's the way I felt about it. But now it's -- And this is not a witness-type thing. We have Hinsons in the room. If you want to hear some of them, I'll show you what I could use a subpoena with if you want to call some of them today.

The Court - Well, no, as you recognize ---

Mr. Woods - I understand, ---

The Court - --- this isn't ---

Mr. Woods - --- but he's trying to make out like I couldn't have used a subpoena, like I was just doing to it be a nuisance, but that was not it. I needed the subpoenas.

The Court - All right, let me move to the next appeal, the one that states additional grounds, June the 4th, 2010. Let me look at this a moment. The court committed an error in not removing Robert Breakfield as Personal Representative after Mell Woods filed a claim against the estate and demanded a bond, the bond is required by statute so and so and claims in excess of one thousand dollars. No discretion given to the court. All right. Let me find -- All right, go ahead, Mr. Woods, on that issue.

Mr. Woods - Well, during that hearing I just -- I just said don't worry about the bond anymore, because I mean it seemed to be causing such a conflict with them, but I do need a bond, because I mean it's -- They're maneuvering around with these papers and things, they're trying to get -- They do have some money in reserve to pay my claim with, but it's in Mr. Brackett -- but it's in Mr. Breakfield's escrow account, but I mean they're trying to get -- They're trying to get a judge to write them out an Order saying they can disburse everything and I'm a creditor of the estate, not with a judgment, but I mean

I've got a -- I've got a claim against them and they just going to try to wipe the thing out where I won't have anything to collect with is what that's about, but the bond is not that big of a thing. What -- What is important is this agreement that they came up with among themselves as they found a statute in the -- they found a statute in the probate code that says -- It's number 62-39-112, private agreements among successors to decedent binding on Personal Representatives. It -- Basically what it says, they can -- they can agree among themselves whatever Will they want or they can even draw another Will after the person has died and use that as the Will, but it -- first thing it says, it says subject to the rights of creditors and that's me and they've never asked me about it and then down there in the third line it stays in a written contract executed by all who are affected by its provisions. I'm affected by it and they ain't asked me about it and I didn't sign it and this is just an example of what they're trying to do and it -- They got a law in South Carolina that's called Statute of Elizabeth from 1517 but it's codified in the South Carolina law saying that the rights of a creditor have got to be preserved and a bogus paper like this can't be used to eliminate his rights with which is what they're trying to do.

The Court - Well, you asked Judge Gettys to

require him to post a bond?

Mr. Woods - Yes, sir, I did.

The Court - Now, there was a -- there was a prior Order? That's what I'm trying to figure out here.

Mr. Woods - No, there was no prior Order about the bond. He just told him to hold back a set amount of money to pay my claim with, but I mean I -- you know, -- And don't get me wrong, I'm not saying Mr. Breakfield is dishonest or anything, but I mean he -- he's got the money. I mean if they was a bond involved I mean then I -- you know, it's just more secure, but it's -- Mr. Breakfield has got money to pay the claim with. In other words, if he wanted to get his pencil going, he can stop probably about eight or ten suits right here today, but he's not going to do that. We've got two or three in the Circuit Court and one in the Magistrate Court and one in this court. He can stop them, but he doesn't want to.

The Court - Wait a minute, now, he -- See what I understand your position is. You're staying that he should be required to post a bond to make sure there's sufficient assets in the estate to pay your claim.

Mr. Woods - That's right. That's what the code -- the probate code says.

The Court - But then a minute ago you said he has sufficient assets to pay your claim with.

Mr. Woods - He's got them in reserve, but that doesn't mean he won't distribute -- he --- there's nothing to keep him from distributing them when he gets ready. I mean he can do it anytime he wants to the way I understand it.

Mr. Brackett - Your Honor, that's not -- That's not the issue on appeal. He has not appealed the probate judge's decision not to require a bond. He has appealed the probate judge's decision not to remove Mr. Breakfield as Personal Representative for a failure to file a bond. That's a big difference. The petition that Mr. Woods filed sought to remove Mr. Breakfield for two reasons, one of which was he had not posted bond. Now, there is an order in the Probate Court file that is referred to in Judge Gettys' April 19, 2010 Order and it was when this estate was opened and when Mr. Breakfield was appointed as Personal Representative and that was February the 18th of 2009. It's on the Form 300 PC, Probate Court form and under the Order of Appointment it appoints Mr. Breakfield to serve and it says no bond required. That was an Order signed by Judge Roddey February the 18th, 2009, and what Judge Gettys said in his Order from which Mr. Woods is appealing today, was that there was no reason to remove Mr. Breakfield because he had not violated a court's Order; He had followed the court's Order. And when

looking at the grounds for removal that are provided for in the removal statute, one being the Personal Representative has failed to abide by the court Order, Judge Gettys said, no, he hasn't, you failed to show that there's any ground for removing him, he's done what the court told him to do. And Judge Gettys also made reference in the transcript, Your Honor, to the fact that he, Judge Gettys, after he -- after he had assumed responsibility for the case, he had ordered Mr. Breakfield in lieu of bond to set aside a certain amount of money in an escrow account not to be distributed unless with court permission. And so the judge in the April Order, April of 2010 said Breakfield has complied with the Orders. He's not required to post bond because the court told him he wasn't required to; He's been ordered to set aside money, which he has done, so ---

The Court - I got it.

Mr. Brackett - --- the only issue on appeal is whether the judge should have or should not have removed him. It's not whether the bond decision in the first instance was right.

The Court - All right. Okay. I see what you're saying. Anything else on that issue?

Mr. Woods - It's not just a bond issue, Judge. I mean the main issue is -- Breakfield is probating the

P R O C E E D I N G S

BEFORE THE HONORABLE JOHN GETTYS

(11:00 A.M.)

* * * * *

The Court: This is a hearing in the matter of Reba P. Hinson, case number 2008-ES-12-0297. I also have York County case, that was a Chester County case, 2010-ES-46-00265. Judge Roddey in Chester recused herself on this estate, and it was assigned over to me as a Special Judge by an order dated March 11, 2010. before we get started, I had a bad week last week. I didn't get a chance to get in touch with y'all. I talked with Mr. Woods, who was by the office. But Chester County has all of the records certified to go over to Circuit Court and be filed on the matter that was transferred over there, the claim.

I want somebody to go -- y'all to work out, who's going to go down there and get them to transfer them over, because somebody's going to pay a fee. Mr. Woods is the one who made the motion, so I assume he would have to do it, but I didn't want to have Mr. Woods go file them without your knowledge. Just be advised they are there and somebody needs to go over and get them.

Appearances:

For the Plaintiff -

Mell Woods, Pro Se

For the Defendant -

B. Michael Brackett, Esquire
Moses Koon & Brackett, PC
1333 Main Street, Suite 650
Columbia, South Carolina 29201

Also Present:

Robert Breakfield, Esquire
Personal Representative of the
Estate of Reba B. Hinson

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF CHESTER)

IN THE MATTER OF)
REBA B. HINSON) CASE NO. 2008-ES-12-00297
)
)

TRANSCRIPT OF PROCEEDINGS

YORK, SOUTH CAROLINA

APRIL 12, 2010

LOIS H. RODDEY
JUDGE OF PROBATE
2010 SEP -8 P 12:58
PROBATE COURT
CHESTER COUNTY S.C.

REPORTER: WILLIAM H. WHITE

Certificate

I, Shirley G. Broom, the undersigned Court Reporter, hereby certify that the foregoing 55 pages constitute a true record of proceedings taken in the case of Mell Woods vs. Robert H. Breakfield, Esquire, as Personal Representative of the Estate of Reba P. Hinson, as taken by me at the time and place stated.

I do further certify that the persons were present as stated, that I am not of Counsel for, related to, or in the employee of any of the parties to this action and that I have no interest whatsoever in the outcome of this case.

This the 12th day of December, 2011

Shirley G. Broom
Circuit Court Reporter
Sixteenth Judicial Circuit

motion filed asking the judge to rule on that. As to the third ground that Mr. Breakfield should be removed because he hasn't posted a bond as required by statute, I find the probate judge has already -- separately -- that that's not sufficient ground to remove him, that the probate judge didn't require him to post a bond. And I believe that you separately withdrew that appeal. The -- As to the issue of the wrong Will being probated by Mr. Breakfield and thus him being required to be removed as a result of him probating the wrong Will, I find you're not entitled to that relief either, in that you have no standing and have not shown that you would be prejudiced by the fact, as well as the other grounds stated by Mr. Brackett, both in his memorandum and stated orally before the court. Mr. Brackett, I'm going to ask you if you'd please prepare an Order consistent with those rulings. Court's adjourned.

(End of transcript)

Mr. Woods - Okay. Well, I thought you indicated you were ready to go forward.

The Court - On the issues on appeal I'm prepared to go ahead and make a ruling, and the bottom line on it, Mr. Woods, is I am going to dismiss your appeal basically in essence on all the grounds stated and argued by Mr. Brackett, but one at a time. As to the issue that Judge Gettys had a conflict, if it wasn't brought to his attention and there are no specific factual allegations that I have here, I can't grant the motion based on that, because basically what you'd be asking me to do is make a decision about whether or not he did have a conflict, and therefore, if I were to rule he did have a conflict, and of course, I don't have enough information about that, it would have to be sent back and re-tried. On the issue of the issue of him -- the judge refusing to issue subpoenas for you, I likewise find that you're not entitled to relief there because there's been insufficient evidence to show that you would have -- how you would have suffered any prejudice. While it does appear that you were entitled to have them issued, you did not present to him, you did not and do not present to this court sufficient evidence for the court to rule as a matter of law that you've been prejudiced as a result of your failure to obtain the subpoenas and in addition there was no 59(E)

know what I'm talking about before I start talking -- On case 2011-CP-12-0291 appeal from the Magistrate's Court in Breakfield vs. Woods I am not going to hear that today. I understand -- I understand what it's about, but I also think that Mr. Woods is entitled to more than two or three, depending on how you count it, days' notice of today's hearing. So if anybody wants the hearing in this matter continued past -- again I forget what date that is -- the June 27th I believe it was mentioned that term -- they'll need to contact the administrative judge and I think the address and all is on the website, the Chester website. Now, let me go back to where we were. In the matter of the Estate of Reba Hinson in case 2010-CP-12-0201 ---

Mr. Woods - Your Honor, can I make a comment on that?

The Court - Yes, sir.

Mr. Woods - I don't have any reason to complain about that one because Judge Newman had it for nearly a year to try to figure out all of the stuff that Mr. Brackett wrote in the Order. That's how long it took and finally he decided he didn't want anything else to do with it and that's why we're here, but I don't have any -- I don't have any reason to complain about that -- about hearing it because it's been on the docket a long time.

actually on the docket. Is it? On the ---

Mr. Woods - The machine put it on there I think.

Mr. Brackett - I had asked that it be added to the June 27 docket so we can do them all but ---

The Court - Okay. Well, I don't know if it's on there or not. If it is -- and they have been having trouble with their computer and their internet access -- if it's still on there and I don't hear it today, I don't have the authority anymore to continue it. As of Tuesday of this week I no longer was the administrative judge and therefore, the request would have to go to the administrative judge asking him to continue the case. All right.

Mr. Brackett - I'm happy to argue that one on July the 27th, Your Honor, before you in your term over in Chester if Mr. Woods is going to be available. He's represented to everybody that he would be on vacation at that time and would be unavailable. I just simply ask if that's still the case. Because that's what -- that's what prompted putting it on for a hearing today.

The Court - I understand.

Mr. Brackett - I mean he had asked protection for that week and you were going to give him protection but hear it today.

The Court - All right, on the -- make sure I

of proceeding provided by statute is turning out not to be so -- not to be so quick. You know, I'd like to ask Mr. Woods on the record if he is still -- if he is still going to be unavailable, out of town, unavailable for that three week period that he mentioned in his letter.

Mr. Woods - Your Honor, I just wrote it in and I didn't say that I'm off. I mean it would be up to you. You know, I mean -- I don't know -- all -- or you could just say, you know, you can't get permission to be off.

The Court - Well ---

Mr. Woods - I mean I didn't mean to stir up this big ruckus about it.

The Court - Well, I have to tell y'all something now that you've mentioned that and I had intended to do and just hadn't gotten around to it. I actually did not sign an Order that continued the hearing in this case.

Mr. Woods - That's right.

The Court - There was a request made for me to continue the hearing, the Magistrate's Court hearing, but I didn't sign it. I thought it wouldn't make any difference if we heard it today, that I wouldn't need to continue the case if we heard it today.

Mr. Woods - Yes, sir.

The Court - It'd be over with. However, it's -- that case -- I don't know. Is it -- I don't know if it's

client's disadvantage to let this thing just rock along indefinitely.

The Court - I know. The letter I got though from Mr. Woods points out to me that he received notice of this hearing I think -- and I'm going to ask him in just a minute -- I believe it was Tuesday. Is that right, Mr. Woods?

Mr. Woods - Yes, sir, it was -- you know, it was 4th of July and it looked like the letter was mailed out from here Friday and I -- it didn't show up until Tuesday, which, you know, they were closed Monday. I just got it Tuesday, didn't know anything about it.

The Court - He's received only two or maybe I guess two or three depending on how you look it days' notice of today's hearing and I understand what you're saying, Mr. Brackett about he ought to know -- ought to be prepared to argue it. I see in the file an Order of Continuance dated June the 22nd.

Mr. Brackett - Yes, sir. The eviction hearing for Magistrate Zamore was supposed to take place that Thursday, June 28th, and after Judge Zamore issued his pre-trial Order, Mr. Woods appeals from that and that appeal caused the continuance of the hearing itself because of the issues that he raised, so this -- what's supposed to be a summary -- a quick summary eviction type

to do it. Now, you remember, Your Honor, we're here today because this matter appeared -- well, actually it didn't -- this -- We're here because we were supposed to have argued the Appellant -- I mean the Probate Court ---

The Court - Probate court.

Mr. Brackett - --- appeal on July the 27th. Mr. Woods said he was going to be out on vacation and wanted that -- wanted that continued and so you then set it for today along with the appeal from the Magistrate's Court. I think the court has absolute discretion to go ahead and hear those.

The Court - You know, I do too, but I mean ---

Mr. Brackett - I mean it's -- You know, Your Honor, the underlying action is a summary eviction case. It is supposed to be -- For the benefit of the landlord it's supposed to be quick and simple and get in, get out and figure out if the person's supposed to stay on the property or not or whether the tenant -- whether the owner can get his property back. And so it is supposed to be an expedited proceeding, otherwise, Mr. Woods just continues to live on this property. He's not paying for it. My clients think they -- you know, claim they own it and they're entitled to be paid some rent or -- they want their money -- actually they'd like to have possession of the property back and so I see, you know, it's to my

mean nothing shows up before a hundred and twenty days and I -- unless you agree to it, and I'm just not prepared on that one and I won't agree to it. I objected to that one going ---

The Court - Well, that's what I was going to ask you. You object to hearing ---

Mr. Woods - Yes, I object to that -- in a nice way. I mean it's nice as I can be. I just want it on the record I'm objecting to it.

The Court - Well, Mr. Brackett?

Mr. Brackett - Your Honor, if anybody should be objecting to not having enough time, it ought to be me. I represent the Respondent. I'm assuming Mr. Woods did his homework before he filed the appeal or else he's telling us he just filed the appeal and alleged all sorts of grounds having no idea whether they have merit or not. So he filed the appeal; I'm the one responding to it. I don't need anymore time. I'm ready to go. Rule 40(H) doesn't require a hundred and twenty days for an appeal to be scheduled from Magistrate's Court to Circuit Court. The non-jury docket, it says no contested non-jury action -- this is not an action; This is an appeal. Okay? And otherwise it says the chief judge for administrative purposes is responsible for setting all matters on the non-jury docket for disposition. You have the discretion

the Probate Court to keep the Will and to get it probated, and he knew it was false.

The Court - So once again paragraph two relates to the removal of your effort to have Mr. Breakfield removed?

Mr. Woods - I thought he should be removed for that and I still do ---

The Court - Okay.

Mr. Woods - --- but I'm not -- You know, it's -- I mean I understand to get an administrator off of a case or a Personal Representative as they call it is one of the hardest things to do. I mean it can't be done. That's -- But I, you know -- I just want to get it on the record what they did.

The Court - Now let me ask Mr. Woods, Mr. Brackett, there's another matter that pending that the court indicated it would hear. Mr. Woods sent a letter objecting on the grounds that hadn't had enough time and so on, that's the appeal from the Magistrate's Court?

Mr. Woods - Yes, sir, it's only been on file a few days and where I read that -- it's Rule 40(H). It sound to me like it's something that needs to be on file at least a hundred and twenty days before you have any hearing about it. That's the way they got the court administration machine set up down there in Columbia. I

me, you want me to tell Judge Gettys that he probated the wrong Will, that the wrong Will was probated.

Mr. Woods - Well ---

The Court - And let me make sure we're on the same track here. Mr. Brackett says that wasn't the issue before the court when y'all had this hearing; The issue before the court was should be Mr. Breakfield be removed because he probated it.

Mr. Woods - The point is that form that he's referring to, that he was just reading out of, the probate form -- What is it a form 300, Mr. Brackett?

Mr. Brackett - (Indicating yes)

Mr. Woods - --- the form 300, you have to swear to that. That's how you get into court on that. It's falsely sworn to.

The Court - All right, but that's -- you're asking --- You aren't asking me to tell Judge Gettys now he's got the wrong Will or ---

Mr. Woods - I think somebody that would sign a false form to get into a Probate Court shouldn't be there to start with. That's my point.

The Court - So paragraph two does relate then to your --

Mr. Woods - I'm not saying he's dishonest. I'm saying he told -- he made a false statement under oath to

Gettys was for the purpose of removing Mr. Breakfield thinking that -- alleging that Mr. Breakfield was probating the wrong Will, and so that's all he can appeal. And the Probate Court said no it wasn't Mr. Breakfield's decision, he hasn't violated any court Order with respect to the Will and so -- and by the way Mr. Woods, you don't have standing to raise the issue anyhow, so denied.

The Court - Okay.

Mr. Brackett - And I would point out that there was no Motion for Reconsideration made. If he thinks the wrong issue was addressed -- okay -- the court addressed -- addressed it in terms of the Personal Representative duties -- if Mr. Woods thinks the court addressed it in the wrong way to preserve it for appeal, he should've -- he should've filed a Rule 59 motion and asked Judge Gettys to clarify that and to address it in the other fashion. He didn't do that, so I think on the merits he fails; Procedurally he hadn't preserved it for review.

The Court - All right. Let me ask you this, Mr. Woods, the -- I'm reading from your June the 4th, 2010 Notice of Appeal and again the paragraph two, the one we've just been talking about, the -- as it's written, it appears to me from reading your paragraph two that you're saying you want me to tell Judge Gettys -- and you don't -- it don't actually say this, but what it sounds like to

Hinson family and the judge as ordered by the judge admitted the June, 1998 Will to probate. Now, Mr. Woods says that's the wrong Will because it somehow establishes that Reba Hinson had a life estate when she really had a fee simple estate. Your Honor, Reba Hinson cannot determine for herself whether she has a life estate or a fee simple estate. That is not her decision to make. She has whatever interest was conveyed to her or transferred to her in her husband's estate as it was set out in his Will. You know, this idea that Reba Hinson can suddenly say, well, I don't care what my husband's Will says, I own it. No. She can't say that. She can't determine her own title, and so this idea that Mr. Woods has that he's going to somehow contest a Will and change the nature of Reba Hinson's title is just wrong. You can't do that. Now, because -- because he raised it as a ground to remove Mr. Breakfield, the court denied it on that ground and also denied it because he didn't have standing to raise it to start with, and so that would be the only -- This idea that the wrong Will's being probated, that was not at issue before Judge Gettys. All right, that was not raised in Mr. Woods' pleadings to remove Breakfield. Okay? So he's trying to -- he's trying to cleverly restate the issue if you will to whether or not the court has accepted the wrong Will. No, no. His proceeding held before Judge

be admitted formally to probate, signed Judge Lois H. Roddey, February 18, 2009. The decision about which Will was going to the probated was the Probate Judge's decision. It wasn't Mr. Breakfield's and for that reason Judge Gettys rightfully so said there's no cause to removed Mr. -- It's not his decision to make. He is probating the Will the court told him to probate. Now, Mr. Woods tries to convert that issue about whether Mr. Breakfield is somehow at fault into -- into contesting the underlying decision about which Will needed to be admitted. All right. He's complaining about it's the wrong -- He doesn't care who made the decision. He's still complaining the wrong Will is being probated. Now, this same Order, Your Honor, the Judge Roddey's Order from February of '09 it says -- It says in the pleading part of that form 300 PC -- it said the handwritten document apparently written by decedent dated April 5, 2003 and the typed document dated April 5, 2003 and witnessed on April 24 of 2003 were not validly executed, therefore, were not considered to have revoked the Last Will and Testament from June 23, 1998. That was in the pleading part of the form so that it was fully disclosed to everybody at that hearing that there were at least two other documents that somebody thought could be, might be, perhaps would be the decedent's Last Will. Knowing that, the members of the

Mr. Breakfield as personal representative because Mr. Breakfield was probating the wrong Will. That's the issue that was presented to the court in Mr. Woods' pleadings, and that's the issue that he -- that's the only issue he can now complain about. The decision about which will gets probated was not Mr. Breakfield's decision. You'll note in the -- in Judge Gettys' April 19, 2010 Order he says on page two the second full paragraph that Mr. Woods failed to persuade the court that cause exist for Mr. Breakfield's removal with respect to alleged probating the wrong Will. The court then said, number one, Mr. Woods, you have no standing to come before the Probate Court and complain about which Will -- which of Reba Hinson's Will would be probated because you are a stranger to that estate. Your name does not appear in either Will or any of the three Wills or the four wills or however many there are. And you simply have no standing to come into court and to try to influence or direct which Will gets probated in Reba Hinson's estate. Over and above that the court refers to the earlier court Order from February of '09 when -- again when the estate was opened and Mr. Breakfield was appointed -- in that Order it says Order of formal testacy the decedent died, Reba Hinson died testate, it is hereby ordered that the Last Will and Testament of the above named decedent dated June 23, 1998

Hinson's Will right now.

The Court - Right.

Mr. Woods - But it's interrelated to all this.

The Court - All right.

Mr. Woods - So -- We talking about a revoked Will, a Will Ms. Hinson wrote out and now the Hinsons claim that she never had any land, but she did have land. She went around dealing with it as her land.

The Court - Let me ask you one more question.

Mr. Woods - Yes, sir.

The Court - Let me ask you one more question. The Will that you say should've been probated ---

Mr. Woods - Yes, sir.

The Court - --- would you have been a beneficiary under that Will?

Mr. Woods - Yes, sir, not -- not as a heir, not as an heir now, but she sold me the land, but if she's got a life's estate, then that kills my claim, and that's what this agreement is all about, to kill my claim. I don't claim to be a Hinson heir, but my rights as a creditor are going to be extinguished just as soon as they convince somebody that she had only a life's estate. So that's what the whole business is about.

Mr. Brackett - Your Honor, ground number four complains that the Probate Court was wrong not to remove

certified copy of that, because it's never been stamped in by the Probate Court. And this -- By this time Gettys was already on the case, you know. So Gettys told them to go take the thing and lock it up in the safe, so that's where it is now as far as I know. It's over there in Chester County in the probate safe. But she wrote out her own Will based on the surveyor maps that she had hired back in 1982 how she wanted the land broke up and the Hinson heirs won't go by that. They want to do it another way and they want -- they want it partitioned and they want everything in the world can be done legally to it, to run up the bill and everything and -- and when Ms. Hinson had it figured out for them, all they had to do was go by her Will, but they won't do that. The only thing that her estate is being administered for is to get the money out it. They claim she didn't have any property because they claim she has a life's estate, but the will is -- He grants her a fee simple estate first and they's several South Carolina statutes -- I mean not statutes, but cases that rules that once it says fee simple, the estate's granted and anything else is a super added word, it doesn't matter what it says.

The Court - But now aren't you talking about his Will?

Mr. Woods - We're talking about Mr. Levie

right here ---

The Court - Are you talking about Reba P. Hinson?

Mr. Woods - Yes, sir.

The Court - All right.

Mr. Woods - And -- They trying to say that she -- that her husband, Mr. Levie Hinson, left her only a life's estate. It's not what it says. That's not what the Will says.

The Court - Wait a minute now. Well, does this -- does this action that we are dealing with here have anything to do with his Will?

Mr. Woods - It's all interrelated, Judge, because here's how it's interrelated and this is how Ned Gregory got in it to start with, he drew the Will that she revoked, because he put in the life's estate language, and as soon as she saw it, she took her pencil and marked through it and put -- and -- she kept it but she put new Will made up, but she would not trust another attorney to make a Will. She wrote it out in her own handwriting and it stayed over there in the Probate Court for a long time hid down in the bottom of the file and I found it one day, and I said, can I get a certified copy of that, because that's an important document, and they said, well, that -- that thing has never been clocked in, so you can't get a

Will in her own handwriting because -- She asked me about -- You know, I told her, said you need to go get a lawyer if you're going to do it, but she went and got some surveyors to draw some maps up, current maps.

Mr. Brackett - Just for the record, Your Honor, I need to object to his representations of hearsay and conversation that violate the deadman statute and all sorts of stuff, but I understand ---

The Court - Well, this isn't an evidentiary hearing.

Mr. Brackett - I understand. I just don't want to be deemed to have waived or be estopped or anything.

The Court - Okay. I'm just trying to figure out I guess what difference it made --

Mr. Woods - The difference it makes to me -- This is how it makes a difference to me and this is the reason I'm here. Okay? They're trying to say she had a life's estate when she didn't. She had a fee simple estate, and she sold me a small lot out there for a building I've got ---

The Court - Now, wait a minute. You're talking about who had a life estate?

Mr. Woods - Breakfield and the Hinson heirs ---

The Court - You talking about ---

Mr. Woods - --- through this piece of paper

that, you know, but I mean, you know, -- I mean sometimes lawyers stump their toes. I don't know what you would make out of that, but -- The main problem I have -- I guess that's on that thing for the next ---

The Court - Let me look -- let me look at that just one minute then I'll hear you.

Mr. Woods - All right, sir.

The Court - (Pause) All right, I see that the last error being asserted by Mr. Woods is that the wrong Will was probated and -- and apparently you're blaming that on Mr. Breakfield. Are you saying that a Will -- there was another Will that would've made you a beneficiary of the estate?

Mr. Woods - Can I speak?

The Court - Yes.

Mr. Woods - It wouldn't have made me a beneficiary of the estate but I -- it has to do with this other matter that we're going to get to I assume in a minute. I'm going to try to summarize it.

The Court - Okay.

Mr. Woods - It's the wrong Will because Ms. Hinson finally read the Will and she saw parts in there such as it made it out to cause her to have a life's estate which she didn't believe she had and she took it and struck through it with a pencil and made out another

wrong Will. That's -- That's the main issue.

The Court - That's the next ground?

Mr. Woods - It may be the next on there. I don't know, but I mean it's -- I'm not trying to jump ahead, but it's more than one issue about that, but as I just said, we don't need to worry about the bond part too much, because I mean he's got the money in his escrow account and he's an honest guy as far as I know.

Mr. Brackett - I would Mr. Woods, then, are you waiving -- are you withdrawing that ground of appeal?

Mr. Woods - I thought that's what we did at the hearing before.

Mr. Brackett - I'm asking you today, are you withdrawing that ground of appeal?

Mr. Woods - I am for this time.

Mr. Brackett - Okay.

Mr. Woods - If I feel like -- if I hear of anything going on where I might need bond again, I'll bring it up again, but right now it's fine.

The Court - All right. This ground for appeal then has been withdrawn. And I assume that you would have the right to ask the Probate Court to issue -- to require bond at a future date on future circumstances. I assume that.

Mr. Woods - You know, I mean -- I don't see

THE COURT: What position does the Personal Representative take on consolidating the case?

MR. BRACKETT: Your Honor, we object to that. There are two principal objections that we have to the removal motion, for the Petition to Vacate, or Motion to Vacate. The first is that according to South Carolina law a Rule 60 motion has to be decided by the same Court that rendered the judgement that is being challenged under Rule 60. Circuit Court has no jurisdiction to entertain a Rule 60 motion for a Probate Court order. That's just not allowed.

Secondly, this is not a matter that is removable under the removal statute, 62-1-302. So, for both of those reasons, removal has to be denied. It would be up to this Probate Court to determine if there's any merit to the Rule 60 motion,

THE COURT: All right.

MR. BRACKETT: And I've set out those authorities ---

THE COURT: In the brief? In the answer, rather?

MR. BRACKETT: Yes, sir. It was filed on February 23, 2010, styled Personal Representative's

2007. At that point, they had a fellow by the name of James Boyd, who's an attorney in this county. I mean, he had prepared a petition, this one right here, to file, and they did file it; but then they took it out. It says, cancelled. And the funny thing about it, when he filed his there was real estate in the estate and money. But as soon as Gregory got hold of it there was no real estate, and it all --

THE COURT: Let me go back; and listen to my question. I'm not asking you about your motion to set aside the order. I'm asking you about your motion to move this to Circuit Court.

MR. WOODS: Well, I feel like it was -- this is a practical matter. No disrespect to this Court, --

THE COURT: I understand.

MR. WOODS: -- I just feel like, as a practical matter, if you got it up there in front of the Circuit Court judge and he saw what's going on I just think you could get it over instead of going to two or three courts.

THE COURT: All right.

MR. WOODS: That's just it, a case consolidation. That's what I mean.

look like it's going to ever be over. I mean, if we could get all -- if we could get everything in front of one judge I think it could get over quicker. That's just my position. And here's the suits. But they don't even understand what partition means. They think they have hired Claude Coleman to be a arbitrator, or something. They don't know he's got the authority to sell the whole place. They don't know that, you know. And I can't explain it to them. I've tried to. And that's the bad part about it.

THE COURT: But, now, what does that have to do with your motion, here --

MR. WOODS: Well, I think Mr. Breakfield ought to explain it to them so they can understand it. Your Honor, they operating in the dark and they got -- they just got several suits over there. I mean, they got, like, at least three suits.

THE COURT: What does that have to do with your motion to set aside that order of the Court?

MR. WOODS: Well, because they knew there was more than one Will, because I went over there with a public record request because they kept saying that they had Wills. But now, here's where I asked her to show me whatever Wills she had, way back in

which was the probating of the -- what was it, '98 Will?

MR. WOODS: Yes, sir. That was it.

THE COURT: And then he moved to transfer that motion hearing to Circuit Court. Let's argue it out. Why do you want to move that to Circuit Court?

MR. WOODS: Well, because they have two other lawsuits pending over there. Can I show you these?

THE COURT: Yes, sir. You can show me anything you want.

MR. WOODS: They've got a petition action.

THE COURT: Who is they?

MR. WOODS: The Hinsons.

THE COURT: Okay.

MR. WOODS: And they also got what I call a spite suit between themselves --

THE COURT: When you say petition, you mean partition?

MR. WOODS: Yeah. Partition. I mean, it's by Claude Coleman. They don't have a regular, I mean --

THE COURT: Special Referee?

MR. WOODS: Yeah. He's a Special Referee. And they just got suits going left and right. It don't

Court ordered that bond was not required. And also, as you've already made note, of the other order of the Court where the Personal Representative was ordered to hold at least $200,000, and to only pay estate expenses. So I ask the Court to take judicial notice of that, as well.

THE COURT: I think that was December 17, 2009. That was when we had the first hearing, that first get-together that did turn out to be a hearing, in Columbia.

MR. BRACKETT: At least that part of the petition, that ground for removal, we submit, should be denied.

THE COURT: Mr. Woods, let me come back and ask you one more time, because I'm going to move on beyond this issue. Is there anything else relating to Mr. Breakfield and his actions as Personal Representative of the estate that you feel he should be removed for, other than the bond issue?

MR. WOODS: The part about the wrong Will; but you said you wanted to get to that later.

THE COURT: All right. Let's go to that. And I also next have a motion filed by Mr. Woods asking me to set aside the order of February 18, 2009,

MR. WOODS: But, that's another matter. We're going to get to that, I guess?

THE COURT: I sure want to, but I want to ask you what else you've got dealing with the removal of the Personal Representative. Do you have any other cause?

MR. WOODS: Well, other than just what we're going to get to. I mean, the way I read this thing -- maybe I'm just reading it wrong, but, I mean, to me, the statute says that even though you have ordered him to hold back the money, I mean, he's still supposed to give bond, and he's not giving bond. I mean, it's not a big deal; he's not a criminal. I mean, he can go over there and get a bond for a couple hundred thousand, well, a couple hundred dollars --

THE COURT: He would, if I ordered him to, but I didn't order him to.

MR. WOODS: I understand.

THE COURT: All right. On this topic, anything else you want to do?

MR. BRACKETT: For the record, Your Honor, I'm asking you to take judicial notice of the order of the Chester County Probate Court dated February 18, 2009. Specifically the Form 300, Page 5, where the

THE COURT: Well, it names two Personal Representatives and it directs that they be exempt from paying bond.

MR. WOODS: I saw that, there.

THE COURT: There's a statute that says, if the Will doesn't require bond, bond is not required unless the Court determines that it's necessary. It is not an automatic. What you've got here is a statute saying what bond, if you come in and ask me to require him to post a bond, which you did.

MR. WOODS: Yes, sir.

THE COURT: And I ruled that I was not going to require a bond. I was going to require him to escrow the money.

MR. WOODS: Well, I mean, I understand how the lawyer has got to -- he's not supposed to lose money --

THE COURT: I understand.

MR. WOODS: -- you know?

THE COURT: I understand. What else? You got any other reasons?

MR. WOODS: Well, it's my position they probated the wrong Will.

THE COURT: Well, I'm talking about the removal of Mr. Breakfield --

supposed -- somebody's got to get a bond for it. These people over there didn't get paid, and they've actually created a new cause of action for people that don't comply with the statutory law of South Carolina. The Supreme Court did that.

THE COURT: What's the Will say, Mr. Breakfield? Have you got a copy of that?

MR. WOODS: I've got a copy.

MR. BRACKETT: My recollection is, the Will does not require a bond. I will also point out, Your Honor, in the Court's order dated February 18, 2009, and that would be Judge Roddey's order, found on the Form 300 on Page 5, when Mr. Breakfield was appointed by the Probate Court, the order expressly provided no bond would be required.

MR. WOODS: Your Honor, I have more about them probating a Will that should not have been filed --

THE COURT: We're not on that bit. We're on the Personal Representative, now. The Will that I'm looking at, the one, the '98 Will -- is that right? Is that the one you say shouldn't have been probated?

MR. WOODS: That's right. It was probated.

MR. BRACKETT: That's the one that, by order of the Court, was --

.MR. WOODS: No, sir. I don't think so. I mean, the statute puts the onus on him to come up with -- Well, let me read the statute. Okay?

THE COURT: I don't think that's what that statute says. I think you can make a demand for bond, which you did --

MR. WOODS: Yes, sir.

THE COURT: -- and I ruled and said that Mr. Breakfield was to hold $200,000 in escrow. I think I signed an order. Is that right?

MR. Breakfield: Yes, Your Honor.

THE COURT: You still got that?

MR. BREAKFIELD: Your Honor, we withheld $210,000, and your order allowed us to pay costs of litigation and the only funds that have been expended from that $210,000 are fees associated with this matter before the Court.

MR. WOODS: Could I say another thing?

THE COURT: Yes, sir.

MR. WOODS: As far as South Carolina, they -- I mean, when it says bond it means bond. I mean, this is a case from this circuit, over there in Union. It doesn't have to do with an estate case, but it's where if there's any contract made with a city that's over $50,000, the law says they

Now, what we're here today, we have several matters. And what I'm going to do, I think, is take these in the order they were filed. I think the first one that was filed was Mr. Woods's Petition to Remove Mr. Breakfield as the Personal Representative.

Before I do that, I need to also say Mr. Woods did come by the office last week and ask me to issue some subpoenas in blank, and I refused to do that. I asked him also to tell me why he needed -- who he needed to subpoena and why, and he did not feel comfortable doing that, so I did not issue the subpoenas.

Mr. Woods, tell me why you want Mr. Breakfield removed?

MR. WOODS: Your Honor, I've got a statute. Can I show that to you?

THE COURT: You can just tell me. I've got the codes right here.

MR. WOODS: I've got copies of this. You got the South Carolina statute that says that he's supposed to give bond in 30 days. That's what it says right here.

THE COURT: Well, now, we had a hearing on that, didn't we?

THE COURT: Anything else?

MR. BRACKETT: Your Honor, just to tie these together, one of the grounds that Mr. Woods raised for removal of Mr. Breakfield was that he had probated the wrong Will. When I filed my response to that and made known my reliance on the fact that there was already a Court order which specified which Will was to be probated and Mr. Breakfield was in compliance with that order, that then prompted, I believe, the Rule 60 motion. Mr. Woods now feels he's got to get rid of that order because it's an impediment to his getting relief under his first motion.

So, this question of the probating of the '98 Will or the unsigned 2003 Will or the signed 2003 Will that has two different dates on it, all that stuff, the fact that he has no standing to challenge by Rule 60 the order, the order stays in place. There is a Court order that has already specified which Will is to be probated.

Mr. Breakfield is obviously in compliance with the Court order; therefore, there is no basis to grant a removal of Mr. Breakfield on either ground set forth in Mr Woods's petition-slash-motion.

THE COURT: I believe the controlling statute

. THE COURT: Well, (As read) informal letters, papers, documents, anything that's not of record yet, please furnish a copy. Release to the Undersigned all the papers, cards, pages, photographs, maps, books, or other document material. I don't see Wills, but I assume that's included in all this. I'm going to Xerox that and put it in my file. I'm not accepting it as evidence. It's already in the Court file. But since it's in Chester, I'll put it in my file. All right. Anything further? Any other motions, or any other arguments, or any other positions anyone wants to take?

MR. WOODS: Well, I did have a motion that I filed. I don't know if it was sent to you or not, about they got a statute that says if a Probate Judge is in possession of more than one Will the fact of that is supposed to be published in the county newspaper, so everybody can know about it.

THE COURT: I don't know. I didn't know there was such a statute.

MR. BRACKETT: I'm not aware that there's a motion pending, Your Honor, that raises that issue.

MR. WOODS: Well, I sent that to you, and it's in your court file.

they like? I got --

MR. WOODS: I talked to her. I mean, she told me --

THE COURT: I got what they sent me. The same stuff I have.

MR. BRACKETT: Just to protect the record, Your Honor, I need to object to anything he now -- he's trying to get in statements made by the decedent, apparently --

THE COURT: Yes.

MR. BRACKETT: -- as somehow evidence in this case, and I would object to that and ask if you would disregard that.

THE COURT: I'll put that in my file.

MR. BRACKETT: What is it?

MR. WOODS: It's where I been asking about it since 2007.

THE COURT: You want me to put -- I'm going to put a copy in my file. I'm not --

MR. BRACKETT: Just for the record, describe the date --

THE COURT: It's dated June 27 of '07. It's to Judge Roddey from Mr. Woods, and it's asking for --

MR. WOODS: Any Will she's got, whether they done filed it or not.

MR. BRACKETT: These apparently have already been filed with the Court, Your Honor, --

MR. WOODS: They in the court file, but the funny thing about the public record request is, I've been through that file several times and it's only shown up in about the last week.

THE COURT: Well, if it's in the file I don't need it. It's already in the file.

MR. WOODS: Well, it's not in the file they sent you.

THE COURT: Well, I didn't ask for it. I just told them what I wanted.

MR. WOODS: Well, can I put it in there for this hearing?

THE COURT: No. If it's in my file, you don't need to put that in evidence. I've got a copy in my file.

MR. WOODS: Well, you see all that, marked through there? And, you know, and the part she doesn't like is --

THE COURT: Now, Mr. Woods, don't tell me what the judge doesn't like. She's not here --

MR. WOODS: I'm talking about the lady that --

THE COURT: No, the lady down there. Don't tell me what they don't like. How do you know what

prove his claim he would have a right to recover whatever amount the Court would find to be owed to him pursuant to his claim. He would have the same relative priority for payment. He gets paid before anything gets distributed out to a designee under the Will.

So when you take the cost of the administration being the first priority, and then you go to working with taxes and other things, and then you get down to creditors. He has the same relative priority under either Will. So he's not damaged. There's $200,000 by Court order that's sitting in an account waiting for his claim to be resolved.

So the simple answer is, Mr. Woods has no standing to either make a Rule 60 motion or to contest which Will the Court decides to probate.

MR. WOODS: Can I put these two documents in evidence?

THE COURT: You can put in anything you want.

MR. WOODS: All right.

THE COURT: Let him see it first.

MR. WOODS: Here's the public record request that I ask be designated Number 1, that I asked her about in 2007 --

this -- to file a claim and come into this Court and try to take charge of which Will gets probated. That's just simply, for lack of a better phrase, that's not his business at this point.

Now, there are two reasons why his Rule 60 motion should be dismissed, and they are both related to standing, the fact that he is a stranger to this estate. First, a non-party to the proceeding and the order that is now being challenged under Rule 60, a non-party has no standing to even make a Rule 60 motion. By his own admission, he wasn't involved in this estate at all, hadn't filed his claim as of February, 2009, when that order was entered by Judge Roddey. So that being said, he wasn't a party to that and he's not entitled now to try to go back and try to re-litigate that under Rule 60.

The second ground has to do -- He has no standing because he has -- As we are sitting here today, he has no property right in this estate. As you pointed out, and as I have mentioned in my filing with the Court, regardless of which Will we look at, Mr. Woods is not named in that Will, in either one of them. He's not a -- he's a total stranger to each of those, meaning that if he can

so if you've got a claim you're not going to get left out.

MR. WOODS: I understand. But -- I'm not trying to prolong it. I mean, I'm trying to get this done. But I mean, if they'll just do it like they're supposed to, the claim will go away.

MR. BRACKETT: Your Honor, the rules and statutes governing the administration of an estate are designed to prevent just such as this.

THE COURT: I understand.

MR. BRACKETT: What Mr. Woods is now claiming is that he has some interest in real estate that Ms. Hinson owned, either by way of some promise or some agreement. That agreement is nowhere to be found in the writing. It is not mentioned in her Will. What he has now done is to file a claim against the estate which I submit to the Court makes him a claimant. He is not yet a creditor until he proves the grounds for liability and all the stuff, the damage. He is a claimant at this point. He is not named in either of the two Wills that he continually mentions in the Court, the one that's been accepted by the Court and the one that he would prefer to be accepted. He's a stranger to each of those. He has no standing to come into

you know, like, when I gave her my public record request she said she didn't have any Wills, or didn't -- she weren't working on there, and they didn't have nothing filed on it. See, this is in 2007 I asked her about it. It got the filing stamp on it, right there.

THE COURT: Yes.

MR. WOODS: Can I put this in to evidence?

THE COURT: Well, see, the estate was opened in 2008.

MR. WOODS: Yeah, I know. But I been asking about it formally since 2007.

THE COURT: Okay.

MR. WOODS: And she had possession of the Wills in -- shortly after she died. She had the information of this will --

THE COURT: Mr. Woods, let me go back to my question. How does this affect you as a creditor? I know you just told me it affects you personally. How does it affect you as a creditor of this estate?

MR. WOODS: Because if it never gets settled, and if it's sold on the courthouse steps, I mean, I'm going to get left out. The way it's set up --

THE COURT: I've got money sitting over here;

affect a creditor. I personally know that I verified one of my --

THE COURT: Well, if it doesn't affect a creditor, why are we here?

MR. WOODS: Well, they can't make an agreement without getting a creditor to agree to it, because it affects me.

THE COURT: How does it affect you? That's my question.

MR. WOODS: Because the way she had it set up, and she showed this to me and told me about it, the building that I got down there was going to a particular person, who I could deal with, and I was going to get it for a set amount. But now, if it's going to be partitioned by Claude Coleman, there's no telling who gets it. It's likely to be sold on the courthouse steps.

THE COURT: But that has nothing to do with a Will, or not a Will.

MR. WOODS: Well, they kept the real Will. They just came out with it recently. Judge Roddey did, not you.

THE COURT: I'm going back to asking you, were you in this case, at all?

MR. WOODS: No I didn't, because she told me,

and they all agreed to it. And as far as I know, they're -- the Will I've been operating under was the one that they wanted accepted, and they elected to have me serve as Personal Rep.

THE COURT: Okay. Mr. Woods, what is your -- are you related, at all, to Ms. Hinson?

MR. WOODS: No, sir.

THE COURT: How are --

MR. WOODS: I'm a creditor.

THE COURT: Well, what does a creditor have to do with the validity of a will?

MR. WOODS: Okay. Can I show you this Will that they talking about? It's got some markings on it.

THE COURT: I think I've got a copy of it.

MR. WOODS: You may not have this one.

THE COURT: I've got one with markings on it.

MR. WOODS: Well, she marked through it, the part that she didn't want, down here; and then she marked up here, at the top, new Will made up. She didn't want this will. They won't even go by her desires. And there is a statute there that says all of them can agree to go by any kind of Will they want to, but you got to be approved by the Court. That's never been done, and it doesn't

that the Will be admitted.

After Mr. Woods later on objected to the '98 Will, I had sent copies of the pleadings to all of the beneficiaries over the years, all the issues that are transpiring in this Court, and I had three of the beneficiaries call me and say, well, we all agreed to use the '98 Will. I was not present when all of that happened. Evidently, the lawyers got together and decided to use the '98 Will, and that happened prior to the hearing when Judge Roddey accepted it.

Based upon the phone calls I received from the three heirs, I then suggested a private agreement, basically to ratify what they did before Judge Roddey. And then, I sent a draft to everyone, got their comments on it, and then they executed a private agreement among the heirs which was filed in the Probate Court on 31 March of 2010. Which, essentially, they ratified what they did in front of Judge Roddey. Judge Roddey did not have court reporter at that hearing. She had one of her staff there that were taking notes, but there was not a verbatim record like we have in this Court today.

So in order to clear that up, that's one of the reasons I suggested we do a private agreement,

that Will was accepted in to probate?

MR. BREAKFIELD: Yes, Your Honor.

THE COURT: Was there a formal hearing?

MR. BREAKFIELD: Yes, Your Honor. They had all of the beneficiaries there, plus their spouses. There were 25 people present. There were two attorneys.

THE COURT: And Judge Roddey ruled that the '98 Will was the valid Will?

MR. BREAKFIELD: Your Honor, I kind of walked in, you know, was brand new in --

THE COURT: Raise your right hand.

WHEREUPON,

Robert Breakfield

was called as witness and first being duly sworn, testified as follows:

MR. BREAKFIELD: I was contacted, Your Honor, by Mr. Boyd and Mr. Gregory, asking me if I would serve as Personal Rep, and I agreed to do it. So they scheduled a hearing, and all the heirs were present, with their spouses and kids and so on. At that hearing, Judge Roddey accepted the '98 Will, and they also accepted me as the personal, prospective Personal Representative. Judge Roddey then ordered that I serve as Personal Rep, and

MR. WOODS: Which one is that you're talking about, Your Honor?

THE COURT: Your motion to set aside the order accepting the Will into probate.

MR. WOODS: Okay. She had the proper Will in front of her, but would not file it into the probate file. She kept it in her drawer.

THE COURT: Who is she?

MR. WOODS: She's Judge Roddey. It's called concealment of a Will. I went over and asked her about it. And this is my proof I asked her about it. It's a public record request. And she'd never tell me about it, and she wouldn't tell anyone about it because she is friends with one of the heirs, Christine Jones, and they wanted it done their way and they didn't want it -- See, Ms. Hinson had the thing surveyed two-three years before she dies the way she wanted it set out. But she found this -- Gregory drew a Will in 1998, but, I mean, she went through here and physically marked through the parts that she didn't like. Can I show this?

THE COURT: Well, now, let me go back, because my understanding is there was a formal hearing. Is that true? Mr. Breakfield, were you in it, when

Motion to Dismiss the Petition to Vacate and Return to the Motion for Removal.

THE COURT: Yes, sir. All right. Mr. Woods, you want to comment on that?

MR. WOODS: Well, if the -- According to the probate code, as amended, the Probate Court and the Circuit Court has dual jurisdiction on all matters. That's what it says. And the Supreme Court has ruled that you can -- I know he's got a technical note, there, that he's quoting, but it can be done either way. I mean, I'd just as soon have everything done in this Court, but, I mean, there's some of this stuff that can't be done here.

THE COURT: Well, that's true. And there's some that they can't do over there, no matter what you say. The Probate's got exclusive jurisdiction on certain things, too. It's an estate. We do have exclusive jurisdiction, but it can be removed. But you have to comply with the removal statute, is my understanding. All right. Tell me about your motion, now -- I'm going to deny your motion to remove to the Circuit. I don't think I can do that. I think it's got to stay here. Tell me about your motion itself. Why should I set aside that one?

on removal would be 62-6-11. Is that right?

MR. BRACKETT: Yes, sir.

THE COURT: And 6-11 sets forth the grounds for removal, and one of those grounds would be not following an order of the Court. I haven't heard anything to convince me that Mr. Breakfield has not followed the Court and its order, because I did order that bond would not be required. All right.

Then, Mr. Brackett, I'm going to get you, if you would, to prepare me an order and I'm going to dismiss the Petition for Removal of Personal Representative on the grounds that there's insufficient evidence of any action or lack of action under 62-6-11, which would convince the Court that Mr. Breakfield needed to be removed or sanctioned in any way.

And secondly, I'm going to deny the motion, I've already denied the Motion to Remove, the Motion to Remove to Circuit Court, deny that and deny Mr. Woods's motion to set aside the will, the order of Judge Roddey in 2/18/09, where she appointed Mr. Breakfield and accepted the Will.

Mr. Woods, standing is important, and I agree completely with Mr. Brackett: you don't have standing to raise these issues. The Hinsons do,

but they've signed an agreement. Is everybody on that agreement?

MR. BRACKETT: Yes, Your Honor. All of the --

THE COURT: How you going to change what all the heirs have --

MR. WOODS: That's what I needed the subpoenas for. They do not understand the agreement. They don't understand it. I mean, when you get them in here -- I'd like to have another hearing on that, just to see if you think --

THE COURT: No, sir. I'm not going to do this, because if they want to do something, they can come up here and do it. They have standing to come in here and raise an issue, and if they want to raise it any one of them can come raise it. At this point, I don't know that I would grant anything to -- that order is apparently agreeable to them, and they signed an agreement saying they agreed to it.

MR. WOODS: They did. But, I mean, it's not been approved by the Court. There's another statute says it's supposed to be approved by the Court.

THE COURT: No, sir. There's not. Agreed -- there's a statute that says the parties can enter into an agreement and the Personal Representative

must abide by it.

MR. WOODS: That's what it says, but can I show this one? Could I show --

THE COURT: That's a different statute. That's on the result of a controversy before the Court. They aren't in any controversy. You are. And you don't have standing in court.

MR. WOODS: Well --

THE COURT: You're a creditor, and that's all you are, as far as I know. And if you're a creditor you can come in and raise any issue on your claim you want to raise. But now, that's in Circuit Court, and if you want to raise issues on your claim you need to go there. Any other issue that I can think of is moot, because you don't have standing.

MR. WOODS: Can I put one more thing in the record?

THE COURT: I don't know. What do you want to put?

MR. WOODS: It's what you were just reading out of, 62-3-6-11.

THE COURT: Removal?

MR. WOODS: Yes, sir. It's a Part B, there. It says if he materially represented material facts

in the proceeding leading to him being appointed. Now, they swore out a affidavit swearing there was only one Will, when they knew there was another one.

THE COURT: Mr. Breakfield was not involved. I understood you were asked if you would agree to serve. Is that correct?

MR. BREAKFIELD: Yes, sir.

MR. WOODS: He signed the paper --

MR. BREAKFIELD: Your Honor, immediately before the proceeding with Judge Roddey, the formal petition was prepared, and I signed it asking that the Will be admitted and the normal blue petition I signed, about ten minutes before walking in before Judge Roddey.

THE COURT: And that was the original Will she adopted?

MR. BREAKFIELD: That's correct. There were two different attorneys involved. There was Mr. Gregory and Mr. Jim Boyd, and they had resolved those issues; and then, I came in and was appointed. There was a lot of controversy between the folks as to who was going to be Personal Rep, and they kind of shopped around for attorneys. They asked me to do it. I said I would do it. And

essentially what Mr. Gregory and Mr. Boyd and all the folks agreed is that they were going to use the '98 Will, and they were going to ask me to serve as Personal Rep. Literally, I signed the document, they notarized it, we walked in to the Court, and the Judge took action on it with all the heirs present in the courtroom.

THE COURT: All right.

MR. WOODS: Your Honor, Form Number 300 asks straight out on here, (As read) Do you know of any other Wills? And they wrote on there no, when they knew that.

THE COURT: Who wrote that?

MR. WOODS: This fellow right here swore to it.

THE COURT: He told me somebody had filled in the form.

MR. WOODS: Yeah. It was Gregory. But, I mean, he should have done his due diligence and found that they was another Will, the way I see it.

THE COURT: But if they were all in agreement that this was the original Will then it is the original Will.

MR. WOODS: Your Honor, when they filled out this form, I mean, he's the one, Boyd, that filled it out. He didn't say anything about it, but, I mean,

they knew the Will was there, and they put down there a little footnote saying that it wasn't properly executed, or something. But, I mean, it was executed in front of a Notary Public and two witnesses. I mean, what else do you need?

THE COURT: I don't know, because I wasn't there. I'm still ruling, so draw up the order. Now, Mr. Woods, this is costing the heirs of the estate a lot of money, because these guys are both getting paid. I don't want to waste their money. I want to say it again, that I don't know how you would have standing to challenge anything in this estate other than relating to your claim.

MR. WOODS: All right, sir. We'll just work on the claim.

THE COURT: That'll be fine, and it's in the Circuit Court. I'm not going to entertain a motion for a frivolous action at this point, but I am not opposed to considering that in the future if we keep charging this estate fees and monies to hear arguments that I don't think you have standing to bring before the Court.

MR. WOODS: I hear you. But, I mean, we just -- I can still go to the Chester County Circuit Court, soon as I can get the papers over there.

THE COURT: Yes, sir.

MR. WOODS: He just wants to know if you object to me walking them over there, or do you want the ladies in the courthouse to do it.

THE COURT: I don't want the ladies in the Court House to do it. I want y'all to go and open the estate.

MR. BRACKETT: He can do it. But you're going to have to pay a filing fee --

MR. WOODS: I'll pay the filing fee. I'm --

THE COURT: A $150 filing fee, court fee, same as Probate.

MR. WOODS: I mean, if you don't have any objection to me going over there and picking up the papers, I'll physically take them over there and file them.

THE COURT: Okay. They've already got them copied and certified, so you can go back and pick them up today and file them and then y'all will be in Circuit Court on the claim

MR. WOODS: All right.

MR. BREAKFIELD: One record-keeping matter, just so what Mr. Woods said will not go unchallenged on the record. Page 3 of the Form 300, there is a note at the bottom that talks about

the handwritten documents dated -- In other words, it addresses the existence of the other documents and explains why they were not probated. So this idea that somehow there was a misrepresentation is false.

THE COURT: All right. I appreciate y'all coming.

Whereupon - Hearing was concluded at 11:32 A.M.

Shirley Dallas-Gerrald, CVR-CM
Notary Public/Court Reporter

(Recorded deposition tapes retained fifteen days from date of certification unless otherwise requested)

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, William H. White, a Notary Public for the State of South Carolina, do hereby certify that I placed under oath the aforesaid deponent; that I reported the foregoing proceedings at the time and place herein designated and that the foregoing pages are a true, accurate and correct transcript of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor in anyway interested in the event of said cause.

In witness my hand and official seal this the 21st day of, April, 2010, in the City of Rock Hill, County of York, State of South Carolina.

William H. White
Court Reporter/Notary Public

My Commission Expires:
8-8-2018

Certified True and Correct Copy
SC Secretary of State's Office

ONPC114335331200

South Carolina Secretary of State's Office

Mark Hammond

Search Response

Dated: 1/26/2012 2:29 PM

Search Criteria Entered:

Filing Number Search
Filing Number1 (UCC1): 111229-1557344
Filing Number2 (UCC1):
Filing Number3 (UCC1):
Filing Number4 (UCC1):
Filing Number5 (UCC1):
Filing Number6 (UCC1):

Filing Number	Filing Type	Filing Date	Lapse Date	Electronic Image Available
111229-1557344	UCC-1 Financing Statement (MANUFACTURED HOME)	12/29/2011 3:57 PM	12/29/2041	Yes

[redacted] UCC-1

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)
SC Secretary of State's Office

Mell Woods

Acknowledgment obtained at
Time of filing: UCC Notice
Fort Lawn, SC 29714

SC Secretary of State

File ID: 111229-1557344

Lapse Date: 12/29/2041

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
WOODS	Mell		

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1537 Hinton Road	Great Falls	SC	29055	USA

1d. TAX ID# (Organizations)	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
DO NOT PROVIDE				☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2d. TAX ID# (Organizations)	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
DO NOT PROVIDE				☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
HINSON	Reba	P.	

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
1414 Catawba River Road	Fort Lawn	SC	29714	USA

4. This FINANCING STATEMENT covers the following collateral:

Manufactured Home, and improvements existing at #10 North Adams Road; this same land lot is also known as 1537 Hinton Road, Great Falls, South Carolina, 29055, along with the Real Estate described in #14 of this UCC filing.

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]

7. REQUEST SEARCH REPORT(S) ON UCC-11 FORM: NOT USED

OPTIONAL FILER REFERENCE DATA

-- None, except note that zero blocks of #5, above, were checked. --

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR

Certified True and Correct Copy
SC Secretary of State's Office

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME,SUFFIX
Woods	Mell	

10. MISCELLANEOUS:

SC Secretary of State

File ID: 111229-1557344

Lapse Date: 12/29/2041

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11d TAX ID #. SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any
DO NOT PROVIDE				☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

12c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

Part of the land shown on the land plat contained in Plat Cabinet D, Slide 174, page 3B, (Tract #2), Official Records of Chester County, South Carolina; AND ALSO fully described in the attached contract, bearing date of May 07, 2005.
- SEE ATTACHED CONTRACT -

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

Reba P. Hinson
1414 Catawba River Road
Fort Lawn, South Carolina 29714

16. Additional collateral description:

All funds held by Debtor, Mell Woods. in all Founders Federal Accounts, Lancaster, SC, or any successor Bank to Founders Federal.

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☒ Filed in connection with a Manufactured-Home Transaction — effective 30 years

☐ Filed in connection with a Public-Finance Transaction — effective 30 years

UCC Addendum, attachment sheet, pg. one, of two, Name of Debtor: WOODS Mell

CHESTER COUNTY, SOUTH CAROLINA

Date: May 07, 2005# 2005

LAND SALES AGREEMENT between REBA P. HINSON and MELL WOODS

Total amount of Contract	$28,530.00
Credit for prior payment (minus)	3,804.00
due May 06#, 2011 extra payment for land . .	19,020.00
$5.00 consideration for this new contract	5.00
	$24,731.00
	Remains

Certified True and Correct Copy
SC Secretary of State's Office
Secretary of State
Filed: 05/07/2005 11:39:16 #57344

To date Mell Woods has paid in $3,804.00 ~~gr~~ and rent on the property described in this contract. He, (mell Woods) bought the building sitting on my land from Bobby Gardner. Mell Woods can move the building if he wants to. The rent contract was $951.90 per year. The rental contract for the ten years is now modified; credit against the contract price, in the amount of $3,804.00 is allowed, and it is now agreed that Mell Woods is buying the land where building is, instead of renting the land. (1537 Hinton Road)

PROMISES BY MELL WOODS

Mell Woods owes Reba P. Hinson the following money:
$951.00 times ten = $9,510.00, plus double the amount paid-in $19,020.00, as a final payment, total of $28,535.00 for the land. Mell Woods can move the building off if he wants to. Mell Woods has 90 days after May 06, 2011 to finish paying the $28,535.00 to either Reba P. Hinson her heirs, or assigns. If the total amount is not paid within 90 days all unpaid amounts will start earning 8% per year interest, after August 06, 2011.

DESCRIPTION OF LAND:

The land sold today is shown on the plat of Phillip G. Smith, a registered surveyor, and dated May 13, 2002 -- reference is made to the Smith plat which shows lands of Reba P. Hinson;

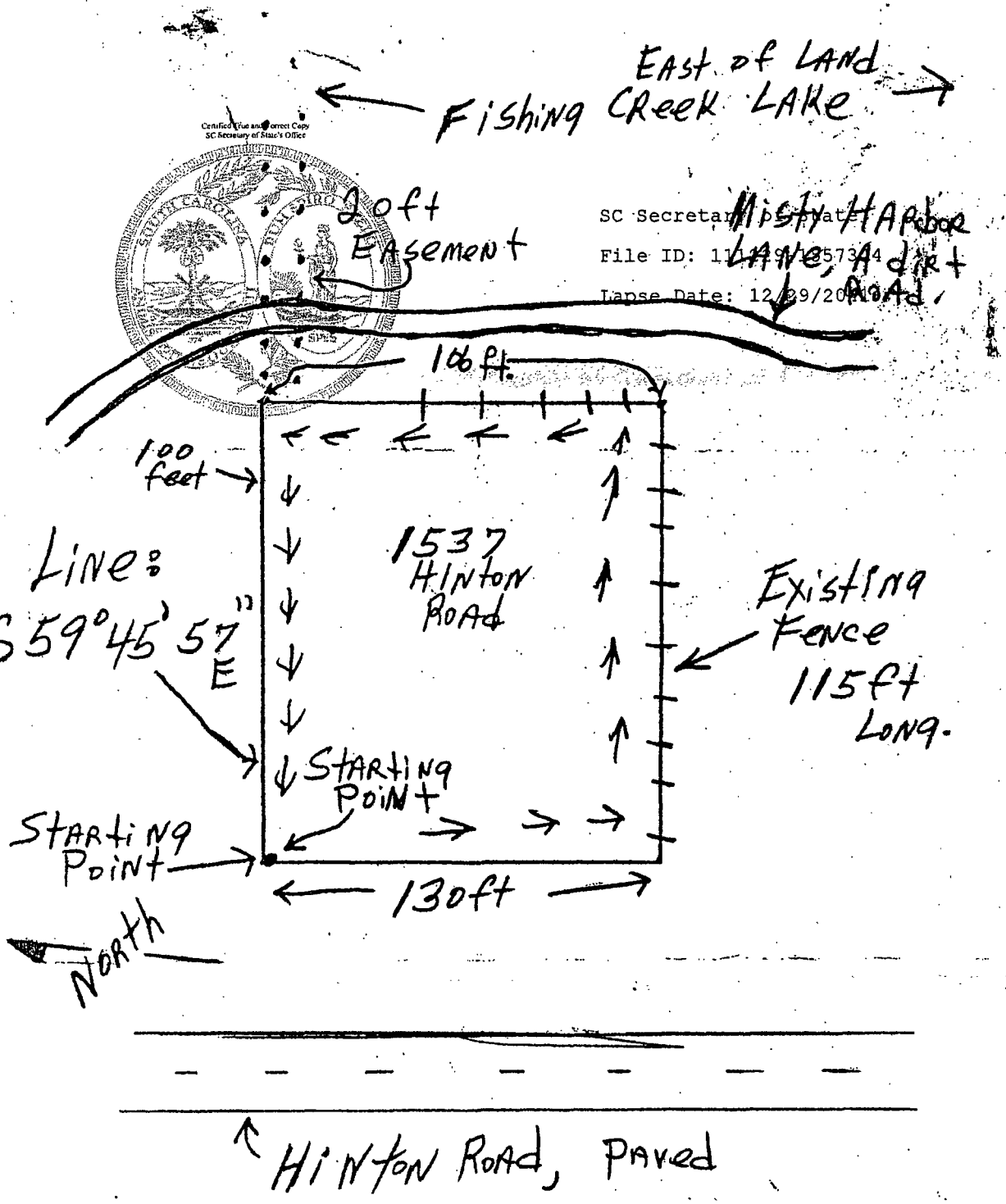
Starting at the dividing line between Tract #2, and Tract #3 at the ~~junction of the line S 59° 45' 57" E~~ and the EAST side of Hinton Road, then turning South for appx 130 feet alongside the East side of Hinton Road to an existing wood fence, then turn east toward Fishing Creek Lake, and go down the existing wood fence appx 115 feet, then turn North along the other existing wood fence and go appx #### 106 feet until intersecting with the dividing LINE S 59° 45' 57"E on the plat of Phillip Smith, and Jack Smith Surveying Company, and last go WEST back toward Hinton Road by going along the S 59° 45' 57"E line for appx 100 feet to arrive at the starting place.

All of the described land is coming out of Tract #2 as shown on the May 13, 2002 plat of Phillip Smith.
In addition Mell Woods, and assigns, is granted a 20ft. easement to Fishing Creek Lake along the South Side of the extension of line S 59° 45' 57"E. SEE THE ATTACHED DRAWING ON PAGE TWO of this contract for illustration purposes; if there is any variation between the drawing and the above word description, then the words control over the drawing.
Mell Woods is to get the above lot surveyed at his own expense.
Mell Woods is hereby put in possession of the described lands as a buyer, and debtor. Mell Woods is no longer a tenant of Reba P. Hinson.
The description from the plat, and attached drawing is everything needed for this agreement to sell the land. Mell woods can move the building if he wants to. It is the further condition of this agreement that once the sum promised is paid-in, Mell Woods, or assigns, is the fee-simple owner of the described property without restriction. Any of the eight % interest which may accrue after Aug. 06, 2011 will be due in a lump sum the following Jan 15, 15, any interest not paid on time will incur a one time late fee of fifty dollars. Accrued interest may be collected by court action, with the limitation of four hundred dollars attorney fee per collection. This contract is a sealed instrument. This contract can be assigned to others by either party, or assigns. Mell Woods will have a deed and plat prepared. Reba P. Hinson will sign, and then keep the deed until the money promised has been paid-in.

Reba P Hinson
SELLER

Mell Woods
BUYER

UCC Addendum, attachment sheet, pg. two, of two, Name of Debtor: WOODS Mell



ALL LAND comes out of TRACT #2, Phillip G. Smith Plat. TOTAL LAND AREA, Less THAN ONE HALF ACRE. NOT TO SCALE.

UCC Online
Uniform Commercial Code
ELECTRONIC FILING, SEARCH & RETRIEVAL

IN PARTNERSHIP WITH SC.GOV
South Carolina Secretary of State's Office
Mark Hammond

Receipt

Transaction History

File ID Number	**120126-1433533**
Acknowledge Copy To	ROBERT SIMPSON
Email Address	
Payment Method	Check (8877 / 7764)
Subscriber Account	N/A
Filing Date/Time	1/26/2012 2:33 PM
# of Documents	1
# of Pages	4
Searched Criteria	111229-1557344

Items Purchased

File ID	Filing Type	Filing Date	# of Pages	Price
111229-1557344	UCC-1 Financing Statement (MANUFACTURED HOME)	12/29/2011	4	$4.00
			UCC Search Filing Fee (Page Count: 4)	$5.00
			Certified Search Response Report	$2.00
			Certification Fee - Number of Filings: 1	$2.00
			Total Amount Due	$13.00
			Total Amount Collected	$13.00

Any overpayment will be retained by the filing office.

Did you know? Effective April 25, 2011, you can file all UCCs online 24 hours a day, 7 days a week at https://ucconline.sc.gov/uccfiling/

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MOSES KOON & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 650 (29201)
Post Office Box 100261
Columbia, South Carolina 29202-3269

hone (803) 461-2300
hile (803) 461-2309

B. Michael Brackett
Direct Dial: (803) 461-2312
Email: mbrackett@mkb-law.com

LOIS H. RODDEY
JUDGE OF PROBATE
2010 FEB 23 A 10:51
PROBATE COURT
CHESTER COUNTY S.C.

February 22, 2010

The Honorable Lois H. Roddey
Chester County Probate Judge
P. O. Drawer 580
Chester, SC 29706

RE: Estate of Reba P. Hinson
08-ES-12-0297 (Petition of Mell Woods to Vacate February 19, 2009 Order; and Motion for Removal to Circuit Court
Our File Number - 12085.1

Dear Judge Roddey:

In response to Mr. Mell Woods' Petition and Motion, dated and served February 17, 2010, I enclose for filing the Personal Representative's Motion to Dismiss Petition and Return to Motion to Remove to Circuit Court.

By copy of this letter, copies of the Personal Representative's enclosed Motion/Return are being served upon the other interested parties in the estate by service on their attorneys of record.

I respectfully request an expedited hearing on this matter so that the administration and closing of the estate will not be unnecessarily delayed.

Please return a closed copy of the enclosed Motion and Return using the envelope provided.

Very truly yours,

B. Michael Brackett

BMB/lta
Enclosures

cc. Robert H. Breakfield, Esquire
Mr. Mell Woods
Ned Gregory, II, Esquire
J. Steedley Bogan, Esquire
Daniel D'Agostino, Esquire

STATE OF SOUTH CAROLINA — PROBATE COURT

COUNTY OF CHESTER

IN THE MATTER OF REBA P. HINSON

CASE NUMBER 2008ES1200297

PROOF OF DELIVERY

On the 10th day of November, 2009, I mailed or delivered a copy of Notice of Hearing, Notice of Disallowance of Claim,

a copy of which is attached hereto and incorporated herein, by the following method (check appropriate box):

- ☐ personal delivery
- X ordinary first class mail
- ☐ certified mail
- ☐ registered mail

LOIS H. RODDEY
JUDGE OF PROBATE
2009 NOV 13 P 12:20
PROBATE COURT
CHESTER COUNTY S.C.

to each of the following persons at the address shown:

NAME	ADDRESS
Mell Woods	P. O. Box 2603, Lancaster, SC 29721

SWORN to before me this 10th day of November, 2009

Kelly S. Stonewall

Notary Public for South Carolina

My Commission Expires: 1-16-2019

Signature: Patricia Davis

Name: Patricia Davis

Address: C/O Robert H. Breakfield
P.O. Box 36061, Rock Hill, SC 29732

Telephone(O): (803) 329-4920

(H):

Signature: _____

Name: _____

Address: _____

Telephone(O): _____

(H): _____

FORM # 120PC (1/91)
SCPC 1-401, 3-1003, general

Chester County, South Carolina
LOIS H. RODDEY, JUDGE OF PROBATE
POST OFFICE DRAWER 580
CHESTER, SOUTH CAROLINA 29706

December 15, 2008

Mr. Ned Gregory, II
Gregory & Gregory
Attorneys at Law
Post Office Box 967
Lancaster, SC 29721-0967

In Re: Estate of Reba Pettit Hinson
File No. 2008ES1200297

Dear Mr. Gregory:

Regarding the above referenced Estate and your filing of a Petition for a Formal Appointment, will it be necessary to hold a hearing so that Mr. Breakfield can be appointed?

Yours truly,

Lois H. Roddey
Judge of Probate

LHR/sfw

Sign Order 1-8-09 & send Copy to Gregory-Feb. 18 2:00 he will notify people involved

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TELEPHONE (803) 385-2604 • FAX (803) 581-5180

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: CHESTER)
) **NOTICE OF: HEARING**
IN THE MATTER OF: REBA P. HINSON)
) CASE NUMBER:

TO: KATHY HUFFSTICKLE AND JAMES W. BOYD, ATTORNEY.

DATE: FEBRUARY 28, 2008

TIME: 2:00 PM

PLACE: CHESTER COUNTY PROBATE COURT, 1476 J. A. COCHRAN BY-PASS, CHESTER, SC

DESCRIPTION OF ATTACHED PLEADINGS (example: petition for formal appointment, filing of bond, hearing to determine heirs, etc.):

TO APPOINT A PERSONAL REPRESENTATIVE OR CO-PERSONAL REPRESENTATIVES FOR THE ESTATE OF REBA P. HINSON.

Executed this 25th day of January 2008.

Lois H. Roddey

LOIS H. RODDEY, JUDGE OF PROBATE

IF TRANSCRIPT OF HEARING IS DESIRED, YOU WILL NEED TO ARRANGE FOR A COURT REPORTER.

2-18-2010

Per Judge Gettys - Original Private Last Will dated April 5, 2003 is in safe

FORM #110PC (1/89)
62-1-401, 62-3-201, 62-3-310, 62-3-403, 62-3-414, 62-3-611, 62-3-721
62-3-1002, 62-3-1003, 62-3-1102, 62-4-203, 62-4-303, 62-5-301, 62-5-305, 62-5-309,
62-5-401, 62-5-402, 62-5-405, 62-5-406, 62-5-412, 62-5-413, 62-5-422, 62-7-206, etc.

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476
breakfieldb@comporium.net

November 20, 2009

LOIS H. RODDEY
JUDGE OF PROBATE
2009 DEC -1 P 1:47
PROBATE COURT
CHESTER COUNTY S.C.

The Honorable John P. Gettys
Probate Judge
P. O. Box 219
York, SC 29745

Re: E/O Reba Hinson (Chester)

Dear Judge Gettys,

Your court will hear a claim presented by Mr. Mel Woods at a hearing scheduled before the Probate Court of Chester County, South Carolina on December 15, 2009 at 3:30 p.m.

In order to save time and provide a context for this claim and the general progress of the administration of this Estate, I have provided the following information, which has been provided to Mr. Mel Woods.

1) Reba Hinson died on January 3, 2007. The Probate Judge did not immediately appoint a Personal Representative because of conflicts among the devisees and heirs of the Estate. I was appointed by Judge Lois Roddey on February 18, 2009. My appointment was supported by the various lawyers that represented the heirs of the decedent. This case has had a substantial controversy concerning real estate that was owned by the decedent's spouse and the decedent.

2) The Probate Court of Chester County was petitioned to rule as to the heirs of Mrs. Hinson's deceased spouse, Levie Hoyt Hinson. I have enclosed a copy of Judge Roddey's Order that clarified and ended the controversy as to who the heirs of a 92-acre tract of land that Mrs. Hinson was a life estate holder.

3) Mr. Woods' claim concerns his connection with the lease of a portion of the 92-acres tract that the decedent, Reba Hinson, held a life estate that was devised to her by Levie Hoyt Hinson.

4) Over the years, Mrs. Hinson had rented portions of the 92-acres to various tenants. Mr. Woods was a tenant of Mrs. Hinson. I have provided by one of Mrs. Hinson's devisees a copy of a memorandum of lease that appears to have been signed by Reba Hinson and Mell Woods on May 6, 2002.

Based upon my review of Mr. Woods' claim, it appears that his claim against the Estate of Reba Hinson arises as a result of his tenancy on the Hinson land. It would appear that Mr. Woods may have constructed buildings on the property.

The 92-acres passed to the devisees of Mr. Levie Hinson's Will at the death of Mrs. Hinson. It is my understanding that several lawyers are involved in an effort to partition the 92-acres among the remaindermen devisees.

As the Personal Representative of the Estate of Reba Hinson, I have had no dealings with the 92-acre tract because Mrs. Hinson's life estate was extinguished at the death of Reba Hinson.

It may be helpful for you to review the Probate file in Chester County. Because of the controversy surrounding this case, I have made an effort to provide Judge Roddey with periodic updates of my progress in this matter.

With kindest regards,

Robert H. Breakfield

RHB/psd
Enclosures

C: Beneficiaries of Estate
Mell Woods

$ 951.00
Water added

May 06, 2002

Mell Woods can renew the lease agreed to today if he wants to, or he can quit the lease and remove the building if he wants to, or Mell Woods can have the lease for ten years.

1537 North Hinton Road

Great Falls, Sc. 29055

Reba P Hinson

REBA P. HINSON

Mell Woods

Mell Woods

PAID-IN $895.00 Founders Federal Credit Union Check #1428255, plus $56.00 cash for rent and water for the first year.

December 10, 2009

Per telephone conversation with Judge Gettys regarding documents filed by Mell Woods on 12/09/09:

Judge Gettys will contact Attorney Robert Breakfield.

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476
breakfieldb@comporium.net

October 29, 2009

The Honorable Lois Roddey
Probate Judge
P. O. Drawer 580
Chester, SC 29706

LOIS H. RODDEY
JUDGE OF PROBATE
2009 NOV -2 A 11:09
PROBATE COURT
CHESTER COUNTY S.C.

RE: Estate of Reba Hinson

Dear Judge Roddey,

I have enclosed the Receipt and Release for the Creditor, Lancaster Convalescent Center.

With kindest regards,

Robert H. Breakfield

RHB/psd
Enclosure

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STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF CHESTER

IN THE MATTER OF ESTATE OF REBA HINSON

CASE NUMBER 2008ES1200297

RECEIPT AND RELEASE

The undersigned hereby acknowledges receipt from the Personal Representative(s) in this matter of the following property:

A check in the amount of $962.00, which represents claim filed against the Estate.

In consideration of the distribution, the undersigned releases and forever discharges the Personal Representative and the Estate from any and all rights and claims, which the undersigned may have against the Personal Representative and the Estate.

Executed this 26th day of October, 2009.

Witness:

Donna Usher, BOMgr.
Notary - Lancaster SC
My Commission expires
9-27-2014

Creditor:

Debra M. Schaeffer, LNHA
Lancaster Convalescent Center

LOIS H. RODDEY
JUDGE OF PROBATE
2009 NOV -2 A 11:00
PROBATE COURT
CHESTER COUNTY S.C.

377

FORM #403PC (7/87)
SCPC administrative .

STATE OF SOUTH CAROLINA)
COUNTY OF: Chester)
IN THE MATTER OF: Reba P. Hinson)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2008ES1200297

On the 15th day of December, 2009, I mailed or delivered the following document,
Request for Correction

☐ A copy of which is attached hereto and incorporated herein, or
☑ The original of which is on file with the court and incorporated herein,

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery ☑ ordinary first class mail
☐ certified mail ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
Robert Harold Breakfield	P.O. Box 36061 Rock Hill, SC 29732

SWORN to before me this 15th day of December, 20 09

Gloria Diane Woods
Notary Public for South Carolina
My Commission Expires: Jan. 08, 2018

GLORIA DIANE WOODS
SOUTH CAROLINA
NOTARY PUBLIC
SEAL OF OFFICE

Signature:
Name: Mell Woods
Address: P.O Box 2603
Lancaster, SC 29721
Telephone (O):
(H):
E-mail:

Signature:
Name:
Address:
Telephone (O):
(H):
E-mail:

LOIS H. RODDEY
JUDGE OF PROBATE
2009 DEC 15 P 3:25
PROBATE COURT
CHESTER COUNTY S.C.

378

FORM #120PC (2/2004)
62-1-401, 62-3-1003, general

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: Chester)
) **REQUEST FOR CORRECTION**
IN THE MATTER OF: Reba P. Hinson)
) CASE NUMBER: 2008ES1200297

Please correct the following: S.C. Statute 62-1-302(d)(5) IS THE CORRECT citation for Removal of Claims to the Circuit Court; this Statute was mis-cited in both the MOTION TO REMOVE, and in the Petition for Allowance of Claim filed December 09, 2009.

Executed this 15th day of December, 2009.

Signature: _____
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone (O): _____
(H): _____

LOIS H. ROBBEY
JUDGE OF PROBATE
2009 DEC 15 P 3:25
PROBATE COURT
CHESTER COUNTY S.C.

NOTE: **Use of this form should be limited to correcting minor clerical errors in pleadings and petitions; significant changes should be accomplished by means of an amended or supplemental document.**

MOSES KOON & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 650
Post Office Box 100261
Columbia, South Carolina 29202-3261

elephone (803) 461-2300
acsimile (803) 461-2309

B. Michael Brackett
Direct Dial: (803) 461-2312
Email: mbrackett@mkb-law.com

LOIS H. RODDEY
JUDGE OF PROBATE
2009 DEC 21 A 11:30
PROBATE COURT
CHESTER COUNTY S.C.

December 18, 2009

The Honorable Lois H. Roddey
Chester County Probate Judge
P. O. Drawer 580
Chester, SC 29706

RE: Estate of Reba P. Hinson
08-ES-12-297
Our File Number - 12085.1

Dear Judge Roddey:

Enclosed for filing please find my original Notice of Appearance. By copy of this letter, a copy of the enclosure is being mailed to Judge Gettys, and to the Claimant, Mr. Mell Woods.

Please return a clocked copy of the enclosed notice using the envelope provided.

Very truly yours,

B. Michael Brackett

BMB/lta
Enclosures

cc. The Honorable John P. Gettys
Robert P. Breakfield, Esquire
Mr. Mell Woods

Mailed Clocked copy
12-21-09

360

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHESTER

C/A NO: 2008-ES-12-00297

LOIS H. RODDEY
JUDGE OF PROBATE
2009 DEC 21 A 11:30
PROBATE COURT
CHESTER COUNTY S.C.

IN THE MATTER OF: THE ESTATE OF REBA P. HINSON

NOTICE OF APPEARANCE

Please take notice that B. Michael Brackett of the firm of Moses Koon & Brackett, PC has been retained to represent Robert P. Breakfield, as Personal Representative of the Estate of Reba P. Hinson, with respect to the claim proceedings commenced by Mr. Mell Woods.

MOSES KOON & BRACKETT, PC

BY: B. Michael Brackett

B. Michael Brackett, Esquire
1333 Main Street, Suite 650
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
Attorney for the Personal Representative

Dec 18, 2009

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

PROBATE COURT

IN THE MATTER OF *THE ESTATE OF REBA P. HINSON*

CASE NUMBER 2008-ES-12-00297

LOIS H. RODDEY
JUDGE OF PROBATE

2009 DEC 21 A 11:30

PROBATE COURT
CHESTER COUNTY S.C.

PROOF OF DELIVERY

On the 18TH day of December, 2009, I delivered copies of **The Notice of Appearance**

a copy of which is attached hereto and incorporated herein, by the following method (check appropriate box):

- ☐ personal delivery
- ☒ ordinary first class mail
- ☐ certified mail
- ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
Mell Woods, pro se	P. O. Box 2603, Lancaster, SC 29721

SWORN to before me this 18 day of December, 2009

Lisa Lawrence

Notary Public for South Carolina

My Commission Expires: 12-15-15

Signature: Linda T. Abernethy

Name: Linda T. Abernethy, Legal Assistant

Address: Moses Koon & Brackett, PC

P. O. Box 100261, Columbia, SC 29202-3261

Telephone(O):

(H):

Signature:

Name:

Address:

Telephone(O):

(H):

382

FORM # 120PC (1/91)
SCPC 1-401, 3-1003, general

STATE OF SOUTH CAROLINA LOIS H. RODDEY JUDGE OF PROBATE IN THE PROBATE COURT

COUNTY OF CHESTER 2010 JAN -4 P 3:02 C/A NO: 2008-ES-12-00297

PROBATE COURT
CHESTER COUNTY S.C.

IN THE MATTER OF: THE ESTATE OF REBA P. HINSON

Personal Representative's Return to Motion for Removal to Circuit Court; And Personal Representative's Motion to Dismiss

Return to Motion for Removal

Claimant Mell Woods filed a claim against the estate on November 9, 2009. The Personal Representative disallowed the claim by notice dated and served November 10, 2009. On December 9, 2009 Mr. Woods filed and served a Petition for Allowance of Claim, a Demand for Jury Trial and a Motion to Remove his action for allowance of claim to Circuit Court.

The Motion to Remove is governed by S.C. Code Ann. §62-1-302(d). Before removal is allowed, the Probate Court must find that the conditions for removal have been satisfied.

Claimant's November 9, 2009 statement of claim is a jumbled, mish-mash of allegations. His Form 371PC describes the basis of claim as "see attached." The attachment is a typed "statement of claim" setting forth 12 numbered paragraphs. The introductory paragraph describes the basis of claim as "quantum meruit; constructive fraud causing a constructive trust to arise; nuisance." Paragraph 12 of the attachment appears to allege an equitable claim for improvements.

To determine whether an action is in law or in equity, the court must discern the main purpose of the suit. Baughman v. AT&T, 298 S.C. 127, 378 S.E.2d 599 (1989).[1] The main purpose should generally be ascertained from the body *of the complaint*. Insurance Fin. Servs., Inc. v. South Carolina Ins. Co., 271 S.C. 289, 247 S.E.2d 315 (1978). The nature of the issues raised by the pleadings and the character of the relief sought determine the character of the action as legal or equitable. Bell v. Mackey, 191 S.C. 105, 3 S.E.2d 816 (1939).

Quantum Meruit. Although quantum meruit is mentioned in the Statement of Claim as a basis for the claim, the detailed allegations in the attachment to the claim do not allege any facts relevant to a quantum meruit claim. The claim is simply devoid of allegations on which a quantum meruit claim can rest. Nevertheless, quantum meruit is an equitable remedy, QHG of Lake City, Inc. v. McCutcheon, 600 S.E.2d 105 (S.C. App. 2004), for which a jury trial is not allowed, Loyola Federal Savings Bank. v. Thomasson Properties, 456 S.E.2d 453 (S.C. App. 1995) (no right ro a jury

[1] See Jean Hoefer Toal, Shanin Vafai and Robert A. Muckenfuss, Appellate Practice in South Carolina 178 (2d ed. 2002).

trial in equitable actions). Consequently, the cause of action alleging quantum meruit is not removable.

Equitable claim for Improvements. The claim for improvements is not a claim under the Betterment Statute, S.C. Code Ann. §27-27-10, et seq. (1991) or under the ejectment statute, §27-27-70 (1991), because under either statute, the claim may only be made defensively in response to an action against the improver for possession of the land. C&S Nat'l Bank v. Modern Homes Const. Co., 149 S.E.2d 326 (S.C. 1966). Mr. Woods has not alleged a statutory claim because his is not a defensive claim in response to an action by the owner; rather, it is a direct claim under the equity jurisdiction of the court.

In C&S Nat'l Bank v. Modern Homes Const. Co., the South Carolina Supreme Court held that the Betterment Statute does not provide the only remedy by which the rights of an improver of the land of another may be protected. Equity may grant a remedy when the particular facts and equities of the case demonstrate that both parties can be made whole. Without explaining the factors or analysis to be employed in judging the equities, the court cited cases from other jurisdictions and two ALR annotations. Consequently, any claim by Mr. Woods for improvements is an equitable claim for which there is no right to a jury trial, and which is not removable to Circuit Court.

Constructive Fraud. To establish constructive fraud, all elements of actual fraud except the element of intent must be established.'" Pitts v.Jackson Nat'l Life Ins. Co., 352 S.C. 319, 333, 574 S.E.2d 502, 509 (Ct.App. 2002) (quoting Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct.App. 1993)). "Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud while intent to deceive is an essential element of actual fraud." Ardis, 314 S.C. at 516. Actual fraud is distinguished from constructive fraud by the presence or absence of the intent to deceive. Pitts, 352 S.C. at 334, 574 S.E.2d at 509. "However, in a constructive fraud case, where there is no confidential or fiduciary relationship, and an arm's length transaction between mature, educated people is involved, there is no right to rely." Ardis, 314 S.C. at 516, 431 S.E.2d at 270.

A Plaintiff must allege more than a "bare claim of conspiracy" using "labels and conclusions." Loubser v. Thacker, 440 F.3d 449 (7th Cir. 2006) (a conspiracy claim differs from other claims in having a degree of vagueness that makes a bare claim of conspiracy wholly uninformative to the defendant); Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955 (2007), (although a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions. . .); Beanal v. Freeport-McMoran, Inc., 197 F.3d 161 (5th Cir. 1999) (a bare bones allegation that a wrong occurred and which does not plead any of the facts giving rise to the injury does not provide adequate notice).[2]

---

[2] Because South Carolina cases have not specifically addressed the pleading requirements for civil conspiracy under the Rules of Civil Procedure, South Carolina courts may seek guidance from federal cases. Gardner v. Newsome Chevrolet-Buick, Inc., 404 S.E.2d 200 (S.C. 1991).

Therefore, the complaint/statement of claim with respect to a cause of action for constructive fraud cannot survive a Rule 12(b)(6) motion and should be dismissed.

Nuisance. There are no allegations in the statement of claim that can remotely be construed as alleging a nuisance on the part of the decedent. A Rule 12(b)(6) motion for failure to state facts sufficient to state a claim for nuisance is well grounded.

Personal Representative's Motion to Dismiss

Please take notice that the Personal Representative, through his undersigned attorney, moves the Chester County Probate Court for an Order dismissing the Claimant's Statement of Claim to the extent that Claimant purports to state a claim for constructive fraud, nuisance and quantum meruit. The motion is made pursuant to Rule 12(b)(6), SCRCP, on the ground that the statement of claim sets forth absolutely no allegations with respect to the elements of those causes of action.

A ruling on a Rule 12(b)(6) motion must be based solely on the allegations of the complaint (statement of claim). Sloan Const. Co., Inc. v. Southco Grassing, Inc., 629 S.E.2d 372 (S.C. App. 2006). The court must decide the motion on the facts alleged and reasonable inferences deducible from those alleged facts. Slack v. James, 589 S.E.2d 772 (S.C. App. 2003).

This motion will be supported by all matters of record herein and by relevant authorities of this and other jurisdictions. There is no duty of prior consultation with respect to this motion.

Conclusion

The motion to remove to the claim to circuit court should be denied. As to the claims of quantum meruit and equitable claim for improvements, those are equitable and are not removable.

As to constructive fraud, nuisance and quantum meruit, no claims have been sufficiently alleged to even constitute a claim on those theories. Once those claims are dismissed, as they must be, there will be nothing left to be removed with respect to those claims.

The Probate Court should retain the claim for equitable improvements and hear that claim in due course, after a reasonable time for discovery.

B. Michael Brackett, Esquire
1333 Main Street, Suite 650
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
Attorney for the Personal Representative

Dec 23, 2009

4-9-1999 Read all policy.

My Insurance policy / Georgia life Ins. Co.
1,000 dollars. now at this date is
American General insurance.
500.00 dollars Life & Casualty. now
American General.
316.00 Pd up insurance # 2948787.
American General. look on book for
address & office in Charlotte N.C.
with is in pocket on wall. all insurance looks.
I have money in 7 ~~folding~~ banks.
First citizen Lancaster & Great Falls.
BB+T Lancaster
5 Rocks Chester (Lois Certificate)
First union Bank R.H.
Founders Lancaster S.C.
Annuity 4-9-99.
2 policys transfered to Western Southern
Life assurance Co. BBT
1 policy keypost Check with BBT Bank
Mrs Denton. ask for ~~Cus~~ Customers
Profile or (Anniversary statement).

20 be made oper

Very
Imp

June 23, 1998

Will

Old Wills

OF

REBA PETTIT HINSON

GREGORY & GREGORY
ATTORNEYS AT LAW
210 WEST MEETING STREET
POST OFFICE BOX 967
LANCASTER, SOUTH CAROLINA 29720-0967
TELEPHONE (803) 283-3324

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Not deed made up

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

LAST WILL AND TESTAMENT
OF
REBA PETTIT HINSON

Recorded- Book E
Page 246

IN THE NAME OF GOD, AMEN:

I, REBA PETTIT HINSON, of Chester County, South Carolina, being of sound mind and disposing memory, do make, declare, and publish this as my Last Will and Testament, hereby revoking any and all others that I have heretofore made.

LOIS H. RODDEY
JUDGE OF PROBATE
2008 DEC 15 P 4:09
PROBATE COURT
CHESTER COUNTY S.C.

ITEM ONE: I hereby direct that all my just debts and lawful charges against my estate be promptly paid.

ITEM TWO: I will, devise, bequeath and appoint to my daughter, LOIS H. GRIFFIN, my home and the 32+/- acres on which it is situated, for her lifetime, with the remainder to her children. This property has a Tax Map Number of 158-00-00-007-000.

ITEM THREE: I will devise, bequeath and appoint that my monies shall be divided as follows: one-fourth (1/4) to Kathy Huffstickle, one-fourth (1/4) to John C. Hinson, one-fourth (1/4) to Lois H. Griffin, and one-fourth (1/4) to the children of William C. Hinson, deceased, the child or children of a deceased child to take their parent's share.

ITEM FOUR: All the rest, residue, and remainder of my property, real, personal, and mixed, wherever situated, located or found, I give, devise, bequeath, will, and appoint to Kathy Huffstickle, John C. Hinson, and William C. Hinson, the child or children of a deceased child to take their parent's share.

ITEM FIVE: The Tracts of property located on the river were devised to me by the Will of my husband, Levie Hoyt Hinson, for my lifetime and then to my bodily heirs forever. Therefore, all of my children shall receive an equal undivided interest in this property, the child or children of a predeceased child to take their parent's share.

ITEM SIX: I hereby nominate, constitute, and appoint LOIS H. GRIFFIN and KATHY HUFFSTICKLE as Co-Personal Representatives of this my Last Will and Testament. I direct

O.H. R.P.H.

that my named Personal Representative and Alternate Personal Representative be exempt from giving any official bond.

IN WITNESS WHEREOF, I, REBA PETTIT HINSON, the Testatrix, sign my name to this instrument this 23rd day of JUNE, A.D. 1998, and being first duly sworn do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament, and I sign it willingly; that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Reba Pettit Hinson (L.S.)
Reba Pettit Hinson

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

We, the undersigned witnesses, sign our names to this instrument being first duly sworn, and we do hereby declare to the undersigned authority that the Testatrix, REBA PETTIT HINSON, signed and executed this instrument as Testatrix's Last Will and Testament and that Testatrix signed it willingly, and that each of us, in the presence and hearing of the Testatrix, hereby signs this Will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Witness Residing at Lancaster, S.C.

DeAnn Hamilton Residing at Lancaster, SC.
Witness

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED BEFORE ME BY THE TESTATRIX. AND SUBSCRIBED AND SWORN TO BEFORE ME BY THE WITNESSES THIS 23rd DAY OF JUNE, A.D., 1998.

(L.S.)
Notary Public for South Carolina
Commission expires: 10-28-99

3-5-10
Original will dated June 23, 1998 is in Safe

390

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

LAST WILL AND TESTAMENT
OF
REBA PETTIT HINSON

IN THE NAME OF GOD, AMEN:

I, REBA PETTIT HINSON, of Chester County, South Carolina, being of sound mind and disposing memory, do make, declare, and publish this as my Last Will and Testament, hereby revoking any and all others that I have heretofore made.

ITEM ONE: I hereby direct that all my just debts and lawful charges against my estate be promptly paid.

ITEM TWO: I will, devise, bequeath and appoint to my daughter, LOIS H. GRIFFIN, my home and the 32+/- acres on which it is situated, for her lifetime, with the remainder to her children. This property has a Tax Map Number of 158-00-00-007-000.

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ITEM FOUR: All the rest, residue, and remainder of my property, real, personal, and mixed, wherever situated, located or found; I give, devise, bequeath, will, and appoint to Kathy Huffstickle, John C. Hinson, and William C. Hinson, the child or children of a deceased child to take their parent's share.

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RPH.

that my named Personal Representative and Alternate Personal Representative be exempt from giving any official bond.

IN WITNESS WHEREOF, I, REBA PETTIT HINSON, the Testatrix, sign my name to this instrument this 23rd day of JUNE, A.D. 1998, and being first duly sworn do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament, and I sign it willingly; that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Reba Pettit Hinson (L.S.)
Reba Pettit Hinson

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

We, the undersigned witnesses, sign our names to this instrument being first duly sworn, and we do hereby declare to the undersigned authority that the Testatrix, REBA PETTIT HINSON, signed and executed this instrument as Testatrix's Last Will and Testament and that Testatrix signed it willingly, and that each of us, in the presence and hearing of the Testatrix, hereby signs this Will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Witness Residing at Lancaster, S.C.

DeAnn Hamilton
Witness Residing at Lancaster, SC.

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED BEFORE ME BY THE TESTATRIX. AND SUBSCRIBED AND SWORN TO BEFORE ME BY THE WITNESSES THIS 23rd DAY OF JUNE, A.D., 1998.

(L.S.)
Notary Public for South Carolina
Commission expires: 10-28-99

392

STATE BIRTH NUMBER

Department of Health and Environmental Control

CERTIFICATE OF DEATH

STATE FILE NUMBER 07 000198

Items 1-23c To Be Completed/Verified By FUNERAL DIRECTOR

NAME OF DECEDENT (For use by physician or institution)

1. DECEDENT'S LEGAL NAME (Include AKAs, if any) (First, Middle, Last): Reba Narcisus Hinson						2. SEX: female	3. SOCIAL SECURITY NUMBER: [redacted]
4a. AGE-Last Birthday (Years): 91	4b. UNDER 1 YEAR: Months	Days	4c. UNDER 1 DAY: Hours	Minutes	5. DATE OF BIRTH (MM/DD/YYYY): 07/03/1915	6. BIRTHPLACE (City and State or Foreign Country): Fort Lawn SC	
7a. RESIDENCE-STATE: South Carolina	7b. COUNTY: Lancaster				7c. CITY OR TOWN: Lancaster		
7d. STREET AND NUMBER: 2044 Pageland Hwy			7e. APT. NO:	7f. ZIP CODE: 29720	7g. INSIDE CITY LIMITS? ☒ Yes ☐ No		
8. EVER IN US ARMED FORCES? ☐ Yes ☒ No	9. MARITAL STATUS AT TIME OF DEATH: ☐ Married ☐ Married, but separated ☒ Widowed ☐ Divorced ☐ Never Married ☐ Unknown		10. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage):				
11. FATHER'S NAME (First, Middle, Last): William Shufford Pettit			12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last): Hettie Eugenia Petty				
13a. INFORMANT'S NAME: Lois Griffin	13b. RELATIONSHIP TO DECEDENT: daughter		13c. MAILING ADDRESS (Street and Number, City, State, Zip Code): 1496 Catawba River RD., Fort Lawn SC 29714				

14. PLACE OF DEATH (Check only one; see instructions)

IF DEATH OCCURRED IN A HOSPITAL: ☐ Inpatient ☒ Emergency Room/Outpatient ☐ Dead on Arrival

IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice facility ☐ Nursing home/Long term care facility ☐ Decedent's home ☐ Other (Specify)

15. FACILITY NAME (If not institution, give street and number)	16. CITY OR TOWN, STATE AND ZIP CODE	17. COUNTY OF DEATH
Springs Memorial Hospital	Lancaster SC 29720	Lancaster

18. METHOD OF DISPOSITION	19. PLACE OF DISPOSITION (Name of cemetery, crematory, other place)
☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)	Lancaster Memorial Park
20. LOCATION-CITY, TOWN, AND STATE: Lancaster SC	21. NAME AND ADDRESS OF FUNERAL FACILITY: Mahaffey Funeral Home, 201 N. Catawba St.

22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT	23. LICENSE NUMBER (Of Licensee)	
Derrick S. Robinson	2257	Lancaster Sc 29720
23a. EMBALMER (Signature): Timothy S Spranger	23b. EMBALMER LICENSE NUMBER: 2553	23c. LICENSE NUMBER (Of Facility): 215

ITEMS 24-28 MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH	24. DATE PRONOUNCED DEAD (MM/DD/YYYY): 01/03/2007	25. TIME PRONOUNCED DEAD: 0952
26. SIGNATURE OF PERSON PRONOUNCING DEATH (Only when applicable)	27. LICENSE NUMBER	28. DATE SIGNED (MM/DD/YYYY)

29. ACTUAL OR PRESUMED DATE OF DEATH (Spell Month): January 3, 2007	30. ACTUAL OR PRESUMED TIME OF DEATH: 0952	31. WAS CORONER OR MEDICAL EXAMINER CONTACTED? ☐ Yes ☒ No

Items 24-49 To Be Completed By MEDICAL CERTIFIER

CAUSE OF DEATH (See instructions and examples)

32. PART I. Enter the chain of events-diseases, injuries, or complications-that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary.

IMMEDIATE CAUSE (Final disease or condition resulting in death) ——> a Mes-C MI, Coronary Atty Disease

Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST.

b Resp failure — Due to (or as a consequence of)

c — Due to (or as a consequence of)

d — Due to (or as a consequence of)

Approximate interval: Onset to death

PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I.

33. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No

34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No

35. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☐ Probably ☒ No ☐ Unknown

36. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year

37. MANNER OF DEATH: ☒ Natural ☐ Homicide ☐ Accident ☐ Pending investigation ☐ Suicide ☐ Could not be determined

38. DATE OF INJURY (Spell Month)	39. TIME OF INJURY	40. PLACE OF INJURY (e.g., Decedent's home, construction site, restaurant, wooded area)	41. INJURY AT WORK? ☐ Yes ☐ No

42. LOCATION OF INJURY: State; City or Town; County; Street & Number; Apartment Number; Zip Code

43. DESCRIBE HOW INJURY OCCURRED

44. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Pedestrian ☐ Passenger ☐ Other (Specify)

45. CERTIFIER (Check only one)

☒ Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated.

☐ Pronouncing and Certifying physician-To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated.

☐ Coroner/Medical Examiner-On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.

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Signature of certifier:

46. NAME, ADDRESS, AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 32)	46a. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER
A Shah 104 N. Catawba St. Lancaster SC 29720	

47. TITLE OF CERTIFIER	48. LICENSE NUMBER	49. DATE CERTIFIED (MM/DD/YYYY)	50. FOR REGISTRAR ONLY-DATE FILED (MM/DD/YYYY)
MD	20170	January 8, 2007	January 8, 2007

51. DECEDENT'S EDUCATION (Check)

52. DECEDENT OF HISPANIC ORIGIN? Check the box

53. DECEDENT'S RACE (Check one or more races to

I HEREBY CERTIFY THIS IS A
TRUE COPY OF THE RECORD
ON FILE IN THE LANCASTER
COUNTY PUBLIC HEALTH DEPARTMENT

JAN 08 2007

COUNTY REGISTRAR

394

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476

LOIS H. RODDEY
JUDGE OF PROBATE
2009 FEB 23 P 12:04
PROBATE COURT
CHESTER COUNTY S.C.

February 20, 2009

Ned Gregory, II
Attorney at Law
P. O. Box 967
Lancaster, SC 29721-0967

James W. Boyd, Esq.
1544 Ebenezer Rd.
Rock Hill, SC 29732

RE: Estate of Reba Hinson

Dear Ned and Jim,

I have made good progress with respect to bank accounts. I have identified and collected on six accounts. I have identified two annuities. We will contact the annuity companies next week.

Real Estate. Please identify any real estate owned in **fee simple** by the decedent by tax map or copy of deed(s). I will have to appraise this property to insure that the beneficiaries' obtain a correct step-up in tax cost basis.

Estate Attorney Fee. Mr. Gregory should send me an itemized fee statement for services as attorney to the Estate. I will present this statement to the Probate Court for approval.

IRS. I suspect that at least two years tax returns have not been filed. I will notice the IRS for tax data for 2005, 2006, 2007 and 2008.

Thank you for your cooperation.

With kindest regards,

Robert H. Breakfield
Personal Representative
E/O Reba Hinson

395

C: Judge Lois H. Roddey
Estate Beneficiaries

000046830 Bk: 00931 Ps: 00311

FILED, RECORDED, INDEXED
12/22/2006 01:13:59PM
Rec Fee: 10.00 St Fee: 0.00
Co Fee: 0.00 Pages: 4
Clerk of Court, Chester County, SC
Sue K. Carpenter

DEED DRAWN ONLY/TITLE NOT EXAMINED

State of South Carolina
County of Chester

Title to Real Estate

Know All Men by These Presents, That

Reba P. Hinson

hereinafter referred to as **Grantor,** for and in consideration of the sum of Five and no 00/100 ($ 5.00) Dollars, Love and Affection to Grantor, hereby paid by **Christine E. Jones and Dennis L. Griffin** hereinafter referred to as **Grantees,** the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the Grantees, Grantee's heirs and assigns, the following described property, to wit:

Tract 1:

All that certain piece, parcel or tract of land, with any improvements that may be thereon, located, lying situate and being in the County of Chester, State of South Carolina, on both sides of U.S. Highway No. 21, between Fort Lawn and Great Falls, containing Seventeen and Sixty-One Hundredths (17.60) Acres, more or less, and having courses and distances, metes and bounds, as follows, to-wit: Being at the extreme northwesternmost corner of the tract or parcel herein and hereby conveyed, and running thence N. 89 ½ ° E. feet to a corner, thence S. 61° E. 583.3 feet to a corner, thence N. 85° E. 586.7 feet to a corner, thence N. 44° E. 200 feet to a corner marked by a cedar stake, thence S. 51° E. 532 feet to a corner, thence S. 84 ½° W. 1044 feet to a corner, and thence N. 84 ½ ° W. 1415.5 feet to the beginning corner; being bounded on the North by Tract no. 5-B as shown on the plat hereinafter referred to, about to be conveyed to Herbert P. Pettit, and by lands of Mrs. Lizzie P. Mobley, on the Northeast by lands of Mrs. Lizzie P. Mobley, on the South by Tract No. 5-D as shown on plat hereinafter referred to, about to be conveyed to Mrs. Reba Pettit Hinson, and on the West by lands now or formerly of Anderson; being shown and designated as tract No. 5-C on a sub-division plat of Tract No. 5 of Estate Lands of G.W. Pettie, decease, which sub-division plat was made by L.H. Melton, of date may 2, 1955, and being shown and designated as Tract No. 5-C on said sub-division plat; and being a portion of Tract No. 5 of the Estate Lands of G. W. Pettie, deceased, conveyed to the grantors and grantee herein, as tenants in common, be George T. Gregory, Jr., Special Referee, by his deed of date January 9, 1954, duly recorded in the Office of the Clerk of Court for Chester county, South Carolina, in Deed Book 375, at Pages 173-174.

Being the identical property conveyed to Reba Pettit Hinson by deed of Albert W. Pettit dated and recorded November 26, 1958 in the Office of the Clerk of Court for Chester County, South Carolina in Deed Book 395, at Page 403.

CHESTER COUNTY TAX ASSESSOR
DATE 12-28-06
TAX MAP NO. 158-2-0-7

396

Tract 2:

All certain piece, parcel or tract of land located, lying, situate and being in the County of Chester, State of South Carolina, on both sides of U.S. Highway 21, between Fort Lawn and Great Falls, containing Fifteen and Forty One-Hundredths (15.40) Acres, more or less, and having courses and distances, metes and bounds, as follows, to-wit: Beginning at the extreme northwesternmost corner of the tract or parcel herein and hereby conveyed, and running thence S. 84 ½ ° E. 1415.5 feet to a corner, thence N. 84 ½ ° E. 1044 feet to a corner, thence S. 51° E. 168 feet to a corner, thence S. 79 ¾ ° W. 420 feet to a corner, thence S. 55° E 67 feet to a corner, thence S. 79 ¾ ° W. 740 feet to a corner, thence S. 84° W. 800 feet to a corner, thence N. 29° w. 215.3 feet to a corner, and thence S. 83 ½ ° W. 592 feet to the beginning corner; being bounded on the North by Tract No. 5-C as shown on the sub-division plat hereinafter referred to, on the Northeast by lands of Mrs. Lizzie . Mobley, on the South by lands of Duke Power Company and lands of the Estate of B.F. Pettit, deceased, and on the West by lands now or formerly of Anderson; being shown and designated as Tract No. 5-D on a sub-division plat of Tract No. 5 of the Estate lands of G.W. Pettit, deceased, which sub-division plat was made by L.H. Melton of date May 2, 1955; and being the extreme Southernmost portion of Tract No. 5 set off and allocated to the grantors and grantee herein in a partition of the Estate Lands of G.W. Pettie, deceased, by deed of George T. Gregory, Jr., Special Referee, of date January 9, 1954, duly recorded in the Office of the Clerk of court for Chester County, South Carolina, in Deed Book 375, at Pages 173-174.

Being the identical property conveyed to Reba Pettit Hinson by deed of Hettie P. Pettit, Albert W. Pettit, Herbert P. Pettit and Ruth Pettit Lipscomb Dority dated and recorded May 10, 1955 in the Office of the Clerk of Court for Chester County, South Carolina in Deed Book 384, at Page 57.

Lois
Attached are
copies of deeds
you were asking
about!

Grantee's Address:
1399 Beaver Dam Road
Richburg, South Carolina 29729

The within described property is conveyed subject to existing easements and rights of way, whether of record or not, and to restrictions, if any, appearing in the chain of title which said restrictions, if any, are not intended to be re-imposed hereby.

TOGETHER with all and singular, the right, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all singular the premises before mentioned unto the said Grantees, Grantees' Heirs and Assigns forever.

And Grantor does hereby bind Grantor's Heirs, Successors, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Grantees and Grantees' Heirs, Successors and Assigns, against Grantor and whomsoever lawfully claiming or to claim, the same or any part thereof.

Witness the Grantor's Hand and Seal this 17th day of August, 2006 and in the two hundred and thirty-first year of the Sovereignty and Independence of the United States of America.

Signed, Sealed, and Delivered in the Presence of:

Witness

Reba P. Hinson

Witness

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

On this 17th day of August, before me personally appeared Reba P. Hinson to me known to be the person described herein and who executed the foregoing instrument, and (s)he acknowledged that (s)he voluntarily executed same.

SWORN to before me this 17th
day of August, 2006.

Ned Gregory, II
Notary Public for South Carolina
My Commission Expires: 11/04/2009

NED GREGORY II NOTARY PUBLIC SOUTH CAROLINA

FILED; RECORDED; INDEXED
12/22/2006 01:17:06PM
Rec Fee: 10.00 St Fee: 0.00
Co Fee: 0.00 Pages: 3
Clerk of Court; Chester County, SC
Sue K. Carpenter

State of South Carolina
County of Chester

Title to Real Estate

Know All Men by These Presents, That We,

Christine E. Jones and Dennis L. Griffin

hereinafter referred to as **Grantors,** for and in consideration of the sum of Five and no 00/100 **($ 5.00) Dollars,** Love and Affection to Grantors, hereby paid by **William M. Griffin** hereinafter referred to as **Grantee,** the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the Grantee, Grantee's heirs and assigns, an undivided one-third (1/3) in and to the following described property, to wit:

Tract 1:

All that certain piece, parcel or tract of land, with any improvements that may be thereon, located, lying situate and being in the County of Chester, State of South Carolina, on both sides of U.S. Highway No. 21, between Fort Lawn and Great Falls, containing Seventeen and Sixty-One Hundredths (17.60) Acres, more or less, and having courses and distances, metes and bounds, as follows, to-wit: Being at the extreme northwesternmost corner of the tract or parcel herein and hereby conveyed, and running thence N. 89 ½ ° E. feet to a corner, thence S. 61° E. 583.3 feet to a corner, thence N. 85° E. 586.7 feet to a corner, thence N. 44° E. 200 feet to a corner marked by a cedar stake, thence S. 51° E. 532 feet to a corner, thence S. 84 ½° W. 1044 feet to a corner, and thence N. 84 ½ ° W. 1415.5 feet to the beginning corner; being bounded on the North by Tract no. 5-B as shown on the plat hereinafter referred to, about to be conveyed to Herbert P. Pettit, and by lands of Mrs. Lizzie P. Mobley, on the Northeast by lands of Mrs. Lizzie P. Mobley, on the South by Tract No. 5-D as shown on plat hereinafter referred to, about to be conveyed to Mrs. Reba Pettit Hinson, and on the West by lands now or formerly of Anderson; being shown and designated as tract No. 5-C on a sub-division plat of Tract No. 5 of Estate Lands of G.W. Pettie, decease, which sub-division plat was made by L.H. Melton, of date may 2, 1955, and being shown and designated as Tract No. 5-C on said sub-division plat; and being a portion of Tract No. 5 of the Estate Lands of G. W. Pettie, deceased, conveyed to the grantors and grantee herein, as tenants in common, be George T. Gregory, Jr., Special Referee, by his deed of date January 9, 1954, duly recorded in the Office of the Clerk of Court for Chester county, South Carolina, in Deed Book 375, at Pages 173-174.

CHESTER COUNTY TAX ASSESSOR
DATE 12-29-06
TAX MAP NO 158-0-0-17

I hereby certify [illegible] Deed has been this 28 day of December A.D. 2006 recorded in Book J of Deeds.

Donald A. Wade
Auditor, Chester County

Tract 2:

All certain piece, parcel or tract of land located, lying, situate and being in the County of Chester, State of South Carolina, on both sides of U.S. Highway 21, between Fort Lawn and Great Falls, containing Fifteen and Forty One-Hundredths (15.40) Acres, more or less, and having courses and distances, metes and bounds, as follows, to-wit: Beginning at the extreme northwesternmost corner of the tract or parcel herein and hereby conveyed, and running thence S. 84 ½ ° E. 1415.5 feet to a corner, thence N. 84 ½ ° E. 1044 feet to a corner, thence S. 51° E. 168 feet to a corner, thence S. 79 ¾ ° W. 420 feet to a corner, thence S. 55° E 67 feet to a corner, thence S. 79 ¾ ° W. 740 feet to a corner, thence S. 84° W. 800 feet to a corner, thence N. 29° w. 215.3 feet to a corner, and thence S. 83 ½ ° W. 592 feet to the beginning corner; being bounded on the North by Tract No. 5-C as shown on the sub-division plat hereinafter referred to, on the Northeast by lands of Mrs. Lizzie . Mobley, on the South by lands of Duke Power Company and lands of the Estate of B.F. Pettit, deceased, and on the West by lands now or formerly of Anderson; being shown and designated as Tract No. 5-D on a sub-division plat of Tract No. 5 of the Estate lands of G.W. Pettit, deceased, which sub-division plat was made by L.H. Melton of date May 2, 1955; and being the extreme Southernmost portion of Tract No. 5 set off and allocated to the grantors and grantee herein in a partition of the Estate Lands of G.W. Pettie, deceased, by deed of George T. Gregory, Jr., Special Referee, of date January 9, 1954, duly recorded in the Office of the Clerk of court for Chester County, South Carolina, in Deed Book 375, at Pages 173-174.

Being the identical property conveyed to Christine E. Jones and Dennis L. Griffin by Deed of Reba P. Hinson dated August 17, 2006 and recorded December 22, 2006 in the Office of the Clerk of Court for Chester County, South Carolina in Deed Book 931, at Page 311.

Grantee's Address:
1399 Beaver Dam Road
Richburg, South Carolina 29729

I hereby certify that the within Deed has been this 29 day of Dec, A.D. 2006 recorded in Book J of Deeds.

Donald G. Wade
AUDITOR, Chester County

The within described property is conveyed subject to existing easements and rights of way, whether of record or not, and to restrictions, if any, appearing in the chain of title which said restrictions, if any, are not intended to be re-imposed hereby.

TOGETHER with all and singular, the right, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all singular the premises before mentioned unto the said Grantee, Grantee's Heirs and Assigns forever.

And Grantors do hereby bind Grantors' Heirs, Successors, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Grantee and Grantee's Heirs, Successors and Assigns, against Grantors and whomsoever lawfully claiming or to claim, the same or any part thereof.

Witness the Grantors' Hands and Seals this 18 day of December, 2006 and in the two hundred and thirty-first year of the Sovereignty and Independence of the United States of America.

Signed, Sealed, and Delivered in the Presence of:

Witness

Christine E. Jones

Witness

Dennis L. Griffin

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

On this 18 day of December, before me personally appeared Christine E. Jones and Dennis L. Griffin, to me known to be the persons described herein and who executed the foregoing instrument, and they acknowledged that they voluntarily executed same.

SWORN to before me this 18
day of December, 2006.

Ned Gregory, II
Notary Public for South Carolina
My Commission Expires: 11/04/2009

NED GREGORY II NOTARY PUBLIC

401

State of South Carolina
County of Chester

Title to Real Estate

Know All Men by These Presents, That I,

William M. Griffin

hereinafter referred to as **Grantor,** for and in consideration of the sum of Five and no 00/100 **($ 5.00) Dollars,** Love and Affection to Grantor, hereby paid by **Christine E. Jones and Dennis L. Griffin** hereinafter referred to as **Grantees,** the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the Grantees, Grantees' heirs and assigns, my undivided one-third (1/3) in and to the following described property, to wit:

Tract 1:

All that certain piece, parcel or tract of land, with any improvements that may be thereon, located, lying situate and being in the County of Chester, State of South Carolina, on both sides of U.S. Highway No. 21, between Fort Lawn and Great Falls, containing Seventeen and Sixty-One Hundredths (17.60) Acres, more or less, and having courses and distances, metes and bounds, as follows, to-wit: Being at the extreme northwesternmost corner of the tract or parcel herein and hereby conveyed, and running thence N. 89 ½ ° E. feet to a corner, thence S. 61° E. 583.3 feet to a corner, thence N. 85° E. 586.7 feet to a corner, thence N. 44° E. 200 feet to a corner marked by a cedar stake, thence S. 51° E. 532 feet to a corner, thence S. 84 ½° W. 1044 feet to a corner, and thence N. 84 ½ ° W. 1415.5 feet to the beginning corner; being bounded on the North by Tract no. 5-B as shown on the plat hereinafter referred to, about to be conveyed to Herbert P. Pettit, and by lands of Mrs. Lizzie P. Mobley, on the Northeast by lands of Mrs. Lizzie P. Mobley, on the South by Tract No. 5-D as shown on plat hereinafter referred to, about to be conveyed to Mrs. Reba Pettit Hinson, and on the West by lands now or formerly of Anderson; being shown and designated as tract No. 5-C on a sub-division plat of Tract No. 5 of Estate Lands of G.W. Pettie, decease, which sub-division plat was made by L.H. Melton, of date may 2, 1955, and being shown and designated as Tract No. 5-C on said sub-division plat; and being a portion of Tract No. 5 of the Estate Lands of G. W. Pettie, deceased, conveyed to the grantors and grantee herein, as tenants in common, be George T. Gregory, Jr., Special Referee, by his deed of date January 9, 1954, duly recorded in the Office of the Clerk of Court for Chester county, South Carolina, in Deed Book 375, at Pages 173-174.

DATE 2-20-07
TAX MAP NO. 158-0-0-7
I hereby certify that the within Deed has been this 20th day of Feb 2007.

Doc # 000047840 EXEMPT
FILED, RECORDED, INDEXED
02/19/2007 03:43P
BK: 00937 PG: 00009
Rec Fee: 10.00 Pages: 3
Clerk of Court, Chester County, SC
Sue K. Carpenter

Tract 2:

All certain piece, parcel or tract of land located, lying, situate and being in the County of Chester, State of South Carolina, on both sides of U.S. Highway 21, between Fort Lawn and Great Falls, containing Fifteen and Forty One-Hundredths (15.40) Acres, more or less, and having courses and distances, metes and bounds, as follows, to-wit: Beginning at the extreme northwesternmost corner of the tract or parcel herein and hereby conveyed, and running thence S. 84 ½ ° E. 1415.5 feet to a corner, thence N. 84 ½ ° E. 1044 feet to a corner, thence S. 51° E. 168 feet to a corner, thence S. 79 ¾ ° W. 420 feet to a corner, thence S. 55° E 67 feet to a corner, thence S. 79 ¾ ° W. 740 feet to a corner, thence S. 84° W. 800 feet to a corner, thence N. 29° w. 215.3 feet to a corner, and thence S. 83 ½ ° W. 592 feet to the beginning corner; being bounded on the North by Tract No. 5-C as shown on the sub-division plat hereinafter referred to, on the Northeast by lands of Mrs. Lizzie . Mobley, on the South by lands of Duke Power Company and lands of the Estate of B.F. Pettit, deceased, and on the West by lands now or formerly of Anderson; being shown and designated as Tract No. 5-D on a sub-division plat of Tract No. 5 of the Estate lands of G.W. Pettit, deceased, which sub-division plat was made by L.H. Melton of date May 2, 1955; and being the extreme Southernmost portion of Tract No. 5 set off and allocated to the grantors and grantee herein in a partition of the Estate Lands of G.W. Pettie, deceased, by deed of George T. Gregory, Jr., Special Referee, of date January 9, 1954, duly recorded in the Office of the Clerk of court for Chester County, South Carolina, in Deed Book 375, at Pages 173-174.

Being the identical property conveyed to William M. Griffin by Deed of Christine E. Jones and Dennis L. Griffin dated December 18, 2006 and recorded December 22, 2006 in the Office of the Clerk of Court for Chester County, South Carolina in Deed Book 931, at Page 320.

Grantees' Address:
1399 Beaver Dam Road,
Richburg, South Carolina 29729

The within described property is conveyed subject to existing easements and rights of way, whether of record or not, and to restrictions, if any, appearing in the chain of title which said restrictions, if any, are not intended to be re-imposed hereby.

TOGETHER with all and singular, the right, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all singular the premises before mentioned unto the said Grantees, Grantees' Heirs and Assigns forever.

And Grantor does hereby bind Grantor's Heirs, Successors, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Grantees and Grantees' Heirs, Successors and Assigns, against Grantor and whomsoever lawfully claiming or to claim, the same or any part thereof.

Witness the Grantor's Hands and Seals this 6th **day of** February, **2007 and in the two hundred and thirty-first year of the Sovereignty and Independence of the United States of America.**

Signed, Sealed, and Delivered in the Presence of:

Witness GINA PATARGAS

William M. Griffin

Witness DIANA ABELLAS

STATE OF FLORIDA)
COUNTY OF Duval)

On this 6th day of February 2007, before me personally appeared William M. Griffin, to me known to be the person described herein and who executed the foregoing instrument, and he acknowledged that he voluntarily executed same. Provided FL DL as ID.

SWORN to before me this 6th
day of February 2007.

Notary Public for Florida
My Commission Expires: Nov 6, 2010

404

GREGORY & GREGORY
ATTORNEYS AT LAW

Post Office Box 967
210 West Meeting Street
Lancaster, South Carolina 29721-0967

RETURN SERVICE REQUESTED

USA 39



405

Gregory & Greogry
Attorneys at Law
Post Office Box 967
Lancaster, SC 29721-0967

TAX INQUIRY - ASSESSOR
00 ASSESSOR DESCRIPTIVE DATA - 2007 DATE: 02/22/07

Enter Function...

Map #: 158-00-00-007-000 R 01046193

		Bldg..	55,500		
JONES CHRISTINE E		Land..	165,800	Acres.	32.00
GRIFFIN DENNIS L		Mkt...	221,300	Tax..	221,300
1399 BEAVER DAM RD					
RICHBURG SC	29729	Deed Ref..937	9	02/06/2007	
		Plat Ref..421	0155		
Dist: 01 Town:	Fire:	Homestead.H	.00		
Desc:		Lender....			
		O Class...			
Locn: 1414 CATAWBA RIVER ROAD					
Prev Own..GRIFFIN WILLIAM M		Prev Deed Ref.931	320	12/18/2006	
2nd Prev..JONES CHRISTINE E-ETAL		2nd Prev Deed.931	311	08/17/2006	

Legal Desc1..
Legal Desc2..
PLS-0001 Search Functions: M=Map# N=Name L=Location F2=Values F12=Help

Doc # 000045013 EXEMPT
FILED, RECORDED, INDEXED
09/14/2006 01:04P
BK: 00924 PG: 00200
Rec Fee: 15.00 Pages: 4
Clerk of Court, Chester County, SC
Sue K. Carpenter

This Document Prepared By:
Gregory & Gregory
Attorneys at Law
Post Office Box 967
210 West Meeting Street
Lancaster, SC 2971-0967

Doc # 000045013 EXEMPT
FILED, RECORDED, INDEXED
09/14/2006 01:04P
BK: 00924 PG: 00200
Rec Fee: 15.00 Pages: 4
Clerk of Court, Chester County, SC
Sue K. Carpenter

STATE OF SOUTH CAROLINA)
) **DURABLE POWER OF ATTORNEY**
COUNTY OF CHESTER)

Doc # 000045013 EXEMPT
FILED, RECORDED, INDEXED
09/14/2006 01:04P
BK: 00924 PG: 00200
Rec Fee: 15.00 Pages: 4
Clerk of Court, Chester County, SC
Sue K. Carpenter

I, Reba P. Hinson, the principal, hereby designate both Kathy H. Huffstickle and Lois Griffin, my true and lawful Attorneys-in-Fact and Agents (hereinafter referred to as my "Agents") in my name, place, and stead, and for my benefit, having the authority to do any and all of the following:

000045013 Bk: 00924 Pg: 00200

1. General Grant of Power. To exercise or perform any act, power, duty, right, or obligation whatsoever that I now have or may hereafter acquire, real or personal, tangible or intangible, now owned or hereafter acquired by me, including and without limitation the following specifically enumerated powers. I grant to my Agents full power and authority to do everything necessary in exercising any of the powers herein granted as fully as I might or could if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that my Agents shall lawfully do or cause to be done, by virtue of this Power of Attorney and the powers herein granted.

1.a. Powers of Collection and Payment. To forgive, request, demand, sue for, recover, collect, receive, hold all such sums of moneys, debts, dues, commercial paper, checks, drafts, accounts, deposits, legacies, bequests, dividends, certificates of deposit, annuities, pension, profit-sharing, retirement, social security, insurance and other contractual benefits and proceeds, all documents of title, all property rights and demands whosoever, liquidated or unliquidated, now or hereafter owned by or due, owing, payable or belonging to me, or in which I have or may hereafter acquire an interest; to have, use, and take all lawful means and equitable and legal remedies and proceedings in my name, for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to execute and deliver for me on my behalf and in my name, all endorsements, releases, receipts, or other sufficient discharges for the same.

1.b. Power to Acquire, Sell, and Mortgage. To acquire, purchase, exchange, mortgage, grant options to sell, and sell and convey real or personal property, tangible or intangible, or interests therein, on such terms and conditions as my Agents may deem proper.

Doc # 000045013 EXEMPT
FILED, RECORDED, INDEXED
09/14/2006 01:04P
BK: 00924 PG: 00200
Rec Fee: 15.00 Pages: 4
Clerk of Court, Chester County, SC
Sue K. Carpenter

1.c. Management Powers. To maintain, repair, improve, invest, manage, insure, rent, lease, encumber, and in any manner deal with any real or personal property, tangible or intangible, or any interest therein that I now own or may hereinafter acquire, in

RPH : KHH LW

Sue K. Carpenter

I do and certify this is a true and correct copy of the original paper on file in this office.

Clerk of Court
Chester County, SC
Date 10-30-06

my name and for my benefit, upon such terms and conditions as my Agents shall deem proper.

1.d. Banking Powers. To make, receive, and endorse checks and drafts, deposit and withdraw funds, acquire and redeem certificates of deposit in banks, savings and loan associations and other institutions, to execute or release such deeds of trust or other security agreements as may be necessary or proper in the exercise of the rights and powers herein granted.

1.e. Motor Vehicles. To apply for a certificate of title upon and endorse and transfer title thereto for any automobile, truck, pickup, van, motorcycle, or other motor vehicle, and to represent in such transfer assignment that the title to said motor vehicle is free and clear of all liens and encumbrances, except those specifically set forth in such transfer assignment.

1.f. Business Interests. To conduct or participate in any lawful business, of whatever nature, for me and in my name, to execute partnership agreements and amendments thereon, incorporate, reorganize, merge, consolidate, recapitalize, sell, liquidate, or dissolve any business; to elect or employ officers, directors, and agents; to carry out the provisions of any agreement for the sale of any business interest or the stock therein; and to exercise voting rights with respect to stock, either in person or by proxy, and exercise stock options.

1.g. Tax Powers. To prepare, sign, and file joint or separate income tax returns or declarations of estimated tax for any year or years, to prepare, sign and file gift tax returns with respect to gifts made by me for any year or years, to consent to any gift and utilize any gift-splitting provisions or other tax election, and to prepare, sign, and file any claims for refund of any tax.

1.h. Safe Deposit Boxes. To have access at any time or times to any safe deposit box rented by me, wheresoever located, and to remove all or part of the contents thereof, and to surrender or relinquish said safe deposit box; and any institution in which any such safe deposit box may be located shall not incur any liability to me or my estate as a result of permitting either of my Agents to exercise this power.

2. Interpretation and Government Law. This instrument is to be construed and interpreted as a general Durable Power of Attorney. The enumeration of specific powers herein is not intended to, nor does it limit or restrict, the general powers herein granted to my Agent. This instrument is executed and delivered in the State of South Carolina, and the laws of the State of South Carolina shall govern all questions as to the validity of this Power and the construction of its provisions.

3. Third-Party Reliance. To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act thereunder, and that revocation or termination hereof by operation of law or otherwise shall be

R.P.H. 2 JGH DW

ineffective as to such third party, unless and until actual notice or knowledge of such revocation shall have been received by such third party; and I, for myself and for my heirs, executors, legal representatives, and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims which may arise against such third party by reason of such third party having relied on the provisions of this instrument.

3.a. Immunity from Liability. No person who may act in reliance upon the representations of my attorney-in-fact for the scope of authority granted to the attorney-in-fact shall incur any liability as to me or to my estate as a result of permitting the attorney-in-fact to exercise this authority, nor is any such person who deals with my attorney-in-fact responsible to determine or ensure the proper application of funds or property.

4. Duration. This Power of Attorney shall specifically not be affected by the passage of time, no matter of what duration.

5. Disability of Principal. This Power of Attorney shall not be affected by physical disability or mental incompetence of the principal, which renders the principal incapable of managing the estate of the principal. It is the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's physical disability or mental incompetence; the authority of my Agents are exercisable by my Agents as provided herein, on behalf of the principal notwithstanding later disability or mental incompetence of the principal. It is understood that all acts done by my Agents pursuant to the Power during any period of disability or mental incompetence shall have the same effect and inure to the benefit of and bind the principal or principal's heirs, devisees, legatees, and personal representative as if the principal were mentally competent and not disabled.

It is the desire, and I so direct, that the Probate Judge not, at any time after the onset of my mental disability, require that an inventory of my deposit, choices in action, or personal property be filed with the Probate Court, or that a Surety Bond be posted by my Attorney-in-Fact.

6. Photographic Copies. Photographic copies of this Durable Power of Attorney shall have the same force and effect as the original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 13th day of September 2006.

Reba P. Hinson

The within Power of Attorney consists of four (4) typewritten pages, each of which bear the signature or the initials of the principal was on the date above, signed, sealed, published, and declared by the said principal as the designation of the principal's true and lawful Agent in the presence of us, who at the principal's request and in the principal's presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Witness of Lancaster, SC

Witness of Lancaster, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

On this 13th day of September, 2006, before me personally appeared Reba P. Hinson to me known to be the person described herein and who executed the foregoing Durable Power of Attorney, and he acknowledged to me that he voluntarily executed same.

Notary Public
State of South Carolina
Commission Expires: August 31, 2014

RPH

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476

February 20, 2009

To Beneficiaries and Parties of
The Estate of Reba Hinson

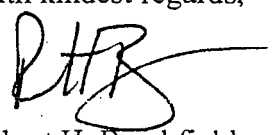
RE: Estate

Dear Interested Parties,

1) I have deposited $69,157.40 from Founders Federal Credit Union to my Trust Account.
2) Enclosed is your official Notice that I have been appointed as Personal Representative.
3) I have paid $27.50 to the Chester News and Reporter for the Notice to Creditors.
4) I also deposited $130,106.74 from Wachovia into my Trust Account.

If you should have any questions, please send me a letter and I will address your concerns via mail.

With kindest regards,



Robert H. Breakfield

RHB/psd
C: The Honorable Lois H. Roddey

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

KRISTIE BOOLEY
JUDGE OF PROBATE

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0478
breakfieldb@comporium.net

2009 OCT 13 A 11:28
PROBATE COURT
CHESTER COUNTY S.C.

October 7, 2009

Interested Parties of
The Estate of Reba Hinson

RE: Estate Issues

Dear Interested Parties,

1) Children of William C. Hinson. I would be most grateful if one or more of you could provide me with the names of the children of William C. Hinson.

2) First Citizens Bank – Checking Accounts & CD's. In my letter dated August 20, 2009, I provided each party with a copy of the First Citizens checking account statements for the period of January 1, 2006 to January 31, 2007. I indicated that my review of the account did not reflect any unusual transfers except for withdrawals that transpired before Mrs. Hinson's death. I have recovered for the Estate the monies that are outlined in Paragraph 3 of my August 20, 2009 letter.

   There has arisen a second issue regarding the First Citizens account. The issue concerns the balances in the account after Mrs. Hinson's death. The First Citizens account was a joint and survivor account. After Mrs. Hinson's death, the monies that remained on deposit after the death of Mrs. Hinson belonged to the surviving co-owners. The sharing of the account is not a matter that the Estate of Reba Hinson has jurisdiction. The only concern that the Estate has with this account is funds removed BEFORE Mrs. Hinson's death. Any dispute about funds that remained after Mrs. Hinson's death is not a matter that the Estate of Reba Hinson is involved.

3) Research of Bank Accounts. I have reviewed with various bank officials at Founders Federal Credit Union, First Citizens, Spratt Savings and Loan, BB&T, and Wachovia the bank accounts that were in either Mrs. Hinson's name alone or in the joint names of Mrs. Hinson and other parties. I have recovered all funds that were in Mrs. Hinson's sole name. I have recovered from persons that held Mrs. Hinson's Power of Attorney all monies that were withdrawn from her account during Mrs. Hinson's life.

4) After Death Withdrawals. South Carolina law provides that the surviving co-owner of a joint bank account becomes the owner of that account upon the death of the account holder. There are instances in this case that AFTER Mrs. Hinson died, the surviving account owners claimed the account. South Carolina's law allows the survivor to claim the account. Therefore, in each case where a balance of the joint account was removed by the account holder after the death of Mrs. Hinson, the Estate has no claim.

5) Mrs. Hinson's Dementia. I have been provided with documents that Mrs. Hinson suffered dementia for at least two years prior to her death. It has been suggested that Mrs. Hinson may not have had capacity to set up joint accounts or transfer property. The fact that a person suffers from dementia is not absolute proof that she lacked the capacity at the time she completed a specific transfer. Each individual transaction would have to be examined to determine if on the day the transaction was completed did Mrs. Hinson have capacity.

   I have received several requests to attempt to investigate specific transfers or the opening of bank accounts to determine if Mrs. Hinson lacked capacity. I am reluctant to commence the investigation because of the high dollar cost to the Estate. I am also reluctant to spend Estate money because in each case that has been reported, a bank employee would have to testify as to Mrs. Hinson appearance and perceived mental capacity. I think that it is clear that no bank employee would have honored Mrs. Hinson's request if that bank employee suspected that Mrs. Hinson lacked capacity. In other words, any future court case would amount to a swearing contest between the parties to the transaction.

   I am also reluctant to spend Estate money in pursuant of a claim that would present a difficult and expensive effort by the Estate.

In summary, I do not want to spend your inheritance in an expensive pursuit of potential claims. I am willing to pursue claims if that is the general desire of the group. However, I must carefully evaluate the evidence to insure that we can win the case.

With kindest regards,

Bob

Robert H. Breakfield

RHB/psd
C: The Honorable Lois H. Roddey

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476
breakfieldb@comporium.net

August 20, 2009

Interested Parties of
The Estate of Reba Hinson

RE: First Citizens Bank – Checking Account

Dear Interested Parties,

I have received from First Citizens the copies of checks and the explanation of the debits to the account.

1) I have examined each check that I requested. It would appear that there are no irregular issues with respect to the operation of the checking account during the one-year period from Janauary 1, 2006 to January 31, 2007.

2) DEBITS: Mrs. Hinson had several debits of $10,000.00 for CD's. Each of three CD amounts has been recovered from the co-owner as part of the $260,000 settlement.

3) PHONE TRANSFERS: (a) a $20,700.17 phone transfer on December 28, 2006 was recovered in the $260,000 settlement; (b) a $15,000 phone transfer on December 28, 2006 has been recovered and is part of the Estate.

In conclusion, I have found no evidence of missing funds from this checking account that have not been recovered by the Estate.

With kindest regards,

Robert H. Breakfield

RHB/psd
Enclosures

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

The Square at Constitution * 1590-02 Constitution Blvd.
P.O. Box 36061 * Rock Hill, South Carolina * 29732
Telephone: (803) 329-4920 * Fax: (803) 329-0476
Email: breakfieldb@comporium.net

October 2, 2009

The Honorable Lois H. Roddey
Probate Judge
PO Drawer 580
Chester, SC 29706

Re: Reba P. Hinson
Case 2008ES 200297

LOIS H. RODDEY
JUDGE OF PROBATE
2009 OCT -5 P 12:00
PROBATE COURT
CHESTER COUNTY, S.C.

Dear Judge Roddey,

I have enclosed the Estate Inventory for the above-referenced. Please send your fee statement at your earliest convenience.

With kindest regards,

Robert H. Breakfield

RHB/kss
Enclosure

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476

July 9, 2009

LOIS H. RODDEY
JUDGE OF PROBATE
2009 JUL 13 A 10:35
PROBATE COURT
CHESTER COUNTY, S.C.

The Honorable Lois H. Roddey
Probate Judge
P. O. Drawer 580
Chester, SC 29706

RE: E/O Reba Hinson

Dear Judge Roddey,

The following is an update on the progress of the Hinson Estate.

The estate has retained Doug Gay to recover bank account funds. Mr. Gay is in negotiations with the defendant's attorney. I am hopeful that the negotiations can be concluded without a trial. However, if negotiations are not successful, a lawsuit will be filed in Circuit Court after July 18, 2009.

With kindest regards,

Robert H. Breakfield

RHB/psd

C: Beneficiaries of Estate

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476

2009 JUN 29 P 12:14
PROBATE COURT
CHESTER COUNTY S.C.

June 26, 2009

The Honorable Lois H. Roddey
Probate Judge
P. O. Drawer 580
Chester, SC 29706

RE: E/O Reba Hinson
2008-297

Dear Judge Roddey,

I would like to update the court on the progress of identifying assets of the Estate of Reba Hinson.

I have identified two individuals who held joint bank accounts with Reba Hinson. In each case all of the funds held in the joint accounts were funded by the decedent. I have identified that on a number of occasions that all or a portion of the accounts held in Mrs. Hinson's Social Security Number were withdrawn prior to Mrs. Hinson's death.

I offered both individuals the opportunity to voluntarily pay over the funds to the estate. One party accepted and the funds were deposited to the estate account. The second party has refused to pay over the funds.

On April 29, 2009, I made a demand for the funds. Too date, no payment has been made. On June 25, 2009, I retained an attorney to bring an action in Circuit Court to re-claim the funds.

In summary, I expect that the Circuit Court action will begin by July 1, 2009.

With kindest regards,

Robert H. Breakfield

RHB/psd

GAY & WALTERS

Attorneys At Law

Post Office Box 10506
1273B Ebenezer Road (29732)
Rock Hill, South Carolina 29731-0506

Douglas F. Gay
Ivan N. Walters
Licensed in N.C. and S.C.

Phone: (803) 327-1880
Facsimile: (803) 324-7949
E-Mail: gwattorneys@comporium.net

LOIS H. ROUDEY
CLERK OF COURT

2009 JUN 29 P 12:14

PROBATE COURT
CHESTER COUNTY S.C.

June 25, 2009

VIA FACSIMILE – 329-0476

Robert H. Breakfield, Esq.
P.O. Box 36061
Rock Hill, SC 29732

RE: Robert H. Breakfield as PR of Estate of Reba Pettit Hinson v. Kathy H. Huffstickle

Dear Bob:

This letter will confirm our recent meeting in which I agreed to represent you in the above referenced matter on an hourly rate basis where my rate is $195.00 per hour. Paralegal work will be billed at the rate of $90.00 per hour. You will be responsible for all court costs, photocopy expense, telephone tolls, unusual postage expenses, fax charges, and any other out-of-pocket expenses. We will normally advance routine costs, and bill them at the time of collection or upon conclusion of the case, but we reserve the right to bill costs at any time. This hourly fee arrangement will cover the defense of any counterclaims, as well as any appeal to the South Carolina Supreme Court or Court of Appeals, if such an appeal is necessary.

We will normally pursue matters through a judgment and execution against property. If further proceedings, such as an Order for Discovery of Property becomes necessary, we will have to make a separate agreement for these services. If the Defendant files bankruptcy, we will file a proof of claim, but will not undertake further proceedings in the Bankruptcy, unless we agree to such representation.

If the above properly outlines your understanding of our agreement, please sign the copy of this letter which is enclosed and return an executed copy to me in the enclosed envelope.

I look forward to being of service to you in this matter. If you ever have any questions about this matter, please let me know.

Very truly yours,

Douglas F. Gay

DFG/ats
Enclosures

Robert H. Breakfield as PR of Estate of Reba Pettit Hinson, agrees to the above fee arrangement, and authorize my attorney to endorse and negotiate any checks or instruments collected in this matter from Defendant or anyone on Defendant's behalf. Dated this 26 day of June, 2007.

By: Robert H Breakfield

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476

JUDGE OF PROBATE
2009 APR 22 A 11:05
PROBATE COURT
CHESTER COUNTY S.C.

April 21, 2009

Kathy H. Huffstickle
5715 Lake View Cr.
Fort Lawn, SC 29714

RE: E/O Reba Hinson

Dear Ms. Huffstickle,

As you know, Judge Roddey appointed me as the Personal Representative of the Estate of Reba Hinson.

My goal is to identify the assets that Mrs. Hinson owned at her death. To date, I have placed approximately $200,000.00 into the Estate account. The amounts include funds that were withdrawn from Reba Hinson's account shortly before she died.

I have identified nine (9) accounts at First Citizens Bank that total $260,651.42. The account numbers are: 560173796786 ($57,005.21), 560173789286 ($10,061.91), 560173786886 ($90,598.00), 560172032886 ($22,468.30), 560173809886 ($10,293.78), 560173923786 ($10,212.03), 560173810986 ($10,432.26), 440109081809, ($20,700.17), and 440109081816 ($28,879.76) **totaling $260,651.42**. The bank records reflect that the funds were removed on December 28, 2006; shortly thereafter Mrs. Hinson died on January 3, 2007.

You may be aware that the South Carolina Supreme Court ruled in a case that is very similar to this matter that the person that removed the funds from the joint account must return the funds to the Estate (see Vaughn vs. Bernhardt).

I would like to make the same offer to you that was made to the other person from whom I have recovered funds

for the Estate. If you will pay over to the Estate the $260,651.42 voluntarily, the Estate will not pursue any interest that would be due to the Estate. The funds will be placed in the estate account. Please accept my sincere appreciation for your cooperation in this matter.

With kindest regards,

Robert H. Breakfield

RHB/psd
C: The Honorable Lois H. Roddey

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476

March 23, 2009

The Honorable Lois H. Roddey
Probate Judge
P. O. Drawer 580
Chester, SC 29706

LOIS H. RODDEY
JUDGE OF PROBATE
2009 MAR 25 A 10:33
PROBATE COURT
CHESTER COUNTY S.C.

RE: E/O Reba Hinson
2008-297

Dear Judge Roddey,

I have recently recovered from Lois Hinson the sum of $16,000.00 that she withdrew from a joint account that was owned with Reba Hinson. The withdrawal from the account was made on December 28, 2006 while Mrs. Hinson was alive.

I have determined that there have been other withdrawals from Reba Hinson's accounts prior to her death. My goal is the encourage the person(s) that have made the withdrawals to voluntarily pay the funds over to the Estate. I have offered to forgive any interest if the money is paid over voluntarily.

With kindest regards,

Robert H. Breakfield

RHB/psd

422

Chester County, South Carolina
LOIS H. RODDEY, JUDGE OF PROBATE
POST OFFICE DRAWER 580
CHESTER, SOUTH CAROLINA 29706

March 19, 2009

Mr. Robert Harold Breakfield
Attorney at Law
P. O. Box 36061
Rock Hill, SC 29732

In Re: Estate of Reba Pettit Hinson
File No. 2008ES1200297

Dear Mr. Breakfield:

Regarding the above referenced Estate and your letter dated March 16, 2009, please be advised that you are authorized to pay Ned Gregory's fees in the amount of $1,570.26.

Yours truly,

Lois H. Roddey
Judge of Probate

LHR/sfw

423

TELEPHONE (803) 385-2604 • FAX (803) 581-5180

ROBERT HAROLD BREAKFIELD
ATTORNEY AT LAW
THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0478

FILED
2009 MAR 17 A 10:18
PROBATE COURT
CHESTER COUNTY S.C.

March 16, 2009

The Honorable Lois H. Roddey
Probate Judge
P. O. Drawer 580
Chester, SC 29706

RE: E/O Reba Hinson

Dear Judge Roddey,

In connection with the Hinson Estate:

1. I have identified and collected $199,263.00 from bank accounts in the name of Reba Hinson. These funds are deposited in my Trust account.
2. I have also identified several joint and survivor accounts. With respect to those accounts, a co-account holder withdrew funds from the account(s) prior to Mrs. Hinson's death. I am in the process of notifying the co-account holder to return the funds. Too date, I have received a promise from a co-account holder that the funds will returned. In exchange for their volunteer cooperation, I have agreed to not seek interest earned after Mrs. Hinson's death.
3. Ned Gregory's legal fee: I would like to pay Mr. Gregory for his time to qualify me as the Personal Representative. I have requested that he provide an itemized bill, which I enclose. I request permission to pay this fee.

With kindest regards,

Robert H. Breakfield

RHB/psd
Enclosure

C: Beneficiaries

GREGORY & GREGORY

ATTORNEYS AT LAW
Post Office Box 967
210 West Meeting Street
Lancaster, South Carolina 29721-0967
Telephone (803) 283-3324
Fax (803) 283-3326

LOIS H. ROBBEY
JUDGE OF PROBATE
2009 MAR 17 A 10:18
PROBATE COURT
CHESTER COUNTY S.C.

Lois Hinson
1414 Catawba River Road
Fort Lawn, SC 29714

For Professional Services

Date	Description	Hours	Extended	Expenses
	Re: Estate of Reba P. Hinson			
08/26/08	Phone call Lois and Mack Hinson	0.08	$ 16.00	
08/26/08	Phone conversation w/Robert H. Brakefield's Office Re: Personal Representative	0.08	$ 16.00	
08/26/08	Phone conver. w/Robert H. Brakefield's Office	0.05	$ 10.00	
08/26/08	Fax to Robert H. Brakefield	0.05	$ 10.00	
08/27/08	Phone conversation w/Robert H. Brakefield, atty	0.08	$ 16.00	
08/27/08	Phone call with Lois and Mack Hinson	0.08	$ 16.00	
08/28/08	Fax received from R. Brakefield, Esq.	0.05	$ 10.00	
08/29/08	Phone conversation w/Robert H. Brakefield, atty	0.08	$ 16.00	
09/04/08	Phone call with Steedley J. Bogan, Esq.	0.08	$ 16.00	
09/04/08	Phone call with Bruce M. Poore, Esq.	0.05	$ 10.00	
09/04/08	Phone conversation with James W. Boyd, Esq.	0.08	$ 16.00	
09/04/08	Fax to Chester Co Probate Court (letter from Robert Brakefield)	0.05	$ 10.00	
09/04/08	Letter to Probate Court	1.00	$ 200.00	
09/04/08	Phone conversation w/client and Mack Hinson	0.41	$ 82.00	
09/04/08	Fax transmittal prepared for cc letter to Probate Court	0.08	$16.00	
09/18/08	Phone call to Steedley Bogan, Esq.	0.05	$ 10.00	
09/26/08	Phone call with Kelly w/Springs Memorial Hos.	0.05	$ 10.00	
09/30/08	Phone conversation with Chester Co. Probate Ct.	0.05	$ 10.00	
10/30/08	Review of file	0.16	$ 32.00	
10/30/08	Phone conversation with Chester Co. Probate Ct.	0.08	$ 16.00	
11/3/08	Review of file	0.05	$ 10.00	
11/3/08	Phone call with Robert Breakfield's office	0.05	$ 10.00	
11/3/08	Phone call with Robert Breakfield's office RE: Personal Representative	0.05	$ 10.00	

425

GREGORY & GREGORY

ATTORNEYS AT LAW
Post Office Box 967
210 West Meeting Street
Lancaster, South Carolina 29721-0967
Telephone (803) 283-3324
Fax (803) 283-3326

)is Hinson
·14 Catawba River Road
)rt Lawn, SC 29714

)r Professional Services

Date	Description	Hours	Extended	Expenses
11/18/08	Preparation of Petition Re: Robert Breakfield	0.50	$ 100.00	
11/20/08	Transmittal of Petition to Robert Breakfield, Esq.	0.08	$ 16.00	
12/1/08	Corresp. Received from Robert Breakfield	0.05	$ 10.00	
12/1/08	Transmittal of Petition to Probate Court with copy to client - Lois Hinson	0.16	$ 32.00	
2/17/08	Corresp recd from Probate Court	0.08	$ 16.00	
2/18/08	Phone conversation with Probate Court	0.05	$ 10.00	
1/05/09	Phone conversation with Probate Court	0.16	$ 32.00	
1/07/09	Corresp recd from Probate Court	0.08	$ 16.00	
1/08/09	Duplication of Order and Prep of Proof of Delivery	0.33	$ 66.00	
1/09/09	Transmittal letter to Robert Breakfield	0.08	$ 16.00	
1/09/09	Mailing of Notice X14	0.08	$ 16.00	
1/09/09	Costs Advanced Postage	cash		$ 8.26
2/18/09	Probate Court Hearing - Chester	3.00	$ 600.00	
2/23/09	Corresp. Rec'd from Robert Breakfield, atty	0.08	$ 16.00	
3/09/09	Phone conversation with Robert Breakfield, atty	0.16	$ 32.00	
3/09/09	Transmittal letter to Robert Breakfield	0.08	$ 16.00	
	Total amount due		**$ 1,570.26**	

426

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476

February 24, 2009

LOIS H. RODDEY
JUDGE OF PROBATE
2009 FEB 25 A 10:59
PROBATE COURT
CHESTER COUNTY S.C.

Chester County Probate Court
P. O. Drawer 580
Chester, SC 29706

RE: E/O Reba Hinson

Dear Judge Roddey,

I have enclosed my trust account check made payable to the Chester News & Reporter for the above-referenced Estate.

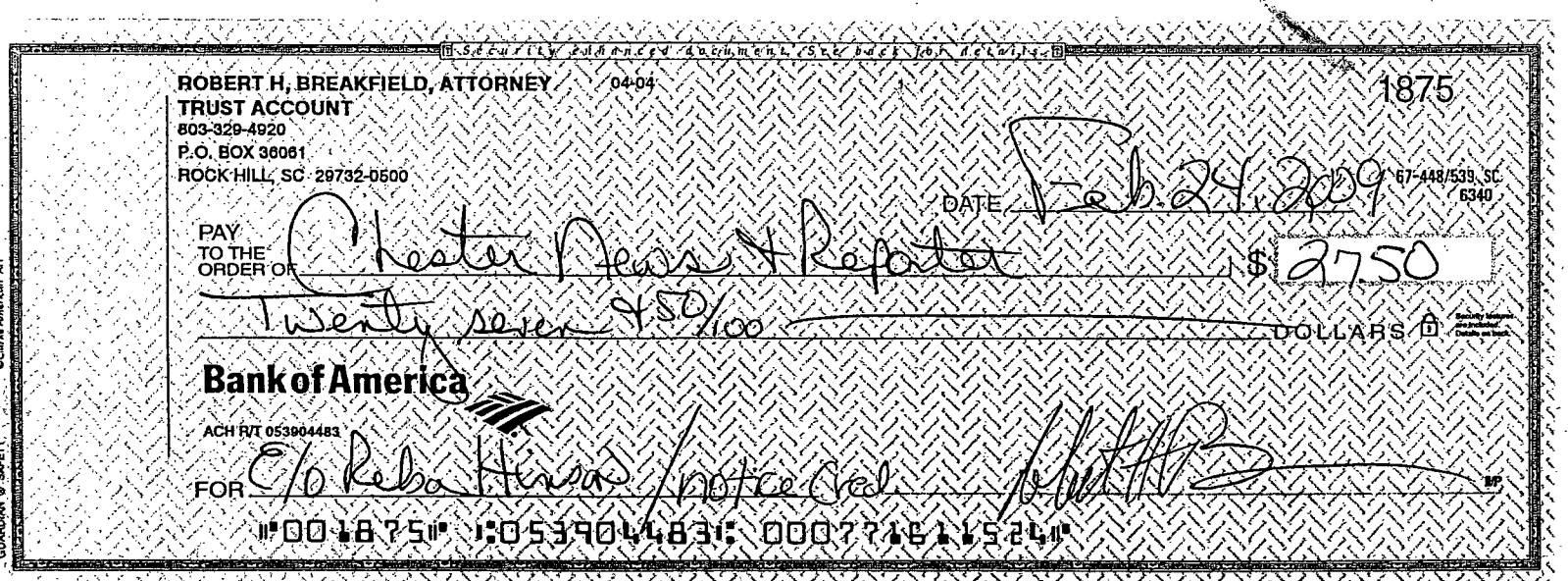
With kindest regards,

RHB

Robert H. Breakfield

RHB/psd
Enclosure

427


Security Enhanced Document. See back for details.
ROBERT H, BREAKFIELD, ATTORNEY
04-04
TRUST ACCOUNT
803-329-4920
P.O. BOX 36061
ROCK HILL, SC 29732-0500
1875
DATE Feb. 24, 2009
67-448/539, SC
6340
PAY TO THE ORDER OF Chester News & Reporter
$ 27.50
Twenty seven 50/100
DOLLARS
Bank of America
ACH R/T 053904483
FOR C/O Reba Hines / notice cred.
⑈001875⑈ ⑆053904483⑆ 000771615241⑈
©Clarke American AH
GUARDIAN ® SAFETY

STATE OF SOUTH CAROLINA PROBATE COU

COUNTY OF CHESTER

IN THE MATTER OF ESTATE OF REBA p. HINSON

CASE NUMBER 2008ES1200297

PROOF OF DELIVERY

On the 20 day of February, 2008, I mailed or delivered a copy of Information to Heirs and Devisees, a copy of which is attached hereto and incorporated herein, by the following method (check appropriate box):

- ☐ personal delivery
- X ordinary first class mail
- ☐ certified mail
- ☐ registered mail

LOIS H. RODDEY
JUDGE OF PROBATE
2009 FEB 25 P 3:41
PROBATE COURT
CHESTER COUNTY S.C.

to each of the following persons at the address shown:

NAME	ADDRESS
SEE ATTACHED LIST	

SWORN to before me this 20th day of February, 2009

Patricia Davis

Notary Public for South Carolina

My Commission Expires: 1-16-2019

Signature: Robert Breakfield

Name: Robert H. Breakfield

Address: P. O. Box 36061
Rock Hill, SC 29732

Telephone(O): (803) 329-4920

(H):

Signature:

Name:

Address:

Telephone(O):

(H):

FORM # 120PC (1/91)
SCPC 1-401, 3-1003, general

429

ATE OF SOUTH CAROLINA PROBATE COURT

UNTY OF CHESSTER

THE MATTER OF ESTATE OF REBA PETTIT HINSON

SE NUMBER 2008ES1200297

INFORMATION TO HEIRS AND DEVISEES

Application/Petition was made to the Probate Court of Chester County, at (address) P. O. Drawer 580, Chester, 29706, for the (check all that apply):

INFORMAL	FORMAL
X PROBATE OF WILL	☐ TESTACY
X APPOINTMENT	☐ APPOINTMENT

he above matter.

mplete if applicable) The decedent's will dated June 23, 1998, and codicil(s) dated N/A, was/were sented.

This notice is being sent to persons who have or may have some interest in the estate.

Bond HAS ☐ HAS NOT XX been filed.

My application/petition was granted within the past thirty days on February 18, 2009.

Applicant / Personal Representative Name: Robert H. Breakfield
Address: P. O. Box 36061
Rock Hill, SC 29732

Telephone(O): 803-329-4920
(H):

Applicant / Personal Representative Name:
Address:

Telephone(O):
(H):

Attorney:
Address:

Telephone:

RM #305PC (1/91)
-306, 62-3-402, 62-3-705

c/o Reba Hinson

Lois Hinson
1399 Beaver Dam Rd.
Richburg, SC 29729

Bobbie Jones
1399 Beaver Dam Rd.
Richburg, SC 29729

Kathy H. Huffstickle
5715 Lake View Cr.
Fort Lawn, SC 29714

John C. Hinson
1563 Hinton Dr.
Great Falls, SC 29055

William L. Hinson
909 Stone Oak Ct.
Sanford, NC 27330

John D. Hinson
1563 Hinton Rd.
Great Falls, SC 29055

Charles J. Hinson
237 Laura, Lot 21
Florence, SC 29506

Robert H. Hinson
PO Box 72
McConnells, SC 29706

William C. Hinson, Jr.
118 Nella Street
Chester, SC 29706

Etta H. Hensley
6 Church Street
Great Falls, SC 29055

Linda H. Stanford
6969 Snowy Owl Rd.
Kershaw, SC 29067

Darrell W. Hinson
PO Box 163
Fort Lawn, SC 29714

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

IN THE PROBATE COURT
FOR CHESTER COUNTY

LOIS H. ROBBLEE
JUDGE OF PROBATE

2009 OCT 14 P 1:16

PROBATE COURT
CHESTER COUNTY S.C.

Estate of Reba P. Hinson
2008-ES-1200-297

This agreement between Robert H. Breakfield, Personal Representative of Estate of Reba P. Hinson, and Kathy H. Huffstickle resolves the matter of certain funds removed by Kathy H. Huffstickle from the bank account of Reba P. Hinson on or about December 28, 2006 in the amount of $260,651.42.

In exchange for the estate electing not to pursue a claim against Kathy H. Huffstickle for interest earned on $260,651.42 from December 28, 2006 to July 27, 2009 and to not pursue the bank interest penalty forfeiture on funds that were removed from the accounts of Reba P. Hinson on December 28, 2006 by Kathy H. Huffstickle, Kathy H. Huffstickle has paid over to the estate the sum of $200,000.00. In addition, the estate will hold an account receivable in the amount of $60,651.42 from Kathy H. Huffstickle which shall be subtracted from her share of the Hinson estate. Therefore, upon the closing of the Hinson estate and the distribution of assets to the estate beneficiaries in lieu of the first $60,651.42 that is distributable to Kathy H. Huffstickle, the receivable will be reduced dollar for dollar until the receivable is extinguished. Thereafter, Kathy H. Huffstickle shall receive her probate share of the estate distribution.

Executed this 27 day of July, 2009.

Witnesses

Patricia Davis

Kelly S. Stumvoll

Patricia Davis

Kelly S. Stumvoll

Kathy Huffstickle
Kathy H. Huffstickle
Beneficiary

Robert H. Breakfield
Robert H. Breakfield
Personal Representative of
Estate of Reba P. Hinson

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

LOUIS H. RODDEY
2009 OCT 21 A 11: 25
PROBATE COURT
CHESTER COUNTY S.C.

The Square at Constitution * 1590-02 Constitution Blvd.
P.O. Box 36061 * Rock Hill, South Carolina * 29732
Telephone: (803) 329-4920 * Fax: (803) 329-0476
Email: breakfieldb@comporium.net

October 19, 2009

Louis H. Roddey
Probate Judge
Chester County
PO Drawer 580
Chester, SC 29706

Re: Estate of Reba Hinson

Dear Judge Roddey,

Enclosed please find a copy of correspondence mailed to the beneficiaries in the above-referenced estate on October 19, 2009.

With kindest regards,

RHB

Robert H. Breakfield

RHB/kss
Enclosures

434

ROBERT HAROLD BREAKFIELD
ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476
breakfieldb@comporium.net

LORI E. RODLEY
JUDGE OF PROBATE
2009 OCT 21 A 11:25
PROBATE COURT
CHESTER COUNTY S.C.

COPY
Send to
Chester probate co

October 15, 2009

To the Beneficiaries of
The Estate of Reba Hinson

RE: Estate

Dear Beneficiaries,

1) FORM W-9: To date I have received four W-9 forms. I will need to receive all W-9 forms before I can close the Estate. I am very hopeful that I will be able to close this Estate before December 31, 2009. In order to meet this deadline, I must receive all W-9 forms. For your convenience, I have enclosed a second W-9 for those beneficiaries that may have misplaced the first W-9 form that was mailed. Also enclosed is a return envelope.

2) PROBATE COURT FEE: I have received the Probate Court fee of $764.92 and I have paid the same.

3) CLAIM OF LANCASTER CONVALESENT CENTER: The Probate Court has received a claim in the amount of $962.00. I have verified this claim with the provider's office manager. We have paid this claim.

4) I have enclosed a proposed schedule of the heirs under the Will of Reba Hinson. Please review this schedule and let me know if my schedule is correct.

With kindest regards,

Robert H. Breakfield

RHB/psd
Enclosures

TATE OF SOUTH CAROLINA

OUNTY OF CHESTER

I THE MATTER OF THE ESTATE OF REBA P. HINSON

ASE NUMBER 2008-ES-12-00297

PROBATE COURT

LOIS H. RODDEY
JUDGE OF PROBATE

2010 FEB 16 A 10:49

PROBATE COURT
CHESTER COUNTY S.C.

PROOF OF DELIVERY

On the 11TH day of February, 2010, I mailed or delivered a copy of **Judge Gettys' Order dated February 10, 010 granting Claimant Mell Woods' Motion to Remove Claim Proceedings to the Circuit Court,** a copy of hich is attached hereto and incorporated herein, by the following method (check appropriate box):

- ☐ personal delivery
- X ordinary first class mail
- ☐ certified mail
- ☐ registered mail

) each of the following persons at the address shown:

NAME	ADDRESS
Mell Woods, pro se	P. O. Box 2603, Lancaster, SC 29721

WORN to before me this 11th day of February, 2010

Notary Public for South Carolina
My Commission Expires: 12/15/15

Signature: Linda T. Abernethy
Name: Linda T. Abernethy, Paralegal
Address: Moses Koon & Brackett, PC
P. O. Box 100261, Columbia, SC 29202-3261
Telephone(O):
(H):

Signature:
Name:
Address:

Telephone(O):
(H):

436

FORM # 120PC (1/91)
SCPC 1-401, 3-1003; general

STATE OF SOUTH CAROLINA)
COUNTY OF: Chester) IN THE PROBATE COURT
IN THE MATTER OF: Reba P. Hinson) **PETITION FOR ALLOWANCE OF CLAIM**
) CASE NUMBER: 2008ES1200297

LOIS H. RODDEY
JUDGE OF PROBATE
2009 DEC 9 P 4:
PROBATE COURT
CHESTER COUNTY S.C.

Petitioner: Mell Woods

The undersigned petitions the Court to allow the following claims against the estate in the amounts set forth below:

Creditor Name and Address	Amount of Claim
Mell Woods P.O.Box 2603 Lancaster, SC 29721 Base amount:	$20,000.00
Mell Woods P.O.Box 2603 Lancaster SC 29721 damages	to be set by J

In support of this petition, petitioner states that each claim is valid, was presented within the period for the presentation of claims as provided by law, and has not been paid, and, as to those claims which were presented to the Personal Representative and not filed with the Court, that a copy of the statement of each such claim is attached to this petition and made a part hereof.

(Other:)
This part of the case is hereby removed to the Circuit Court for Chester County. See 62-1-302(6)(d)(5), and also 380 S.C. 466; Amount in controversy over $5,000.00. See attached motion

Executed this 09 day of December, 2009.

Signature: _____
Name: Mell Woods
Address: P.O. Box 2603
Lancaster, SC 29721
Telephone(O): _____
(H): _____

Attorney: _____
Address: _____
Telephone: _____

437

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE MATTER OF *THE ESTATE OF REBA P. HINSON*

CASE NUMBER 2008-ES-12-00297

PROBATE COURT

PROOF OF DELIVERY

On the 28th day of January, 2010, I delivered copies of **Personal Representative's Answer to the Petition for Removal of the Personal Representative**,

copy of which is attached hereto and incorporated herein, by the following method (check appropriate box):

- ☐ personal delivery
- ☒ ordinary first class mail
- ☐ certified mail
- ☐ registered mail

each of the following persons at the address shown:

NAME	ADDRESS
ell Woods, pro se	P. O. Box 2603, Lancaster, SC 29721

LOIS H. RODDEY
JUDGE OF PROBATE

2010 JAN 29 A 11:03

PROBATE COURT
CHESTER COUNTY S.C.

ORN to before me this 28th day of January, 2010

Notary Public for South Carolina
My Commission Expires: 1/11/12

Signature: Linda T. Abernethy
Name: Linda T. Abernethy, Legal Assistant
Address: Moses Koon & Brackett, PC
P. O. Box 100261, Columbia, SC 29202-3261
Telephone(O):
(H):

Signature:
Name:
Address:

Telephone(O):
(H):

RM # 120PC (1/91)
PC 1-401, 3-1003, general

438

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF CHESTER

IN THE MATTER OF *THE ESTATE OF REBA P. HINSON*

CASE NUMBER 2008-ES-12-00297

PROOF OF DELIVERY

On the 23rd day of December, 2009, I delivered copies of **The Personal Representative's Motion to Dismiss Petition and Return to Motion to Remove to Circuit Court,**

a copy of which is attached hereto and incorporated herein, by the following method (check appropriate box):

- ☐ personal delivery
- ☒ ordinary first class mail
- ☐ certified mail
- ☐ registered mail

LOIS H. RODDEY
JUDGE OF PROBATE

2010 FEB 23 A 10:51

PROBATE COURT
CHESTER COUNTY S.C.

to each of the following persons at the address shown:

NAME	ADDRESS
Mell Woods, pro se	P. O. Box 2603, Lancaster, SC 29721
Ned Gregory, II, Esquire	P. O. Box 967, Lancaster, SC 29721
J. Steedley Bogan, Esquire	P. O. Box 12489, Columbia, SC 29211
Daniel D. D'Agostino, Esquire	P. O. Box 1199, York, SC 29745

SWORN to before me this 22 day of February, 2010

Teresa Laurens

Notary Public for South Carolina

My Commission Expires: 12-15-15

Signature: Linda T. Abernethy

Name: Linda T. Abernethy, Legal Assistant

Address: Moses Koon & Brackett, PC

P. O. Box 100261, Columbia, SC 29202-3261

Telephone(O):

(H):

Signature:

Name:

Address:

Telephone(O):

(H):

439

FORM # 120PC (1/91)
SCPC 1-401, 3-1003, general

ROBERT HAROLD BREAKFIELD
ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476
breakfieldb@comporium.net

October 21, 2009

LOIS H. RODDEY
JUDGE OF PROBATE
2009 OCT 23 A 11:31
PROBATE COURT
CHESTER COUNTY, S.C.

The Honorable Lois H. Roddey
Probate Judge
P. O. Drawer 580
Chester, SC 29706

RE: E/O Reba P. Hinson
2008-ES-297

Dear Judge Roddey,

I would like to update you with respect to the status of the above-referenced Estate.

1) I have identified and collected from the various banks and certain individuals that were either on deposit in the decedent's name or in the case of a joint account. All of the funds that had been withdrawn by individuals before Mrs. Hinson's death from a joint account held jointly with Mrs. Hinson. All of the funds are on deposit in my law office trust account. I have paid various bills, tax preparation fees and I have partially paid my Personal Representative fee.

2) Several beneficiaries have requested that I investigate two joint checking accounts held by Mrs. Reba Hinson and one or more of her daughters. I have received a First Citizens account and a Founders Federal Credit Union account. I have provided each beneficiary with complete copies of the bank statements that I have received.

Based upon my inspection of the accounts, I have received from Lois Hinson $16,000.00 and from Kathy Huffstickle $200,000.00 in cash, plus her agreement that approximately $62,000.00 that has been retained by Kathy will be counted as a portion of her devise share. Kathy had volunteered to borrow the funds and pay the same to the Estate. However, in order to reduce costs, I suggested

that the $62,000.00 be ultimately counted against her share of the Estate. Kathy and I signed an agreement; your office has a copy on their file.

3) I have paid all of the claims of the Estate. I have also filed a 2007 Federal and State Tax returns for interest earned under her Social Security Number for 2007.

4) I am hopeful that I can distribute the beneficiaries' share of the Estate before Christmas this year.

Upon my review of the Probate Court file, I believe that I can complete all the closing documents before December 25, 2009. However, there has arisen a lawsuit in the Court of Common Pleas between Kathy H. Huffstickle and others against Lois H. Griffin and others. The nature of the lawsuit concerns the transfer of real property by Reba Hinson to Lois H. Griffin and others. The suit involves a Living Trust that was created by Reba Hinson. The Estate has not been joined in this suit. However, the Plaintiff has requested as a potential remedy that the real estate be returned to the Estate of Reba Hinson.

It therefore appears that it may be necessary to keep the Estate open for a period that will extend beyond the end of this year. I have enclosed a copy of the complaint for your information and file.

Based upon the status of the litigation, I believe that I can make a partial distribution before Christmas to the beneficiaries, and retain sufficient funds to deal with the consequence of the lawsuit. I have a strong desire to distribute a substantial portion of the Estate before Christmas. The beneficiaries have had to wait almost three years to receive benefits under this Estate.

Prior to any decision on distribution, I will consult with your office.

With kindest regards,

Robert H. Breakfield

RHB/psd
Enclosure

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476
breakfieldb@comporium.net

October 15, 2009

Bernard N. Ackerman, CPA
864 Riverview Road
Rock Hill, SC 29730

RE: Estate of Reba Hinson
Form 1041

Dear Bernie,

I am the Personal Representative of the above-referenced Estate. I am requesting your firm to prepare Form 1041 for the Estate and year 2009. There will be 11 K-1s to be issued. I am hopeful this estate can be closed by the end of this year. Therefore, I am enclosing your fee of $600.00, which you quoted for the return.

My information is as follows:

Robert H. Breakfield
Personal Representative,
Estate of Reba Hinson
P. O. Box 36061
Rock Hill, SC 29732
EIN: 27-6034665

With kindest regards,

Robert H. Breakfield

RHB/psd
Enclosure

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

LOIS H. RODDEY
CLERK OF COURT

2009 OCT 14 P 1:16

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0478
breakfieldb@comporium.net

PROBATE COURT
CHESTER COUNTY S.C.

October 13, 2009

The Honorable Lois H. Roddey
Probate Judge
P. O. Drawer 580
Chester, SC 29706

RE: E/O Reba Hinson

Dear Judge Roddey,

I have enclosed for your file a copy of an agreement between the Estate and Kathy Huffstickle regarding funds taken from decedent's account prior to her death.

With kindest regards,

Robert H. Breakfield

RHB/psd
Enclosure

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476
breakfieldb@comporium.net

October 23, 2009

LOIS H. RODDEY
JUDGE OF PROBATE
2009 OCT 26 A 10:49
PROBATE COURT
CHESTER COUNTY S.C.

The Honorable Lois H. Roddey
Probate Judge
P. O. Drawer 580
Chester, SC 29706

RE: E/O Reba Hinson

Dear Judge Roddey,

I have enclosed for your information the Answer filed by Lois H. Griffin in the matter that I identified in my letter of October 21, 2009.

With kindest regards,

Robert H. Breakfield

RHB/psd

Enclosure

C: All Beneficiaries of Estate

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER)	CASE NO. 2009-CP-12-527
)	
IN RE:)	
Estate of Reba P. Hinson)	
)	
EX PARTE:)	
Kathy H. Huffstickle, Wayne Hinson,)	
John C. Hinson, William Levy Hinson,)	
Danny Hinson, Jerry Hinson, Robert)	
Hinson, Bill Hinson, Jr., Elaine)	
Hensly, Linda Stanford and Wayne)	
Hinson, as beneficiaries of the Reba P.)	ANSWER AND COUNTERCLAIM
Hinson Estate,)	
Plaintiffs,)	
vs.)	
)	
Lois H. Griffin, Christine G. Jones,)	
Individually and as Trustee of the)	
Lois H. Griffin Living Trust, and)	
Dennis L. Griffin,)	
Defendants.)	

CLERK OF COURT
CHESTER CO. S.C.
2009 OCT -6 P 3:32
FILED
LOIS H. RODDEY
JUDGE OF PROBATE
2009 OCT 26 A 10:49
PROBATE COURT
CHESTER COUNTY S.C.

The Defendants answer the Plaintiffs' Complaint as follows:

FOR A FIRST DEFENSE

1. The Defendants deny each and every allegation of the Complaint not admitted, modified or explained.

2. The Defendants admit the allegations contained in Paragraph 1 of the Complaint, with the exception that William Levy Hinson, who, upon information and belief, is a resident of the State of North Carolina and that Lois H. Griffin, now known as Lois H. Hinson, is also a beneficiary of the Estate of Reba P. Hinson.

3. The Defendants admit the allegations contained in Paragraph 2 of the Complaint, with the exception that Dennis L. Griffin is a resident of Horry County, South Carolina.

4. The Defendants admit the allegations contained in Paragraph 3 of the Complaint.

5. The Defendants admit the allegations contained in Paragraph 4 of the Complaint with the explanation that Reba P. Hinson never owned Tracts 4, 5, 6 and 7 of Exhibit A.

6. The Defendants deny the allegations contained in Paragraph 5 of the Complaint and demand strict proof thereof. Further answering Paragraph 5, the Defendants allege that Reba P. Hinson executed only one Deed and that William M. Griffin has no interest in the property in Exhibit A.

7. The Defendants deny the allegations contained in Paragraph 6 of the Complaint and demand strict proof thereof.

8. The Defendants admit the allegations contained in paragraph 7 of the Complaint.

9. The Defendants deny the allegations contained in Paragraph 8 of the Complaint and demand strict proof thereof.

10. The Defendants deny the allegations contained in Paragraph 9 of the Complaint and demand strict proof thereof.

11. The Defendants deny the allegations contained in Paragraph 10 of the Complaint and demand strict proof thereof.

12. The Defendants deny the allegations contained in Paragraph 11 of the Complaint and demand strict proof thereof.

13. The Defendants deny the allegations contained in Paragraph 12 of the Complaint and demand strict proof thereof.

GoB

14. The Defendants deny the allegations contained in Paragraph 13 of the Complaint and demand strict proof thereof.

15. The Defendants deny the allegations contained in Paragraph 14 of the Complaint and demand strict proof thereof.

16. The Defendants are without sufficient information to form a belief as the allegations contained in Paragraph 15 of the Complaint and therefore deny the same. Further answering Paragraph 15, the Decedent named both Kathy Huffstickle and Lois Griffin her agents in a Durable Power of Attorney.

17. The Defendants deny the allegations contained in Paragraph 16 of the Complaint and demand strict proof thereof.

18. The Defendants deny the allegations contained in Paragraph 17 of the Complaint and demand strict proof thereof.

19. The Defendants deny the allegations contained in Paragraph 18 of the Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE

20. The allegations contained in the previous Defense, not inconsistent herewith, are hereby realleged and incorporated herein by reference.

21. The Plaintiffs have failed to allege facts sufficient to assert a cause of action against the Defendants.

22. Based upon and due to the foregoing, pursuant to the South Carolina Rules of Civil Produce 12(b) 6, the Plaintiffs' claim should be dismissed as a matter of law.

447

FOR A THIRD DEFENSE

23. The allegations contained in the previous Defenses, not inconsistent herewith, are hereby realleged and incorporated herein by reference.

24. The Plaintiffs are unable to prove any damages which were the sole proximate result of the Defendants' alleged actions and/or omissions. Based upon and due to the foregoing, the Plaintiffs' claims should be dismissed as a matter of law.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM
(BREACH OF FIDUCIARY DUTY/CONVERSION OF FUNDS)

25. The allegations contained in the previous Defenses, not inconsistent herewith, are hereby realleged and incorporated herein by reference.

26. Decedent created a fiduciary relationship with Plaintiff Kathy Huffstickle (herinafter "Huffstickle") by including her name on joint bank accounts containing exclusively Decedent's money.

27. Without Decedent's knowledge or consent, Huffstickle on December 28, 2006 withdrew $260, 651.42 of Decedent's money on deposit at First Citizens Bank (hereafter "Citizens") and converted said funds to her own personal use.

28. That as result of these actions of Huffstickle, money was lost in payment of early withdrawal penalty fees and interest the money would have earned, but for the premature withdrawal.

29. Lois withdrew $16,000.00 from a matured Certificate of Deposit at Citizens according to directions from Decedent, and on December 29, 2006, after being threatened by Huffstickle, created a Certificate of Deposit at Citizens. Said funds were subsequently paid by Lois to Decedent's Estate.

30. As a direct and proximate result of the intentional acts of Huffstickle, the Defendants have been injured and have suffered actual damages.

31. Based upon and due to the foregoing, the Defendants are entitled to judgment against Huffstickle for $61,162.86 actual damages.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(HARASSMENT)

32. The allegations contained in the previous Defenses, not inconsistent herewith are hereby alleged and incorporated herein by reference.

33. Lois lived with her mother (Decedent) and often assisted her with her household affairs and business affairs as landlord of her rentals, which included maintenance of roads and water from private wells on land she managed during her lifetime.

34. After the death of Decedent, Lois continued management of the land, for the benefit of the tenants and other landowners.

35. Lois' peaceful existence and enjoyment of her home was disrupted on several occasions by Huffstickle when she approached Lois at her home in a boisterous and argumentative manner and repeatedly called Lois on the telephone and threatened her. These acts were intentional for the sole purpose of harassment.

36. Huffstickle has threatened Lois in order to cause Lois mental anguish and attempt to get Lois to give up her interest in the land on the Catawba River, which Lois inherited from her father, Levie Hoyt Hinson.

37. As a direct and proximate result of the injury to Lois caused by the harassment Huffstickle, Lois has been injured and has suffered damages.

38. Based upon and due to the foregoing, Lois is entitled to judgment against Huffstickle for actual and punitive damages.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(FRIVOLOUS CLAIM)

39. The allegations contained in the previous Defenses, not inconsistent herewith, are hereby realleged and incorporated herein by reference.

40. Upon information and belief, the Plaintiffs have no evidentiary and/or legal basis to support a good faith claim against the Defendants.

41. Upon further information and belief, the Plaintiffs are pursuing this action for the unwarranted purpose of harassment in violation of S.C. Code Ann. § 15-36-10 et.seq.

42. Based upon and due to the foregoing, the Defendants submit that they are entitled to attorney's fees and costs associated with the defense of this frivolous lawsuit pursuant to the S.C. Frivolous Civil Proceedings Sanctions Act.

WHEREFORE, having answered Plaintiffs' Complaint, the Defendants pray that the Plaintiffs' claim be dismissed with prejudice; for the costs of this action; for judgment against the Plaintiffs for actual and punitive damages pursuant to the Defendants' Counterclaim, for attorneys fees, for a Declaratory Judgment declaring Plaintiffs', action a Frivolous Lawsuit and for such other relief the Court deems just and proper.

450

Gregory & Gregory Attorneys

By: _____ II

Ned Gregory, II
Attorney for Defendants
Post Office Box 967
Lancaster, SC 29721-0967
Tel: (803) 283-3324
Fax: (803) 283-3326

October 6, 2009
Lancaster, South Carolina

FILED
2009 OCT -6 P 3:32
CLERK OF COURT
CHESTER CO S.C.

451

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER	)	CASE NO. 2009-CP-12-_____
IN RE: Estate Of Reba P. Hinson	)	
EXPARTE: Kathy H. Huffstickle, Wayne Hinson, John C. Hinson, William Levy Hinson, Danny Hinson, Jerry Hinson, Robert Hinson, Bill Hinson, Jr., Elaine Hensly, Linda Stanford and Wayne Hinson, as beneficiaries of the Reba P. Hinson, Plaintiffs, vs. Lois H. Griffin, Christine G. Jones, individually and as Trustee of the Lois H. Griffin Living Trust, and Dennis L. Griffin, Defendants.	)	COMPLAINT (Non-Jury)

FILED
2009 AUG 14 P 4:34
CLERK OF COURT
CHESTER COUNTY, S.C.

The Plaintiffs, complaining of the Defendants above, would respectfully allege and show unto this Honorable Court as follows:

1. The Plaintiffs are citizens and residents of the State of South Carolina, and are beneficiaries of the Estate of Reba P. Hinson, Chester County Probate Court Case No.: 2008-ES-12-00297.

2. The Defendants are citizens and residents of the County of Chester, State of South Carolina.

3. This action involves a dispute to the title to real property located within Chester County, South Carolina, and this Court has jurisdiction over the subject matter and the parties to this action.

BACKGROUND

4. Heretofore, Reba P. Hinson (the "Decedent") was the owner of all of those certain tracts of property located in Chester County, South Carolina as described on the attached Exhibit "A".

5. Prior to the Decedent's death and on or about August 17, 2006, the Decedent purportedly executed certain deeds transferring the property on the attached Exhibit A to the Defendant, Lois H. Griffin (hereinafter "Lois"), and to the children of Lois, Christine G. Jones, Dennis L. Griffin and William M. Griffin. William M. Griffin subsequently transferred his interest the properties described in Exhibit "A" Christine G. Jones (hereinafter "Christine") and Dennis L. Griffin (hereinafter "Dennis") by deed dated February 6, 2007, and William M. Griffin no longer has an interest in the properties described in Exhibit "A".

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

6. The preceding paragraphs are realleged and incorporated herein by reference as if fully set forth verbatim to the extent not inconsistent herewith.

7. This cause of action is brought pursuant to the Uniform Declaratory Judgment Act, Sections 15-53-10, *et. seq.*, of the South Carolina Code of Laws, 1976, as amended, and this Court has jurisdiction over the matter.

8. At the time the Decedent purportedly transferred all of her interest in and to the property described on Exhibit A to the Defendants, the Decedent was in poor health and dependent upon Lois for her daily needs. Furthermore, the Decedent was suffering from dementia and other ailments which affected her ability and capacity to understand the nature of her actions.

9. The Decedent relied on her daughter Lois to the extent that the Decedent placed her trust and confidence in Lois to assist her with her affairs, as the Decedent was incapable of handling her affairs on her own.

10. That by reason of the trust and confidence the Decedent placed in Lois, a fiduciary relationship existed between the Decedent and Lois.

11. During the time of this fiduciary relationship, Lois violated her duty of good fait, loyalty, honesty and fair dealing owed to the Decedent, by procuring the Decedent's signature on deeds dated August 17, 2006, purportedly transferring the Decedent's interest in the real properties described on Exhibit "A".

12. Upon information and belief, the deeds were also improperly witnessed and were not delivered to the Defendants with the intent to transfer the Decedent's interest in the properties, as the deeds were not recorded until December of 2006.

13. The Plaintiffs are informed and believe that they are entitled to an order of this Court finding and declaring that the deeds purportedly transferring the Decedent's interest in the properties described in Exhibit "A" are improper and void, and declaring that the properties described in Exhibit "A" belong to the Estate of the Decedent.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

14. Each and every allegation set forth in the preceding paragraphs is realleged and incorporated herein by reference to the extent not inconsistent herewith.

15. In addition to the foregoing, the Decedent later executed a Power of Attorney, naming Lois as the Decedent's attorney-in-fact.

16. Upon information and belief, Lois, as attorney-in-fact for the Decedent, engaged in some or all of the following acts:

(a) withdrawing monies from bank accounts of the Decedent for her own personal use;

(b) having her name added to the accounts of the Decedent such that the accounts would pass by operation of law to her upon the Decedent's death and without the Decedent's consent; and

(c) commingling the funds of the Decedent with her own personal funds.

17. The actions of Lois were in violation of her duties of good faith, loyalty, honesty and fair dealing, and caused damages to the Decedent and her Estate.

18. The Plaintiffs are informed and believe that they are entitled to an Order of this Court finding that Lois has breached her fiduciary duty, and awarding actual and punitive damages to the Estate in an amount to be determined by the ultimate trier of fact.

WHEREFORE, the Plaintiffs pray for the following relief:

A. For an Order finding that the deeds executed by the Decedent for the transfer of the properties listed on Exhibit "A" are invalid and declaring that the properties listed on Exhibit "A" are properties belonging to the Estate of the Decedent;

B. For an Order of the Court finding that Lois breached her fiduciary duty owed to the Decedent, and awarding actual and punitive damages to the Estate of the Decedent;

C. And for such other and further relief as this Court may deem just and proper.

William T. Moody
Morton & Gettys
30 N. Congress Street, Suite 200
York, SC 29745
(803)684-9604
Fax: (803)684-4932
Counsel for the Plaintiff

York, South Carolina
August 14, 2009

EXHIBIT A
(Legal Description)

Tract 1; Being the identical property conveyed to Reba Pettit Hinson by deed of Albert W. Pettit dated and recorded November 26, 1958 in the Office of the Clerk of Court for Chester County, South Carolina in Deed Book 395, at Page 403.
between Fort Lawn and Great Falls. containing Seventeen and Six-One hundredths (17.60) Acres, more or less, and having courses and distance, metes and bounds, as follows, to-wit: Being at the extreme nothwesternmost corner of the tracts or parcel herein and hereby conveyed, and running thence N. 89 1/2 E. feet to a corner, thence S. 61 E. 583.3 feet to a corner, thence N. 85 E. 586.7 feet to a corner. thence N. 44 E. 200 feet to a corner marked by a cedar stake, thence S. 51 E. 532 feet to a corner, thence S. 84 1/2 W. 1044 feet to a corner, and thence N. 84 1/2 W. 1415.5 feet to the beginning corner, being bounded on the North by Tract no. 5-B as shown on the plat hereinafter referred to, about to be conveyed to Herbert P. Pettit, and by lands of Mrs. Lizzie P. Mobley. on the South by the Tract No. 5-D as shown on plat hereinafter referred to, about to be conveyed to Mrs. Reba Pettit Hinson, and on the West by lands now formerly of Anderson; being shown and designated as Tract N. 5-C on a sub-division plat was made by L.H. Melton, of date May 2, 1955, and being shown and designated as Tract No. 5-C on said sub-division plat; and being portion of Tract No. 5 of the Estate Lands of G. W. Pettit, deceased, conveyed to the grantors and grantee herein, as tenets in common, be George T. Gregory, Jr. Special Referee, by his deed of date January 9. 1954, duly recorded in the Office of Clerk of Court for Chester County, South Carolina, in Deed Book 375, at Pages 173-174.

Being the identical property conveyed to Reba Pettit Hinson by deed of Albert W. Pettit dated and recorded November 26, 1958 in the Office of the Clerk of Court for Chester County, South Carolina in Deed Book 395, at Page 403.

Tract 2: All certain piece, parcel or tract of land located, lying, situate and being in the County of Chester, State of South Carolina, on both sided of U.S. Highway 21, between Fort Lawn and Great Falls, containing Fifteen and Forty One-Hundredths (15.40) Acres. more or less, and having courses and distances, metes and bounds, as follows, to-wit: Beginning at the extreme northwesternmost corner of the tract or parcel herein and hereby conveyed, and running thence S. 84 1/2 E. 1415.5 feet to a corner, thence N. 84 1/2 E. 1044 feet to a corner, thence S. 51 E. 168 feet to the corner, thence S. 79 3/4 W. 420 feet to a corner, and thence S. 55 E 67 feet to a corner, thence S. 79 3/4 W. 740 feet to a corner, thence S. 84 W. 800 feet to a corner, thence N 29 W. 215.3 feet

to a corner, and thence S. 83 1/2 W 592 feet to the beginning corner, being bounded on the North by Tract No. 5-C as shown on the sub-division plat hereinafter referred to , on the Northeast by lands of Mrs. Lizzie Mobley, on the South by lands of Duke Power Company and lands of the estate lands of G.W. Pettit, deceased, on the West by lands now and formerly of Anderson; being shown and designated as Tract No. 5-D on a sub-division plat of Tract No. 5 of the Estate lands of G. W. Pettit, deceased, deceased, which sub-division: plat was made by L.H Melton of date May 2, 1955; and being the extreme Southernmost portion of Tract No. 5 set off and allocated to the grantors and grantee herein in partition of the Estate Lands of G. W. Pettit, deceased, by deed of George T. Gregory, Jr. Special Referee, of date January 9, 1954, duly recorded in the Office of Clerk of Court for Chester County, South Carolina in Deed Book 375, at Pages 173-174

Being the identical property conveyed to Reba Pettit Hinson by deed of Hettie P. Pettit, Albert W. Pettit, Herbert P. Pettit and Ruth Pettit Lipscomb Dority dated and recorded May 10, 1955 in the Office of the Clerk of Court for Chester County, South Carolina in Deed Book 384, at Page 57.

Tract 3: All certain piece, parcel or lot of land together with dwelling house and any and all other improvements thereon, lying, being and situate Chester County, S.C. , on the eastern side of US Highway 21 between Fort Lawn and Great Falls, containing 4.27 acres, more or less, being bounded on the North by lands now or formerly of Mrs. Lizzie Mobley, on the South by Tract No. 5 B of the W. S. Pettit Estates lands, and on the West be center line of said highway, and being a part of the property conveyed to Mrs. Ruth Pettit Dority by deed dated May 10, 1955, and recorded in the Office of the Clerk of Court for Chester County in vol. 384 at page 58, reference is craved to plat of the W. S. Pettit lands made by L.H. Melton, C.E., dated June 3, 1959, recorded in vol. 398 at page 82, which shows the width on the front along the center line of said Highway as 480.6 feet, more or less.

Being the identical property conveyed to Reba P .Hinson by deed of E. Kenneth Mullis dated May 7, 1963 and recorded May 8, 1963in the Office of Clerk of Court for Chester County, South Carolina in Deed Book 413, at Page 539.

Tract 4: All certain piece, parcel or lot of land located, lying situate and being in the county of Chester, State of South Carolina, containing 48.40 acres, more or less, and having courses and distances, ,metes and bounds, as follows, to-wit: Beginning at the extreme Northwest of the Seaboard Air Line Railway, and running thence N. 84 1/2 E. 1600 Feet to the corner, thence S. 38 E. 343.5 Feet to a corner, thence S. 69 E. 364 Feet to a corner, thence South 835 Feet to a corner at or in the Catawba River Lake thence, N 38 W. 335 Feet to a corner, thence S. 48 W. 460 Feet to a corner, thence N. 60 1/2 W. 1175 Feet to a corner, thence S 35 E. 440 Feet to a corner, thence S 76 1/2 E. 270 Feet to a corner, thence S. 44 1/2 thence E. 151 Feet to a corner, thence S. 65 E. 396 feet to a corner, thence S

Kenneth Mullis

49 W. 276 Feet to a corner, thence N 33 W. 474 Feet to a corner, thence N. 85 W. 984 Feet to the corner West of the Seaboard Air Line Railway, and thence N. 5 1/2 W. 957 feet to the beginning corner; being bounded on the North by Tract No. 7, as shown on the plat hereinafter referred to, on the East by lands of Duke Power Company, on the South by lands of Duke Power Company and by the Catawba River Lake, and on the West by land of others, being shown and designated as Tract 8 on a plat of Estate lands of G. W. Pettit, deceased, made by L. H. Melton, Registered Land Surveyor, of date October 30, 1952 , filed in Plat Book B, at Page 106, reference to which is hereby invited for a more particular description.

Being the identical property conveyed to L.H. Hinson by Deed of Anne Belle Blackwelder Snape dated February 9, 1954 and recorded in the Office of the Clerk of Court for Chester County, South Carolina in Deed Book 378, at Page 22.

Tract 5: All of those certain tracts of land situate, lying and being in Rossville Township, Chester County, South Carolina, said land being more particularly described as follows:

5 (a) First Tract: Beginning at the northeasterly corner of L.H. property and runs thence S 69-17 E 71.4 feet; thence the following courses and distance with contour at elevation 417 feet above mean sea level, U.S.G.S. datum: S2-53 E 24.9 feet; S 20-09 E 66.9 feet; S 8-22 W 33.9 feet; S 22-41 E 127.6; S 55-54 E 57.5 feet; S 12-35 E 72.8 feet; S 24-06 E 53.1 feet; S 37-18 W 130.2 feet. S 24-37 W 40.5 feet; S 6-02 E 62.5 feet; S 25-07 W 60.8 feet; S 13-11 W 66.8 feet; S 24-26 W 66.2 feet; S 47-14 W 43.7 feet; N 71-42 W 35.4 feet; thence with the easterly line on the L.H. Hinson property N 0-04 E 816.8 feet to the Beginning, containing 2.4 acres.

5 (b) Second Tract: Beginning at the stake, and said stake being N 43-45 W 218.5 feet from a point, said point being S 0-04 W 2402 feet from the Southeasterly corner of the First Tract above (5a) and runs thence the following courses and distances with a contour at elevation 417 feet above mean sea level, USGS datum: S33-08 W 48.6 feet; S 74-14 W 38.9 feet; S 58-54 E 21.9 feet; S 13-32 W 244.4 feet; S 37-54 W 64.1 feet; S 77-11 W 38.9 feet; N 63-64 W 72.7 feet; N 47-39 W 101.0 feet; N 43.58 W 84.2 feet, thence with the southeasterly line of the L.H. Hinson property N 49-19 E 410.2 feet; thence with a southeasterly line of said property two courses and distance as follows: (1) S 43-36 E. 70.3 feet; and S 43-35 E 24.5 feet to the Beginning, containing 1.8 acres.

5 (c) Third Tract: Beginning at a stake, and said stake being N 59-41 W 373.8 feet from a second stake, said second stake being S 49-19 W 49.9 feet from the westerly corner of the Second Tract above (5b) and runs thence the following courses and distances with contour of elevation 417 feet above mean sea level, USGS datum: S 22-53 E 120.5 feet; S 19-37 E 94.7 feet; thence with the L.H. Hinson

property seven courses and distances as follows: (1) N 67-47 W 151.6 feet; (2) N 43-15 W 134.7 feet; N 70-34 W 47.0 feet; (4) N 74-35-W 240.8 feet (5) N 38-07 W

38.7 feet; (6) N 33-47 W 398.2 feet; and (7) S 59-37 E 783.4 feet to the beginning containing 2.5 acres.

Being the identical property conveyed to L.H. Hinson by Deed of Duke Power Company dated February 8, 1965 and recorded in the Office of the Clerk of Court for Chester County, South Carolina in Deed Book 421 at Page 158.

Tract 6: All that piece, parcel or tract of land, lying, being situate in Chester County, South Carolina, and being shown and designated as Lot No. 7 containing 47.50 acres, more or less, on a plat of property belonging to the Estate of G.W. Pettit by L.H. Melton dated October 30, 1952; said tract of land being bounded generally on the south by other lands of L.H. Hinson; on he east by lands of Duke Power Company; on the north lands now or formerly of the Estate of Ben Pettit, the same being shown as Lot No. 6 on the aforesaid plat filed in Plat Book B, at Page 106

Being the identical property conveyed to L.H. Hinson by Deed of Anne Belle Pettit and Ralph Stephan Pettit dated April 26, 1966 and recorded April 30, 1966 in the Office of the Clerk of Court for Chester County, South Carolina in Deed Book 427 at Page 179.

Tract 7: All and certain tract of land situate, lying and being in Rossville Township, Chester County, South Carolina and more particularly described as follows: Beginning a the northeasterly corner of the L.H. Hinson property and runs thence with the northerly line of said property N 69-17 W 71.4 feet; thence with the easterly line of said property two courses an distance as follows: (1) N 0-06 W 734.0 feet; and (2) N 34-24 W 212.2 feet, thence with the counter at elevation 417 feet above mean sea level, USGS datum in a southeasterly direction 924.8 feet; and (2) N 34-24 W 212.2; thence N 86-00E 255.7 feet; thence with contour at elevation 417 feet above mean sea level, USGS. datum, in a southeasterly direction 924.8 feet to the beginning containing 2.8 acres, as shown on print dated June 12, 1939, marked Fishing Creek File No. 80.

Being the identical property conveyed to L.H. Hinson by Deed of Duke Power Company dated September 29, 1969 and recorded April 30, 1966 in the Office of the Clerk of Court for Chester County, South Carolina in Deed Book 443 at Page 525.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER	)	CASE NO. 2009-CP-12-_____
IN RE: Estate Of Reba P. Hinson	)	
EXPARTE: Kathy H. Huffstickle, Wayne Hinson, John C. Hinson, William Levy Hinson, Danny Hinson, Jerry Hinson, Robert Hinson, Bill Hinson, Jr., Elaine Hensly, Linda Stanford and Wayne Hinson, as beneficiaries of the Reba P. Hinson,	)	
Plaintiffs,	)	NOTICE OF PENDENCY OF ACTION
vs.	)	
Lois H. Griffin, Christine G. Jones, individually and as Trustee of the Lois H. Griffin Living Trust, and Dennis L. Griffin,	)	
Defendants.	)	

FILED
2009 AUG 14 P 4:34
CLERK OF COURT
CHESTER COUNTY, S.C.

TO: THE CLERK OF COURT FOR CHESTER COUNTY, SOUTH CAROLINA; THE DEFENDANTS NAMED ABOVE; AND TO ALL PARTIES TO WHOM THESE PRESENTS MAY CONCERN:

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court of Common Pleas for Chester County, South Carolina, upon the Complaint of the above-named Plaintiffs against the above-named Defendants for an action to determine title to real property located in Chester, South Carolina, and described as follows:

Legal description

SEE ATTACHED EXHIBIT A

William T. Moody
Morton & Gettys, LLC
30 N. Congress Street
Suite 200
York, SC 29745
(803) 684-9604
Fax: (803) 684-4932
Counsel for the Plaintiffs

York, South Carolina
August 14, 2009

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(Legal Description)

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5 (c) Third Tract: Beginning at a stake, and said stake being N 59-41 W 373.8 feet from a second stake, said second stake being S 49-19 W 49.9 feet from the westerly corner of the Second Tract above (5b) and runs thence the following courses and distances with contour of elevation 417 feet above mean sea level, USGS datum: S 22-53 E 120.5 feet; S 19-37 E 94.7 feet; thence with the L.H. Hinson

property seven courses and distances as follows: (1) N 67-47 W 151.6 feet; (2) N 43-15 W 134.7 feet; N 70-34 W 47.0 feet; (4) N 74-35-W 240.8 feet (5) N 38-07 W

38.7 feet; (6) N 33-47 W 398.2 feet; and (7) S 59-37 E 783.4 feet to the beginning containing 2.5 acres.

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Tract 6: All that piece, parcel or tract of land, lying, being situate in Chester County, South Carolina, and being shown and designated as Lot No. 7 containing 47.50 acres, more or less, on a plat of property belonging to the Estate of G.W. Pettit by L.H. Melton dated October 30, 1952; said tract of land being bounded generally on the south by other lands of L.H. Hinson; on he east by lands of Duke Power Company; on the north lands now or formerly of the Estate of Ben Pettit, the same being shown as Lot No. 6 on the aforesaid plat filed in Plat Book B, at Page 106

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Being the identical property conveyed to L.H. Hinson by Deed of Duke Power Company dated September 29, 1969 and recorded April 30, 1966 in the Office of the Clerk of Court for Chester County, South Carolina in Deed Book 443 at Page 525.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER	)	CASE NO. 2009-CP-12-_____
IN RE:	)	
Estate Of Reba P. Hinson	)	
	)	
EXPARTE:	)	
Kathy H. Huffstickle, Wayne Hinson, John C. Hinson, William Levy Hinson, Danny Hinson, Jerry Hinson, Robert Hinson, Bill Hinson, Jr., Elaine Hensly, Linda Stanford and Wayne Hinson, as beneficiaries of the Reba P. Hinson,	)	
	)	
Plaintiffs,	)	SUMMONS
	)	
vs.	)	
	)	
Lois H. Griffin, Christine G. Jones, individually and as Trustee of the Lois H. Griffin Living Trust, and Dennis L. Griffin,	)	
	)	
Defendants.	)	

FILED
2009 AUG 14 P 4:34
CLERK OF COURT
CHESTER COUNTY, S.C.

TO: THE DEFENDANTS, LOIS H. GRIFFIN AND CHRISTINE G. JONES, INDIVIDUALLY AND AS TRUSTEE OF THE LOIS H. GRIFFIN LIVING TRUST, AND DENNIS L. GRIFFIN:

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 to the said Complaint on the subscribers at their offices at 30 N. Congress Street, Suite 200, York, 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 Plaintiffs in this action will apply to the court for the relief demanded in the Complaint.

William T. Moody
Morton & Gettys, LLC
30 N. Congress Street
Suite 200
York, SC 29745
(803) 684-9604
Fax: (803)684-4932
Attorney for the Plaintiffs

York, South Carolina

August 19, 2009

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER)

Kathy H. Huffstickle, et. al.,) CIVIL ACTION COVERSHEET
Plaintiff(s))
) 2009-CP - 12-
vs.)
)
Lois H. Griffin, et. al.,)
Defendant(s))

(Please Print)
Submitted By: William T. Moody
Address: 30 N. Congress St., York, SC 29745

SC Bar #: 063035
Telephone #: 803-684-9604
Fax #: 803-684-4932
Other:
E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-CP-____-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☒ Other (499) Quiet title

FILED

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** 08/14/09

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

469

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF CHESTER

IN THE MATTER OF THE ESTATE OF REBA P. HINSON

CASE NUMBER 2008-ES-12-00297

PROOF OF DELIVERY

On the 21st day of April, 2010, I mailed or delivered a copy of **Order dated April 19, 2010**, a copy of which is attached hereto and incorporated herein, by the following method (check appropriate box):

PROBATE COURT
CHESTER COUNTY S.C.
2010 APR 22 P 12:16
LOIS H. RODDEY
JUDGE OF PROBATE

- ☐ personal delivery
- X ordinary first class mail
- ☐ certified mail
- ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
Mell Woods, pro se	P. O. Box 2603, Lancaster, SC 29721

SWORN to before me this 21st day of April, 2010

Notary Public for South Carolina
My Commission Expires: 12/12/15

Signature: Linda T. Abernethy
Name: Linda T. Abernethy, Paralegal
Address: Moses Koon & Brackett, PC
P. O. Box 100261, Columbia, SC 29202-3261
Telephone(O):
(H):

Signature:
Name:
Address:

Telephone(O):
(H):

FORM # 120PC (1/91)
SCPC 1-401, 3-1003, general

470

COPY

MOSES KOON & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW
1333 Main Street, Suite 650 (29201)
Post Office Box 100261
Columbia, South Carolina 29202-3261

Telephone (803) 461-2300
Facsimile (803) 461-2309

B. Michael Brackett
Direct Dial: (803) 461-2312
Email: mbrackett@mkb-law.com

LOIS H. RODDEY
JUDGE OF PROBATE
2010 APR -2 A 10:49
PROBATE COURT
CHESTER COUNTY, SC

April 1, 2010

Mell Woods
P. O. Box 2603
Lancaster, SC 29721

RE: Estate of Reba P. Hinson
Chester County Case # 2008-ES-12-0297
York County Case # 2010-ES-46-0265
Our File Number - 12085.1

Dear Mr. Woods:

Enclosed, and served upon you, is a copy of the Private Agreement Among Heirs and Devisees, recorded with the Probate Court on March 31, 2010.

Very truly yours,

B. Michael Brackett

BMB/lta
Enclosure

cc. Chester County Probate Court
York County Probate Court
Robert H. Breakfield, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE MATTER OF THE ESTATE OF REBA P. HINSON

CASE NUMBER: YORK - 2010-ES-46-0265
CHESTER - 2008-ES-12-00297

PROBATE COURT

LOIS H. RODDEY
JUDGE OF PROBATE
2010 APR -2 A 10:50
PROBATE COURT
CHESTER COUNTY S.C.

PROOF OF DELIVERY

On the 1st day of April, 2010, I delivered copies of **Private Agreement Among Heirs and Devisees, filed March 31, 2010,**

a copy of which is attached hereto and incorporated herein, by the following method (check appropriate box):

- ☐ personal delivery
- ☒ ordinary first class mail
- ☐ certified mail
- ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
Mell Woods, pro se	P. O. Box 2603, Lancaster, SC 29721

SWORN to before me this 1st day of April, 2010

Notary Public for South Carolina
My Commission Expires: 12-15-15

Signature:
Name: Linda T. Abernethy, Legal Assistant
Address: Moses Koon & Brackett, PC
P. O. Box 100261, Columbia, SC 29202-3261
Telephone(O):
(H):

Signature:
Name:
Address:

Telephone(O):
(H):

FORM # 120PC (1/91)
SCPC 1-401, 3-1003, general

472

STATE OF SOUTH CAROLINA)
) ESTATE OF REBA P. HINSON
COUNTY OF CHESTER) FILE NO. 2009ES

LOIS H. RODDEY
JUDGE OF PROBATE

2010 MAR 31 A 11:06

PROBATE COURT
CHESTER COUNTY S.C.

PRIVATE AGREEMENT AMONG HEIRS AND DEVISEES PURSUANT TO S. C. PROBATE CODE 62-3-912

We, Lois Hinson, John C. Hinson, Kathy Huffstickle, William L. Hinson, John D. Hinson, Charles J. Hinson, Robert H. Hinson, William C. Hinson, Jr., Elaine H. Hensley, Personal Representative of the Estate of Linda H. Stanford; Darrell W. Hinson, are the devisees and heirs of Reba P. Hinson.

Reba P. Hinson died on January 3, 2007. There was a great deal of conflict among several members of the Hinson family. As a consequence, no person was named as the Personal Representative of the Estate of Reba P. Hinson during the period between the date of death of Reba P. Hinson and February 18, 2009.

We, with the assistance of our lawyers, decided to use the services of a non-family member to serve as Personal Representative. Our lawyers proposed either John P. Gettys, Jr. or Robert H. Breakfield as potential candidates as Personal Representative. We all agreed that Robert H. Breakfield should be appointed as Personal Representative of the Estate.

We were also aware that Reba P. Hinson had executed a Will dated June 23 1998 and later she may have executed two other documents titled Private Will of Reba P. Hinson. These documents are dated April 5, 2003, but purportedly signed April 24, 2003. We were aware of all three documents. As part of the general agreement among the parties, we all agreed that the Will dated June 23, 1998 should be probated.

The other documents were placed in the Probate File as general information on February 18, 2009. We all met with Judge Lois H. Roddey at a hearing on February 18, 2009 in the Probate Court. The lawyers present were Ned Gregory and James Boyd.

Mr. Gregory had prepared a formal petition to appoint Robert H. Breakfield as Personal Representative and to admit the Will dated June 23, 1998 as the Last Will of Reba P. Hinson. At the hearing, Judge Roddey ask all of us if we had any objections to the Probate of the Will dated June 23, 1998 and the appointment of Robert H. Breakfield as Personal Representative. We all agreed to the admission of the Will dated June 23, 1998 and the appointment of Robert H. Breakfield as Personal Representative.

We now understand that a potential creditor, Mell Wood, is now challenging the admission of the Will dated June 23, 1998 for probate. We understand that under the South Carolina Probate Code Section 62-3-912 that as all of the heirs and devisees of the Estate of Reba P. Hinson, that we can agree among ourselves to have the Will of

Reba P. Hinson dated June 23, 1998 to be deemed the Last Will of Reba P. Hinson. We understand that this Agreement is subject to the rights of any creditor.

We in fact agreed at the Probate Court proceeding held before Judge Lois H. Roddey that the Will dated June 23, 1998 should be admitted as Reba P. Hinson's Last Will.

By our signatures below, we ratify our consent before the Probate Court and we request that all the Courts in South Carolina recognize our right as the sole heirs and devisees of Reba P. Hinson to have her Will dated June 23, 1998 probated as her Last Will.

We are aware that prior to signing this document that we have the absolute right to consult with an attorney of our selection. We have exercised our right and we sign this Private Agreement as our acts and seal.

Executed this 24 day of March, 2010

Lois Hinson 3-22-10
Lois Hinson

John C. Hinson
John C. Hinson

Kathy Huffstickle
Kathy Huffstickle

John D. Hinson
John D. Hinson

Charles J. Hinson by Robert H. Hinson his attorney in fact
Charles J. Hinson

Robert H. Hinson
Robert H. Hinson

X Young Hinson
Robert H. Brakefield

X Wm. C. Hinson Jr.
William C. Hinson, Jr.

+ Young Hinson
Robert H. Brakefield

Elaine H. Hensley
Elaine H. Hensley

Patricia Davis
Robert H. Brakefield

Darrell W. Hinson 3/30/10
Darrell W. Hinson

Kelly S Swonsalt
Patricia S. Davis

George W Stanford 3-25-10
George Stanford, Personal Rep., Estate of Linda Stanford

_____
William L. Hinson

STATE OF ~~NORTH~~ South CAROLINA)
)
COUNTY OF York)

PROBATE

Before me personally appeared Young Hinson who on oath says that he with Robert H. Brakefield saw the within named WILLIAM C. HINSON, Jr. sign seal and as his act deliver the within Private Agreement Among Heirs and Devisees Pursuant to S. C. Probate Code 62-3-912.

Witness:
Young Hinson

SWORN TO BEFORE ME this 24 day of March, 2010.
Robert H. Brakefield
Notary Public for North Carolina
My Commission Expires: 9-25-2017

475

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PROBATE

Before me personally appeared Patricia S. Davis, who on oath says that she with Kelly S. Sumwalt, saw the within named LOIS HINSON, sign seal and as her act deliver the within Private Agreement Among Heirs and Devisees Pursuant to S. C. Probate Code 62-3-912.

Witness:
Patricia S. Davis

SWORN TO BEFORE ME this 22 day of March, 2010.

Kelly S Sumwalt
Notary Public for South Carolina
My Commission Expires: 1-16-2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PROBATE

Before me personally appeared Young Hinson who on oath says that she with Robert H Breakfield saw the within named JOHN C. HINSON, sign seal and as his act deliver the within Private Agreement Among Heirs and Devisees Pursuant to S. C. Probate Code 62-3-912.

Witness:
Young Hinson

SWORN TO BEFORE ME this 24 day of March, 2010.

Robert H Breakfield
Notary Public for South Carolina
My Commission Expires: 9-25-2017

476

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PROBATE

Before me personally appeared Yong Hinson who on oath says that she with Robert K. Brakfield saw the within named KATHY HUFFSTICKLE, sign seal and as her act deliver the within Private Agreement Among Heirs and Devisees Pursuant to S. C. Probate Code 62-3-912.

Witness:
Yong Hinson

SWORN TO BEFORE ME this 24 day of March, 2010.
Robert H Brakfield
Notary Public for South Carolina
My Commission Expires: 9-25-2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PROBATE

Before me personally appeared Yong Hinson, who on oath says that she with Robert K. Brakfield saw the within named JOHN D. HINSON, sign seal and as his act deliver the within Private Agreement Among Heirs and Devisees Pursuant to S. C. Probate Code 62-3-912.

Witness:
Yong Hinson

SWORN TO BEFORE ME this 24 day of March, 2010.
Robert H Brakfield
Notary Public for South Carolina
My Commission Expires: 9-25-2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PROBATE

Before me personally appeared Yong Hinson, who on oath says that She with Robert H. Brakefield saw the within named Robert H. Hinson Attorney in fact for CHARLES J. HINSON, sign seal and as his act deliver the within Private Agreement Among Heirs and Devisees Pursuant to S. C. Probate Code 62-3-912.

Witness:

Yong Hinson

SWORN TO BEFORE ME this 24 day of March, 2010.

Robert H Brakefield

Notary Public for South Carolina
My Commission Expires: 9-25-2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PROBATE

Before me personally appeared Yong Hinson, who on oath says that She with Robert H Brakefield saw the within named ROBERT H. HINSON, sign seal and as his act deliver the within Private Agreement Among Heirs and Devisees Pursuant to S. C. Probate Code 62-3-912.

Witness:

Yong Hinson

SWORN TO BEFORE ME this 24 day of March, 2010.

Robert H Brakefield

Notary Public for South Carolina
My Commission Expires: 9-25-2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PROBATE

Before me personally appeared Joyce Hinson, who on oath says that she with Robert H. Breakfield saw the within named WILLIAM C. HINSON, JR., sign seal and as his act deliver the within Private Agreement Among Heirs and Devisees Pursuant to S. C. Probate Code 62-3-912.

Witness:
x Joyce Hinson

SWORN TO BEFORE ME this 24 day of
March, 2010.
Robert H Breakfield
Notary Public for South Carolina
My Commission Expires: 9-25-2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PROBATE
Patricia Davis

Before me personally appeared ~~Kelly Swindell~~, who on oath says that she with ~~Patricia Davis~~ Robert H. Breakfield saw the within named DARRELL W. HINSON, sign seal and as his act deliver the within Private Agreement Among Heirs and Devisees Pursuant to S. C. Probate Code 62-3-912.

Witness: Patricia Davis
~~Kelly Swindell~~

30th RHB
SWORN TO BEFORE ME this ~~25~~ day of
March, 2010.
Robert H Breakfield
Notary Public for South Carolina
My Commission Expires: 9-25-2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PROBATE

Before me personally appeared Yong Hinson, who on oath says that she with Robert A. Bentley saw the within named ELAINE H. HENSLEY, sign seal and as her act deliver the within Private Agreement Among Heirs and Devisees Pursuant to S. C. Probate Code 62-3-912.

Witness:
Yong Hinson

SWORN TO BEFORE ME this 24 day of March, 2010.
Notary Public for South Carolina
My Commission Expires: 9-25-2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

PROBATE

Before me personally appeared Kelly S Stewart, who on oath says that she with Patricia S. Davis, saw the within named GEORGE STANFORD, Personal Representative, The Estate of Linda Stanford, sign seal and as his act deliver the within Private Agreement Among Heirs and Devisees Pursuant to S. C. Probate Code 62-3-912.

Witness:
Patricia S Davis

SWORN TO BEFORE ME this 25 day of March, 2010.
Notary Public for South Carolina
My Commission Expires: 9-25-2017

480

William C. Hinson, Jr.

Elaine H. Hensley

Darrell W. Hinson

George Stanford, Personal Rep., Estate of Linda Stanford

Monique McLaughlin

William L. Hinson

STATE OF NORTH CAROLINA)
)
COUNTY OF Lee)

PROBATE

Before me personally appeared Monique McLaughlin who on oath says that he with Alison Fifield, saw the within named WILLIAM L. HINSON, sign seal and as his act deliver the within Private Agreement Among Heirs and Devisees Pursuant to S. C. Probate Code 62-3-912.

Witness:
Monique McLaughlin

SWORN TO BEFORE ME this 22 day of March, 2010.

Notary Public for North Carolina
My Commission Expires: 10/18/2012

YORK COUNTY PROBATE COURT

John P. Gettys, Judge of Probate
Post Office Box 219, York, SC 29745
Tel: (803) 684-8513 Fax: (803) 684-8536

LOIS H. RODDEY
JUDGE OF PROBATE
2010 APR -2 A 10:49
PROBATE COURT
CHESTER COUNTY S.C.

March 31, 2010

The Honorable Lois H. Roddey
Judge of Probate
Post Office Drawer 580
Chester, SC 29706

Subject: Estate of Reba P. Hinson, Chester Case No. 2008-297
York Case No. 2010-265

Dear Judge Roddey,

Enclosed please find the original Notice of Hearing, Proof of Delivery and a copy of the letter for the above captioned estate for filing.

If you have any questions, please give me a call.

Sincerely,

Kelly J. Arwood
Associate Probate Judge

Enclosures (3)
/kja

COPY

MOSES KOON & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

LOIS H. RODDEY
JUDGE OF PROBATE
2010 APR -2 A 10:09
PROBATE COURT
CHESTER COUNTY S.C.

1533 Main Street, Suite 650 (29201)
Post Office Box 100261
Columbia, South Carolina 29202-3261

Telephone (803) 461-2300
Facsimile (803) 461-2309

B. Michael Brackett
Direct Dial: (803) 461-2312
Email: mbrackett@mkb-law.com

FILED RECEIVED
2010 MAR 31 AM 9:26
JUDGE OF PROBATE
YORK COUNTY, SC

March 29, 2010

Mell Woods
P. O. Box 2603
Lancaster, SC 29721

RE: Estate of Reba P. Hinson
Our File Number - 12085.1

Dear Mr. Woods:

Enclosed please find copies of the Probate Court's Order for Hearing and a copy of the required Notice of Hearing which are herewith served upon you. By copy of this letter, the original Notice of Hearing, and Proof of Delivery, are being forwarded to the Probate Court for filing.

Very truly yours,

B. Michael Brackett

BMB/lta

cc. The Honorable John P. Gettys, York County Probate Judge
Robert Breakfield, Esquire

AUTOMATIC COVER SHEET

DATE : SEP-04-08 04:43 PM

TO :

FAX #: *67180358151800

FROM : Gregory&Gregory At

FAX #: 8032833326

2008 SEP -4 P 4:48

PROBATE COURT
CHESTER COUNTY, S.C.

LOIS H. RODDEY
JUDGE OF PROBATE

2 PAGES WERE SENT

(INCLUDING THIS COVER SHEET)

GREGORY & GREGORY[SM]

ATTORNEYS AT LAW

Ned Gregory, II

Post Office Box 967
210 West Meeting Street
Lancaster, South Carolina 29721-0967
Telephone (803) 283-3324
Fax Line (803) 283-3326
E-Mail: ngregory@comporium.net

Toy R. Gregory, Sr.
(1899 - 1973)
Ned Gregory, Sr.
(1903 - 1985)

LOIS H. RODDEY
JUDGE OF PROBATE
2008 SEP -4 P 4:49
PROBATE COURT
CHESTER COUNTY, S.C.

September 4, 2008

Chester County Probate Court
Post Office Drawer 580
Chester, SC 29706-0580

RE: Estate of Reba Pettit Hinson

I understand that on June 19, 2008, James W. Boyd, Esq. notified via fax Steedley J. Bogan, Esq., Bruce M. Poore, Esq., and the undersigned regarding the proposed appointment of John Gettys, Esq. as Personal Representative of the above captioned estate and that, after receiving no response, sent a follow up fax on August 26, 2008.

While my client neither agrees with nor opposes the appointment of Gettys, Robert Harold Brakefield, Esq. of the Rock Hill Bar has consented to serve as Personal Representative and is hereby submitted to the Probate Court for its consideration. Mr. Brakefield's phone number is (803) 329-4920.

I personally believe that Mr. Brakefield would make an excellent choice as Personal Representative of the Estate of Reba P. Hinson, would act promptly and serve efficiently. Therefore, by way of copies hereof to the noted attorneys, I am requesting that responses be made to the Probate Court by September 15, 2008; otherwise, I hereby request that Mr. Brakefield be appointed by the Probate Court.

P.S. Mr. Boyd has confirmed by phone conversation on September 4, 2008 that he has no objective with appointment of Mr. Brakefield.

Yours very truly,

Gregory & Gregory Attorneys

By: Ned Gregory II

NGII/law

cc. Lois Hinson
Steedley J. Bogan, Esq.
James W. Boyd, Esq.
Bruce M. Poore, Esq.

AUTOMATIC COVER SHEET

DATE : SEP-04-08 10:28 AM

TO :

FAX #: *6718035815180

FROM : Gregory&Gregory At

FAX #: 8032833326

LOIS H. RODDEY
JUDGE OF PROBATE
2008 SEP -4 P 12:33
PROBATE COURT
CHESTER COUNTY, S.C.

2 PAGES WERE SENT

(INCLUDING THIS COVER SHEET)

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 38061 * ROCK HILL, SOUTH CAROLINA * 29732
TELEPHONE (803) 329-4920 * FAX (803) 329-0476

August 27, 2008

LOIS H. RODDEY
JUDGE OF PROBATE
2008 SEP -4 P 12:33
PROBATE COURT
CHESTER COUNTY, S.C.

VIA FACSIMILE
803-283-3326

Ned Gregory, Esq.

RE: Estate of Reba P. Hinson

Dear Mr. Gregory,

I will serve as Personal Representative of the above-referenced Estate. Please let me know how you would like to proceed.

With kindest regards,

RHB

Robert H. Breakfield

RHB/psd

James W. Boyd
Attorney at Law
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732

Telephone (803) 328-2600

Fax (803) 328-5747

LOIS H. RODDEY
JUDGE OF PROBATE
2008 JAN 14 P 12:07
PROBATE COURT
CHESTER COUNTY S.C.

January 11, 2008

Honorable Lois H. Roddey
Chester County Probate Court
140 Main Street
Chester, SC 29706

Re: In Ref.: Estate of Reba P. Hinson

Dear Judge Roddey:

I am writing this letter to request that you set up a hearing on appointing a Personal Representative for the Estate of Reba P. Hinson for the purpose of making a determination on the validity of Reba P. Hinson's will. There are a number of bank accounts with substantial amounts of money, which may be apart of the estate, and this matter needs to be resolved.

Thank you for your attention in this matter.

With kind regards, I am

Sincerely,

James W. Boyd

JWB/klc
Enclosures
cc: Steedley J. Bogan
Roger Jellenik

James W. Boyd
Attorney at Law
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732

Telephone (803) 328-2600 **Fax (803) 328-5747**

April 24, 2007

Chester Co. Probate Office
PO Box 580
Chester, SC 29706

Re: Estate of Reba P. Hinson

Dear Sir/Madam;

Enclosed you will find an original Application/Petition for Probate Appointment in reference to the above estate. Please file the original with the court and return a clocked copy in the provided envelope. Thank you for your attention in this matter.

With kind regards, I am

Sincerely,

James W. Boyd

JWB/klc
Enclosure

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: CHESTER)
)
IN THE MATTER OF: Reba P. Hinson)
) CASE NUMBER:

FILED IN THE OFFICE OF THE CLERK OF COURT
2007 APR 19 9:00
JUDGE OF PROBATE
CHESTER COUNTY, SC

CLOCK IN TIME CANCELLED

APPLICATION FOR (check any that apply) **PETITION FOR**

INFORMAL FORMAL

☒ PROBATE OF WILL ☐ TESTACY
☐ APPOINTMENT ☐ APPOINTMENT

Applicant/Petitioner: Kathy H. Huffstickler
Address: 5715 Lakeview Circle, Fort Lawn, SC 29714
Telephone: 803-804-1864

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.

Daughter

2. Decedent Information

Name: Reba P. Hinson
Social Security Number:
Date of Birth: 7/13/15
Date of Death: 1/03/07
Age at date of death: 91
Domicile at date of death: Chester (county) SC (state)

3. Venue for this proceeding is proper in this county because:

☒ Decedent was domiciled in this county at date of death.
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.
☐ Decedent has a right to take legal action in this county because:

4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Decedent
Kathy H. Huffstickler	12/04/51	2715 Lakeview Cir., Ft.Lawn, SC 29714	Daughter
John C. Hinson	05/09/28	1563 Hinton Rd., Great Falls, SC 29055	Stepson
Lois H. Griffin	04/16/??	1406 Catawba River Rd., Ft.Lawn, SC 29714	Daughter
William Levy Hinson		909 Stoneoak Ct., Sanford, NC 27330	Grandchild

(use additional sheet if necessary)

Additional Devisees for the Estate of Reba P. Hinson

(Grandchildren)

1. Danny Hinson
   5621 Footlose Rd.
   Fort Lawn, SC 29714

2. Jerry Hinson
   237 Laural Lot 21
   Florence, SC 29506

3. Robert Hinson
   PO Box 72
   McConnells, SC 29726

4. Bill Hinson, Jr.
   118 Mella St.
   Chester, SC 29706

5. Elaine Hensly
   6 Church St.
   Great Fall, SC 29055

6. Linda Stanford
   6969 Snowy Owl Rd.
   Kershaw, SC 29067

7. Wayne Hinson
   PO Box 163
   Fort Lawn, SC 29714

4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent

se additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a guardian or conservator ever been appointed for this person?

☒ NO ☐ YES If yes, please explain on page 3.

8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?

☐ NO ☒ YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten years passed since the decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The decedent died with a personal estate of about the value of $750,000.00 and real estate of about the value of $700,000.00. (A full inventory and appraisement, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.

12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?

☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

Additional Devisees for the Estate of Reba P. Hinson

(Grandchildren)

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   Fort Lawn, SC 29714

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   237 Laural Lot 21
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6. Linda Stanford
   6969 Snowy Owl Rd.
   Kershaw, SC 29067

7. Wayne Hinson
   PO Box 163
   Fort Lawn, SC 29714

IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- ☐ The original is attached
- ☒ The original is in the Court's possession
- ☐ An authenticated copy of a will probated in another jurisdiction is attached
- ☐ An authenticated copy of a will not probated in another jurisdiction is attached
- ☐ The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

☒ Yes ☐ NO If no, please explain on page 3.

3. The date of execution of the will was: 4/23/03
codicil(s): _____

4. Are you aware of any instrument or document amending or revoking the will?

☒ NO ☐ YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

☒ YES ☐ NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

☒ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheet.)

Lois H. Griffin has filed a petition to be appointed personal representative with this Court.

IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:
Kathy A. Huffstickler
5715 Lakeview Circle, Ft. Lawn, S.C. 29714

2. Priority for this appointment is:
- ☐ named as Primary Personal Representative in will
- ☐ named as Alternate Personal Representative in will
- ☐ nominee of above Primary Personal Representative in will
- ☐ nominee of above Alternate Personal Representative in will
- ☐ surviving spouse of decedent who is devisee of decedent or nominee of said spouse
- ☒ other devisee of decedent, (describe): daughter & devisees under will or nominee of said devisee
- ☐ surviving spouse of decedent or nominee of said spouse
- ☐ other heir of decedent (describe): _____
- ☐ creditor (Forty-five days after death must have passed), or nominee of creditor
- ☐ other (describe): _____

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

Lois H. Griffin

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 19 day of April, 20 07

Notary Public for South Carolina
My Commission Expires: June 14, 2006

Signature: x Kathy Huffstickler
Name: Kathy Huffstickler
Address: 5715 Lakeview Cir.
Fort Lawn S.C 29714
E-mail:
Telephone (O):
(H): (803) 804-1884

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☐ GRANTED ☐ DENIED informally this _____ day of _____, 20 _____.

_____
, Probate Court Judge

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____

TIME: _____

PLACE: _____

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this day of , 20 .

_____

, Probate Court Judge

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☐ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated, , be admitted formally to probate.

Executed this day of , 20 .

_____

, Probate Court Judge

SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this day of , 20 .

_____

, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: _____
Name: _____
Address: _____
_____
E-mail: _____
Telephone (O): _____
(H): _____

Signature: _____
Name: _____
Address: _____
_____
E-mail: _____
Telephone (O): _____
(H): _____

Attorney: _____
Address: _____
_____
E-mail: _____
Telephone (O): _____

ROBERT HAROLD BREAKFIELD

ATTORNEY AT LAW

THE SQUARE AT CONSTITUTION * 1590-02 CONSTITUTION BLVD.
P.O. BOX 36061 * ROCK HILL, SOUTH CAROLINA * 29732 .
TELEPHONE (803) 329-4920 * FAX (803) 329-0476
breakfieldb@comporium.net

January 27, 2010

LOIS H. RODDEY
JUDGE OF PROBATE
2010 JAN 29 A 10: 59
PROBATE COURT
CHESTER COUNTY S.C.

Chester County Probate Court
P. O. Drawer 580
Chester, SC 29706

Re: E/O Reba Hinson – 2008-297

Dear Sir or Madam:

I have enclosed a check for $5.50 for copies of Probate documents provided by the Court.

With kindest regards,

Robert H. Breakfield

RHB/psd
Enclosure