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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Circuit Court Judge

Opinion No. 2018-UP-365 (S.C. Ct. App. Filed Sep. 19,2018)

In RE: Estate of Norman R. Knight, Jr., (deceased), and Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby" Knight, III, Petitioners,

v.

Beatrice A. Whitten, as a Special Administrator, and Chloe Knight-Tonney, Claimant, Respondents,

---

APPENDIX

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..... **P.O. Box 70070**
..... **N. Charleston, South Carolina 29415**
..... **(843) 740-7777**
..... **Attorney for Petitioners**

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In The Supreme Court

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Special Administrator, Respondent
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

CASE NO. 2014-CP-10-5355
Appellate Case No. 2016-000748

In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby" Knight, III, Appellants,

v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-10-5355

In Re Estate of Norman R. Knight, Jr. et al.	Beatrice E. Whitten and Chloe Knight-Tonney
PLAINTIFF(S)	DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

FILED
2016 MAR 4 4:30
BY JULIE J. ARMSTRONG
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiffs' Motion for a New Trial or to Alter or Amend Judgment filed on February 8, 2016 is respectfully *denied* without a rehearing.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge

2117
Judge Code

3/4/16
Date

SCRCP Form 4C

CERT 0006 CERT 0006 CERT 0006

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-10-5355

Norman Robert Knight, Jr. et al	Beatrice A. Whitten
PLAINTIFF(S)	DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*) ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

FILED
2016 JAN 27 PM 1:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before this Court on Plaintiff's Motion for Appeal, filed on June 23, 2016 and argued before this Court on November 9, 2015. Upon review, Plaintiff's motion for appeal is **denied.**

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge

2117
Judge Code

1/27/16
Date

SCRCP Form 4C

CERT 0007 CERT 0007 CERT 0007

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-10-5355

Norman Robert Knight, Jr.
PLAINTIFF(S)

Beatrice A. Whitten
DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

FILED
2015 NOV 10 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before this Court on November 9, 2015. Plaintiff's Motion to Declare Complex Case filed on September 14, 2015 is **denied.** Plaintiff's Motion to Supplement the Record on Appeal filed on September 3, 2015 is **granted** for the inclusion of written closing arguments submitted to the Court below. Plaintiff's Motion to Strike filed on December 12, 2014 is **denied.**

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge

2117
Judge Code

11/10/15
Date

SCRCP Form 4C

CERT 0008 CERT 0008 CERT 0008

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2008ES1000409 (Charleston)
COUNTY OF BEAUFORT	)	CASE NO. 2012ES0700998 (Beaufort)
IN THE MATTER OF ESTATE OF NORMAN ROBERT KNIGHT, JR.	)	ORDER DENYING MOTION FOR NEW TRIAL AND TO ALTER OR AMEND JUDGMENT

This matter came before the Court on the Motion for New Trial and to Alter or Amend Judgment ("Motion"), filed on behalf of Judy Brown, as Personal Representative of the Estate of Mildred C. Knight, and Norman R. Knight, III, by their attorney, J. Seth Whipper, Esquire, on July 28, 2014. The Motion addresses two judgments of this Court: the Order of Judgment Allowing Claim of Chloe Tonney and the Order of Judgment Dismissing Complaint for Removal of Personal Representative, both Orders having been entered on July 11, 2014.

After receipt of the Motion, the Court notified all counsel, by letter of July 31, 2014, that the Motion would be determined on written briefs of the parties, without oral argument, and briefs were timely filed thereafter by each counsel.

Having carefully reviewed and considered the Motion, the arguments submitted, the record, and the applicable law, I find no reason to grant a new trial in the matter, nor to alter or amend the subject Orders of Judgment in any way. Accordingly, the Motion is denied.

AND IT IS SO ORDERED.

Kenneth E. Fulp, Jr., Judge
Beaufort County Probate Court

Beaufort, South Carolina

August 21, 2014

FILED
2014 AUG 21 PM 3:45
PROBATE COURT
BEAUFORT COUNTY, SC

CERT 0009 CERT 0009 CERT 0009

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2008ES1000409 (Charleston)
COUNTY OF BEAUFORT	)	CASE NO. 2012ES0700998 (Beaufort)
IN THE MATTER OF ESTATE OF NORMAN ROBERT KNIGHT, JR.	)	ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT UNDER RULE 60(b)(1), SCRCP

This matter came before the Court on the Motion for Relief from Judgment under Rule 60(b)(1), filed on behalf of Judy Brown, as Personal Representative of the Estate of Mildred C. Knight, and Norman R. Knight, III, by their attorney, J. Seth Whipper, Esquire, on July 14, 2014. The movants request relief from this Court's Order of July 29, 2013, on the ground of mistake of fact regarding the filing date of Chloe Tonney's claim.

After receipt of the Motion, the Court notified all counsel, by letter of July 24, 2014, that the Motion would be determined on written briefs of the parties, without oral argument, and briefs were timely filed thereafter by each counsel.

Having carefully reviewed and considered the Motion, the arguments submitted, the record, and the applicable law, I find no mistake of fact as asserted in the Motion. Accordingly, the Motion for Relief from Judgment is denied.

AND IT IS SO ORDERED.

Kenneth E. Fulp, Jr., Judge
Beaufort County Probate Court

Beaufort, South Carolina
August 15, 2014

FILED
2014 AUG 15 PM 3:52
PROBATE COURT
BEAUFORT COUNTY, SC

CERT 0010 CERT 0010 CERT 0010

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2008ES1000409 (Charleston)
COUNTY OF CHARLESTON	)	CASE NO. 2012ES0700998 (Beaufort)
IN THE MATTER OF ESTATE OF NORMAN ROBERT KNIGHT, JR.	)	ORDER OF JUDGMENT ALLOWING CLAIM

FILED
JUL 11 2014
BEAUFORT COUNTY, SC

Hearing Dates:	**March 31, 2014 and April 28, 2014**
Presiding Judge:	**Kenneth E. Fulp, Jr.**
Petitioner Chloe Toney's Attorney:	**C. Mac Gibson, Jr.**
Respondent Norman Robert Knight, III's Attorney:	**J. Seth Whipper**
Special Administrator:	**Beatrice E. Whitten**

THIS MATTER came before this Court on March 31, 2014 and April 28, 2014, on Chloe Toney's Petition for Allowance of Claim against the Estate of Norman Robert Knight, Jr. ("Mr. Knight's Estate"), and Norman Robert Knight, III's Amended Complaint for removal of the Special Administrator. This Order renders judgment on the Petition for Allowance of Claim.

Present at the hearings were Chloe Tonney ("Tonney"), Norman Robert Knight, III, their respective attorneys, and the Special Administrator.

Based on the parties' pleadings, the record, the testimony of the witnesses and other admissible evidence, the arguments of counsel, and the applicable law, this Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. All interested parties were served with proper notice of the hearings.

2. Charleston County Probate Court issued an Order dated August 25, 2005, appointing Walter Kaufmann ("Kaufmann") as Guardian and Family Services, Inc. as the Conservator for Norman Robert Knight, Jr. ("Mr. Knight"), an incapacitated person.

3. The Honorable Tamara Curry, Associate Judge for Charleston County Probate Court, issued an emergency Order dated January 31, 2006, which authorized Kaufmann, as Guardian to take physical and legal custody of Mr. Knight. With the assistance of the City of North Charleston police department, Kaufmann removed Mr. Knight from his primary residence and placed him at Savannah House, an assisted living facility. Several months later, Kaufmann and the management of Savannah House determined that Mr. Knight needed extensive and full time care, so Mr. Knight was transferred to the Bishop Gadsden nursing facility.

4. Mr. Knight died on March 11, 2008 in Charleston County, South Carolina.

5. The first notice to creditors was published in a local newspaper on May 21, 2008.

6. On July 30, 2008, the Honorable Irvin G. Condon, Probate Judge for Charleston County, and the Honorable Tamara C. Curry, Associate Judge for Charleston County Probate Court, submitted a request to South Carolina Court Administration for recusal from all pending and subsequent matters relating to Mr. Knight's Estate.

7. On August 5, 2008, South Carolina Court Administration issued an Order of the Chief Justice of The Supreme Court of South Carolina appointing the Honorable Mary Blunt, Probate Judge for Dorchester County, as special probate court judge for Charleston County in this matter.

8. Judge Blunt appointed Beatrice Whitten as Special Administrator of Mr. Knight's Estate, by Order issued on December 15, 2008.

9. Tonney filed a creditor's claim against Mr. Knight's Estate on January 20, 2009. Tonney sought reimbursement for expenses which she incurred for her father, Mr. Knight. The expenses included food, clothes, personal items, payments to Bishop Gadsden, furniture, legal fees, a payment to Family Services, Inc., and moving expenses in the amount of $61,249.46. At the conclusion of trial, Tonney reduced her claim to the sum of $26,733.27 plus interest.

10. After several years of litigation and appeals, South Carolina Court Administration issued an Order of the Chief Justice on November 28, 2012, appointing the Kenneth E. Fulp, Jr., Probate Judge for Beaufort County, as special probate court judge for Charleston County for Mr. Knight's Estate case.

11. This Court issued an Order dated July 29, 2013, ruling that Tonney had timely presented her creditor's claim against Mr. Knight's Estate and, after disallowance by the Special Administrator, had timely and properly commenced this proceeding for allowance of her claim.

12. At the time Kaufmann removed Mr. Knight from his primary residence to the Savannah House assisted living facility, Kaufmann did not take any of Mr. Knight's clothes, bed, or furniture due to the emergency nature of the removal. The rooms at the Savannah House assisted living facility had no furniture. The management at Savannah House permitted Mr. Knight to borrow a bed until a new bed could be procured.

13. Tonney talked with Kaufmann and Iris Albright ("Albright"), a representative of Family Services, Inc., the Conservator, about assisting her father in terms of purchasing clothes, furniture, and food. Kaufmann and Albright testified that they were in agreement for Tonney to purchase food, clothes, and furniture for her father with the expectation that she would be reimbursed. Tonney's expectation was confirmed in her letter to Albright dated March 15, 2006.

14. Tonney presented receipts from various stores for clothes, food, personal items, and furniture as follows:

Walgreens	$ 220.10
Dillards	$ 477.66
Harris Teeter	$ 132.75
Sears	$ 209.35
Citadel	$ 260.93
Bombay	$ 179.00
Wal-Mart	$ 208.42
Tuesdays	$ 59.60

Best Buy	$ 320.99
Parisian	$ 26.74
Stuckey Brothers	$ 5,060.48

15. Kaufmann and Albright testified such purchases were for the benefit of Mr. Knight at the times he resided at Savannah House and Bishop Gadsden. The testimony of Kaufmann and Albright is found to be highly credible.

16. The Citadel print in the amount of $260.93 was not reasonably necessary for Mr. Knight's maintenance and is not allowed.

17. Tonney purchased a television from Wal-Mart in the amount of $248.00 for Mr. Knight. Prior to trial, Tonney withdrew the claim for the television. Sales tax attributable to the purchase was not deducted from the amount of the Wal-Mart expenditures claimed above ($208.42), and the amount of such sales tax, *viz.*, $16.12, is disallowed.

18. Tonney bought a recliner chair for $1,777.49 and a desk for $658.00 from Stuckey Brothers for Mr. Knight. Such recliner chair and desk exceeded that which was reasonably necessary for Mr. Knight's support and comfort, particularly in view of the other table, desk, and chair purchases which are allowable. Consequently, the $2,435.49 sum Tonney spent for the purchase of the recliner chair and desk from Stuckey Brothers (which was included in total claimed above for Stuckey Brothers expenditures) is disallowed.

19. Mildred Knight commenced an action for maintenance and support in the Charleston County Family Court in November, 2006. In the action, Mrs. Knight sought additional financial support from Mr. Knight.

20. Tonney discussed with Kaufmann and Albright the need for Mr. Knight to have legal representation to protect his assets. In a letter to Albright, dated October 24, 2007, Tonney

confirmed her payment of Attorney Thad Vincent's fees to represent Mr. Knight in the family court action with the proviso she considered the payment a loan to Mr. Knight.

21. Thad Vincent issued a letter to Tonney dated November 6, 2006, confirming his agreement to represent Mr. Knight and that Tonney would be responsible for all charges not paid by Family Services, the Conservator for Mr. Knight.

22. Tonney presented invoices from Vincent Law Firm totaling $6,091.09, for services rendered and costs incurred in representing Mr. Knight. Tonney paid all invoices out of her own funds, and presented proper documentation for such expenditures, which was admitted in evidence. There is no evidence Tonney used any of Mr. Knight's funds to pay Vincent's invoices. Further, Albright testified that Tonney did not have access to her father's funds or her father's other assets.

23. This Court issued an Order dated December 23, 2013, that required Tonney to provide unredacted copies of Vincent's invoices to Respondent's attorney. Two of the Vincent invoices presented by Tonney at trial -- the invoices dated March 17, 2007 and October 15, 2007 -- showed redaction of the description of services in two line items. Because the redacted content had not been provided, as ordered, the charges for those line items, $21.20 and $106.00, respectively, are disallowed.

24. During the pendency of the family court action, Thad Vincent retired from the practice of law. Tonney, Kaufmann, and Albright determined Mr. Knight needed another attorney in the family court action. Attorney Mary Ann Hall was retained for that purpose, and Tonney paid a retainer in the amount of $5,000 to Hall. Mr. Knight died before the conclusion of the family court action; therefore, Mary Ann Hall returned to Tonney the unearned balance of the retainer in the amount of $1,808.03.

25. Tonney and Albright testified that, when Mr. Knight was transferred to the Bishop Gadsden nursing facility in 2007, they had agreed that if Mr. Knight's available funds were not sufficient to currently pay the monthly charges at Bishop Gadsden, then Tonney would pay the difference.

26. Tonney presented a monthly statement dated October 31, 2007, from Bishop Gadsden in the amount of $13,306.71. Tonney paid a sum of $2,000 towards the balance by check drawn on her and her husband's personal checking account.

27. Tonney presented an invoice with a statement date December 31, 2007 from Bishop Gadsden. The total invoice was $6,708.50, of which Family Services, Inc., as Conservator for Mr. Knight, paid $3,100.00, and Tonney paid the balance of $3,608.50, by check drawn on her and her husband's checking account.

28. Family Services, as Conservator, paid $3,300.00 to Bishop Gadsden for the invoice dated January 31, 2008. Tonney paid the $3,277.89 balance of the invoice by check drawn on her and her husband's personal checking account.

29. Tonney wrote on each of the checks to Bishop Gadsden that each payment was a loan to "NRK Jr." Tonney paid a total sum of $8,886.39 to Bishop Gadsden on behalf of Mr. Knight.

30. Tonney issued a personal check in the amount of $1,000.00 to Family Services on May 29, 2007, after Albright informed Tonney that Mr. Knight did not have sufficient funds in the conservatorship account to cover his expenses. Tonney made a notation on the check "care expenses."

31. Tonney paid Larry Collins, owner of Collins Office Supply, Inc., to move Mr. Knight's furniture and bed from Savannah House assisted living to Bishop Gadsden nursing

facility. Tonney presented a check made payable to Larry Collins in the amount of $150.00, and such check account was in her and her husband's name. Tonney wrote "moving exp.- NRK, Jr." on that check.

32. After Mr. Knight's death, Tonney paid Collins Office Supply, Inc. the sum of $279.00 to move Mr. Knight's furniture and items out of Bishop Gadsden to a storage unit. The payment was made from her and her husband's checking account with the notation "NRK, Jr. BG moving expenses."

33. Albright testified that, as Conservator, she had marshaled credit cards and other accounts owned by Mr. Knight, and Tonney did not at any time use her father's income or assets to pay his expenses.

34. The allowable expenditures claimed by Tonney, as provided above, total $23,914.73.

CONCLUSIONS OF LAW

1. This Court has proper jurisdiction over the subject matters and the parties hereto, and proper notice of all proceedings has been given.

2. The South Carolina Probate Code defines "claims" to include, "in respect to estates of decedents and protected persons . . . liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator . . . ." *S.C. Code Ann.* § 62-1-201(4) (Supp. 2013). "[C]laims against a decedent's estate include all claims 'whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis.' " *Matter of Margaret Dever Hover Gurnham a/k/a Margaret D. Hover, Beach First National Bank v. The Estate of Margaret Dever Hover Gurnham a/k/a Margaret D. Hover, and/or Brian Hover*, 407 S.C. 194, 203, 754 S.E. 2d 875, 880 (2014).

3. " 'Broadly speaking, all claims against the decedent should be presented for allowance, and the word "claims" included such debts or demands as existed against the decedent in his or her lifetime and that might have been enforced against him or her by personal actions for the recovery of money.' 34 C.J.S. *Executors & Administrators* §548 (Supp. 2013) (footnotes omitted). 'Stated another way, the term included every species of liability that the personal representative can be called on to pay out of the general funds of the estate.' *Id.* "However, claims against an estate are not limited to obligations of the decedent that could have been enforced against him or her while living.' *Id.*" *Matter of Gurnham*, 407 S.C. at 203-4, 754 S.E. 2d at 880.

4. Tonney proved by a preponderance of the evidence that the expenditures that she incurred for Mr. Knight, totaling $23,914.73, were reasonable and necessary for the support, care, maintenance, and benefit of Mr. Knight before his death and the moving of Mr. Knight's property after his death.

5. Tonney proved by a preponderance of the evidence that the expenditures she incurred for Mr. Knight were not gratuitous, but were paid from her own funds or credit, and that she expected to be reimbursed by Mr. Knight or his estate.

6. Tonney showed by the preponderance of the evidence that she made payments for Mr. Knight as loans with the expectation that she would be reimbursed.

7. The expenses that Tonney incurred fall within the definition of "claim" under *S.C. Code Ann.* § 62-1-201(4) and as set forth in *Matter of Gurnham*, cited *supra*. The expenses are the obligation of the estate which could have been enforced against Mr. Knight during his lifetime, but for his or his Conservator's lack of access to his funds and other assets at the times

the expenses were incurred. Tonney has the right to seek reimbursement of the expenses from Mr. Knight's Estate.

8. Tonney's claim against Mr. Knight's Estate is allowable in the amount of $23,914.73.

9. "[A]llowed claims bear interest at the legal rate . . . for the period commencing upon the later of fourteen months after the date of the decedent's death or the last date upon which the claim could have been properly presented under § 62-3-803, unless based on a contract . . . ." *S.C. Code Ann.* § 62-3-806 (Supp. 2013).

10. On the facts of this case, there being no provable contractual interest rate, Tonney is entitled to interest at the legal rate of eight and three-fourth percent (8.75%) per annum commencing May 11, 2009, fourteen months after Mr. Knight's death. *Id.*

Therefore, it is

ORDERED, ADJUDGED, AND DECREED that Tonney's claim against Mr. Knight's Estate is **ALLOWED** in the amount of $23,914.73, with interest thereon at the rate of 8.75% per annum commencing on May 11, 2009.

AND IT IS SO ORDERED.

Kenneth E. Fulp, Jr.
(Probate Judge for Beaufort County)
Special Probate Court Judge for Charleston County

Beaufort, South Carolina

July 11, 2014

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2008ES1000409 (Charleston)
COUNTY OF CHARLESTON	)	CASE NO. 2012ES0700998 (Beaufort)
IN THE MATTER OF ESTATE OF NORMAN ROBERT KNIGHT, JR.,	)	ORDER OF JUDGMENT DISMISSING COMPLAINT FOR REMOVAL OF PERSONAL REPRESENTATIVE
Norman R. Knight, III, Complainant.	)	

FILED
JUL 11 2014
BEAUFORT COUNTY, SC

Complainant, Norman Robert Knight, III, brought an action to remove the court-appointed Special Administrator and have himself appointed as successor Personal Representative. Complainant's Complaint was fully heard by this Court on April 28, 2014. Complainant was present at the hearing, with his attorney, J. Seth Whipper, Esquire. Also present were Chloe Tonney and her attorney, C. Mac Gibson, Jr., Esquire, and the Special Administrator, Beatrice E. Whitten, Esquire.

Based upon the pleadings, record, testimony and documentary evidence submitted at the hearing, arguments of counsel, and applicable law, this Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. All interested parties were served with notice of these proceedings and the hearing held on April 28, 2014.
2. Complainant testified that he believed himself to be qualified to serve as Personal Representative for his father's estate. However, he also admitted that he had been jailed by the Charleston County Probate Court for contempt of court after refusing to comply with that court's orders.
3. Complainant further testified that probate-related litigation involving himself, his parents and his sisters had been ongoing continuously since 2005. He had been represented by counsel in these matters since 2005.
4. Complainant testified that he sought the removal of Ms. Whitten as Special Administrator

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because she refused to have direct contact with the estate heirs; she did not recover a 1995 Mitsubishi automobile that had belonged to his father; she had failed to recover annuities belonging to his father; and she had not paid the funeral bill. However, Complainant did not provide any information as to the allegedly missing annuities or any other property belonging to his late father.

5. Complainant asserted that the Special Administrator had failed to release a Lis Pendens, as ordered by this Court in July 2013. The Special Administrator testified that she had released the Lis Pendens, but could not locate the release instrument.

6. Heir Chloe Tonney stated that she supported Ms. Whitten's continuing as Special Administrator for the estate.

7. Ms. Whitten testified that she accepted the appointment as Special Administrator in 2008 on the express condition that she would communicate only with the parties' attorneys, and not directly with the parties. She produced a June 2008 letter which was sent to attorneys for all of the parties and testified that none of the recipients ever objected to this condition. She further testified that she imposed this condition because of the long history of litigation and conflict between the family members. Ms. Whitten stated that she had applied this condition evenhandedly to all parties, and had always been available to the attorneys.

8. Ms. Whitten testified that she had researched the 1995 automobile belonging to Norman R. Knight, Jr., and had determined that this vehicle had no monetary value. She further determined that the vehicle had been given to the decedent's daughter, Linda Jones, during his lifetime. No party introduced any testimony or other evidence which contradicted this information.

9. Ms. Whitten testified that all known property belonging to the decedent was transferred directly to her from his court-appointed conservator, Family Services, Inc., upon her appointment as Special Administrator. She stated that neither the conservator nor any other person or entity had ever furnished any information about additional funds or property belonging to the decedent, despite her written request for such information soon after her initial appointment.

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10. Ms. Whitten testified that she had not paid any debts or claims of the estate because of the undecided actions and issues which were pending before the Probate Court. She stated that no claimant ever filed a timely claim for funeral expenses in the estate. Carolina Memorial Gardens had filed a late claim which she then disallowed. This disallowance was not challenged and the claim was now legally barred.

11. Ms. Whitten testified that she had at all times performed her duties as Special Administrator to the best of her ability, being mindful of the interests of the heirs and creditors and of the fact that this is a small estate with limited assets.

Based on the above findings of fact, I make the following conclusions of law:

1. All interested parties have been provided proper notice and opportunity to be heard, as required by the relevant provisions of the South Carolina Probate Code.

2. I find that Complainant has failed to show, by a preponderance of the evidence, cause for the removal of the Special Administrator under South Carolina Code Section 62-3-611. Petitioner's request to remove the Special Administrator should therefore be dismissed.

3. I find that continuation of Ms. Whitten's appointment appears to be in the best interest of the estate.

4. Cause having not been shown for removal of the Special Administrator, and her continued appointment being in the best interests of the estate, Complainant's request for appointment is denied.

It is therefore ORDERED that Complainant's Amended Complaint for Removal is hereby dismissed, with prejudice, and the Special Administrator's appointment will remain in full force and effect.

AND IT IS SO ORDERED.

Kenneth E. Fulp, Jr.
(Probate Judge for Beaufort County)
Special Probate Judge for Charleston County

Beaufort, South Carolina

July 11, 2014

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STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2008ES1000409 (Charleston)
COUNTY OF CHARLESTON	)	CASE NO. 2012ES0700998 (Beaufort)
IN THE MATTER OF ESTATE OF NORMAN ROBERT KNIGHT, JR.	)	ORDER TO QUASH RESPONDENTS' SUBPOENA DUCES TECUM TO MORGAN STANLEY

FILED
2014 APR 22 AM 9:59
PROBATE COURT
BEAUFORT COUNTY, SC

On April 17, 2014, Chloe Tonney ("Tonney") filed a Motion to Quash a Subpoena Duces Tecum issued to Morgan Stanley by counsel for Respondents Norman Robert Knight, III ("Knight") and Judy Brown as Personal Representative for the Estate of Mildred C. Knight ("Brown"), pursuant to Rule 45(c) of the South Carolina Rules of Civil Procedure.

Tonney's Motion to Quash was heard on April 21, 2014, via telephone conference, by consent of all counsel. Participating in the hearing were: C. Mac Gibson, attorney for Tonney; J. Seth Whipper, attorney for Knight and Brown; and Beatrice Whitten, the court- appointed Special Administrator of the Estate of Norman Robert Knight, Jr. The attorneys consented to the hearing being audio-recorded by the Court.

On April 9, 2014, J. Seth Whipper, as attorney for Respondents Knight and Brown, issued a Subpoena Duces Tecum to the custodian of records for Morgan Stanley at 485 Lexington Avenue, New York, New York, for deposits and withdrawal records, including identity of depositors and payees beginning 2004 through 2009, pertaining to a certain Smith Barney account which had been identified at the hearing on March 31, 2014 as the "Queenie" account.

Tonney through her attorney filed the Motion to Quash asserting that the Subpoena Duces Tecum does not comply with Rule 45, SCRCP, and §3119 of the New York Civil Practice Law

and Rules, because the subpoena was issued from Charleston County, South Carolina to the records custodian for Morgan Stanley in New York, New York.

Mr. Whipper contended that Morgan Stanley operates in the County of Charleston, State of South Carolina; therefore, it is subject to the laws of the State of South Carolina regarding the subpoena at issue. With respect to the Smith Barney account in question, Mr. Whipper's argument is persuasive, and this Court would not quash the subpoena for failure to comply with Rule 45(a)(2), SCRCP.

Tonney's Motion to Quash further asserts that the subpoenaed documents are not relevant to her creditor's claim against the above-referenced estate. At the time Tonney presented her case to this Court on March 31, 2014, Mr. Whipper cross-examined her regarding checks that she issued for the benefit of her father including checks from the "Queenie" account. Additionally, Iris Albright, an employee for Family Services, Inc., a former court-appointed Conservator for Norman Robert Knight, Jr., testified that Family Services, Inc. had marshaled the assets of Norman Robert Knight, Jr., and did not find any of his assets in the "Queenie" account.

While expressing reservations as to the relevance of the subpoenaed documents, the Court stated that it would not quash the subpoena solely on the grounds asserted in the Motion and initial argument of Tonney's counsel.

In response to the Court's initial findings, as stated above, Tonney's attorney informed the Court and the other attorneys, on the record in the hearing, that Tonney was withdrawing her claim as to payments made to Bishop Gadsden Rehab., Inc., totaling $1,622.22, marked as Petitioner's Exhibit #18 in the hearing of March 31, 2014. The checks made payable to Bishop Gadsden Rehab., Inc. came from the "Queenie" account and are part of Exhibit #18.

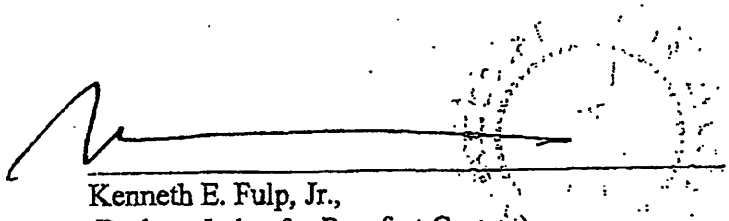
No checks from the "Queenie" account were introduced in support of any other expenses claimed by Tonney, so the withdrawal of that portion of her claim pertaining to expenses paid from the "Queenie" account renders the subpoenaed documents irrelevant to the remainder of the Tonney claim which is subject to adjudication. Enforcement of the subpoena, under these circumstances, would require the disclosure of otherwise confidential personal financial information, protected by law, to no purpose relevant to the matter before the Court.

Tonney has previously reduced the sum originally claimed in her Petition for Allowance of Claim, without objection by Respondents. Allowing her to further reduce her claim by withdrawing the amounts paid from the "Queenie" account to Bishop Gadsden Rehab., Inc., eliminates those payments as a matter for trial or defense by Respondents, and does not prejudice Respondents. Accordingly, whether the withdrawal of the subject payments is deemed an amendment of Tonney's Petition, under Rule 15, SCRCP, or a voluntary dismissal of part of her claim, under Rule 41, it is allowed by this Court.

Because Ms. Tonney has withdrawn her claim for the $1,622.22 in payments made to Bishop Gadsden Rehab., Inc., marked as Petitioner's Exhibit #18, this Court finds and concludes that the documents being sought under the Subpoena Duces Tecum, *viz.*, the deposit and withdrawal records pertaining to the Smith Barney account identified as the "Queenie" account from 2004-2009, are not relevant to the remainder of Tonney's creditor's claim, and that the disclosure of such personal financial information would serve no justifiable purpose in this claim allowance proceeding. Therefore, it is

ORDERED that Tonney's Motion to Quash Respondents' Subpoena Duces Tecum to Morgan Stanley is granted;[1] and

IT IS SO ORDERED.



Kenneth E. Fulp, Jr.,
(Probate Judge for Beaufort County)
Special Probate Court Judge for Charleston County

Beaufort, South Carolina

April 22, 2014

[1] Before executing this Order, this Court received from Mr. Whipper by fax this morning a Notice of Motion and Motion for Reconsideration, on behalf of Respondents Knight and Brown, asking the Court "to reconsider its order issued after hearing on April 21, 2014." No written order had been issued before submission of the Motion. Nevertheless, the Motion states no ground that persuades this Court to reconsider the within ruling, and Respondents' Motion is denied.

FILED
2014 JAN 17 PM 4:17
PROBATE COURT
BEAUFORT COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2008ES1000409[1]
COUNTY OF CHARLESTON	)	CASE NO. 2012ES0700998[2]
IN THE MATTER OF ESTATE OF NORMAN ROBERT KNIGHT, JR.	)	ORDER DISMISSING BISHOP GADSDEN'S CLAIM, DENYING KNIGHT'S MOTIONS, AND DEFERRING TONNEY'S MOTIONS

This matter came before the Court for a hearing, by telephone, on January 6, 2014, at 9:00 a.m., following proper notice, on the following Motions of Norman R. Knight, III ("Knight"):

- Motion to Dismiss, dated December 6, 2013.
- Motion to Dismiss, Deny or Reduce Creditor's Claims, dated December 6, 2013.
- Corrected Motion to Amend Complaint, dated December 10, 2013.

Also addressed at the hearing, despite the lack of ten days' notice thereon, were:

- Knight's Motion to Amend Respondents' Amendment to a Petition to Deny Claim and for Relief (sic), dated December 30, 2013 ("Knight's Motion to Amend Respondents' Amendment").
- Request of Chloe Tonney ("Tonney") for sanctions under Rules 11 and 37(a)(4), SCRCP, as set forth in her Answer to Knight's Motions, dated January 3, 2014 ("Tonney's Motion for Sanctions").
- Tonney's Motion for Extension to Comply with Order to Compel, dated January 3, 2014.
- Tonney's Motion for Reconsideration of Order to Compel Dated December 23, 2013, the Motion being dated January 6, 2014.

[1] Charleston County.
[2] Beaufort County.

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Present by telephone at the hearing were: J. Seth Whipper, Esquire, attorney for Knight; Beatrice E. Whitten, Special Administrator of the decedent's estate; C. Mac Gibson, Jr., Esquire, attorney for Tonney and Linda Knight Jones; and W. E. Applegate, III, Esquire, attorney for Bishop Gadsden Episcopal Home ("Bishop Gadsden").

At the outset of the telephone conference, all counsel assented to the audio-recording of the telephone hearing by the Court.

Voluntary Dismissal of Bishop Gadsden's Claim

Prior to commencement of the hearing on the Motions, the Court noted that no formal objection had been filed to the proposed voluntary dismissal of Bishop Gadsden's Petition for Allowance of Claim, pursuant to the earlier e-mail notification by Mr. Applegate that Bishop Gadsden had withdrawn its claim. Tonney's counsel had objected by e-mail message on December 18, but had not formalized and filed the objection. Moreover, in the telephone conference on January 6, he indicated that Tonney no longer objected to Bishop Gadsden's dismissal.

Wherefore, Bishop Gadsden's Petition for Allowance of Claim, dated April 23, 2009, is voluntarily DISMISSED under Rule 41(a)(2), SCRCP.

The hearing on the pending Motions commenced, and the Motions were successively argued by counsel and ruled on by the Court, as follows.

Knight's Motion to Dismiss

The Motion seeks dismissal of Tonney's claim[3] on the following grounds: lack of subject matter jurisdiction, due to the alleged failure of the claimant to commence the claim-allowance

[3] The first two Knight Motions request dismissal, etc., of both Tonney's and Bishop Gadsden's claims. The Motions are addressed in this Order only as they relate to Tonney's claim, due to the dismissal of Bishop Gadsden's claim.

proceeding by filing and serving a summons with her Petition for Allowance of Claim, citing *S.C. Code Ann.* §§ 62-3-804 and 62-3-806; and the alleged failure of the claimant "to notify the devisee of the existence and organization of the subject obligations."

The South Carolina Probate Code was amended, effective June 7, 2010, to require the filing and service of a summons with a petition in order to commence a formal proceeding in Probate Court. *See, generally, S.C. Code Ann.* §§ 62-1-201(15) and (31); more particularly, as to claim-allowance proceedings, *see id.* § 62-3-806(b). Tonney's Petition for Allowance of Claim was filed and served in 2009, before the cited amendments, and a summons was not required at that time to commence a claim-allowance proceeding in Probate Court.

As to the alleged failure of Tonney "to notify the devisee," the applicable provisions of the South Carolina Probate Code, at all times relevant to this action, have required a creditor's claim against a decedent's estate to be presented by the timely filing of a written statement of the claim in the Probate Court, which the claimant may deliver or mail to the personal representative of the estate. *Id.* § 62-3-804(1). A formal proceeding for allowance of a claim, after disallowance by the personal representative, must be commenced by the claimant against the personal representative of the estate. *See Id.* § 62-3-806(a) (which has read the same at all times relevant herein). Under the applicable statutes, there is no requirement that a claimant notify an estate devisee (who is not also a personal representative of the estate) of a claim against the estate, in order to properly commence a proceeding for allowance of the claim.[4]

For the foregoing reasons, Knight's Motion to Dismiss is DENIED.

[4] The Court may direct that notice of any hearing in the proceeding be given to interested persons in addition to the claimant and the personal representative, *id.* § 62-3-806(b), and this Court has, in fact, given notice to all interested persons, or their counsel, of each hearing it has set.

Knight's Motion to Dismiss, Deny or Reduce Creditor's Claims

This Motion asks that Tonney's claim be dismissed, denied, or reduced on the following grounds:

> [C]laimed expenses not approved by devisee; were unnecessary, unreasonable, resulted from unauthorized actions of claimant; is subject to set-off by indebtedness to decedent[.]

There is no statutory requirement that a creditor's claim against a decedent's estate be "approved" by a devisee of the decedent. It is the province of the personal representative of the estate to allow or disallow a creditor's claim; if disallowed, the claimant may petition the Probate Court for allowance, as Tonney has done here. *See id.* § 62-3-806. The Court will determine, after the upcoming merits hearing, whether or not to allow Tonney's claim, in whole or in part. *See id.* § 62-3-806(b).

Whether the claimed expenses "were unnecessary, unreasonable, [etc.]" goes to the merits of the claim. As an interested person, Knight may test the claimant's evidence and present his own evidence in that regard at the merits hearing. Knight's Motion, alone, does not state a sufficient basis for dismissal, denial, or reduction of the claim, however.

With respect to Knight's assertion that Tonney's claim "is subject to set-off by indebtedness to the decedent[,]" Knight lacks standing to plead set-off on behalf of the decedent's estate. Only the personal representative (the Special Administrator here) may do that. *See id.* §§ 62-3-703(c) and 62-3-715(20).

Accordingly, Knight's Motion to Dismiss, Deny or Reduce Creditor's Claims is DENIED.

Knight's Corrected Motion to Amend Complaint

This Motion seeks leave to amend Knight's Complaint for removal of the Special Administrator, which is set for trial on February 3, 2014. The proposed Amended Complaint

would add two factual allegations to the original Complaint.

Without objection, and with the agreement of Tonney's counsel and the Special Administrator, during the hearing, to serve and file their respective responsive pleadings within fifteen days after the hearing (which they have since done), the Motion to Amend is GRANTED.

The following Motions were served and filed less than ten days before the hearing, after the Court had issued the Notice of Hearing on the above three Motions. Nevertheless, due to the proximity of the trial date, the Court addressed the Motions at the hearing.

Knight's Motion to Amend Respondents' Amendment

Without objection to the lack of sufficient notice, argument on this Motion was heard by the Court. The Motion is made on behalf of Knight and Judith A. Brown, as Personal Representative of the Estate of Mildred C. Knight.

The Motion seeks leave to file a pleading entitled "Petition to Deny Claim and for Relief," yet, by its terms, the "Petition" appears to be a responsive pleading, setting forth a "First Defense" to the "claims against this estate" and a "Second Defense by Way of Counterclaim," which appears to assert a cause of action for loss of consortium.

The "First Defense" initially asserts that "the Estate of Norman R. Knight, Jr. must be administered by the Probate Court of Charleston County." Any question regarding the authority of this Court over this decedent's estate case, including estate administration, under the Chief Justice's Order appointing me as Special Probate Court Judge for Charleston County in the matter, was put to rest at the hearing held on July 17, 2013, and in the Order issued from that hearing, dated July 29, 2013 (Order at 5.) Knight's counsel confirmed at the July 17, 2013 hearing that he did not challenge my authority in the matter, and appeared to concede the issue on the record during the January 6, 2013 hearing.

The assertion under the "First Defense" that "actions of Chloe Tonney in creating her debt were not lawful and contrary to prior Court Orders" is, in effect, subsumed by similar allegations in Knight's Motion to Dismiss, Deny or Reduce, which go to the merits of the action set for trial.

As to the proposed Counterclaim for loss of consortium, *S.C. Code Ann.* § 15-75-20 provides that "[a]ny person may maintain an action for damages arising from an intentional or tortious violation of the right to the companionship, aid, society and services of his or her spouse." While the statute might allow Norman R. Knight, Jr.'s surviving spouse, or her personal representative, to assert a cause of action for loss of consortium against an alleged tortfeasor, such an action could not be maintained in the case instant, under the proposed Counterclaim, because the Estate of Norman R. Knight, Jr. would be neither the claimant nor the alleged tortfeasor (Tonney is named as the latter) -- *i.e.*, it would not be a claim asserted either by or against the Estate of Norman R. Knight, Jr.[5]

Therefore, in this decedent's estate case (Estate of Norman R. Knight, Jr., Case Nos. 2008ES1000409 and 2012ES0700998), this Court lacks subject matter jurisdiction, under *S.C. Code Ann.* §§ 62-1-302(a)(1) and (b), to entertain the proposed Counterclaim for loss of consortium.

For the foregoing reasons, the Knight's Motion to Amend Respondents' Amendment is DENIED.

Without objection, the Court determined at the conclusion of the hearing to defer disposition of the Motions submitted by Tonney on January 3 and 6, 2014, as provided below.

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[5] The proposed Counterclaim is, thus, distinguishable on the facts from the case mentioned by Knight's counsel during argument, *McCullar v. Estate of Campbell*, No. 2006-UP-332 (S.C. App. Ct. 2006) (having no precedential value), which involved a claim for loss of consortium asserted by the surviving spouse *against the estate of the alleged tortfeasor*.

Tonney's Motion for Sanctions

The Court deferred hearing this Motion until the trial date, February 3, 2014, or later. Counsel should be prepared to argue the Motion on February 3 at the conclusion of trial, although the Court may determine at that time, in its discretion, to defer hearing the Motion until a later date. This Order constitutes notice of the foregoing.

Toney's Motion for Extension to Comply with Order to Compel

Based on the Motion's representation that Knight's counsel did not object to the requested extension (of ten days), the Court determined that a hearing on the issue should not be set, unless the extended compliance date proposed in the Motion (ten days from January 6, 2014) is not met, and Knight's counsel files a Motion to Compel.

Tonney's Motion for Reconsideration of Order to Compel Dated December 23, 2013

After a discussion of details of compliance with the Order, Tonney's counsel agreed to advise the Court shortly whether or not Tonney would withdraw the Motion, and the matter was deferred accordingly. (Subsequently, by letter of January 8, 2014, Tonney's counsel notified the Court and other counsel of Tonney's decision to withdraw the Motion.)

AND IT IS SO ORDERED.

Kenneth E. Fulp, Jr.
(Probate Judge for Beaufort County)
Special Probate Court Judge for Charleston County

Beaufort, South Carolina

January 17, 2014

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2008ES1000409*
COUNTY OF CHARLESTON	)	
IN THE MATTER OF ESTATE OF NORMAN ROBERT KNIGHT, JR.	)	ORDER GRANTING MOTION FOR CONTINUANCE AND PARTIALLY GRANTING MOTION TO COMPEL

This matter came before the Court for a hearing, by telephone, on December 17, 2013, at 3:00 p.m., on Norman R. Knight's Corrected Motions for Continuance and Objection to Venue and Corrected Motion to Compel (discovery), both dated December 10, 2013. The hearing was held on only one day's formal notice, this Court having found good cause for an expedited hearing, in view of the then-impending trial set for December 20, 2013. The hearing was scheduled in coordination with all counsel, to determine their availability, and no counsel objected to holding the hearing on such short notice.

Present by telephone at the hearing were: J. Seth Whipper, Esquire, attorney for Norman R. Knight, III ("Knight"); Beatrice E. Whitten, Special Administrator of the decedent's estate; and C. Mac Gibson, Jr., Esquire, attorney for Chloe K. Tonney ("Tonney") and Linda Knight Jones ("Jones").

Shortly before the hearing was convened, the Court and all counsel received an e-mail from W. E. Applegate, III, Esquire, attorney for Bishop Gadsden Episcopal Home ("Bishop Gadsden"), advising that Bishop Gadsden had withdrawn its claim and that Mr. Applegate would not be participating in the hearing.

* Beaufort County Probate Court Case No. 2012ES0700998.

Motions for Continuance and Objection to Venue

After hearing the respective arguments of counsel, the Court determined to grant the Motion for Continuance, on the basis of Mr. Whipper's reasonable representations that he had not had adequate time to prepare for trial since returning to work on December 2, following illness. Also, Mr. Whipper offered to make himself for trial early in 2014. Based on the Court's willingness hold the trial in Charleston at that time, subject to courtroom availability, Mr. Whipper withdrew his objections to venue. This Order formalizes the continuance.[1]

Motion to Compel

This Motion asserts that Tonney and Jones failed to fully respond to Knight's requests for production of documents, specifying that "the checks, receipts, and other documents produced were redacted by those parties who responded to [the] production requests, an example of which is attached...." The attachment is a copy of a check purportedly drawn on a "Financial Management Account" with "Smith Barney Citigroup" (according to the institutional logo on the check), made payable to "Bishop Gadsden Rehab, Inc" (sic) in the amount of $445.00, and signed by "Linda K. Jones" and "Chloe K. Tonney." Redacted from the check copy are the account number and the line between the printed names of Jones and Tonney and the address "2655 Lake Rd" in the upper left-hand corner of the check.

Mr. Whipper asserted that similar redactions appeared on other copies of checks, receipts, and other documents produced, and argued that unredacted copies of the same should be produced, because the issue of "whose money was used" for the expenditures was relevant to Tonney's claim.

[1] Subsequent to the hearing, the trial was set for February 3, 2014, in Charleston, and formal notice thereof given to all counsel.

Mr. Gibson asserted that the redactions were made to protect from disclosure the account numbers involved and the types of accounts Tonney used to pay the claimed expenses, and argued that the redacted information was not relevant to the claim.

The Court determined that it was necessary to examine all the redacted documents before it could properly rule on the Motion to Compel, and Mr. Whipper was directed to transmit all such documents electronically to the Court by day's end on December 19, 2013. This was done timely by fax transmission, Mr. Whipper's transmittal letter indicating that Mr. Gibson and Ms. Whitten were being copied on the transmission.

Having examined the documents, it appears that the account numbers have been redacted from all copies of checks. Some of the checks have names or other line items redacted from the upper left-hand corner, where the names and addresses and, sometimes, telephone numbers of the account holders normally appear, and some of the checks do not have such redactions. Some of the checks appear to have the institutional logo redacted, and some do not.

Copies of receipts for apparent retail purchases uniformly show redaction of credit card or account numbers and authorization codes.

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party...." Rule 26(b)(1), SCRCP.

The sources for payment of the expenses claimed by Tonney would appear relevant to the subject matter of her claim and Knight's opposition to it. Mr. Whipper's argument is persuasive on that point. Therefore, the above-described checks and receipts must be produced in unredacted form, *except that* all but the last four digits of the account and credit card numbers and all payment-authorization codes may be redacted. Such limited redactions would appear to allow proper identification of the accounts from which the claimed expenses were paid, without

compromising the security of the accounts.

As to the other documents showing redactions:

1. Invoice of Bishop Gadsden to Chloe Tonney Knight, dated January 31, 2008, is partially covered by a copy of check no. 3436, and the uncovered part shows one line item redacted, after "01/09/08 Misc Charges Clearing." To the extent that Tonney is seeking reimbursement for the expenditure ("$306.50") applicable to the redacted item, it would appear to be relevant to her claim, and the document must be produced in unredacted, and uncovered, form.
2. Invoices of BG Rehab, Inc. "for Physical Therapy Services" totaling $445.50 and $526.80, respectively, each show an item redacted following a handwritten notation, in the lower right-hand corner, appearing to indicate payment by a numbered check on a certain date. For the reason stated in "1" above, each document must be produced in unredacted form.
3. Invoice of Collins Office Supply, Inc., dated March 13, 2008, in the amount of $279.00, shows a redaction following "SHIP TO:". Consistent with the above reasoning, the document must be produced in unredacted form.
4. Invoice of Stuckey Brothers Furniture Co., dated February 1, 2006, in the total amount of $1,777.49, shows the redaction following "Ship to:" of everything except "Charleston SC." Consistent with the above reasoning, the document must be produced in unredacted form.
5. Statement of The Vincent Law Firm, L.L.C., in two pages, the first page dated October 15, 2007, showing redactions following "9/18/07 Telephone conference" and "12/13/06 Telephone conferences." All other line items listed for telephone conferences show "with" Tonney or other persons. To the extent that Tonney is seeking reimbursement for

the expenses represented by telephone conferences showing redactions, the two-page invoice must be produced in unredacted form.

6. Letter of Thad H. Vincent, an attorney, addressed to Mrs. Chloe Tonney and Walter R. Kaufmann, Esq., dated October 16, 2007, showing a redaction following "This is no one's fault other than." Otherwise, the letter appears primarily to state what is owing to his firm and what must be paid for Mr. Vincent's continued representation, and to define the scope of his representation. The assignment of "fault" would appear to go to a legal theory of the attorney being expressed to his client and, thus, appears privileged from disclosure by discovery in this instance.

Accordingly, it is ORDERED that Tonney and Jones produce: (a) copies of all checks and retail purchase receipts in unredacted form, *except for* all but the last four digits of the respective account and credit card numbers and authorization codes; and (b) copies of the documents identified in the paragraphs numbered 1 through 5, above, in unredacted form; and serve the same on Mr. Whipper, as counsel for Knight, *within fifteen (15) days from the date of this Order.*

The request in the Motion to Compel for recovery of "costs and attorney's fees for preparing this motion and supporting papers, and attending the hearing on this motion," is denied. The documents produced all appear, by their respective dates, to have been in existence long before Knight's Petition for Allowance of Claim was filed and, thus, were discoverable in this action for over four years before the subject request for production was served, barely a month before the then-scheduled trial. As such, and based on Mr. Gibson's argument in the hearing, this Court finds that the opposition to the Motion was substantially justified, although

not persuasive on the redaction issue, and the circumstances described above render an award of expenses unjust. Rule 37(a)(4), SCRCP.

AND IT IS SO ORDERED.

Kenneth E. Fulp, Jr.
(Probate Judge for Beaufort County)
Special Probate Court Judge for Charleston County

Beaufort, South Carolina

December 23, 2013

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE PROBATE COURT CASE NO. 2008ES1000409*
IN THE MATTER OF ESTATE OF NORMAN ROBERT KNIGHT, JR.	)))	ORDER GRANTING MOTION TO ALLOW DISCOVERY EXTENSION

FILED
2013 SEP 13 AM 11:56
PROBATE COURT
BEAUFORT COUNTY, SC

This matter comes before the Court on Motion of counsel for Judith A. Brown, as Personal Representative of the Estate of Mildred C. Knight, and Norman R. Knight, III, requesting an order to extend the period allowed for discovery to October 11, 2013, and for a scheduling order ("Motion"). The Motion appears to have been served on September 4, 2013, and filed herein on September 5, 2013.

Because of the proximity of the merits hearing set on the petitions and complaint pending herein, *viz.*, October 24, 2013, and in view of the fact that the respective parties have been free to engage in discovery, as provided by law, since commencement of the pending actions, this Court notified all parties by letter of September 10, 2013 (sent by e-mail and U.S. Mail) that the Motion would be granted, to the extent of extending the discovery period to October 11, 2013, unless any party objected to or demanded a hearing on the Motion by e-mail no later than 5:00 p.m. on September 12, 2013.

The only response received to the Court's September 10 letter is a letter of the same date from C. Mac Gibson, Jr., Esquire, attorney for Chloe K. Tonney and Linda Knight Jones. In his letter, Mr. Gibson asks the Court to reconsider its "intent to permit Mr. Whipper to engage in discovery," based on concerns expressed in the letter, which is of record herein. Those concerns appear to go the scope of and entitlement to the discovery that Mr. Whipper might seek, as well

* Beaufort County Probate Court Case No. 2012ES0700998.

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as the timing thereof. Nevertheless, Mr. Gibson states in his letter that "I do not wish to seek a hearing to address my concerns . . . ."

No restriction has been placed on discovery in this matter, except for this Court's determination not to allow discovery to delay the commencement of the merits hearing, as scheduled. (*See* this Court's letters of August 12 and September 10, 2013.) The scope of discovery is limited as provided in Rule 26(b), SCRCP. It would appear inapposite that Mr. Whipper may have cross-examined Mr. Gibson's client in a previous hearing (as asserted in Mr.Gibson's letter), which apparently led to a judgment since vacated.

Accordingly, it is ORDERED that the Motion be, and is hereby, granted to the extent of extending the period allowed for discovery to October 11, 2013, subject to the proviso that this extension shall not operate so as to delay the commencement of the merits hearing as scheduled, on October 24, 2013, at 9:00 a.m. Further to that proviso, should any discovery request be served that appears to allow inadequate time to respond, under the SCRCP, before the scheduled merits hearing date, a motion for protection should be filed promptly and will be heard on an expedited basis.

AND IT IS SO ORDERED.

Kenneth E. Fulp, Jr.
(Probate Judge for Beaufort County)
Special Probate Court Judge for Charleston County

Beaufort, South Carolina

September 13, 2013

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE PROBATE COURT CASE NO. 2008ES1000409*
IN THE MATTER OF ESTATE OF NORMAN ROBERT KNIGHT, JR.	))	ORDER DENYING MOTIONS

FILED
2013 JUL 29 PM 3:38
PROBATE COURT
BEAUFORT COUNTY, SC

This matter came before the Court for a hearing, following proper notice, on July 17, 2013, on Norman R. Knight, III's Amended Motions to Recuse, Dismiss and Change Venue and Second Motion to Amend Answer, both motions dated May 27, 2013.

Present at the hearing were: J. Seth Whipper, Esquire, attorney for Norman R. Knight, III ("Knight"), who also was present; Beatrice E. Whitten, Special Administrator of the decedent's estate; and C. Mac Gibson, Jr., Esquire, attorney for Chloe K. Tonney ("Tonney") and Linda Knight Jones, of whom Tonney was present. Bishop Gadsden Episcopal Home was not represented at the hearing, either by counsel or other representative, the Court having received a letter from its President/CEO, C. William Trawick, on the morning of the hearing, indicating that he would not be present and that Bishop Gadsden had not retained counsel to represent it.

No witness testimony was offered in support of, or in opposition to, the motions; only arguments of counsel, including references to the record, were heard. Except for those portions of the motions that were withdrawn or agreed to be moot, as provided below, the Court, upon consideration of the motions, arguments of counsel, record, and applicable law, ruled from the bench that the motions were denied. The purpose of this order is to formalize the Court's rulings, as follows.

* Beaufort County Probate Court Case No. 20120700998.

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Motion to Recuse

This motion asks that I recuse myself because, as alleged by the motion, my "relationship with the Episcopal Church and service on the Probate Code Revision Committee raises a reasonable question regarding [my] ability to be impartial in this matter."

Section 3E(1)(a) of the South Carolina Code of Judicial Conduct, Rule 501, SCACR, provides that:

> A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where . . . the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding . . . .

With respect to the Episcopal Church issue, it appears from the arguments of Knight's counsel that the "relationship" alleged in the motion is based on: (a) my identification of myself, in my biography appearing on the website of the South Carolina Judicial Department, as "a long-time member of the Parish Church of St. Helena (Episcopal) in Beaufort"; and (b) Bishop Gadsden Episcopal Home, a creditor's claimant herein, allegedly being an institution of the Episcopal Church and Diocese of South Carolina, as described by Knight's counsel.

Based on that "relationship," Knight's counsel argued that a litigant might reasonably question my impartiality with respect to Bishop Gadsden's pending claim, particularly in view of the highly publicized, recent and ongoing litigation between the Episcopal Church of the United States ("ECUS") and the Diocese of South Carolina over the latter's disassociation from the ECUS. Knight's counsel asserted that Episcopalians might feel "under siege" as a result of that litigation, and feel a need to be protective of the Church and its institutions.

"It is not enough for a party seeking disqualification to simply allege bias. The party must show some evidence of bias or prejudice." *Mallett v. Mallet*, 323 S.C. 141, 145-6, 473 S.E. 2d 804, 807 (Ct. App. 1996).

No evidence was offered or representation made that I am an officer, trustee, board member, vestryman, etc., or hold any position of executive or legislative responsibility in the ECUS, Anglican Communion, Diocese of South Carolina (Episcopal or Anglican), Bishop Gadsden Episcopal Home, or any parish church, including the Parish Church of St. Helena -- and I do not hold any such position. I am simply a parishioner of a local church.

As I stated on the record at the hearing, and confirm here in more detail, I have no personal bias or prejudice, as an Episcopalian or otherwise, concerning Bishop Gadsden or any party or lawyer in this case, and I have no personal knowledge of disputed evidentiary facts concerning the proceeding.

When a judge is resolving a motion for disqualification of which he is the subject, "as a general rule the judge, in determining whether to proceed, must accept as true the factual allegations of a motion to disqualify." *Shaw v. State*, 276 S.C. 190, 192, 277 S.E. 2d 140, 141 (1981). "However, this does not prevent the judge from exercising his right to consider the legal sufficiency of those facts." 276 S.C. at 192-3, 277 S.E. 2d at 141.

Even accepting as true the factual allegations made by Knight's counsel in his argument, as summarized above and set forth in the record of the hearing, I do not believe the facts are legally sufficient to show any bias or prejudice on my part in this case, nor do I believe that my impartiality might *reasonably* be questioned based on those facts.

On the record at the hearing, the "Probate Code Revision Committee" aspect of the Motion to Recuse was withdrawn by Knight's counsel, after it was established by my representations and those of Ms. Whitten that we had not worked together directly on the

Committee and, in fact, worked in different subcommittees on different parts of the Probate Code.

Based on the foregoing, I conclude that I should not disqualify myself in this matter, and Knight's Motion to Recuse is DENIED.

Motions to Dismiss

Knight moves to dismiss: (a) "all claims as they are time-barred coming for consideration more than one-year after the death of the decedent;" and (b) the Special Administrator's Petition to Allow Sale of Real Estate, on several grounds stated in the motion.

As to (a) above, generally, claims against a decedent's estate which arose before the death of the decedent are barred unless presented within the earlier of one year after the decedent's death or eight months after the first publication of notice to creditors. *S.C. Code Ann.* §§ 62-3-801 and 62-3-804(a).

On the faces of the statements of creditors' claims filed herein, it appears that the claims of Tonney and Bishop Gadsden arose before the death of the decedent, and no argument to the contrary has been made. The record reflects that: the decedent died on March 11, 2008; notice to creditors was first published on May 21, 2008; the Bishop Gadsden claim was presented on December 1, 2008: and the Tonney claim was presented on January 20, 2009. Those dates were stated on the record at the hearing, and none was questioned by Knight's counsel.

It appears that both claims were presented within eight months after the first publication of notice to creditors and were, therefore, timely presented under the above-cited statutes. Accordingly, Knight's Motion to Dismiss the claims as being time-barred is DENIED.

With respect to the Motion to Dismiss the Petition to Allow Sale of Real Estate, the Special Administrator asserted at the hearing, in essence, that she was no longer prosecuting the

original Petition, by reason of the Circuit Court Order of July 9, 2012, which declared invalid the previous Probate Court Order approving the real estate sale. She stated that she would not determine whether to re-commence an action for the sale of real estate until this Court rules on the pending Petitions for Allowance of Claims.

Upon hearing this representation, with the assent of Knight's counsel, the Motion to Dismiss was and is deemed moot and withdrawn, subject to the proviso that Knight may assert the same defenses, by motion to dismiss or responsive pleading, should an action to sell real estate be re-commenced hereafter.

Motion to Change Venue

This motion requests a change of venue for these proceedings, presumably to Charleston County, because "all parties, witnesses, and res are sited in Charleston County." As confirmed by Knight's attorney at the hearing, the motion does not challenge my authority, as Special Probate Court Judge for Charleston County, to preside over the matter.

At the hearing, I distributed to each counsel a copy of the "Procedures for Appointment of a Special Probate Judge," issued by South Carolina Court Administration on October 23, 2012. Section 3 of the document provides that where, as here, the recusal of the original probate judge is for the entire case, including estate administration, "[a]ny hearings should be held in the special probate judge's county unless the special probate judge is willing to travel to the original probate court for said hearings."

For the convenience of the parties and their lawyers, and any potential witnesses, I exercised my discretion as Special Probate Judge to convene the hearing on the subject motions in Charleston at the Charleston County Judicial Center. I stated on the record at the hearing that I would make every effort to convene any further hearings in Charleston County, but could not

be bound to do so, for instance, in the event of an emergency, unavailability of courtroom space in Charleston County, unanticipated inability on my part to travel, etc. Therefore, I will not limit my discretion to hold a hearing in Beaufort County, if necessary.

Accordingly, the Motion to Change Venue is DENIED.

Motion to Amend Answer

This motion seeks to amend Knight's Answer to the Special Administrator's Petition to Allow Sale of Real Estate, by substantially restating his original Answer, first filed in the Dorchester County Probate Court on May 5, 2011, and purporting to assert a counterclaim against Tonney and Bishop Gadsden for "loss of consortium."

Tonney filed a response to the motion, requesting its denial based on redundancy, the statute of limitations, and, as to the counterclaim, lack of subject matter jurisdiction.

Upon the call of the motion, the Court noted that, inasmuch as the Petition to Allow Sale of Real Estate was no longer pending for action, and Knight's Motion to Dismiss the Petition deemed moot and withdrawn, as discussed above, the Motion to Amend Answer to the Petition likewise appeared moot. Moreover, the proposed counterclaim appears to be asserted against Tonney and Bishop Gadsden, not the "opposing party" (*i.e.*, the petitioner/Special Administrator) in the action to sell estate sale. *See* Rule 13, SCRCP.

Knight's attorney argued that he should be allowed to assert the counterclaim against Tonney and Bishop Gadsden because of their Petitions for Allowance of Claims. But the Motion to Amend Answer seeks leave to amend Knight's answer to the Petition to Allow Sale of Real Estate, not the Petitions for Allowance of Claims.

Because the Motion to Amend Answer seeks to amend a pleading in response to a petition that is no longer pending for adjudication, the motion is DENIED.

AND IT IS SO ORDERED.

Kenneth E. Fulp, Jr.
(Probate Judge for Beaufort County)
Special Probate Court Judge for Charleston County

Beaufort, South Carolina

July 29, 2013

The Supreme Court of South Carolina

ORDER

I find that the Honorable Daniel R. Eckstrom, Special Probate Court Judge for Charleston County and the Honorable Julie H. Thompson, Associate Judge of Probate for Lexington County are disqualified from any further hearings In Re: Estate of Norman R. Knight, Jr. (2012-ES-32-00798) and therefore are unable to sit as judge of probate in this matter.

Pursuant to the provisions of S.C. Const. Art. V, §4, S.C. Code Ann. §14-23-1030, and S.C. Code Ann. §14-23-1080 (Supp. 1997),

IT IS ORDERED that the Honorable Kenneth E. Fulp, Jr., Judge of Probate for Beaufort County, is appointed as special probate court judge for Charleston County for the handling of the above matter. As such special probate court judge, the Honorable Kenneth E. Fulp, Jr. shall have all the powers and duties appertaining to a probate court judge for Charleston County for the handling of the above matter.

JEAN H. TOAL, CHIEF JUSTICE

BY: _____
Rosalyn Frierson, Director
South Carolina Court Administration

November 28, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT OF
)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2004-GC-10-0099
IRIS M. ALBRIGHT, Conservator)	
for Norman Robert Knight, Jr.,)	
and an agent for Family)	
Services, Inc.,)	**ORDER RELIEVING FAMILY**
)	**SERVICES, INC. AS CONSERVATOR AND**
Petitioner,)	**APPOINTING CHLOE KNIGHT TONNEY AS**
)	**SUCCESSOR CONSERVATOR**
vs.)	
)	
IN RE THE ESTATE OF:)	
NORMAN ROBERT KNIGHT, JR.,)	
An Incapacitated Person)	
)	

THIS MATTER came before the Court today on a Petition for Discharge which was filed with this Court on June 8, 2007 by Iris M. Albright, of Family Services, Inc., who is the duly appointed Conservator for the incapacitated Norman Robert Knight, Jr. Present before the Court were Kathleen Moraska Ferri, Esq., appearing for Thad H. Vincent, attorney for Norman Robert Knight, Jr., Walter R. Kaufmann, Esq., Guardian for the incapacitated, Norman Robert Knight, Jr., Ben F. Mack, Esq., attorney for Mildred Knight, Glenn P. Churchill, Esq., the Court appointed Guardian *ad Litem* for the incapacitated and Iris M. Albright, of Family Services, Inc., the Court appointed Conservator.

In her Petition for Discharge, Iris Albright asks to be discharged from her appointment as Conservator. Prior to hearing arguments of counsel, Ben F. Mack, Esq., attorney for Mildred Knight, wife of the incapacitated, mentioned to the Court that Bobby Knight, son of the incapacitated, alleged he was not properly

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served. However, the Court felt it was necessary to proceed with this hearing, and did so. Mr. Bobby Knight is not represented by counsel, nor did he make an appearance at today's hearing to argue that he was not properly served.

After hearing arguments of counsel, the Court hereby finds as follows:

1. That venue and jurisdiction are proper.

2. That the Court commends Iris M. Albright for her work as Conservator in this difficult case.

3. That Iris M. Albright and Family Services, Inc.'s Motion for Discharge is hereby accepted, and Iris M. Albright is hereby discharged of her duties as Conservator.

4. That Chloe Knight Tonney, daughter of the incapacitated, renewed her Motion to be Appointed as Conservator. She had filed a Motion to be Appointed as Conservator when this case first began. Kathleen Ferri, Esq. argued that Mrs. Tonney is bondable, that she has been involved in this case from its inception and knows all of the parties and lawyers, has attended all hearings in this case, works for the Centers for Disease Control, and has a background in investment banking. Walter Kaufmann, Esq. argued that Mrs. Tonney has been cooperative with him in his role as Mr. Knight's Guardian, that she would save the Estate money as she has agreed to serve without compensation, and that she has already paid some of Mr. Knight's expenses now that the Estate is nearly insolvent.

After considering all arguments of counsel, the Court

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rules that Chloe Knight Tonney, daughter of the incapacitated, shall be named as successor Conservator.

5. That Chloe Knight Tonney shall obtain a surety bond in the amount of One Hundred Two Thousand Six Hundred and 00/100 ($102,600.00) Dollars. (The monthly amount received by the incapacitated is Five Thousand Seven Hundred and 00/100 ($5,700.00) Dollars, multiplied by (12) months, multiplied by 1.5 equals $102,600.00).

6. That the Probate Court and the Family Court must approve the sale of any assets in Mr. Knight's name.

7. That any assets previously divided by the Probate Court, prior to the Family Court being involved, shall remain divided.

FCC 394 8/31/07

8. That the Guardian *ad Litem* in the Family Court matter, Paul D. Schwartz, Esq., as well as the incapacitated's Guardian, Walter R. Kaufmann, Esq., shall be kept informed by the Conservator of her actions.

THEREFORE, based on the above, it is hereby

ORDERED that Family Services, Inc. is relieved of their duties as Conservator; and it is further

ORDERED that Chloe Knight Tonney is appointed as successor Conservator; and it is further

ORDERED that Chloe Knight Tonney shall obtain a surety bond in the amount of One Hundred Two Thousand Six Hundred and 00/100 ($102,600.00) Dollars; and it is further

ORDERED that no assets in Mr. Knight's name shall be sold

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unless prior approval is obtained by both the Family Court and the Probate Court; and it is further

ORDERED that any assets previously divided by the Probate Court, prior to the Family Court being involved, shall remain divided; and it is further

ORDERED that Chloe Knight Tonney shall keep the Guardian *ad Litem*, Paul D. Schwartz, Esq., as well as the Guardian, Walter R. Kaufmann, Esq., informed of her actions as Conservator;

AND IT IS SO ORDERED!

THE HONORABLE TAMARA C. CURRY
JUDGE FOR THE PROBATE COURT
OF THE NINTH JUDICIAL CIRCUIT

Charleston, South Carolina
This 31st day of August, 2007

ATTEST: A TRUE COPY

DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

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PROBATE JUDGE
DORCHESTER COUNTY
2008 DEC 15 P 4:11

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	
COUNTY OF DORCHESTER)	CASE NO.: 2008-ES-18-00-402
)	
IN THE MATTER OF ESTATE OF NORMAN ROBERT KNIGHT, JR.)	CERTIFIED TRUE COPY Robin Waggoner Robin Waggoner Administrative Assistant Dorchester Co. Probate Court
)	
LINDA KNIGHT JONES,)	
)	
Petitioner,)	
)	**ORDER APPOINTING SPECIAL ADMINISTRATOR**
-versus-)	
)	
MILDRED CUMMINGS KNIGHT, NORMAN ROBERT KNIGHT, III, and CHLOE KNIGHT TONNEY,)	
)	
Respondents.)	

Date of Hearing:	November 21, 2008
Presiding Judge:	Honorable Mary Blunt
Attorney for Petitioner Linda Knight Jones:	C. Mac Gibson, Jr., Esquire
Attorney for Respondent Mildred Cummings Knight:	Ben F. Mack, Esquire
Attorney for Respondent Norman Robert Knight, III:	J. Seth Whipper, Esquire

On or about March 19, 2008, Petitioner Linda Knight Jones, adult daughter of the late Norman Robert Knight, Jr., filed a Petition with the Charleston County Probate Court to commence the Estate of Norman Robert Knight, Jr. and to seek the appointment of a Personal Representative. In an Order dated May 6, 2008, the Honorable Tamara Curry, Associate Probate Court Judge for Charleston County, mandated that the parties mediate the issue regarding the appointment of a Personal Representative; and, in the interim, appointed Bea Whitten, Esquire, to serve as the Special Administrator until said mediation could take place. The parties engaged in mediation on June 26, 2008, with Charles Goldberg, Esquire, but they were unable to reach an agreement concerning the appointment of a Personal Representative. This Court obtained jurisdiction of this matter by virtue of an Order dated August 5, 2008, from the South Carolina Supreme Court. The South Carolina Supreme Court found that the Honorable Irvin G. Condon, Judge of Probate for Charleston County, and the Honorable Tamara C. Curry, Associate Judge of Probate.

Court for Charleston County, were disqualified from any further hearing of In Re: Estate of Norman Robert Knight, Jr. and transferred the matter to the Dorchester County Probate Court.

A hearing on the Petition for the appointment of a Personal Representative was held on November 21, 2008. The Petitioner and her attorney, C. Mac Gibson, Jr.; Respondent Mildred Cummings Knight and her attorney, Ben F. Mack; Respondent Norman Robert Knight, III, and his attorney, J. Seth Whipper; and Respondent Chloe Knight Tonney were present at the hearing.

Based upon the testimony presented, other evidence of record, and the arguments of counsel, I make the following findings of fact:

FINDINGS OF FACT

1. That Norman Robert Knight, Jr. died on March 11, 2008, a resident of Charleston County, South Carolina, having executed a valid Last Will and Testament dated September 5, 1997.
2. That Norman Robert Knight, Jr. was survived by a wife, Respondent Mildred Cummings Knight, aged 81 years old, and three children: Linda Knight Jones, Chloe Knight Tonney, and Norman Robert Knight, III.
3. That Mildred Cummings Knight is the sole devisee under the terms of the Last Will and Testament of Norman Robert Knight, Jr.
4. That Norman Robert Knight, Jr. nominated Mildred Cummings Knight to serve as Personal Representative under the terms of said Will; petitioner Linda Knight Jones was nominated as the alternate Personal Representative.
5. That Petitioner Linda Knight Jones testified that she would renounce her nomination to serve as alternate Personal Representative so this Court could consider the appointment of Bea Whitten, Esquire, as the Special Administrator; Attorney Whitten has consented to continue to serve as Special Administrator should this Court so order.
6. That creditors have filed claims against the Estate of Norman Robert Knight, Jr.
7. That during trial, Mildred Cummings Knight testified that she had violated previous Orders issued by the Charleston County Probate Court.

8. That during trial, Mildred Cummings Knight testified that she withdrew and spent funds from banking accounts and credit cards notwithstanding Orders issued by the Charleston County Probate Court prohibiting her from doing so.
9. That the Charleston County Probate Court held Mildred Cummings Knight in contempt because of her unauthorized withdrawal of funds, and she was subsequently incarcerated for said contempt.
10. That Mildred Cummings Knight had counsel representing her during some of the prior violations.
11. That during trial, Mildred Cummings Knight testified that she was unaware of any creditors' claims against her late husband's estate.
12. That Mildred Cummings Knight's sole witness, Nancy Cook, licensed professional counselor, testified that Mildred Cummings Knight understood her duties pursuant to Orders of the Charleston County Probate Court and that Mrs. Knight "was aware of what she was doing" when she violated the Orders.

LAW AND ANALYSIS

I. Standing

That pursuant to § 62-1-201 of the South Carolina Probate Code, Petitioner Linda Knight Jones has standing to initiate the appointment of a Personal Representative. As the named alternate nominee for Personal Representative in the Decedent's will, Petitioner Linda Knight Jones could be appointed Personal Representative if the primary nominee was unwilling or unable to serve. Therefore, in this Court's discretion, Petitioner Linda Knight Jones is deemed an "interested person" and thus has standing to bring this action.[1]

II. Qualification of Personal Representative

This Court has the authority to disqualify a nominee for Personal Representative upon finding such nominee unsuitable to serve, even if the nominee has statutory priority. Section 62-3-203(e)(3) of the South Carolina Code states that a person is unqualified to serve as Personal Representative if the Court finds him or her "unsuitable in formal proceedings." (Further, in the case of *In re McClam's Estate*, 245 S.C. 315, 140

[1] Of note, no objection was made to Robert Knight, III (son of the Decedent who is not named in the will) participating in the trial.

S.E.2d 478 (1965), the court found that "the Judge of Probate may deny administration to the person first entitled under the statute if upon the showing made before him he is satisfied that such person is not properly qualified.")

In addition to weighing the evidence presented at the hearing, this Court has carefully observed and noted the demeanor and attitude of Mildred Cummings Knight, finding her to be uncooperative and often argumentative. This Court has observed her verbal and non-verbal actions, including gestures, facial expressions, and tones of voice to weigh against her arguments for appointment. Mrs. Knight testified that she viewed the prior orders as stealing (her money) and that she chose to disregard the orders. Mrs. Knight made no apologies for her prior violations of court orders. Her actions in the court room, as well her admitted actions in the past, do not lay the foundation necessary to convince this Court that she will fulfill the fiduciary responsibilities expected of a Personal Representative. In fact, due to her numerous previous and admitted willful violations of prior probate court orders, Mrs. Knight has demonstrated that she is unfit to serve in the capacity of Personal Representative.

Also being taken into consideration by this Court for the limited purpose of impeaching the character of Mrs. Knight are previous Court Orders dated July 20, 2005 (Charleston County Probate Court, Exhibit #2), September 20, 2005 (Charleston County Probate Court, Exhibit #3), June 2, 2006 (Charleston County Probate Court, Exhibit #4), September 5, 2007 (Charleston County Family Court, Exhibit #5), each of which find that Mrs. Knight willfully violated a court order. "One of the highest causes [for denying a person the right to serve as administrator] would be that the person applying was without character upon which to base a trust." *Ex parte Small*, 69 S.C. 43, S.E. 40 (1904). Mrs. Knight has demonstrated a pattern of violations of court orders, and has therefore, in this Court's discretion, compromised her ability to be trusted with the roles and duties of Personal Representative.

As previously noted, Petitioner Linda Knight Jones has renounced her right to serve as alternate Personal Representative, and therefore, the Court must now turn to the next option available.

III. Appointment of Special Administrator

A Special Administrator may be appointed when such appointment is necessary to preserve the estate or to secure its proper administration, including situations where a general Personal Representative cannot or should not act in such capacity. S.C. Code § 62-3-614(2). Any proper person may be appointed as a Special Administrator. *Id.* at § 62-3-615(b). In this case, the Testator's intent as to the disbursement of the estate will best be realized by the appointment of a Special Administrator who will properly administer the estate.

The purpose of any will is to dispose of property which the Testator owns according to the Testator's intent. *Bankers Trust of South Carolina v. Truesdale*, 269 S.C. 191, 237 S.E.2d 45 (1977). Bea Whitten's prior performance as interim Special Administrator in this matter, coupled with her previously given consent to continue in the position, makes her the ideal choice to serve as Special Administrator and to effectuate the administration of the Testator's will in accordance with his intent.

CONCLUSIONS

1. This Court has subject matter jurisdiction of the issues contained herein and personal jurisdiction over the parties.
2. The parties hereof received timely notice of the hearing.
3. Due to her willful violations of previous court orders, Mildred Cummings Knight is not qualified to serve as Personal Representative for the Estate of Norman Robert Knight, Jr.
4. Linda Knight Jones has renounced her right to serve as alternate Personal Representative for the Estate of Norman Robert Knight, Jr.
5. The appointment of a Special Administrator is both necessary and appropriate in order to protect the estate, to ensure proper administration, and to serve the best interest of the parties.

Therefore, it is **ORDERED, ADJUDGED AND DECREED** that:

A. Bea Whitten, Esquire, shall be appointed as Special Administrator for the Estate of Norman Robert Knight, Jr. to serve without bond.

B. The Special Administrator has the power of a general Personal Representative pursuant to S.C. Code § 62-3-617.

C. The Special Administrator shall keep records of her time devoted to this matter and shall submit a bill for her fees and costs to this Court at the conclusion of the Estate. The fees and costs shall be paid from the Estate, upon Court's approval, pursuant to the South Carolina Probate Code.

D. The appointment of Bea Whitten, Esquire, as the Special Administrator shall terminate pursuant to S.C. Code § 62-1-401.

E. The Special Administrator shall not be personally liable for claims against the Estate of Norman Robert Knight, Jr. or expenses incurred by the late Norman Robert Knight, Jr. before or after his death.

IT IS SO ORDERED!

Mary Blunt

Mary Blunt, Judge
Dorchester County Probate Court

15th day of December, 2008
St. George, South Carolina

Now, our contention is, of course, that there definitely can't be an attorney/client privilege if you've got the guardian in the case -- because the lawyer represented Ms. Tonney. He did not represent Mr. Kaufman, so there's no attorney/client privilege right there. It's killed. So we ask that that be --

THE COURT: Who is Walter Kaufman?

MR. WHIPPER: Walter Kaufman was a guardian.

THE COURT: Okay. All right.

MR. WHIPPER: Court appointed guardian.

THE COURT: All right. So did you ever find out what was redacted?

MR. WHIPPER: No, Your Honor. We never found out.

THE COURT: So the judge wouldn't unredact the copies is what you're saying?

MR. WHIPPER: That's right, Your Honor. And so that -- I mean, our theory -- what we needed to do, we couldn't develop our case as a result of that.

THE COURT: Did you offer to -- did you raise that at trial, or when was that raised as far as redacted and offering this letter?

MR. WHIPPER: It was raised -- yeah, we objected to it -- we objected to the admission of the letter at trial. And we -- we raised the issue before and then --

THE COURT: And you objected to the -- raised the admissibility of the letter because it was redacted; is that correct?

MR. WHIPPER: That's correct.

THE COURT: Why don't you think it should have been admissible other than the redaction?

MR. WHIPPER: Well, I have to tell you that's the only reason.

THE COURT: That's the only reason. Okay. All right. I'll be glad to hear you as to why you think that was not an error of law, in not allowing the unredacted copy of the letter. Obviously, in my opinion, if they sent it to a third party, Walter Kaufman, that waived any attorney/client privilege, if it was attorney/client privilege to begin with.

MR. GIBSON: Well, Your Honor --

THE COURT: I mean, when you publish it to a third party, it's waived.

MR. GIBSON: I agree, but he intended, Your Honor, that was something --

THE COURT: Pardon?

MR. GIBSON: Take it beyond that, something that you questioned about the issue of the relevancy in that my client filing the request to be reimbursed as to the expenses she incurred, that particular letter in issue

there?

MR. WHIPPER: Yes, sir.

MR. GIBSON: The check to Bishop-Gadsden is, Your Honor.

THE COURT: Page 197?

MR. WHIPPER: Page 197.

THE COURT: All right. Okay. There is a redacted check.

MR. WHIPPER: That's one of them.

THE COURT: All right. It looks like the last four digits of the account number and -- not even the routing number is redacted. I mean, nothing was redacted except the last four digits of the account number.

MR. WHIPPER: Yeah.

THE COURT: Now, please tell me what's wrong with that?

MR. WHIPPER: Your Honor, that was after we had a motion where we argued about the fact that -- if you look at 197 --

THE COURT: I mean, why you -- you got the checks, so why did you need it? It tells you who it was to, the date it was to, the account number, and everything.

MR. WHIPPER: Well, that's what I'm saying, Your Honor, that's after something else had happened in the

court. He's trying to make it look like this is how it was initially. But early on in the case, this name, where you see Queeny account there, Judge, that Queeny account was blackened out. And I think the financial management account -- or maybe even Smith Barney was blackened out. And then when we --

THE COURT: Well, the check I'm looking at, the only thing that's redacted is the last four digits of the account number.

MR. WHIPPER: But, Your Honor, because that's -- I'm putting what was used after our pretrial motions, where all of this happened. See, there were pretrial motions that talked about the fact that the wrong information -- or there was information that was misleading as to what the check was all about. And in those motions, the judge ordered that that black stuff come off of that named Queeny account --

THE COURT: Well, what does that have to do -- why would that make these checks relevant once the -- you saw the true check? Why was it relevant and why did the judge make an error of law in not admitting these checks is my question --

MR. WHIPPER: No, here's what the judge -- the judge made an error of law is not allowing us to see the account's -- the activity in the account that these

checks came from.

THE COURT: Well, I thought you said you got the checks?

MR. WHIPPER: No, Your Honor, we did not.

THE COURT: All you got is that one check?

MR. WHIPPER: No. These three checks right here, but we did not get the account. We asked for the account -- activity on the account.

THE COURT: Okay.

MR. WHIPPER: For a certain period of time. That was in our subpoena. And we didn't get that. And the only reason we didn't get it is because the Court didn't want to accept the position that that information could help us defend on this claim.

THE COURT: Okay. All right. Let's move on. I think I understand y'all's argument on that.

MR. WHIPPER: Then -- then later on, Your Honor --

THE COURT: Let's talk about the automatic stay from the defense standpoint.

MR. WHIPPER: Your Honor, from the defense standpoint, that's them --

THE COURT: Well, first of all before you --

MR. WHIPPER: Judge, there's one other point in this redaction thing that was important --

THE COURT: What is it?

--

MR. GIBSON: Page nine of Mr. Whipper's brief.

THE COURT: All right. He's on -- I'm on page eight of his brief.

MR. GIBSON: Go the next page please.

THE COURT: Number -- page nine?

MR. GIBSON: Yes, sir. And right below the case citation n.b. con -- the sentence following that, Your Honor, says the representation in this fact pattern was a nonstatement and omission that caused Ms. Knight to think that she was not in jeopardy so that she acquiesced in the arrangement. So there is no statement. There is nothing for the individual to rely on. There is no allegation of any kind of fraud. There is no statement made. There is nothing whatsoever presented to the Court that would constitute as fraud.

THE COURT: Okay. Mr. Whipper.

MR. WHIPPER: Please the Court, Your Honor. We were -- since the Court didn't agree with our issue on the summons, we were allowed to proceed under the old statutes. So we elicited testimony from everybody, went forward with the case. And then the Court asked us to make closing arguments. And we made closing arguments. And in those closing arguments, we did

point out what we thought was happening from the testimony relative to the fraud. And the court ruled -- didn't rule for us. So we made it -- we brought it to the court's attention what we thought was going on, but the court did not agree with us.

Secondly, to not -- in -- in the testimony from the stand, there -- the guardian and the conservator are under court orders to discuss all of their major decisions and movements with the wife of the decedent. And they are both -- everybody admitted that they did not discuss this particular financial arrangement and other arrangements with Ms. Knight. They just -- they didn't do it.

Now, admittedly, there was a strained relationship, but no one wrote her in these notes. Ms. Tonney wrote everybody, but didn't write her mother. Never said, mom, you know, I'm going to look for y'all to pay me back; anything. No one -- and it's clear. I don't think anybody in the court here today will say that that's not what was heard from the testimony.

So what we are saying then is that everybody did tra-la-la-la-la, and you can name any statement you want, but there was tra-la-la-la-la, they told Ms. Knight what they wanted to tell her, but they never told her. And guess what, you're going to have to pay

some money at the end of the day. And so we say that that falls squarely into the requirement of fraud and the inducement, because she went right along with what she thought was the situation.

THE COURT: So, basically, what you're saying is, Mrs. Tonney did perform certain -- I guess Chloe Knight Tonney did perform certain services for the deceased, but never informed the decedent that she was expecting compensation?

MR. WHIPPER: That's right. And we have two deceased now, because --

THE COURT: Pardon?

MR. WHIPPER: When you say the decedent --

THE COURT: Well, I'm talking about -- it would be the estate of the -- I guess Norman Robert Knight; right?

MR. WHIPPER: That's correct, Your Honor. His -- his widow --

THE COURT: His widow was Martha Knight, and she died -- I guess she was -- was she the Executor or the --

MR. WHIPPER: At one point --

THE COURT: -- personal representative?

MR. WHIPPER: She was.

THE COURT: I guess they should say between Tonney

Norman, and approximately 2008 for Mildred.

Q. Now, around the care of senior citizens and the elderly, what are some of the standards that you observe and follow?

A. I wish to give my patients the best possible help they can have. My standard is I would think a standard of excellence and compassion.

Q. You have had an opportunity to look at some of the documents here --

A. Not at length.

Q. But you have had the opportunity to understand a little bit about the medical issues of Mr. Knight, his leaving home and being placed in a nursing home?

A. Yes, but that was after my tenure as his physician.

Q. What is your opinion about the importance of home healthcare as opposed to care away from the home?

A. I will answer the question first. It would be the preponderance, vast majority of the good physicians, that a couple should remain together as long as they are getting adequate home care, adequate medical care in the home setting.

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There are so many reasons for this.

Q. And they are?

A. They are: familiarity with the home, familiarity with one another. The death rate among elderly when they are separated or due to death, that mortality rate is phenomenally high once one of the two partners, particularly when the wife dies. The husband generally lives less than one year. Some people say less than six months. But most importantly, it's the familiarity of where they have lived. I am always recommending home, always recommending home care if nursing home or assisted living home care can be avoided, plus there is the giant cost involved where families often lose everything they have ever had to excellent centers like Bishop Gadsden here in town. They are excellent, but you still go broke. My general feeling is home care is preferred unless there is some medical reason why home care cannot be provided.

Q. Now, when was your last contact with Mr. Knight?

A. I have looked at my records. In South Carolina and in the nation, we are only required to keep records for seven years. So I know it was

to take. He needed someone to really be with him. That's what skilled care is, 24 hours.

Q. So what kind of costs are we talking about if you are not at Bishop Gadsden?

A. Well, the first thing that you look at, whether you can stay at home. That's what most people are looking at now, whether I can keep Mom and Dad at home. Now, costs like that, you would have somebody -- the going rate at this time is probably about $17 an hour. Back then it could have been 15 or so, but let's say $17 an hour. But you would need someone there 24/7 because he had -- he had needed bladder and bowel -- he had no control over those two things. That's where the lift came in.

Q. I see. Now, was there any indication to you about what his condition was in 2006?

A. I looked back. I believe in 2006 he still needed assisted living, assisted. I don't know what what level. By 2007, he needed skilled care, because at some point he got a little combative with taking his medicine and, you know, spitting out food and things like that, so he needed someone with him 24 hours a day.

Q. Now, what would be the main challenges

for him -- I mean, for people caring for him if they wanted to do home care?

A. Well, if his weight -- that's where the Hoya lift and the other lifts come in, and I noticed that his weight was about 130 pounds. You know, we have people -- I have a resident now who is 200 pounds, and he doesn't have a lift, but it takes four people to transfer him. At his weight, 130 pounds, he could have one person transferring him. If he can stand, that makes it easier to transfer you to the shower and then having all of the equipment that you needed, like a shower chair and a wheelchair, but Medicare pays for those kinds of equipment.

Q. Medicare?

A. Yes, and I believe Tricare. I looked -- he was in the military at one time.

Q. Yes, that's correct.

A. And he would probably -- did qualify for Tricare, and there are -- the military also has what they called aid and attendant. If there is someone who needs to go to skilled care, be able to help you with that. It is a process that you go through. But he was a veteran, and I believe he was a veteran of the Second World War, if I am not

mistaken. I'm not sure.

Q. So then let's talk about these levels of care. What do you know -- what are you thinking about -- if you are not at Bishop Gadsden, how much are you spending, if there is a range?

A. At skilled nursing, the minimum that you are probably going to pay is at least three to four thousand dollars at a skilled care, and it doesn't matter what place you are in, it's the quality of care that you are going to receive from the facility. You know, you can be in a fancy place or you cannot. Some of the service is the same, but it doesn't matter about the place. It is the people that are taking care of you.

Q. So what would be your reaction knowing that Mr. Knight was being cared for at home?

A. If he had all of the supplies -- if he had everything that he needed, like I said, someone there -- first of all, he needed someone there to -- the most important thing was his medication and have knowledge of medication. In the state of South Carolina, even in an assisted living facility, you do not need a nurse there because they take it as you're being at home, and a nurse wouldn't necessarily be at home. So a layperson,

if taught how to do the medicine, if he needs someone to take his medication, assist him with bathing, all of his daily activities, and possibly someone there to take him to the doctors' appointments, I am not sure about that, but it has been done and is being done because some people retire early and stay home now and take care of their parents.

Q. Now, when it comes to what you do, I think you said you opened Savannah House. What kinds of things do you look for when you look at a facility or look at a home situation?

A. Well, I have done quite a bit of that. Well, you look at the physical -- first of all, you look at the physical building, you know, to make sure -- things like DHEC does because we have to be licensed. They come and do a thorough inspection, you know, of all of the places because now people are really particular about where they place their loved ones. So looking at the physical building, talking to the staff, if possible, having an interview with the administrator, talking about the levels of care they offer, and there is like an a la carte. You can get extra things that you pay another couple of hundred dollars, or you want

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questions, you know, and was filling out forms. Daddy signed something for her when I got there, and she thought everything was fine. The house was nice and clean. Everybody was being taken care of, and she left.

Q. All right. And the allegations were found to be unfounded; is that correct?

A. Yes, sir.

Q. How did all of that make your mother and father feel?

A. Well, that June and July of 2004, that's when they saw how my sisters were using that power of attorney, and then that's when -- after we saw the Bumgardner letter, we went to see Susan Dunn. She is an attorney that I knew, and she couldn't help us, but she sent us to see Suzanne Croft, who revoked the power of attorney. So that happened on June -- end of June of 2004. And then the DSS people came, and then the petition for probate came.

Q. Take a look at that document.

A. Yes, sir.

Q. So what is that?

A. That's the revocation that was done by Suzanne Croft for Mildred C. Knight.

as well.

THE COURT: Offer of proof on what?

MR. WHIPPER: On the relevance of the agreements made. I have one other witness coming in who may be able to provide the order for us.

THE COURT: Well, if you have other testimony that will show some sort of relevance, but this testimony is not relevant. I have already ruled on that.

Q. Now, when you all took care of your father, how did you manage his care?

A. Well, going back to the end of 2003, we put a new roof on the house. Daddy worked with us and the crew. Daddy broke his hip at Linda Jones's house in January of 2004. That's how he ended up in the hospital, and when he got out of the hospital and came home, you know, the same thing you would do with anybody else who had just finished with a broken hip. He had a walker. He needed help in and out of the bathroom, bathtub. He came to the kitchen to eat his meals, and Mama took care of him, had a lady that stayed at the house in the daytime, Maria. They were on my payroll. We had a gentleman that worked in the yard, worked on the other house most days of the

made out to her and daddy, which brought it up to around 110,000. So 54,000 of that was Mildred Knight's. Charlie had been spending the payment for the three lawyers by October 20th, and I think that had been reduced by about half.

Q. What was the understanding about how their assets were to be divided?

A. Fifty-fifty.

Q. All assets, and that was understood at the Probate Court?

A. Yeah.

Q. And ordered through the Probate Court?

A. Right, everything was Mama's and Daddy's, half and half, even though they were staying together, but I think Mr. Vincent used a 50-50 thing. That was to determine how much was left to be put in a conservatorship account. Mr. Vincent said that in the second paragraph. Actually it turned out to be about $64,000.

MR. GIBSON: Your Honor, I object to relevancy. I thought you made it clear we were not going to retry other cases. That's what I am hearing.

THE COURT: That is what I am hearing, the two pages. Neither of them have been admitted

court-ordered settlement, I can look at the order and determine whether it has any relevance to this proceeding.

MR. WHIPPER: I don't have the order, but it is a part of the file.

THE COURT: If all we are going to hear is testimony of this witness relating testimony he heard at trial, and we are going to get excerpts from transcripts that are uncertified, I am going to sustain Mr. Gibson's objection, and I am not going to allow any more testimony regarding these proceedings that you are questioning the witness about. So let's go on to the next subject.

MR. WHIPPER: Your Honor, I have copies -- I have copies of the transcript, your Honor for October 6th. It is not certified.

THE COURT: Well, unless you have a court order showing a settlement that is relevant to these expenditures by this claimant, I am not going to allow the testimony. So that's done. Let's go ahead and move on to the next subject.

MR. WHIPPER: All right, and so that was the understanding and so it was a part of what you were doing then, is that, and, your Honor, at some point I want to make an offer of proof on that

answered that none of Louise Reynolds' funds were used for payment, so why is it necessary to know the whereabouts of Ms. Reynolds?

MR. WHIPPER: Your Honor, because we want to make sure that none of her money was used in that account.

THE COURT: What more are you going to get from this witness other than the question you have asked?

MR. WHIPPER: Where is Ms. Reynolds?

THE COURT: Yes.

MR. WHIPPER: That is what I want.

THE COURT: Why is that relevant today?

MR. WHIPPER: Your Honor, we need to know where Ms. Reynolds is so we can verify that none of that money has been used in this account.

THE COURT: Well, the witnesses are before the Court. Today is the day of the merits hearing.

MR. WHIPPER: I understand, your Honor, and that is part of it. Everybody's credibility can be probed into.

THE COURT: This is your opportunity to probe into it. Answer the question. I will give you that question, and that's that on that subject.

Q. Where is Ms. Reynolds now?

A. I am very hesitant to answer that question because your client has a history of sending people to wherever Ms. Reynolds might live.

THE COURT: I am going to interrupt right now. I would like to see both counsel in chambers. We are taking a brief recess.

(A recess transpired.)

THE COURT: We are back on the record. The last question is disallowed, and the objection is sustained. Mr. Whipper, is there anything further to the subject of the location of Ms. Reynolds or the subject of discovery that you wish to say for the record?

MR. WHIPPER: Your Honor, no other questions for Ms. Tonney, no major questions on the ruling, I understand the ruling, and perhaps as we move forward, your Honor, we can get a clearer understanding of what some of our pretrial discussions were. Certainly I don't think that would affect what we need to do today, or keep us from what we need to do.

THE COURT: As I mentioned just now, I think there is a clear deadline on discovery in this matter. I think it was clearly communicated

Q. And when he made payment to Mr. Vincent, were you making a payment to give for your father, or were you making a payment as a necessary expense for your father with the expectation of being reimbursed?

A. As a necessary expense and certainly with the expectation of being reimbursed as my father did have enough assets to pay for these things. They were tied up.

Q. When you would get invoices from Mr. Vincent, would you correspond either in writing or telephone call with Iris Albright to determine what Family Service can pay on behalf of your father and what you can pay on behalf of your father?

A. Yes. Ms. Albright and I stayed in fairly regular communication regarding expenditures for Daddy, whether it be for legal expenses or care to determine what amount she had available in terms of his cash flow that she could pay on any given month and what would be helpful if I made up the difference.

MR. GIBSON: Your Honor, at this time I will move this both collectively as Petitioner's Exhibit Number 4.

Q. And was that made as a gift or with the expectation of being reimbursed for the necessary expenses?

A. Made with the expectation of being reimbursed.

Q. And then with regard to services on 9/18/07, it had a telephone conference and it is redacted?

A. Yes.

Q. Do you know what has been redacted?

A. I do not recall.

Q. Did you attempt to find an original invoice to see what had been there?

A. I did. Actually this is what I had. I had redacted on the original, or the copy, and I have had three water events, flooding events in my home, so some documents I no longer have.

MR. WHIPPER: Your Honor, I am going to move this as Petitioner's Exhibit Number 6.

THE COURT: Well, just to possibly forestall an objection, I am going to have to make the same ruling. I anticipated an objection to the redacted portion. I previously ruled on that, but it should not be redacted, so that particular line item which totaled $106 will have to be reduced

father wasn't able to pay for it in the end, she would be willing to be responsible, and she would guarantee it, and I thought that sounded like a ideal situation for my ward, so even if he didn't have the money, that's what his daughter wanted for him, and it was obviously the best thing for him.

Q. Did you believe that served his best welfare?

A. Yes, I did.

Q. Had Mr. Knight's quality of life at Bishop Gadsden improved?

A. I believe so, yes.

Q. How often did you visit Mr. Knight?

A. I would have to give you an estimate, Mr. Gibson, but I would say probably every other week or so. He had so much contact with his two daughters, who saw him on a daily basis, if not daily, a near daily basis -- I would say each of them saw him three or four times a week, and Linda Knight Jones, who lived on James Island, was local and the time, and Ms. Tonney, even though she was in Atlanta, she would come nearly weekly or every other week at least to see their father's condition, and they would let me know if they found he needed something, and we would discuss his care.

Petitioner's Exhibit Number 7. Is this indeed the letter you are referring to?

A. Yes, it is.

Q. Did you have any objection to the arrangement that Ms. Tonney made with Family Services?

A. No, I did not.

Q. Ms. Albright, did you feel that it was necessary for Ms. Tonney to pay legal fees on behalf of her father?

A. Mr. Knight did not have the funds to pay these fees and maintain his care.

Q. And do you know what happened by way of the Family Court action?

A. Yes. There was an order issued that Mr. Knight was to pay half of his civil service funds to Mrs. Knight.

Q. And as a result of that, did that have an impact on his financial ability to live at Savannah House as well as Bishop Gadsden?

A. It did.

Q. As a result of that financial burden, you made contact what Ms. Tonney?

A. Yes.

Q. For assistance?

A. She did buy personal items for him and furniture.

Q. And was that necessary expense for Mr. Knight?

A. Yes, it was.

Q. And do you know to your knowledge whether Mr. Knight had any clothes or any medicine taken with him to Savannah House?

A. My understanding was that Mr. Knight was removed from the home with just the articles of clothing he wore.

Q. And was there an understanding between you and Ms. Tonney as to any money that she had spent on behalf of her father would be treated as a loan?

A. Yes.

Q. Was there a discussion between you Ms. Tonney with regard to the legal fees that Ms. Tonney was paying to Thad Vincent on behalf of her father?

A. Ms. Tonney submitted a letter to me saying that she had paid Attorney Vincent's fees and that she was considering it a loan and that it was prime plus two.

Q. And that is what has been marked as

Q. You describe yourself in your contract with Ms. Hall as being the court-appointed conservator with power of attorney. Where is the power of attorney? Where did that come from?

A. I think that may have been language typed on the form. I don't think I wrote that.

Q. Is it your position then that although you made these decisions to spend the money that you did spend, is it your opinion that this in fact should be adopted by your father's estate?

A. Yes, I am asking for reimbursement. My father had the assets to pay for his care. They were not available to him.

Q. Is it your opinion also that your father would approve of leaving his wife without any means of support?

A. My father didn't leave his wife without any means of support.

Q. It is my understanding from what Ms. Albright testified to that at the time of your father being removed from the home, that his wife was only receiving about $100 per week of support. My understanding is that your father and mother were married for fifty something years, they were very close, they had always done things together,

discovered just recently, is it not?

A. I actually didn't have a recollection of it. I don't dispute Ms. Hall's recordkeeping, but that is a refund that was made two years after my father's death.

Q. And there was no other legal work done in the two years?

A. Not by Ms. Hall.

Q. And it is your opinion your only motive for making this claim is because -- and tell me again -- the only motive is you just want to be paid back; is that correct?

A. I expended the funds that I did with the expectation of being reimbursed for them, and my father had then and he has now the assets to cover those expenses.

Q. It is my understanding you have never approached your brother or your sister about sharing the bill, have you?

A. No.

Q. Now, let me make sure, that you are making these claims on your behalf; is that correct?

A. That's right.

Q. I have looked at a lot of these checks.

THE COURT: Well, in that case, Mr. Whipper, I think we might be able to resolve this simply by having that marked for identification only without having it admitted in evidence. It is more in the nature of argument on behalf of Ms. Tonney, or a summary, or summation, if you will, and if you would rather him wait in closing argument and submit it then. It is more of a summation.

MR. WHIPPER: It doesn't matter, your Honor.

THE COURT: Okay. Well, just to keep the record straight, let's go ahead and receive that or have it marked for identification only as Petitioner's Exhibit 20 without admitting it into evidence, okay? So this will be marked as Petitioner's Exhibit 20 for identification only.

(PETITIONER'S EXH. 20, REIMBURSEMENT BREAKDOWN, was marked for identification only.)

MR. GIBSON: I have no further questions, your Honor.

THE COURT: Mr. Whipper, you have the floor for cross-examination.

CROSS-EXAMINATION

BY MR. WHIPPER:

BY MR. GIBSON:

Q. Ms. Tonney, what was your relationship to Norman Knight, Jr.?

A. He was my father.

Q. Okay. And throughout your lifetime did you have a good relationship with him?

A. I did. I always had an excellent and very close relationship with both of my parents actually.

Q. To jump ahead, was there a probate proceeding initiated in regard to your father?

A. Yes.

Q. And if you would tell the Court what was the nature of the probate proceeding starting when it was filed, if you can recall.

A. Yes. That was in August of 2004, and I became aware that my father was subject to a number of what I deemed atrocities in terms of physical, financial, and psychological abuse.

Q. As a result of the action, was a guardian as well as a conservator appointed?

A. Yes.

Q. And who was the guardian appointed?

A. The initial guardian was my mother.

Q. And did she remain the guardian?

disallow the question and sustain the objection.

Q. The television that was bought at Best Buy, where is that television now?

A. That television is in the garbage. It was damaged in a flood in the storage unit.

Q. Okay.

THE COURT: For clarification, where was the storage unit?

A. It was on Folly Road near Bishop Gadsden, public storage.

THE COURT: You may continue, Mr. Whipper.

Q. It is my understanding that your father didn't wear blue jeans. You are telling us he started wearing blue jeans?

A. Yes, he did. He had to have a specific type of pants for physical therapy that had elastic in the waist, and he was also very cold-natured, and those were heavy pants.

Q. Now, your claim for $132 from Harris Teeter -- so am I understanding now that vitamin E, is that something that was prescribed for Mr. Knight?

A. Yes.

Q. Vitamins and kids' scissors?

Citadel. Where is that now?

A. That is also destroyed. It was on the floor of the public storage unit, and when we went back, it was mildewed.

Q. You don't deny that the reason Mr. Knight was moved from his home was because of visitation issues?

A. Visitation issues and concerns around his care. No one really knew how my father was doing.

Q. Now, what did you do about the medical visits? Did you make sure he took care of all of those?

A. Yes, we did. Once he moved to Bishop Gadsden, he had a physician there in addition to his outside physicians.

Q. As I look through the bills and the invoices, is there any reason why you haven't submitted a bill for the storage unit?

A. Because I couldn't find it.

Q. You mentioned that there was a refund of some sort on the fees for Mary Ann Hall; is that correct?

A. That's right.

Q. And that was something that you

Q. And what was that decision?

A. The decision was that he should have representation.

Q. Did that include as to Thad Vincent and Mary Ann Hall?

A. Yes, Mr. Vincent and Ms. Hall.

Q. Why did you feel that Mr. Knight needed legal representation?

A. It might be a lawyer bias, but I think anybody involved in a Family Court case should be represented.

Q. And you had no objection to Ms. Tonney assisting her father with financial responsibility?

A. No, I didn't.

Q. In all of the payments and action undertaken by Ms. Tonney, was it for the benefit for her father?

A. Yes, absolutely.

Q. Did Ms. Tonney keep in touch with you in discussion of what would be best for her father?

A. All of the time.

Q. And did you have the authority to refuse his admission to Bishop Gadsden?

A. Yes, I did.

Q. And why did you feel it would be best

Q. So, if the guardian knowing that he would need clothing, he would need furnishings, knowing that he has these things available to him in his home, you didn't feel that you should get any of it; is that correct?

A. No, that is not correct.

Q. Okay. Do you feel that since these things are available to him, that it's better to spend money for additional items?

A. They weren't available to him, Mr. Whipper.

Q. And certainly you know that if you are under an automatic stay, that you shouldn't be acting?

A. I know that now, Mr. Whipper.

Q. Okay. Now, you had no concern about the value or how much would have to be spent from this estate in order to have him at Bishop Gadsden?

A. No, sir, because Ms. Tonney wanted the best for her father. She was willing to guarantee the best for her father, so I had no objection to that being provided to him.

Q. So you're thinking Ms. Tonney was going to bear the cost; is that right?

A. No, my thinking was that if he didn't

Q. You describe yourself in your contract with Ms. Hall as being the court-appointed conservator with power of attorney. Where is the power of attorney? Where did that come from?

A. I think that may have been language typed on the form. I don't think I wrote that.

Q. Is it your position then that although you made these decisions to spend the money that you did spend, is it your opinion that this in fact should be adopted by your father's estate?

A. Yes, I am asking for reimbursement. My father had the assets to pay for his care. They were not available to him.

Q. Is it your opinion also that your father would approve of leaving his wife without any means of support?

A. My father didn't leave his wife without any means of support.

Q. It is my understanding from what Ms. Albright testified to that at the time of your father being removed from the home, that his wife was only receiving about $100 per week of support. My understanding is that your father and mother were married for fifty something years, they were very close, they had always done things together,

almost hand in glove. Do you think your father would want your mother to live on $400 a month?

A. She didn't live on $400 a month. She had access to other income and assets.

Q. As a part of the Family Court matter, do you understand that documents are submitted that state the income of both sides? Are you aware of that?

A. I am.

Q. Did you ever see any documents that identified what your mother's income was at that time?

A. I don't recall that I did.

Q. Ms. Tonney, it is no secret that you and your brother have a terrible relationship at this point; is that correct?

A. Yes, we live by two different moral codes.

Q. As a matter of fact, you said two different moral codes. Isn't it true that while your brother was living with your mother and your father, they were there together; isn't that true?

A. Yes.

Q. Your brother, your mother, and your father, they were together?

MR. GIBSON: Your Honor, I am going to object to DSS. I don't understand any relevancy to a DSS matter.

THE COURT: Overruled.

A. I seem to recall that there was a report made at some time. I don't recall the details of it.

Q. You don't recall that it was determined to be unfounded?

A. No, sir. I just recall that there was one. I don't recall anything about it. I think that was before I was involved, as far as I know.

Q. And what I understand you to say today is that there were some issues around visitation?

A. Yes, sir.

Q. And that is why you did what you did; is that correct?

A. There was a lot of issues around visitation, Mr. Whipper, and I guess it would depend on whose visitation with who that you are talking about.

Q. We are not going to go all the way into that. My next question to you is that you were aware that the order appointing you and some other orders were under appeal; isn't that true?

A. Once they were under appeal, I was aware that they were under appeal, yes, sir.

Q. And during the time that these orders were under appeal, you took action; isn't that true?

A. Yes, sir, I did. There was no order ever sought by any counsel in the lower court, in the Probate Court, seeking to say that I shouldn't continue, and Mr. Knight was an incapacitated person, and I believed he needed continued protection.

Q. Now, you were present back in September or October for a hearing in front of Judge Young, weren't you?

A. Yes, I was.

Q. At that time, Judge Young in fact told you that you had no status in this case?

A. Yes, sir, he did, and I sort of expected at that time that Mr. Bobby Knight and Mrs. Mildred Knight's counsel would go to the Probate Court and have someone appointed to protect Mr. Knight. That didn't happen.

Q. It is my understanding from the order that all guardians and all conservators who are in place would remain in place. That is what the

it looks like 2007.

Q. And do you have a bottom line figure in there of I think 215,000?

A. His net monthly income is $5,728.27. His monthly expenses were $8,363, and the assets with the other assets that were involved, his total was $215,852.23. This was the total value of property and an annuity, a couple of annuities.

Q. Okay. Now, generally you get your clients from the court referrals; is that correct?

A. That's correct.

Q. Are there any sort of people who walk in right off the street and ask you to do what you do?

A. Nobody wants to do what I do. Nobody wants me to have to do that for them because you are taking away their freedom.

Q. It is generally court involvement?

A. Right.

Q. This 215,000 figure, that figure was before the beginning of the Family Court matter; is that correct?

A. This figure was as of September 5th, 2007.

Q. And at that time, what types of

STATE OF SOUTH CAROLINA)
)
COUNTY OF: CHARLESTON AND/OR)
DORCHESTER)
)
IN THE MATTER OF: Estate/Norman R. Knight, Jr)
)

IN THE PROBATE COURT

STATEMENT OF CREDITOR'S CLAIM

CASE NUMBER: 2008-ES-10-0409 in Charleston Co Probate Court; when transferred to Dorchester Co Probate Court, 08-ES-18-00-402

09 JAN 20 PM 2:54

Decedent's Date of Death (if known): 11 March 2008
Decedent's Last Mailing Address: Family Services Inc. c/o Ms. Iris Albright, 4925 LaCross Road, Suite 215, North Charleston, SC 29406

Creditor: Chloe Knight Tonney
Address: 2655 Lake Road
Tucker, GA 30084
Telephone: 770.414.5224

Basis of claim:

The decedent, Norman R. Knight, Jr., was my father. Funds were expended for his legal protection, as well as legal representation for his court-appointed guardian in probate, family, circuit and the Supreme Court of S.C. Funds were also expended to cover the costs of food, shelter, skilled nursing care, personal care items, furniture, and wardrobe replacement for Norman R. Knight, Jr.

Amount of claim $ 61,249.46

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

Nature of uncertainty as to amount of claim and due date, if any:

Description of any security as to claim:

Signature: Chloe Knight Tonney
Title:
Date: 15 January 2009

INSTRUCTIONS: 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.)

FILED
DEC 13 2013
PROBATE COURT
BEAUFORT COUNTY, SC

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
)

IN THE PROBATE COURT FOR
THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-ES-07-998
: 2008-ES-10-409

IN RE: ESTATE OF NORMAN R. KNIGHT, JR.

ex. rel. Norman R. Knight, III, and
Estate of Mildred C. Knight,

AMENDED COMPLAINT
(Removal of Special Administrator)

COMES NOW, NORMAN R. KNIGHT, III, alleging and complaining as follows:

1. Petitioner is the successor devisee of the Estate of Norman R. Knight, Jr.
2. Beatrice E. Whitten is the Special Administrator for the Estate of Norman R. Knight, Jr. and will be referred to herein as the Respondent.
3. Petitioner is informed and believes that Beatrice E. Whitten should be replaced as the Special Administrator of the Estate of Norman R. Knight, Jr. for the following reasons:
   A. the Special Administrator does not want to interact directly with Norman R. Knight, III or any lay persons associated with Mrs. Knight;
   B. the Special Administrator is estranged from the issues influencing and informing the substance of the conflicts in this matter;
   C. the Special Administrator has not acted to recover property rightfully belonging to the Norman R. Knight, Jr. Estate in that there are motor vehicles titled to Mr. Knight, Jr. that are being left in the possession of family members who are not devisees cost free;
   D. the Special Administrator is not actively attempting to effect the intentions of the testator in providing for his devisees;
   E. Special Administrator has not verified payment of funeral expenses and has wrongfully disbursed on A&G annuity.

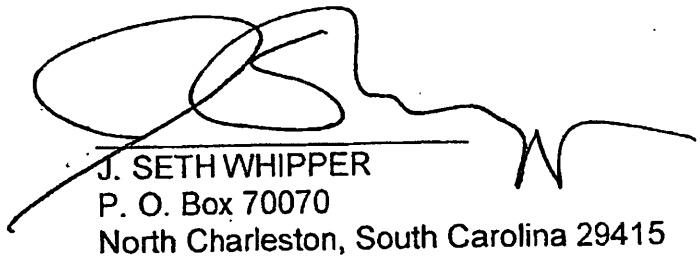
4. Petitioner has attempted to communicate with the Special Administrator and was denied access to the Special Administrator.

Having fully pled his desires, the Petitioner asks for the following relief:

A. the Special Administrator be removed and the Petitioner be appointed to complete the administration of his father's estate;

B. Such other relief as the Court deems just and proper.

WHIPPER LAW FIRM



J. SETH WHIPPER
P. O. Box 70070
North Charleston, South Carolina 29415
(843) 740-777 Fax (843) 740-9108
ATTORNEYS FOR MOVANT

North Charleston, South Carolina
December 7, 2013

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE PROBATE COURT CASE NO. 2008ES1000409 (Charleston) CASE NO. 2012ES0700998 (Beaufort)
IN THE MATTER OF ESTATE OF NORMAN R. KNIGHT, JR.	)	MOTION FOR NEW TRIAL AND TO ALTER OR AMEND THE JUDGEMENT

TO: HONORABLE KENNETH E. FULP, JR.: CLERK; BEATRICE E. WHITTEN: C. MAC GIBSON:

PLEASE TAKE NOTICE that Judy Brown, Personal Representative for the Estate of Mildred C. Knight and Norman R. Knight, III, by and through the undersigned counsel, hereby move for a new trial and to alter or amend the judgment issued in the Court's Orders of July 11, 2013 regarding the disallowance of Chloe Tonney's claim against the Norman R. Knight, Jr. Estate, and the Petition for Removal of the Special Administrator therein.

This motion is found on the following basis:

NEW TRIAL

1. The Special Judge appointment must conform to the same standards and legal requirements as applied to the Probate and Associate Judge regarding residency and territorial jurisdiction. The Special Judge must be a qualified elector of the county having jurisdiction of the decedent's estate. The Special Judge herein is not a qualified elector of Charleston County and therefore all orders of the Special Judge are void and a nullity. The orders of July 11, 2014 must be vacated and a new trial granted on all petitions.

ALTER OR AMEND

2. Allowance of Claim:

FILED
JUL 28 2014
PROBATE COURT
BEAUFORT COUNTY, SC

a. The Court failed to regard the record on the existence of the automatic stay on the appeal of the August, 2005 Orders and the appeal of the August, 2007 Order;

b. The Court failed to consider the lack of compliance by the Conservator (Family Services, Inc.) and the alleged Guardian (Walter Kaufman) in acting without consulting with Mildred Knight as directed by the Probate Court appointment;

c. No testimony was offered to establish the sequence for the timelines of the claim filings;

d. The Court failed to consider any of the testimony of Movants' professional witnesses who testified forthrightly and based on relevant and profound experience with the subject matter, the parties, and the facts;

e. Tonney has not purged her actions of the misleading abuse charges made against Mildred C. Knight and Bobby Knight, therefore lacking the clean hands necessary for recovery;

f. The Court's findings numbered 5,6,7,9, and10 were not presented during the trial of this claim;

g. The Court's finding numbered 25 does not consider that Albright told Tonney, Mr. Knight's estate could not afford the Bishop Gadsden Home or Thad Vincent's attorney's fee, and Tonney's actions were unilateral and not bargained for consideration.

3. Removal of Special Administrator:

a. The Court erred in finding that the Special Administrator had removed the Lis Pendens as ordered in July, 2013;

b. The Court failed to consider the process for transferring title to automobiles after the death of the owner;

c. The Court failed to consider the Special Administrator's failure to withdraw the Lis Pendens;

d. The Court failed to consider the lack of evidence establishing the alleged transfer of the 1995 automobile belonging to Norman R. Knight, Jr.;

e. The Special Administrator offered Movants no evidence of notice of her receipt of the AIG annuity payment.

Movants request that the court reconsider these issues and disallow the claims of Tonney and remove the present Special Administrator.

This Motion is based on the jurisprudence, statutes and rules of practice for State of South Carolina.

PLEASE BE PRESENT to argue if you are so minded.

WHIPPER LAW FIRM

J. SETH WHIPPER
P. O. Box 70070
North Charleston, South Carolina 29415
(843) 740-777 Fax (843) 740-9108
ATTORNEYS FOR MOVANT

North Charleston, South Carolina
July 24, 2014

8-1-2011
4:04pm

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	
COUNTY OF CHARLESTON)	CASE NO: 2008-ES-18-0402
	2011-LP-10- 1615
BEATRICE WHITTEN, as)	
Special Administrator of the)	
Estate of NORMAN ROBERT)	**LIS PENDENS**
KNIGHT, JR.,)	**3940 Hottinger Avenue**
Petitioner,)	**3932 Hottinger Avenue**
)	
vs.)	
)	
Heirs to the Estate of NORMAN)	
ROBERT KNIGHT, JR.,)	
Respondents.)	

FILED
2011 AUG -1 PM 3:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

NOTICE IS HEREBY GIVEN that an action has been commenced by Beatrice Whitten, as Special Administrator of the Estate of Norman Robert Knight, Jr., against the above-named respondents for the authorization of the Probate Court to the Petitioner to sell the decedent's interest in the property described in the Petition for the purposes therein stated.

The property covered and affected by the above said Petition at the time of the filing of this Notice is described as follows:

3932 Hottinger Avenue, North Charleston, South Carolina, 29405

ALL THAT LOT of land, known and designated as Lot No. 62 in the Subdivision known as Whipper Barony, as shown on a plat thereof made by Joseph Needle, C.E., dated April 10, 1948, and recorded in the Charleston County R.M.C. Office in Plat G, Page 48, and having such shape, size, dimensions and boundaries as shown upon said plat.

TMS 470-14-00-132

BEING the same property conveyed to Norman R. Knight, Jr. by deed of Louise May Reynolds, dated March 25, 1999, and recorded on March 31, 1999 at the RMC Office for Charleston County in Book N-323 at Page 148.

AND

3940 Hottinger Avenue, North Charleston, South Carolina, 29405

ALL THAT LOT of land, known and designated as Lot No. Sixty-three (63) in the Subdivision known as Whipper Barony, in the County of Charleston, South Carolina, as shown on a plat thereof made by Joseph Needle, C.E., dated April 10, 1948, and recorded in the

Charleston County R.M.C. Office in Plat G, Page 48, and having such shape, size, dimensions and boundaries as shown upon said plat.

TMS 470-14-00-133

BEING the same property conveyed to Norman R. Knight, Jr. by deed of Adela Hottinger Geils, dated January 24, 1950, and recorded on January 24, 1950 at the RMC Office for Charleston County in Book Q-051 at Page 203.

ATTORNEY FOR PETITIONER
Beatrice E. Whitten
1110A Queensborough Blvd.
Mount Pleasant, SC 29464
843-881-1399

Mount Pleasant, South Carolina

Date: July 27, 2011

BEATRICE E. WHITTEN
Attorney and Mediator
1110 Queensborough Blvd. Suite A
Mount Pleasant, SC 29464
Phone (843) 881-1399 Fax (843) 881-6695

July 28, 2011

Charleston County Clerk of Court
Court of Common Pleas
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Estate of Norman Robert Knight, Jr.
Case No.: 2008-ES-18-0402
2011-LP-10-_____

Dear Madame Clerk:

Enclosed please find the original and two copies of a Lis Pendens for filing, regarding the above-entitled estate, with a $10.00 check for the filing fee. I have enclosed an envelope for you to send the filed copies back to me.

If you should have any questions, do not hesitate to call me or email me at libby@beawhitten.com. Thank you!

With kind regards, I remain

Sincerely,

Elizabeth Castle
Paralegal

Enclosures (as stated)

cc: Dorchester County Probate Court (via facsimile only: 843-832-0222)
J. Seth Whipper, Esquire (via facsimile only: 843-740-9108)
C. Mac Gibson, Jr., Esquire (via facsimile only: 843-225-6208)

Claimants #1
No objection

THE VINCENT LAW FIRM, L.L.C.
834 SAVANNAH HIGHWAY
P.O. BOX 31842
CHARLESTON, SOUTH CAROLINA 29417-1842

THAD H. VINCENT
KATHLEEN MORASKA FERRI

(843) 769-6600
FAX (843) 402-0119

November 30, 2006

Mrs. Chloe Tonney
2655 Lake Road
Tucker, GA 30084

RE: Mildred Knight v. Norman Robert Knight, Jr.
Case No.: 06-DR-10-3999

Dear Chloe:

This letter is written to confirm our payment arrangement on the above-referenced matter. I have agreed to represent your father in this matter at a reduced hourly rate of $200.00. Monthly statements will be mailed to you and Family Services. You have agreed to be fully responsible on a monthly basis for any and all charges which are not paid by Family Services.

If this letter accurately sets forth our agreement, I would ask that you sign and return a copy of it to my office.

Sincerely,

Thad H. Vincent

Thad H. Vincent

THV/cm

Clients #2
No Objections

THE VINCENT LAW FIRM, L.L.C.
834 SAVANNAH HIGHWAY
P.O. BOX 31842
CHARLESTON, SOUTH CAROLINA 29417-1842

THAD H. VINCENT
KATHLEEN MORASKA FERRI

(843) 769-6600
FAX (843) 402-0119

July 9, 2007

Mrs. Chloe Tonney
2655 Lake Road
Tucker, GA 30084

RE: Mildred Knight vs. Norman Knight, Jr.

Dear Chloe:

Enclosed please find a copy of the most recent bill that has been sent out on behalf of your father. We are already under the impression that Iris Albright does not have the money to pay the bill. Before we started this matter, you assured me you would take care of the bill yourself. I am asking you to do that at this stage, and I will send the bills directly to you. I would appreciate you taking care of this at the earliest possible time.

As you are aware, we have your mother's deposition scheduled for 1:00 p.m. on Wednesday, July 11, 2007. Please advise if you plan on attending.

Sincerely,

Thad H. Vincent

Thad H. Vincent

THV/lg
Enclosure (as stated)

#3
Clement w/o objection

THE VINCENT LAW FIRM, L.L.C.
834 SAVANNAH HIGHWAY
P.O. BOX 31842
CHARLESTON, SOUTH CAROLINA 29417-1842

THAD H. VINCENT
KATHLEEN MORASKA FERRI

(843) 769-6600
FAX (843) 402-0119

October 16, 2007

Mrs. Chloe Tonney
2655 Lake Road
Tucker, GA 30084

Walter R. Kaufmann, Esq.
P.O. Box 1173
Mt. Pleasant, SC 29456-1173

RE: Mildred Knight vs. Norman Knight, Jr.

Dear Chloe and Walter:

Mr. Knight's bill has now approximated $2800.00. I think we are all aware of the craziness involved in all of this.

I am unwilling to go any further in this case without getting paid the balance that is owed and getting a retainer of $5000.00. This is no one's fault other than [redacted], but these matters do have to be dealt with.

I want to make sure that everyone understands that I represent Norman Knight, Jr. in the family court matter. I cannot represent Chloe in anything in the family court matter. Obviously, Chloe and Norman's interests should be the same, but I represent Norman, Jr. in the family court matter. In the probate court matter, I represent Chloe and Linda.

I would appreciate phone calls from you and possibly we can have a conference call.

This matter gets worse rather than better.

Sincerely,

Thad H. Vincent

Thad H. Vincent

THV/lg
Enclosure

CERT 0110 CERT 0110 CERT 0110
000043

2 docs Clients #4

The Vincent Law Firm, L.L.C.
834 Savannah Highway
Post Office Box 31842
Charleston SC 29417-1842

Norman R. Knight, Jr.
c/o Iris Albright
Family Services, Inc.
4925 Lacross Road, Ste 215N
North Charleston SC 29406

March 13, 2007
In Reference To: Knight v. Knight
Invoice #12450

Professional services

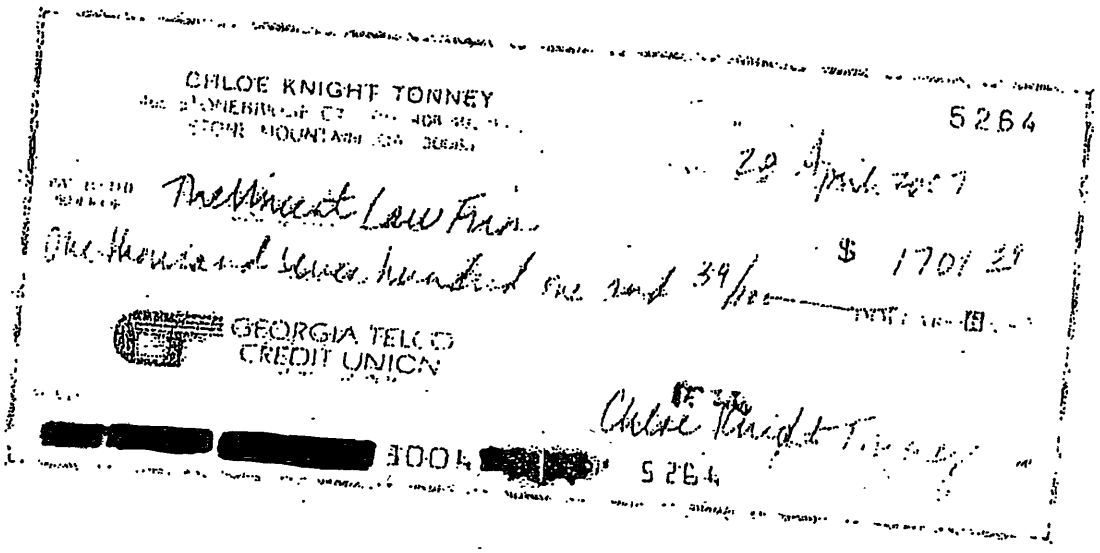
		Hrs/Rate	Amount
11/8/06	Telephone conference with Mack	0.30 200.00/hr	63.60
11/27/06	Telephone conferences with client & Albright re: temporary hearing; Review fax from Albright; Note to attorney	0.70 65.00/hr	48.23
11/28/06	Letter to Mack	0.20 200.00/hr	42.40
11/29/06	Telephone conferences with Chloe; Preparation of Answer and Counterclaim; Review probate orders	3.40 200.00/hr	720.80
12/1/06	Telephone conference with Tonney re: hearing	0.20 65.00/hr	13.78
12/4/06	Telephone conference with Kaufman re: affidavit & financial declaration; Fax to Albright; Telephone conference with Tonney	0.50 65.00/hr	34.45

		Hrs/Rate	Amount
12/4/06	Telephone conference with Mack re: amending pleadings	0.20 200.00/hr	42.40
12/5/06	Conference with Tonney	0.20 200.00/hr	42.40
12/6/06	Letter to court - Notice Appearance	0.30 200.00/hr	63.60
12/13/06	Telephone conferences [redacted]	0.10 200.00/hr	21.20
1/4/07	Letter to opposing counsel	0.20 200.00/hr	42.40
1/8/07	Telephone conference with Mack	0.10 200.00/hr	21.20
1/17/07	Telephone conferences with & letter to Judge Landis, Ben Mack, Walter Kaufman & Tonney	1.00 65.00/hr	68.90
1/18/07	Preparation of Order of Continuance	0.50 65.00/hr	34.45
1/31/07	Telephone conference with Tonney re: status	0.10 200.00/hr	21.20
2/1/07	Letter to Tonney re: hearing date	0.20 65.00/hr	13.78
2/27/07	Court Appearance	1.80 200.00/hr	381.60
	For professional services rendered	10.00	$1,676.39
	Additional charges:		
1/22/07	Clerk of Court - Filing Fee - Ck #6588		25.00
	Total costs		$25.00

	Amount
Total amount of this bill	$1,701.39
Balance due	$1,701.39

NOTE: These charges include an RT fee expense fee of six (6%) percent.

CERT 0113 CERT 0113 CERT 0113



CHLOE KNIGHT TONNEY
[redacted]
STONE MOUNTAIN GA [redacted]

5264

29 April 2017

PAY TO THE ORDER OF Dellinger Law Firm

$ 1701.29

One thousand seven hundred one and 29/100

GEORGIA TELCO CREDIT UNION

[redacted] 5264

Chloe Knight Tonney

000068

Claimants #5 w/objection

Norman R. Knight, Jr.

		Amount
6/11/07	Clerk of Court - Filing Fee - Ck #6893	25.00
	Total costs	$50.00
	Total amount of this bill	$1,588.06
	Previous balance	$1,701.39
5/3/07	Payment - thank you	($1,701.39)
	Balance due	$1,588.06

Claimant's #6 w/objection

The Vincent Law Firm, L.L.C.
834 Savannah Highway
Post Office Box 31842
Charleston SC 29417-1842

Norman R. Knight, Jr.
c/o Iris Albright
Family Services, Inc.
4925 Lacross Road, Ste 215N
North Charleston SC 29406

October 15, 2007
In Reference To: Knight v. Knight
Invoice #12650

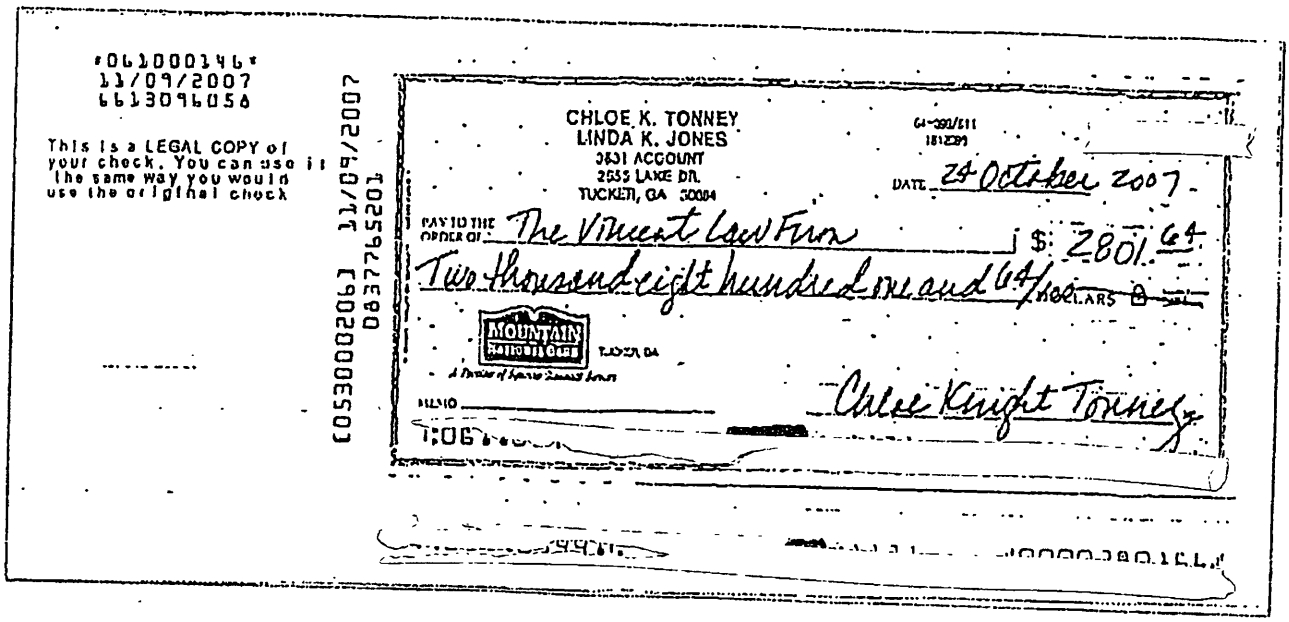
Professional services

	Hrs/Rate	Amount
9/5/07 Court Appearance for RTSC	2.50 200.00/hr	530.00
Telephone conference with Mack	0.10 200.00/hr	21.20
9/18/07 Telephone conference [redacted]	0.50 200.00/hr	106.00
10/1/07 Serve all parties with RTSC Order	0.60 65.00/hr	41.34
10/10/07 Telephone conference with Chloe	0.10 200.00/hr	21.20
For professional services rendered	3.80	$719.74
Previous balance		$2,081.90
Balance due		$2,801.64

NOTE: These charges include an [illegible] expense fee of six (6%) percent.

pltf ct. 1131 10-24-07

CERT 0116 CERT 0116 CERT 0116



061000146
11/09/2007
6613096056

This is a LEGAL COPY of your check. You can use it the same way you would use the original check

[053000206] 11/09/2007
083776520]

CHLOE K. TONNEY
LINDA K. JONES
3631 ACCOUNT
2555 LAKE DR.
TUCKER, GA 30084

64-390/611
1812289

DATE 24 October 2007

PAY TO THE ORDER OF The Vincent Law Firm $ 2801.64

Two thousand eight hundred one and 64/100 DOLLARS

MOUNTAIN NATIONAL BANK
TUCKER, GA

MEMO

Chloe Knight Tonney

:061

No Objection
Claimant #7

Chloe Knight Tonney
2655 Lake Road
Tucker, Georgia 30084

24 October 2007

Ms. Iris Albright
Family Services Inc.
4925 LaCross Road, Suite 215
North Charleston, S.C. 29406

RE: Norman R. Knight, Jr.

Dear Iris:

Enclosed are copies of two invoices from The Vincent Law Firm for legal fees generated by the Family Court action brought by my mother, Mildred C. Knight against my father, Norman R. Knight, Jr. Since the Family Court divided my father's monthly income on a temporary order, and no court has made any provision for my father's care or legal expenses to be paid through court-ordered liquidation and/or division of assets, he does not have enough income to pay for his care, medicines, or legal expenses. As a result, I consider that the current amount of $2801.64 paid to The Vincent Law Firm shall constitute a loan from me to my father at the current prevailing interest rate of 7.75% prime plus 2% (9.75%).

As you know, I have also paid previous legal and personal care expenses related to my father's present situation. Current legal invoices #12587 and #12650 along with a copy of my check #1131 made payable to The Vincent Law Firm are attached for your records.

I trust that as my father's assets are freed for his highest and best use, that you will consider reimbursing me for these expenditures or support any future claims on my behalf concerning my father's care and legal protection expenses.

With best regards,

Chloe Tonney

Chloe Knight Tonney

cc: Thad Vincent, Esq.
Linda Knight Jones

Claimants #8
w/o obj

Mary Ann Hall, P.C.
Attorney at Law

3 Broad Street, Suite 400 • Charleston, South Carolina 29401
Phone 843.377.1341 • Fax 843.377.1344
Email: mah@hallmarweims.com

December 14, 2007

Chloe Tonney
2655 Lake Road
Tucker, GA 30084

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO THE UNIFORM ARBITRATION ACT, § 15-48-10- § 15-48-240, S.C. CODE ANN.

PERSONAL AND CONFIDENTIAL

Dear Ms. Tonney:

Our rules of professional conduct require that all fee agreements between lawyers and their clients must be in writing. This letter shall serve to confirm the fee arrangement for the handling of your father's domestic matter. You, as court-appointed Conservator with Power of Attorney, are entering into this contract on behalf of your father, Norman Knight. This fee agreement is for the purpose of divorce, alimony, equitable distribution and attorney's fees. Your father was previously represented by Thad Vincent, Esq. in this domestic matter.

You have been charged a retainer fee of $5,000, against which I will bill. You agree that when your trust balance falls below $1,000, you will pay me an additional $5,000 within ten days of your receipt of a bill showing your trust balance has fallen below $1,000. No notice will be sent to you; it is your responsibility to make retainer payments under the terms of your fee agreement. You agree to continue to pay additional retainers each time your credit balance falls below $1,000. In the event your case should be set for trial, you agree to pay me an additional $5,000 retainer within ten days from the date of setting your trial. Because of the nature of domestic relations cases, I have adopted a strict policy that these retainers must be timely paid. My policy mandates that I withdraw as counsel and terminate the attorney-client relationship if the additional retainers are not promptly received by me. You, therefore, understand that it will be a basis for me to withdraw as your counsel if these funds have not been promptly deposited with me.

You will be billed at my hourly rate of $250 per hour for my time and $85 per hour for my paralegal, Toni Roberson. In the event I should change either my or my paralegals' hourly rate, the new rates shall be effective and deemed substituted in this letter.

In addition to my and my paralegals' hourly rates, you will also be billed for any costs incurred. Customary costs may include filing fees, service fees, copy costs, long distance telephone calls, depositions fees, etc. You will be billed on a monthly basis for both fees and costs, and remittance is expected as set forth herein.

In addition, in the event of a settlement, at the conclusion of the case in Family Court, or as part of your action for attorney's fees to be awarded by the Court against your spouse, we will mutually agree or the Family Court will determine, as against your spouse, any additional fees to be charged based on the result obtained in your case and the other factors considered under South Carolina law.

In the event that litigation results in attorney's fees being awarded by the Court from your spouse, these fees will be reimbursed to you provided that your account is current. That is, you will only pay fees for actual work which I have performed. However, if fees are awarded and your balance is not current, then I will first pay off any balance owed me and any excess will be reimbursed to you.

The fee arrangement contemplated is for the completion of the present legal services to be performed. The fee arrangement does not contemplate the handling of any collateral or ancillary lawsuits, such as foreclosures or suits by creditors (which frequently arise from marital obligations) or the handling of appeals to either the South Carolina Supreme Court of the South Carolina Court of Appeals. Should any of these possibilities materialize, it will be necessary for us to negotiate an appropriate fee arrangement for the handling of those cases.

Any controversy, dispute, or claim arising out of or relating to my fees, charges, performance of legal services, obligations reflected in this letter, or other aspects of our representation shall be resolved through binding arbitration in Charleston County, South Carolina in accordance with the rules then in effect of the American Arbitration Association, and judgment on the award rendered may be entered in any court having jurisdiction thereof. You acknowledge that by agreeing to arbitration, you are relinquishing your right to the following: bring an action in court; to a jury trial; to a judge bound by the Code of Ethical Conduct; to full discovery proceedings; to certain evidentiary rules; and to a right to findings based on the evidence with explicit legal reasoning. Additionally, you acknowledge that by agreeing to arbitration you ability to appeal adverse decisions will be curtailed and costs of the proceedings may be higher than a court case.

Please review the above paragraphs closely and, if this letter accurately reflects the agreement reached in my office, please sign the enclosed copy of this agreement as your acceptance of the terms of my employment and return both pages to me in the enclosed self-addressed, stamped envelope provided for that purpose.

If you do not understand the fee arrangement or do not believe it to accurately reflect our

agreement, please contact me at once. I trust, however, that you will find it appropriate.

Yours very truly,

Mary Ann Hall

Mary Ann Hall

I hereby acknowledge and accept the fee arrangement as set forth herein.

12/26/07
Date

Chloe Tonney
Chloe Tonney

Claimant #9
W/O dep

Amount: $5,000.00
Account: 17005[redacted]
Bank Number: 061000052

Sequence Number: 1152635056
Capture Date: 12/28/2007
Check Number: 3364

CHLOE KNIGHT TONNEY
FREDERICK R. TONNEY JR.
PH. 770-414-5224
2655 LAKE ROAD
TUCKER, GA 30084-2348

3364

Date 12/26/07

64-5/610 GA
288

Pay to the Order of Mary Ann Hall, P.C. $ 5000.00

Five thousand and 00/100 Dollars

Bank of America

ACH R/T 061000052

Bank of America Advantage

For Retainer

Chloe K. Tonney

⑈[redacted]005 21⑈ [redacted] ⑈3364 ⑆000050000⑆

00005

CERT 0122 CERT 0122 CERT 0122

Claimants #10
w/o obj.

Mary Ann Hall, P.C.

Attorney at Law

1816 Belgrade Avenue, Suite 101 • Charleston, South Carolina 29407
Phone 843.377.1341 • Fax 843.377.1344
Email: mah@mahlawfirm.com

September 24, 2010

By U.S. Mail:
Chloe Tonney
2655 Lake Road
Tucker, GA 30084

RE: Knight vs. Knight
2006-DR-10-3999

Dear Ms. Tonney:

Please find enclosed your trust refund check number: 0923 in the amount of $1,808.03. Ms. Hall will retain the file for seven years. Should you require any documents please let me know as soon as possible.

It has been a pleasure for our office to assist you and please do not hesitate to contact us should you require assistance in the future.

Yours Truly,

Heather Russell,
Legal Assistant to Mary Ann Hall

/her
Enclosures as stated

Mary Ann Hall, P.C.
1816 Belgrade Avenue, Ste. 101
Charleston, SC 29407
843-377-1341
Trust Account

WACHOVIA BANK, NA
67-776/532

0923

9/24/2010

PAY TO THE ORDER OF Chloe Tonney $ **1,808.03

One Thousand Eight Hundred Eight and 03/100********** DOLLARS

Chloe Tonney
2655 Lake Road
Tucker, GA
30084

MEMO Retainer Refund

CERT 0123 CERT 0123 CERT 0123

⑈000923⑈ ⑆053207766⑆ [redacted]4683⑈ 000067

Check #119
w/deposition

July 2006

119

000012

Dear Larry,

My sister, Linda Jones, and I couldn't be more grateful to and the two wonderful gentlemen you sent to us to help move our precious Daddy to Bishop Gadsden! You will never fully know how much the lastest of your and your employee's kindness meant to us at a time when our plate was truly full. Heartfelt thanks for extraordinary assistance on all fronts! You folks made a real difference for us!

Warmly, Chloe Tonney

0166

CHLOE KNIGHT TONNEY
FREDERICK R. TONNEY JR.
PH. 770-414-5224
2655 LAKE ROAD
TUCKER, GA 30084-2348

2013

Date 7/25/06

64-5/610 GA
288

Pay to the Order of Larry Collins $. 150.-

One hundred fifty and 00/100 Dollars

Bank of America

ACH R/T 061000052 (Invoice # 245643-0)

For Moving exp. - NRK, Jr.

Bank of America Advantage®

Chloe Knight Tonney

1: [redacted] 0052 2: [redacted] 2013

©Bank of America

CERT 0124

CERT 0124

CERT 0124

Exhibit #12

Walgreens
The Pharmacy America Trusts · Since 1901

I'm Felicity R.. Thank you for
allowing me to serve you today.

215 10 6279 06075 028

RFN# 0607-5286-2797-0712-1820

	PUFFS 132 SHEETS	1A	2.19
	PUFFS 132 SHEETS	1A	2.19
	PUFFS 132 SHEETS	A	1.38-WAGC
	2 @ 2/ 3.00		
	WLG UNDRWR36	1A	19.99
	WLG UNDRWR36	1A	19.99-VOID
M	WLG UNDRWR36	1A	13.99
M	WLG BRIEF MX LG32S	1A	13.99
M	WLG BRIEF MX LG32S	1A	13.99
M	WLG BRIEF MX MD40S	1A	13.99
	SUBTOTAL		56.96
	A=7.5% SALES TAX		4.42
	TOTAL		63.38
	VISA		63.38
	ACCT#:*******[redacted]		
	CHANGE		.00
	WAG COUPON SAVINGS:		1.38
	YOUR TOTAL SAVINGS:		1.38

907 Folly Road Ste A Charleston, SC
STORE (843)795-5452

THANK YOU
FOR FASTER SERVICE, CALL IN YOUR
PRESCRIPTION ORDER OR PLACE IT ON
WWW.WALGREENS.COM 24 HOURS IN ADVANCE

WALGREENS PRESCRIPTION SAVINGS CLUB
SAVE ON OVER 3,000 NAME BRAND
AND GENERIC MEDICATIONS.

PLUS, PAY $12.99 FOR A 90-DAY SUPPLY
OF OVER 150 GENERIC MEDICATIONS.
ASK HOW MUCH YOU CAN SAVE TODAY!

RETAIN THIS RECEIPT FOR YOUR RECORDS

DECEMBER 18, 2007 9:16 PM

Walgreens
The Pharmacy America Trusts · Since 1901

I'm Felicity R.. Thank you for
allowing me to serve you today.

215 10 3714 06075 027

RFN# 0607-5273-7143-0712-1820

	PLMV DSH 130Z	1A	1.79
	PLMV DSH 130Z	1A	1.79
	PLMV DSH 130Z	1A	1.79-VOID
	PLMV DSH 130Z	1A	1.79-VOID
M	PLMV DSH 130Z	1A	.89
M	PLMV DSH 130Z	1A	.89
M	PLMV DSH 130Z	1A	.89
M	PLMV DSH 130Z	1A	.89
M	PD CRM 3.90Z	A	2.25
M	PD CRM 3.90Z	A	2.24
	1 @ 2/ 4.49		
	W/F GL[illegible] 5.50Z	B	2.99
	W/F CARAMEL 5.50Z	B	2.01
	1 @ 1/ 2.99 - 2/ 5.00		
F	WLG JLY 130Z	1A	3.45
F	A&D CRM 160Z	1A	11.99
F	A&D CRM 160Z	1A	11.99
	PPR TWL 165S	1A	1.69
	WHTMN PCN CRWN110Z	1B	8.99
	WHTMN PCN CRWN110Z	1B	8.99-VOID
M	WHTMN PCN CRWN110Z	1B	4.99
	LISTR GL4.2Z	1A	4.99
	PFS TIS 216S	1A	2.19
	GOETZ CARM13	1B	2.29
	WRTH ORG CHMY5.5OZ	1B	1.99
	CARD 22S	1A	6.99
	WLF GRD MN52	1A	11.99
	WLG REFST UNDWR18S	1A	10.99
	WLG REFST UNDWR18S	1A	10.99
	WLG REFST UNDWR18S	1A	10.99-VOID
	WLG BRIEF MX MD40S	1A	17.99
	WLG BRIEF MX MD40S	1A	17.99
	WLG BRIEF MX MD40S	1A	17.99
	WLG BRIEF MX LG32S	1A	17.99
	WLG BRIEF MX LG32S	1A	17.99-VOID
	WLG BRIEF MX MD40S	1A	17.99-VOID
	WLG BRIEF MX MD40S	1A	17.99-VOID
	WLG BRIEF MX MD40S	1A	17.99-VOID
	WLG BRIEF MX MD40S	1A	17.99
	WLG BRIEF MX MD40S	1A	17.99-VOID
M	WLG BRIEF MX MD40S	1A	13.99
M	WLG BRIEF MX MD40S	1A	13.99
M	WLG BRIEF MX MD40S	1A	13.99
M	WLG BRIEF MX LG32S	1A	13.99
	SUBTOTAL		140.59
	A=7.5% SALES TAX		9.92
	B=1.5% SALES TAX		.21
	TOTAL		150.72
	VISA		150.72

CERT 0125 CERT 0125 CERT 0125

000020

0167

120

Initial grocery trip



Harris Teeter

[redacted]

[redacted]

OS CRNBRY PEACH		3.29	I
TOASTCHEE		2.59	I
VIENNA FINGR		3.49	I
KRFT WHT SINGLE		1.99	I
JELLO SUNDAE		3.19	I
DEPENDS PANTS		12.19	I
CAPRI SUN 10 PK	PC	2.89	I
CAMPB TOM SOUP	PC	.85	I
PF VTHIN WH		2.99	I
PIMENTO CHEESE		3.49	I
KLONDIKE BARS	PC	3.89	I
DEPENDS PANTS		12.19	I
HOT COCOA MRSH		1.59	I
DEPENDS PANTS		12.19	I
VIC LOTION		6.29	I
FRNCH TST CRNCH		3.29	B
CAMPBELL SOUP		1.39	B
VIENNA WAFER		6.79	B
CAMPB TOM SOUP	PC	.85	B
FLINTSTONE VITM	PC	6.29	I
KIDS SCISSORS		.99	I
LISTERINE		3.79	I
VITAMIN E 400IU		14.79	I
CD GINGERALE		4.19	B
COLGATE TPST	PC	2.79	I
FR ONION MUSTRD		2.69	B
DRIED CRANBERRY		2.39	B
CAMPBELL SOUP		1.39	B
A&W ROOT BEER	PC	3.59	B
CUSTOMER		4868888C281	
SC 8352 VIC SUNDROP .5LTR		.10-B	
SC 5074 VIC COLGATE TPST		.50-I	
SC 8036 VIC FLINTSTONE GUM		1.30-I	
SC 5396 VIC KLONDIKE BARS		.89-B	
2 @ 5/3.00			
SC 5032 VIC CAMPB TOM SOUP		.50-B	
SC 5186 VIC CAPRIS SUN 10		.39-B	
**** 6.5% SC SALES TAX		4.53	
**** 6.5% SC SALES TAX		3.57	
**** BALANCE DUE		132.75	
VF PERSONAL CHECK		132.75	

****

CHECK #: 1673

****

CERT 0126 CERT 0126 CERT 0126

000022

Mother

Dillard's

CUSTOMER COPY

276839209 SALE 0023-1 0461035

579-510 774756 MDS 1 47.50
AIGLE (winter coat)
U POP 084950937197 6.500
044211615783 693 1 69.00
MENS CASUAL
U POP 084950937222 6.500
044211615660 698 1 45.00
MENS CASUAL
U POP 084950937130 6.500
095723029773 691 1 4.50
MENS DRESS SHOES
U POP 084950937148 6.500
522-040 2382513 MDS 1 3.50
SOCKS
U POP 084950937189 6.500
522-040 2382513 MDS 1 3.50
SOCKS
U POP 084950937171 6.500
522-040 2382513 MDS 1 3.50
SOCKS
U POP 084950937163 6.500
522-040 2743224 MDS 1 9.00
SOCKS
U POP 084950937155 6.500

SUBTOTAL 185.50
SALESTAX 12.06
TOTAL 197.56

01135 VISA
U BANKCARD CHARGE 197.56
M **********[redacted]
TONNEY/CHLOE KNIGHT

CHANGE DUE 0.00

THANK YOU FOR SHOPPING DILLARD'S
SEE WHAT'S HAPPENING @
WWW.DILLARDS.COM/CITADELMALL
CHARLESTON, SC
PHONE: 843-556-0080
RETURN POLICY ON BACK OF RECEIPT
02/04/06 16:14

Dillard's

CUSTOMER COPY

389240026 SALE 0022-1 0461067

565-764 394414 MDS 1 18.00
KNIT SHIRTS
HU POP 084953041195 6.500
566-580 [illegible] MDS 1 18.00
SPORT SHIRTS
HU POP 084953041203 6.500
566-530 35897 MDS 1 18.00
SPORT SHIRTS
HU POP 084953041187 6.500
566-530 831047 MDS 1 18.00
SPORT SHIRTS
HU POP 081837815440 6.500
565-764 394411 MDS 1 16.00
KNIT SHIRTS
HU POP 084953041179 6.500
565-764 394394 MDS 1 16.00
KNIT SHIRTS
HU POP 084953041161 6.500
565-764 394392 MDS 1 16.00
KNIT SHIRTS
HU POP 074228433228 6.500

Dillard's

566-214 303304 MDS 1 16.00
SPORT SHIRTS
HU POP 084953041211 6.500

Dillard's

SUBTOTAL 134.00
SALESTAX 8.71
TOTAL 142.71

008949 VISA
HU BANKCARD CHARGE 142.71
M **********[redacted]
TONNEY/CHLOE KNIGHT

CHANGE DUE 0.00

THANK YOU FOR SHOPPING DILLARD'S
SEE WHAT'S HAPPENING @
WWW.DILLARDS.COM/CITADELMALL

CERT 0127 CERT 0127 CERT 0127 000023

0169 122

Bedspread

Dillard's

162150221 SALE 0009-1 0461009

754405252035 773.1 129.00
CONFETTI/TWIST RUFFLES
HU POP 0849631095A 1.500

SUBTOTAL 129.00
SALES TAX 8.39
TOTAL 137.39

Dillard's

994423 MASTERCARD
AU BANKCARD CHARGE 137.39
[redacted]
TONNEY/CHLOE.K

CHANGE DUE 0.00

THANK YOU FOR SHOPPING DILLARD'S
SEE DETAILS IN STORE
WWW.DILLARDS.COM/GIFTWRAP
CHARLESTON,SC
PHONE: 843-556-0080
RETURN POLICY ON BACK OF RECEIPT
02/05/06 16:24

Dillard's

CERT 0128 CERT 0128 CERT 0128 000024

2 pr. pants

SEARS
CITADEL MALL, SC 02855



RETAIN FOR COMPARISON WITH MONTHLY
STATEMENT OR FOR RETURN OR EXCHANGE

SALESCHECK #
0285551486 40

TRAN#	PG/STORE	REG#	ASSOC#
8640	99 02855	514	24133

SALE

16 28450071	DENIM, DA MDS	14.98T
16 28448060	DENIM, DAR MDS	14.98T
16 28447060	QTY:2	
	DENIM, MED W MDSE	29.96T
	SUBTOTAL	59.92
	TAX 06.500%	3.89
	CHECK TENDER	63.81
06/04/06	CASH TOTAL	63.81

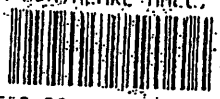
RC: 5997-8788-5397-6867

SATISFACTION GUARANTEED
OR YOUR MONEY BACK
A RECEIPT DATED WITHIN 90 DAYS
IS REQUIRED FOR A RETURN OR EXCHANGE
WHICH WOULD BE 09/02/06. OTHER RULES
APPLY. SEE BACK OF RECEIPT FOR DETAILS.
RETURNED MERCHANDISE MUST INCLUDE ALL
COMPONENT PARTS. REFUND WILL BE ISSUED
IN THE ORIGINAL TENDER.

THIS FATHER'S DAY, GIVE DAD
THE SPECIAL GIFT OF PORTRAITS.
SAME DAY PORTRAITS AVAILABLE.
CALL TODAY! 1-888-PORTRAIT

1 pr. pants

SEARS
ATLANTA NORTHLAKE MALL, GA 01



RETAIN FOR COMPARISON WITH MON
STATEMENT OR FOR RETURN OR EXCH

SALESCHECK #
01275019 5631

TRAN#	PG/STORE	REG#	ASSO(
5631	99 01275	019	569

SALE

16 54506076	WMN PNT.TW MDS	19!
	SUBTOTAL	19.
	TAX 07.000%	1.

CARD TYPE: SEARS ACCOUNT
ACCT #: [redacted]
AUTH CODE: [redacted]
STATE: GA
01/14/07 SEARS ACCOUNT TOTAL 21.

RC: [redacted]

CARDHOLDER ACKNOWLEDGES RECEIP
OF GOODS AND/OR SERVICES IN TH
AMOUNT OF
$21.38
WITH AMOUNTS AS SHOWN CHARGED
EACH CREDIT CARD IDENTIFIED HERE
AND AGREES TO BE BOUND BY THE TE
SET FORTH IN THE CARDHOLDER'S
AGREEMENT(S) WITH THE ISSUER(S)
THOSE CREDIT CARDS.

SATISFACTION GUARANTEED
OR YOUR MONEY BACK
A RECEIPT DATED WITHIN 90 DAY:
IS REQUIRED FOR A RETURN OR EXCH
WHICH WOULD BE 07/13/07. OTHER RUL
APPLY. SEE BACK OF RECEIPT FOR DETA
RETURNED MERCHANDISE MUST INCLUDE A
COMPONENT PARTS. REFUND WILL BE ISS
IN THE ORIGINAL TENDER.

CERT 0129 CERT 0129 CERT 000025

Clothes

SEARS
CITADEL MALL, SC 02855

RETAIN FOR COMPARISON WITH MONTH
STATEMENT OR FOR RETURN OR EXCHAN

SALESCHECK #
028555126586

TRAN#	PG/STORE	REG#	ASSOC#
6586	10 02855	512	2071

SALE

07 54003014	PANTS, AV MDS	14.9
16 28449027	DENIM, MED MDS	14.9
7 53761038	PO PANTS, MDS	14.9
16 29806034	QTY:2 PANT, AVG PQ MDSE	48.0
16 23230060	PANT, SHOR MDS	24.0
	SUBTOTAL	116.94
	TAX 06.500%	7.60

CARD TYPE: MASTERCARD
ACCT #: [redacted]
AUTH CODE: [redacted]
02/02/06 MASTERCARD TOTAL 124.54

RC:[redacted]

CARDHOLDER ACKNOWLEDGES RECEIPT
OF GOODS AND/OR SERVICES IN THE
AMOUNT OF
$124.54
WITH AMOUNTS AS SHOWN CHARGED TO
EACH CREDIT CARD IDENTIFIED HEREON
AND AGREES TO BE BOUND BY THE TERM
SET FORTH IN THE CARDHOLDER'S
AGREEMENT(S) WITH THE ISSUER(S) O
THOSE CREDIT CARDS.

SATISFACTION GUARANTEED
OR YOUR MONEY BACK
A RECEIPT DATED WITHIN 90 DAYS
IS REQUIRED FOR A RETURN OR EXCHAN
WHICH WOULD BE 05/03/06. OTHER RUL
APPLY. SEE BACK OF RECEIPT FOR DETA
RETURNED MERCHANDISE MUST INCLUDE AL
COMPONENT PARTS. REFUND WILL BE ISSU
IN THE ORIGINAL TENDER.

Citadel print

THE CITADEL GIFT SHOP
MSC 110, 171 MOULTRIE STREET
CHARLESTON SC 29409
843-953-5110

6388 PRINT FRAMED DRESS PARA 245.00

Payment Via
VISA 260.93

Subtotal:	245.00
Tax:	15.93
Total:	260.93
Amt Paid:	260.93

PRINT FRAMED DRESS PARADE BY STR PRINTS
$245.00
CITADEL GIFT
9006 3886

VISA
Card Number [redacted]
Approval Code [redacted]
Charge Amount 260.93
CUSTOMER COPY

Receipt# 13357482 reg. 106/56
11:40:20 a.m. 04 FEB 2006

THANK YOU FOR SHOPPING THE CITADEL GIFT SHOP. RECEIPTS ARE REQUIRED FOR RETURNS. CASH REFUNDS ONLY WITHIN 30 DAYS AND REQUIRE RECEIPT. WE RESERVE THE RIGHT TO REFUSE A REFUND.

000027

BOMBAY

SALE

Cashier: SHIRLEY
Associate: SHIRLEY
Date: Feb 04, 2006
Time: 3:45 PM

Item #	Qty	Price
001B53463	1	$179.00
GALLERY SIDE TABLE-VT		

Sub Total
SALES TAX
Total

Payments:

Visa xxxxxxxxxxx[redacted]
Auth. Code:[redacted]

Trans No: 004B10602040025523
Store No: 00481
481 - *CITADEL MALL
2070 SAM RITTENBERG BLVD
Phone No: (843)769-5127

004B10602040025523

Price adjusiments are not avail
on holiday or seasonal merchandi
Visit us on the
www.bombaycompany

phone/housewares

WAL★MART
ALWAYS LOW PRICES.
Always

WE SELL FOR LESS
MANAGER LARRY HOOPER
(843) 762 - 9034

ST# 2348 OP# 00001869 TE# 18 TR# 04680

DUPLEX JACK	002661601732	4.24 X
CORDDETANGLE	002661601734	3.96 X
CORDDETANGLE	002661601734	3.96 X
AMP PHONE	001722906248	34.88 X
AMP PHONE	001722906248	34.88 X
SHELF LINER	007535326272	3.97 X
SHELF LINER	007535325625	4.98 X
SHELF LINER	007535326272	3.97 X
SHELF LINER	007535325625	4.98 X
ATOMIX CLOCK	007239713131	14.42 X
VB	005100015318 F	3.42 X
BATTERIES	004133382501	5.36 X
OCN SPRY JCE	003120021007 F	2.43 X
SUBTOTAL		125.45
TAX 1 6.500 %		8.15
TOTAL		133.60
VISA TEND		133.60

ACCOUNT [redacted]
APPROVAL [redacted]
TRANS ID -009603413481482?
VALIDATION -BFBV
PAYMENT SERVICE - E
CHANGE DUE 0.00

ITEMS SOLD 13

TC# 8749 4754 1728 5172 1564 4

C. Tony

Buy a big screen TV for the Big Game!
Protect it with a 2 year service plan!
02/02/06 22:45:03

CUSTOMER COPY

housewares / t.v.

WAL★MART
ALWAYS LOW PRICES.
Always

WE SELL FOR LESS
MANAGER LARRY HOOPER
(843) 762 - 9034

ST# 2348 OP# 00001797 TE# 67 TR# 07888

15 MAG. LCD	003784996552	248.00 X
CC MP TWIN	003137451264	9.94 X
TRAVEL PLW	002569500382	3.53 X
BOUNTY NAP	003700034885	3.00 X
DUST SANITZR	004650002868	2.94 X
COFFEEMAKER	007217922814	14.67 X
BRAWNY 6RL	004200024600	4.47 X
COTT WIPE 42	003600072042	1.94 X
COTT FMW 42	003600072044	1.76 X
COTT FMW 42	003600072044	1.76 X
COFF FILTER	007128747201	0.97 X
BARSOAP	001111132397	2.37 X
AJAX 18FO	003600000856	1.08 X
CUP 3Z 100CT	004116502632	1.48 X
FOAM CUPS	007129000504	1.07 X
SRV-N-STR 9	001370010007	2.00 X
ROLD GOLD	002840001448 F	2.14 X
SUBTOTAL		303.12
TAX 1 6.500 %		19.70
TOTAL		322.82
VISA TEND		322.82

ACCOUNT [redacted]
APPROVAL [redacted]
TRANS ID -009603584528508O
VALIDATION -KPP6
PAYMENT SERVICE - E
CHANGE DUE 0.00

ITEMS SOLD 17

TC# 6328 8936 3910 3084 3188 6

Chloe K. Tony

Buy a big screen TV for the Big Game!
Protect it with a 2 year service plan!
02/04/06 18:29:19

CUSTOMER COPY

000029

CERT 0133 CERT 0133 CERT 0133

Bathroom items

TUESDAY MORNING, INC.
975 SAVANNAH HIGHWAY, SUITE 254 TU
CHARLESTON, SC 29407
(843) 556-1060
02-04-06 500192 R002

CUSTOMER RECEIPT COPY

280TC TH GDF J		9.99
000006247524		
T-350 SOLID COLOR TW S/S		29.99
000036038717		
CHERRY PMAT		5.99
000005276266		
VANITY TRAY CHROME		9.99
000006125785		
SUB TOTAL		55.96
SALES TAX		3.64
TOTAL		59.60
AMOUNT TENDERED		
VISA		59.60
CARD #:	**********	
EXP DATE	****	
AMOUNT	59.60	
SEQUENCE NUMBER		
TOTAL PAYMENT		59.60

CHLOE KNIGHT TONNEY
THANK YOU FOR SHOPPING AT
TUESDAY MORNING
EVERYTHING 50% TO 80% OFF

****

000030

STOCKLY BROTHERS FURNITURE CO.
1113 JOHNNIE DODDS BLVD. E.

MT. PLEASANT SC 29464
(843) 884-2650 / (843) 884-2874 FAX

Bill to: Chloe Tonney
2655 Lake Road
Tucker GA 30084

Cust ID
9731994

SALES ORDER
41777

14:11:27 Order Date: 02/01/2006

Ship to: [redacted]
Charleston SC[redacted]

Code:
Type: RETAIL
Ref#: 41777

Pmt Terms: CASH CUSTOMER
Cust P.O.:
Orig Nmbr:

Seller(s)		
LYNNG	/	x
	/	x
	/	x
	/	x

Qty Sold	Ordered	Description	Sale Price
1.0000		HM 1023 RECLINER GR-CL2 DOCUMENT CLARET ADDISON BUSTLEBACK 8	1629.00 02/01/2006

THANK YOU FOR SHOPPING WITH US!! WE APPRECIATE YOUR BUSINESS!!
*) 1/2% INTEREST PER MONTH CHARGE ADDED TO ALL UNPAID BALANCES AFTER DELIVERY.

Last Five Payments Received:
V 1777.49 02/01/2006

Merchandise:	1629.00	State Tax:	83.45
Deliv/Ship:	40.00	City Tax:	25.04
Setup/Finish:	.00	Other Tax:	.00
Fabguard/ESW:	.00	GRAND Total:	1777.49
Other Chrgs:	.00	Pmts Rcvd:	1777.49
SUB Total:	1669.00	*) NET BALANCE:	.00

CERT 0135 CERT 0135 CERT 0135

TUCKEY BROTHERS FURNITURE CO.
113 JOHNNIE DODDS BLVD. E.

T. PLEASANT SC 29464
843) 884-2650 / (843) 884-2674 FAX

Cust ID	9731994

SALES ORDER	41777

08:39:30 Order Date: 02/01/2006

Bill to: Chloe Tonney
2655 Lake Road
Tucker GA 30084

Ship to: Norman Knight (Summerhouse Nursing)
1501 Secessionville Road

Charleston SC 29412

ode:	Pmt Terms: CASH CUSTOMER	Seller(s)	770 / -235-0166	x
ype: RETAIL	Cust P.O.:	LYNNG	/	x
ef#: 41777	Orig Nmbr:		/	x

Qty Sold	Ordered	Description	Sale Price
1.0000		HM 1023 RECLINER GR-CL2 DOCUMENT CLARET	1629.00
		ADDISON BUSTLEBACK B	02/01/2006

HANK YOU FOR SHOPPING WITH US!! WE APPRECIATE YOUR BUSINESS!!
1 1/2% INTEREST PER MONTH CHARGE ADDED TO ALL UNPAID BALANCES AFTER DELIVERY.

ast Five Payments Received:
1777.49 02/01/2006

Merchandise:	1629.00	State Tax:	83.45
Deliv/Ship:	40.00	City Tax:	25.04
Setup/Finish:	.00	Other Tax:	.00
Fabguard/ESW:	.00	GRAND Total:	1777.49
Other Chrgs:	.00	Pmts Rcvd:	1777.49
SUB-Total:	1669.00	=> NET BALANCE:	.00

CERT 0136 CERT 0136 CERT 0136

000064

TUCKEY BROTHERS FURNITURE CO.
1113 JOHNNIE DODDS BLVD. E.

MT. PLEASANT SC 29464
(843) 884-2650 / (843) 884-2874 FAX

Cust ID
9731994

SALES ORDER
41806

15:56:48 Order Date: 02/03/2006

Bill Chloe Tonney
to: 2655 Lake Road
Tucker GA 30084

Ship to:

Seller(s)			
LYNNG	/	/	/
	x	x	x

Code:
Type: NOTAX
Ref#: 41806

Pmt Terms: CASH CUSTOMER
Cust P.O.:
Orig Nmbr:

Qty Sold	Ordered	Description	Sale Price
2.0000		OA PA67-12-1340 LAMP LAMP	199.00 02/03/2006
1.0000		DRK 7847 CHAIR DELUXE FIN F NETTIE RAJA/CHERRY ARM CHAIR	389.00
1.0000		HC 2330-70 TBL.END ALT FIN ENG ANTIQUE CHIPPENDALE END TABL	599.00 02/03/2006
1.0000		HAM T1006485-00 DESK 46X23X36 DESIGN DESK	829.00
1.0000		HAM T75239-00 CHAIR ENGLLISH FOLIO CORNE	409.99 02/03/2006

THANK YOU FOR SHOPPING WITH US!! WE APPRECIATE YOUR BUSINESS!!
*1 1/2% INTEREST PER MONTH CHARGE ADDED TO ALL UNPAID BALANCES AFTER DELIVERY.

**SPECIAL ORDERS AVERAGE 8 WEEKS DELIVERY TIME TO OUR STORE, BUT WE CAN MAKE NO GUARANTEE ON SHIPPING TIME. WE HAVE NO CONTROL OVER THIS. WE WILL CONTACT YOU WHEN YOUR FURNITURE ARRIVES TO SCHEDULE DELIVERY.
THERE IS A 25% RESTOCKING CHARGE ON ALL RETURNED SPECIAL ORDERED ITEMS.

Last Five Payments Received:
V 2624.99 02/03/2006

Merchandise:	2624.99	State Tax:	.00
Deliv/Ship:	.00	City Tax:	.00
Setup/Finish:	.00	Other Tax:	.00
Fabguard/ESW:	.00	GRAND Total:	2624.99
Other Chrgs:	.00	Pmts Recvd:	2624.99
SUB-Total:	2624.99	=> NET BALANCE:	.00

CERT 0137 CERT 0137 CERT 0137

,CKEY BROTHERS FURNITURE CO.
.13 JOHNNIE DODDS BLVD. E.

MT. PLEASANT SC 29464
(843) 884-2650 / (843) 884-2874 FAX

Cust ID
9731994

SALES ORDER
43234

14:46:47 Order Date: 07/22/2006

Bill to: Chloe Tonney
2655 Lake Road
Tucker GA 30084

Ship to:

Seller(s)	770 / -235-0166	x
LYNNG	/	x
	/	x
	/	x

Code:
Type: RETAIL
Ref#: 43234

Pmt Terms: CASH CUSTOMER
Cust P.O.:
Orig Nmbr:

Qty Sold	Ordered	Description	Sale Price
1.0000		PULA 603103 DESK SECRETARY DECK	237.92
1.0000		PULA 603101 DESK SECRETARY BASE	339.92

DLV: B. Gads.

Additional Storage – Bishop Gadsden

**SPECIAL ORDERS AVERAGE 8 WEEKS DELIVERY TIME TO OUR STORE, BUT WE CAN MAKE NO GUARANTEE ON SHIPPING TIME. WE HAVE NO CONTROL OVER THIS. WE WILL CONTACT YOU WHEN YOUR FURNITURE ARRIVES TO SCHEDULE DELIVERY. THERE IS A 25% RESTOCKING CHARGE ON ALL RETURNED SPECIAL ORDERED ITEMS.
THANK YOU FOR SHOPPING WITH US!! WE APPRECIATE YOUR BUSINESS!!
*1 1/2% INTEREST PER MONTH CHARGE ADDED TO ALL UNPAID BALANCES AFTER DELIVERY.

Page 1 of 1

Last Five Payments Received:
V 329.01 VISA CARD 10/09/2006
V 329.00 07/22/2006

CERT 0138

Merchandise:	577.84	State Tax:	30.89
Deliv/Ship:	40.00	City Tax:	9.27
Setup/Finish:	.00	Other Tax:	.00
Fabguard/ESW:	.00	GRAND Total:	658.00
Misc Chrgs:	.00	Payments:	658.01
SUB-Total:	617.84 =>	NET BALANCE:	-.01

CERT 0138

CERT 0138

WELCOME TO BEST BUY #0.
TUCKER, GA 30084
(770)939-7660

Keep your receipt



Sal #: 0952-0079 0945-5664

0513 060 6723 07/15/07 14 04 0576346

SALE

8212604 27P19007D/1 299 99
27" FLAT SDTV TUBE

SUBTOTAL 299.99
SALES TAX 7 00 % 21.00
TOTAL 320 99

xxxxxxxxxxxx[redacted] VISA 320.99
F TONNEY
APPROVAL [redacted]

YOUR CUSTOMER SERVICE PIN IS:
[redacted]

<<<<< CUSTOMER COPY >>>>>

BEST BUY VALUES YOUR FEEDBACK!!
TAKE OUR SURVEY AND ENTER FOR A CHANCE TO
WIN A $10,000 BEST BUY SHOPPING SPREE!!

Visit http://www.besthurveys.com

& enter the following codes:

Group A: 591228
Group B 6409
Group C 622629

NO PURCHASE NECESSARY. Must be legal resident of 50 US/DC, 16 or older. 2 Drawing Periods. 3/1 6/2-07 & 6/3-9/30/07. Limit 3 entries per [illegible] for free entry & other details, see Official Rules at website or store. Void where prohibited.

0181

CERT 0139 CERT 0139 CERT 0139

Sweatshirt

Parisian
4820 Briarcliff Road
Atlanta, GA. 30345
Phone: 770-496-3200

STORE MGR: John Eller
ASSOC: 282242 Beverly

ST:0133 TRN.0054 TRN:44368 TAKE

PRESWICK & MOORE
882621296051 537.015
42.00 PROMO (17.01)
(1 @ 24.99) 24.99
Item Tax 1.75 (

Subtotal 24.99
Total Tax 1.75
Total 26.74
CHK#2142 Personal Check (26.74)
AUTH:009600 (00)

Lacome has a Gift for You!
Receive a Free Gift with any $35.00
Lancome Purchase!
Thank You for Shopping Parisian.
Where You are Always Someone Special!

v201.14 10/07/2006 04:36PM

Customer Copy

.ES
)ILS
ILL
SUED

Sear

Claimant's Ex #1
w/o objection

Chloe Knight Tonney
2655 Lake Road
Tucker, Georgia 30084

15 March 2006

Family Services Inc.
Ms. Iris Albright
Conservator for Norman R. Knight, Jr.
4925 LaCross Road, Suite 215
North Charleston, SC 29406

RE: Expenditures for Norman R. Knight, Jr.

Dear Ms. Albright:

Most importantly, *thank you* on behalf of my sister and me for all ~~you are doing to~~ see that my father's assets are marshaled for his highest and best use. After almost two years of frivolous litigation and the loss of all that Daddy has worked for and held dear for his entire life, we now have the privilege of seeing him well and thriving in his new environment. None of us would have wished for the court to find it necessary to use such far-reaching measures to protect Daddy, but we stand convinced that these measures have indeed saved his very life. My sister and I are truly grateful to the court for carrying out what we feared might be inevitable, though it is clearly in Daddy's best interest.

It is tragic, however, that Daddy is not able to live in the home that he loves, built with his own hands, and worked his entire life to pay for, while his abuser(s) not only live there at his expense, but enjoy the added benefit of my father's pension paying minimum credit card payments on outrageous amounts of consumer debt fraudulently run up in Daddy's name. Hopefully the responsible parties will be prosecuted to the full extent of the law with judgments against them for amounts owed until restitution is made in full.

When Daddy moved to assisted living at the end of January 2006, he arrived there with basically the clothes on his back. There were ensuing issues around his prescriptions and personal belongings that my mother and brother refused to make available to him. After consultation with both you and Mr. Walter Kaufmann, Daddy's guardian, I made the purchases necessary to provide Daddy with items such as clothing, bedding, house wares, and furniture. Purchases were made that would make Daddy feel as comfortable as possible in his new environment with an effort to replicate familiar and favorite items that he enjoyed at home. My father is accustomed to nice things and has always provided us with the very best – it seems only right that he should continue to enjoy these types of things and not be penalized because family members have chosen to steal from him.

Attached are the original receipts and one duplicate set for your records. If reimbursement for these items is possible, it would be very much appreciated. Again, please know how much my sister and I value all that you and others are doing for Daddy in this enormously difficult circumstance.

With great thanks and appreciation, I send my

Best personal regards,

Chloe Knight Tonney

Enclosures

cc: Walter Kaufmann, Esq.

Statement

Form PB-01

Claim's #15
no chapter

Bishops Gadsden

RESIDENT #	UNIT	STMT. DATE
879	119A	12/31/2007
RESIDENT(S)		
Mr. Norman Knight		
TOTAL AMOUNT DUE		$6,728.50
DATE DUE		01/15/2008

CHLOE KNIGHT TONNEY
2655 LAKE ROAD,
TUCKER, GA 30084

Please deduct these nebulizer charges. I've asked the nursing staff @ this source how to do this $3008.50

DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE

AMOUNT REMITTED

DATE	DESCRIPTION	Days/ Units	CHARGES	CREDITS	BALANCE
	Balance Forward				5,156.97
12/13/07	Payment Received - Thank You			3,156.97	2,000.00
12/31/07	Payment Received - Thank You			2,000.00	0.00
	*** Cloister ***				
~~12/04/07~~	~~Mask Aerosal Adlt~~	1	1.55		~~1.55~~
	~~MASK AEROSOL ADLT W/TUBE~~				
~~12/04/07~~	~~Nebulizer Disposable~~	1	2.76		~~4.31~~
	~~NEBULIZER DISPOSABLE~~				
~~12/10/07~~	~~Mask Aerosal Adlt~~	1	1.55		~~5.86~~
	~~MASK AEROSOL ADLT W/TUBE~~				
~~12/10/07~~	~~Nebulizer Disposable~~	1	2.76		~~8.62~~
	~~NEBULIZER DISPOSABLE~~				
12/10/07	Beauty Salon	1	14.50		23.12
	Men's Cut 1				
~~12/17/07~~	~~Mask Aerosal Adlt~~	1	1.55		~~24.67~~
	~~MASK AEROSOL ADLT W/TUBE~~				
~~12/17/07~~	~~Nebulizer Disposable~~	1	2.76		~~27.43~~
	~~NEBULIZER DISPOSABLE~~				
~~12/26/07~~	~~Mask Aerosal Adlt~~	1	1.55		~~28.98~~
	~~MASK AEROSOL ADLT W/TUBE~~				
~~12/26/07~~	~~Nebulizer Disposable~~	1	2.76		~~31.74~~
	~~NEBULIZER DISPOSABLE~~				
~~12/30/07~~	~~Nebulizer Disposable~~	1	2.76		~~34.50~~
	~~NEBULIZER DISPOSABLE~~				
12/31/07	Tylenol 500mg - CL	62	9.30		43.80
12/31/07	Colace - CL	29	2.90		46.70
12/31/07	Mucinex-CL	62	24.80		71.50
01/01/08	Monthly Service Fee - CL 01/01-01/31	31	6,634.00		6,705.50

CONTINUED
NEXT PAGE

RESIDENT #	CURRENT	OVER 30	OVER 60	OVER 90	OVER 120	TOTAL AMOUNT DUE

Form PB-01

Bishop Gadsden

CHLOE KNIGHT TONNEY
2655 LAKE ROAD,
TUCKER, GA 30084

RESIDENT #	UNIT	STMT. DATE
879	119A	12/31/2007
RESIDENT(S)		
Mr. Norman Knight		
TOTAL AMOUNT DUE		$6,728.50
DATE DUE		01/15/2008

TACH AND RETURN THIS PORTION WITH YOUR REMITTANCE

$ _____ AMOUNT REMITTED

DATE	DESCRIPTION	Days/ Units	CHARGES	CREDITS	BALANCE
1/01/08	Cable Television-CL 01/01-01/31	1	23.00		6,728.50

RESIDENT #	CURRENT	OVER 30	OVER 60	OVER 90	OVER 120	TOTAL AMOUNT DUE
879	6,728.50	0.00	0.00	0.00	0.00	$6,728.50

Form PB-01

SIDENT NAME Mr. Norman Knight

CERT 0144 BISHOP GADSDEN, ONE BISHOP GADSDEN WAY, CHARLESTON, SC 29412 CERT 0144 CERT 0144

Statement questions contact Lynn Hall (843)406-6298- Dining Service questions contact Becky Staton (843)406-6418

000009

(T) 6728.50
- 3100.00
3628.50

139

3390

CHLOE KNIGHT TONNEY
FREDERICK R. TONNEY JR.
PH. 770-414-5224
2655 LAKE ROAD
TUCKER, GA 30084-2348

Date 1/20/08

64-5/610 GA
2BB

Pay to the Order of Bishop Gabriel $ 3608.50

Three thousand six hundred eight and 50/ Dollars

Bank of America

Bank of America Advantage®

ACH R/T 061000052

For Dec '07 fees - loan NRK, Jr.

Chloe Knight Tonney

⑈005 21⑈ 000 [redacted] ⑈3390

©Carlo Amerian

CERT 0145 CERT 0145 CERT 000005

Complaint #14
W/o Objection

CHLOE KNIGHT TONNEY
FREDERICK R. TONNEY JR.
PH. 770-414-5224
2655 LAKE ROAD
TUCKER, GA 30084-2348

2594

Date 5/29/07

64-5/610 GA
288

Pay to the Order of Family Services Inc. for F. R. Knight Jr. $ 1000.00

One thousand dollar and 00/100 Dollars

Bank of America

Bank of America Advantage®

ACR R/T 061000052

For Care expenses

Chloe Knight Tonney MF

[redacted]00521: [redacted] 2594

©Bank America

CERT 0146 CERT 0146 CERT 0146 000003

Claim #16
No obj

2/6/10, 3A
— 3300 — Sam. Stev.
— 38.45 nebulizer charge
03277.89 CK

Bishop Gadsden

CHLOE KNIGHT TONNEY
2655 LAKE ROAD,
TUCKER, GA 30084

RESIDENT #	UNIT	STMT. DATE
879	119A	01/31/2008
RESIDENT(S)		
Mr. Norman Knight		
TOTAL AMOUNT DUE	$6,616.34	
DATE DUE	02/15/2008	

DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE

$ _____ AMOUNT REMITTED

DATE	DESCRIPTION	Days/ Units	CHARGES	CREDITS	BALANCE
	Balance Forward				6,728.50
01/15/08	Payment Received - Thank You			3,100.00	3,628.50
01/25/08	Payment Received - Thank You			3,608.50	20.00
	*** Cloister ***				
01/07/08	Tray Cath Urth Red/PVP-CL	1	10.61		30.61
	CATHETER KIT-URTH-RED/PVP				
01/07/08	Mask Aerosal Adlt	2	3.10		33.71
	MASK AEROSOL ADLT W/O TUBE				
01/07/08	Nebulizer Disposable	2	5.52		39.23
	NEBULIZER DISPOSABLE				
01/09/08	Misc Charges Clearing	1	306.50		345.73
	-Comfort Sling, Hygenic				
01/16/08	Mask Aerosol Adlt	1	1.55		347.28
	MASK AEROSOL ADLT W/O TUBE				
01/16/08	Nebulizer Disposable	1	2.76		350.04
	NEBU[illegible]				
01/21/08	Mask A[illegible]				351.59
	-MAS[illegible]				
01/21/08	Nebuliz[illegible]				354.35
	NEBU[illegible]				
01/21/08	Headma[illegible]				368.85
	Men's[illegible]				
01/24/08	Tray Ca[illegible]				375.83
	CATH[illegible]				
01/30/08	Mask Ac[illegible]				377.39
	MASK[illegible]				
01/30/08	Nebulize[illegible]				380.14
	NEBU[illegible]				

CHLOE KNIGHT TONNEY
FREDERICK R. TONNEY JR.
PH. 770-414-5224
2655 LAKE ROAD
TUCKER, GA 30084-2348

3436

Date 2/15/08

Pay to the Order of Bishop Gadsden $ 3277.89

Three Thousand two hundred seventy seven and 89/100 Dollars

Bank of America

Bank of America Advantage

ACH R/T 061000052

For Jan '08 Cons/NHCgr. Chloe Knight Tonney

⑆061000052⑆ 3436

HOLD NEXT PAGE

RESIDENT #	CURRENT	OVER 30	OVER 60	OVER 90	OVER 120	TOTAL AMOUNT DUE
	2906.73					

RESIDENT NAME Mr. Norman Knight

BISHOP GADSDEN, ONE BISHOP GADSDEN WAY, CHARLESTON, SC 29412

Statement questions contact Lynn Ball (843)406-6298 CERT 0147 questions contact Becky Staton (843)406-6144 CERT 0147

CERT 0147 CERT 0147 CERT 0147

000054

Amount: $3,277.89
Account: 17005[redacted]
Bank Number: 061000052

Sequence Number: 3492067127
Capture Date: 03/22/2008
Check Number: 3436

CHLOE KNIGHT TONNEY
FREDERICK R. TONNEY JR.
PH. 770-414-5224
2655 LAKE ROAD
TUCKER, GA 30084-2348

3436

Date 2/18/08

64-5/610 GA
280

Pay to the Order of Bishop Gadsden $ 3277.89

Three thousand two hundred seventy seven and 89/100 Dollars

Bank of America

Bank of America Advantage®

ACH R/T 061000052

For Feb '08 care/NICU gr. Chloe Knight Tonney

⑆[redacted]0052⑆ 0001700 5[redacted]⑈3436

HCC

000053

CERT 0148 CERT 0148 CERT 0148

Check #1
W/O Shyd

CHLOE KNIGHT TONNEY
FREDERICK R. TONNEY JR.
PH. 770-414-5224
2655 LAKE ROAD
TUCKER, GA 30084-2348

3363

144

Date 12/26/07

64-5/610 GA
288

Pay to the Order of Bishop Gadsden $ 2000--

Two thousand and 00/100 Dollars

Bank of America

Bank of America Advantage®

ACH R/T 061000052 NRG ft. Iraq

For Charge Fund 11/30/07

Chloe Knight Tonney

⑆[redacted]005 21⑆ 000[redacted]⑈3363

©Bank of America

00004

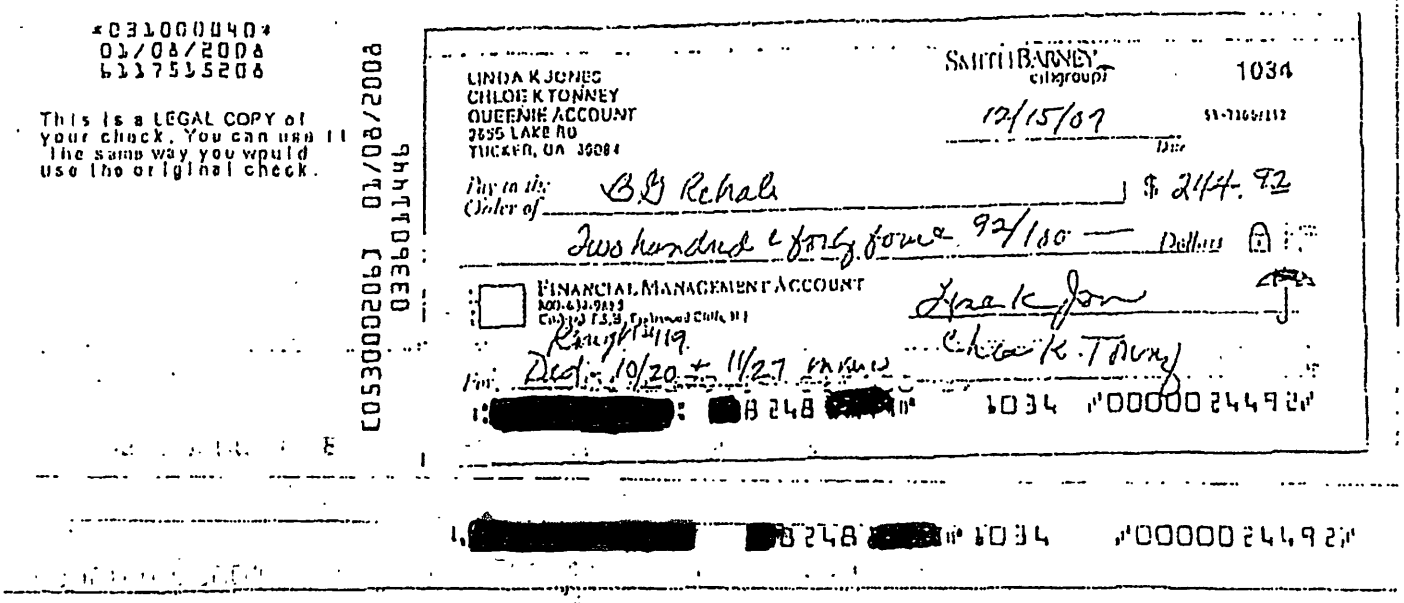
0191

CERT 0149

CERT 0149

CERT 0149

Claimt #18 w/objection



0310000404
01/08/2008
611751520B

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

C053002067 01/08/2008 036011446

LINDA K JONES
CHLOE K TONNEY
QUEENIE ACCOUNT
2655 LAKE RD
TUCKER, GA 30084

SMITH BARNEY citigroup

1034

12/15/07

Pay to the Order of BJ Rehali $ 214.92

two hundred & forty four 92/100 — Dollars

FINANCIAL MANAGEMENT ACCOUNT

Linda K Jones
Chloe K Tonney

For: Dec: 10/20 + 11/27 invoice

[redacted] B248 [redacted] 1034 "00000244920

[redacted] B248 [redacted] 1034 "00000244920

031000040
11/28/2007
U317350688

This is a LEGAL COPY of your check. You can use it the same way you would use the original check

[053000206] 11/26/2007
093646254 3

LINDA K JONES
CHLOE K TONNEY
QUEENIE ACCOUNT
2655 LAKE RD
TUCKER, GA 30084

SMITH BARNEY
CITIGROUP

10/10/07

Pay to the Order of BCa Rehab $ 405.00

Four hundred & five & 00/100 Dollars

FINANCIAL MANAGEMENT ACCOUNT
[illegible]

For Daddy ⑈031000040⑈ 317350688 00 112807 Chloe K. Tonney

LINDA K JONES
CHLOE K TONNEY
QUEENIE ACCOUNT
2655 LAKE RD
TUCKER, GA 30084

SMITH BARNEY
citigroup

3/1/07

55-7265/212

⑆ 570090891 ⑆ 0315075 7

Pay to the Order of Bishop Gadsden Rehab, Luc | $ 445.50

Four hundred & forty five & 50/100 Dollars

FINANCIAL MANAGEMENT ACCOUNT
800-634-9855
Citibank F.S.B. Englewood Cliffs, N.J.

Linda K Jones

For Dad's 11/16 - 2/12/07

Chloe K. Tonney

Norman Knight Clinic #119

550

CERT 0152 CERT 0152 CERT 0152

000055

BG Rehab, Inc.
One Bishop Gadsden Way
Charleston, SC 29412
843-406-6302

Invoice for Physical Therapy Services

Name: *Knight, Norman*

11/16/2006	Ther ex		$54.00
11/20/2006	Ther ex		$54.00
11/27/2006	Ther ex		$54.00
12/04/2006	Ther ex		$54.00
12/11/2006	Ther ex		$54.00
12/21/2006	Ther ex		$54.00
01/08/2007	Ther ex		$54.00
01/17/2007	Ther ex		$54.00
01/29/2007	Ther ex		$54.00
02/05/2007	Ther ex		$54.00
02/12/2007	Ther ex		$54.00
		Sub Total	$594.00
		25% cash discount applied	

Total $445.50

RL #1029 3/2/07
Smith Barney Acct.

000060

CERT 0153 CERT 0153 CERT 0153

04/03/2007

BG Rehab, Inc.
One Bishop Gadsden Way
Charleston, SC 29412
843-406-6302

Invoice for Physical Therapy Services

Name: *Knight, Norman*

02/19/2007	Ther ex	$54.00
02/27/2007	Ther ex	$54.00
03/05/2007	Ther ex	$54.00
03/12/2007	Ther ex	$54.00
03/19/2007	Ther ex	$54.00
04/02/2007	Ther ex	$54.00
	Sub Total	$324.00
	25% cash discount applied	

Total $243.30

+ 283.50 (4/10/07 - 6/4/07)

$526.80

rec'd
1031
7/2/07
Spindle Brewing Acct.
$526.80

000061

031000040
07/10/2007
651086222 3

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

07/10/2007 0733746394 053000206 3

LINDA K JONES
CHLOE K TORNEY
QUEENIE ACCOUNT
2655 LAKE RD
TUCKER, GA 30084

SMITH BARNEY
citigroup

7/2/07

Pay to the Order of Bishop Gadsden Rehab $ 526.80

Five hundred Twenty-six & 80/100 Dollars

FINANCIAL MANAGEMENT ACCOUNT
800-431-1313
Clifton, N.J.

Linda K. Jones

For Rehab Daddy

Chloe K. Torney

[redacted] 248 [redacted] 0" 1031 "000005 2680"

570152051 07 071007 57

80"

CERT 0155 CERT 0155 CERT 0155

000052

ACCOUNT: 345
DATE: 03/13/08
TIME: 16:10:42

COLLINS OFFICE SUPPLY, INC

P.O. Box 70934 • Charleston Heights, S.C. 29415-0934 • (843) 554-4404
2118 N. Cosgrove Avenue FAX (843) 744-7935

INVOICE 255066-0
PAGE: 1

SOLD TO: CASH SALE / C.O.D ONLY
PAYMENT DUE ON PICKUP OR DELIVERY

SHIP TO: [redacted]
PAYMENT DUE ON PICKUP OR DELIVERY

TERMS	P.O. NUMBER	DEPARTMENT	REQ DATE	ORDER TAKER
NET 15 DAYS			03/13/08	205
SALEPERSON	SHIPPING INSTRUCTIONS			ROUTE
HOUSE ACCOUNT				1

QTY ORD	QTY SHIP	QTY BO	ITEM NUMBER/ DESCRIPTION	TAX	PM	UNIT PRICE	EXTENDED PRICE
1	1		(LT) LABOR LABOR	N	2	279.000	279.00

BISHOP GADSDEN

[redacted]

3488

CHLOE KNIGHT TONNEY
FREDERICK R. TONNEY JR.
PH. 770-414-5224
2655 LAKE ROAD
TUCKER, GA. 30084-2348

Date 3/24/08

64-5/610 GA
288

Pay to the Order of Collins $ 219.--

Two hundred seventy nine and 00/100 Dollars

Bank of America

Bank of America Advantage®

Inv#: 255066-0
ACH R/T 061000052

Nick, Jr.

For Labor/Boarding expense Chloe Knight Tonney

[redacted] 003521 [redacted] 3488

000018

SUB-TOTAL 279.00

PLS REFERENCE INV# NUMBER(S) ON CHECK STUBS.

CERT 0156 CERT 0156 CERT 0156

SALES TAX

TOTAL 279.00

PLEASE PAY BY INVOICE · 1½% PER MONTH WILL BE ADDED TO ALL PAST DUE INVOICES · 20% RESTOCKING CHARGE ON ITEMS RETURNED MORE THAN 10 DAYS FROM DATE OF INVOICE. · MERCHANDISE MUST BE IN ORIGINAL CARTON.

ACCOUNT: 345
DATE: 03/13/08
TIME: 16:10:42

COLLINS OFFICE SUPPLY INC

P.O. Box 70931 • Charleston Heights, S.C. 29415-0931 • (843) 554-4404
2118-N. Cosgrove Avenue FAX (843) 744-7935

INVOICE
PAGE:

SOLD TO: CASH SALE / C.O.D ONLY
PAYMENT DUE ON PICKUP OR
DELIVERY

SHIP TO: LINDA JONES
PAYMENT DUE ON PICKUP OR
DELIVERY

TERMS	P.O. NUMBER	DEPARTMENT	REQ DATE	ORDER TAKER
NET 15 DAYS			03/13/08	205

SALEPERSON	SHIPPING INSTRUCTIONS	ROUTE
HOUSE ACCOUNT		1

QTY ORD	QTY SHIP	QTY BO	ITEM NUMBER/ DESCRIPTION	TAX	P M	UNIT PRICE	EXTENDED PRICE
1	1		(LT) LABOR	N	2	279.000	279.00
			LABOR TO MOVE FURNITURE FROM BISHOP GADSDEN TO PUBLIC STORAGE				

PLS REFERENCE INV# NUMBER(S) ON CHECK STUBS.

SUB-TOTAL 279.00

SALES TAX 0.00

TOTAL 279.00

PLEASE PAY FROM INVOICE. 1.5% PER MONTH WILL BE ADDED TO PAST DUE INVOICES. 20% RESTOCKING CHARGE ON ITEMS RETURNED MORE THAN 10 DAYS FROM DATE OF INVOICE. • MERCHANDISE MUST BE IN ORIGINAL CARTON.

CERT-0157 CERT-0157 CERT-0157

000056

Amount: $279.00
Account: 17005[redacted]
Bank Number: 06100065

Sequence Number: 892517073
Capture Date: 04/01/2008
Check Number: 1488

CHLOE KNIGHT TONNEY
FREDERICK R. TONNEY JR.
PH. 770-414-5224
2655 LAKE ROAD
TUCKER, GA 30084-2348

Date 3/20/08

61-5/610 GA
288

Pay to the Order of Cullum $ 279.00

Two hundred seventy nine and 00/100 Dollars

Bank of America

Bank of America Advantage®

Inv#: 255066-0
ACH RTT 061000052

NICK, JR.

For Labor/Bx moving expenses Chloe Knight Tonney

000057

CERT 0158 CERT 0158 CERT 0158

BK P 500PG793

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

POWER OF ATTORNEY REVOCATION

KNOW ALL MEN BY THESE PRESENTS that I, Mildred C. Knight, of Charleston, Charleston County, South Carolina, hereby revoke all prior powers of attorney, whether limited or durable, including but not limited to the power of attorney recorded at Book R 482, page 594 in the RMC Office for Charleston County, South Carolina, and by these presents do specifically bar LINDA KNIGHT JONES and CHLOE K. TONNEY from acting as my attorney in fact, and otherwise in my name, place and stead, and/or on my behalf.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of June 28, 2004.

Mildred C. Knight

Mildred C. Knight
Social Security Number: 247-38-4367

Mildred C. Knight, states to us that this document is her Power of Attorney Revocation; she requested that we act as witnesses to her signing it, and she signed it in our presence. We, in her presence and in the presence of each other, sign as witnesses this 28th of June, 2004, at Charleston, South Carolina.

Suzanne E. Boff
Witness

Witness

CERTIFIED
TRUE COPY
CHARLIE LYBRAND
REGISTER MESNE CONVEYANCE
CHARLESTON COUNTY, SC
DATE: 7-9-04
BY: Charlie Lybrand, RB

CERT 0159 CERT 0159 CERT 0159

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BK P 500PG794

PERSONALLY appeared before me, Stephanie Hatcher, and made oath that he/she saw the within named MILDRED CUMMINGS KNIGHT, sign, seal and as his/her act and deed, deliver the within written Revocation of Power of Attorney and that he/she with the other witness witnessed the execution thereof.

SWORN to before me this
28th day of June, 2004.

Suzanne C. Goff
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 9/20/06

CERT 0160 CERT 0160 CERT 0160

Suzanne E. Groff
P. O. Box 12510
Chas SC
29422

BK P 500PG795

FILED

P500-793
2004 JUN 30 AM 9:29

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

Revoke/Plat
10.00
.50
10.50

Robert W. Cain, M.D.
Internal Medicine

F. Carl Derrick III, M.D.
Internal Medicine

Lowcountry
Medical Associates

Keith W. Lackey. M.D.
Internal Medicine

Charles Condon

August 29, 2005

Re; Norman Knight
DOB: 3/25/24

Dear Mr. Condon,

I have been following the above mentioned patient since January of 2002 and recently saw him on 8/25/05 in the office. I found him to be more alert and talkative than usual and feel that his general mental and physical health is improved. His medicines have remained the same and I have not had to make any adjustments. My understanding is that Mr. Knight was found to be incapacitated by the court system but I feel that this decision needs to be readdressed.

If I can be of any further assistance, please feel free to contact my office.

Sincerely,

Carl Derrick, MD

Carl Derrick, M.D.

615 Wesley Drive, Suite 300
Charleston, South Carolina 29407
Phone (843) 266-4400 • Fax (843) 577-0455

CHARLESTON HEMATOLOGY-ONCOLOGY, P.A.

125 Doughty Street
Suite 280
Charleston, SC 29403
Telephone: (843) 577-6957
Fax: (843) 577-6523

George F. Geils, Sr., M.D.
David M. Ellison, M.D.
George F. Geils, Jr., M.D.
J. Scott Smith, M.D.

Practice Limited To
Hematology, Medical Oncology
and
Bone Marrow Transplantation

August 31, 2005

Charlie Condon
880 Johnnie Dodds blvd.
Mt. Pleasant, SC 29464

Re: Norman Knight, Jr.
DOB: 3/25/24
Our Chart # 15654

Dear Mr. Condon:

Mr. Norman Knight has been followed in our office for iron deficiency anemia. At this point, his symptoms have abated. His energy level has dramatically improved. His mental status is intact. With adequate therapy, he has done extraordinarily well.

It is my understanding that Mr. Knight has been found to be incapacitated by the judicial system. My feeling is contrary to this in that he certainly should not be considered a ward of the state, and this needs to be readdressed.

If I can be of any further assistance, please feel free to contact me.

Sincerely,

J. Scott Smith, M.D.

JSS/lb

STATE OF SOUTH CAROLINA)
) PROBATE COURT
COUNTY OF CHARLESTON)

IN THE MATTER OF **NORMAN ROBERT KNIGHT, JR.**

CASE NUMBER **2004GC10-099**

CERTIFICATE OF APPOINTMENT

This is to certify that

WALTER KAUFMANN

is the duly qualified

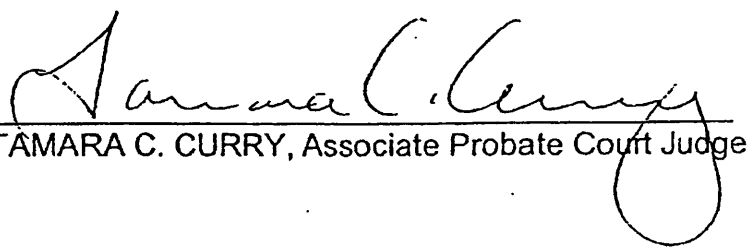
_ PERSONAL REPRESENTATIVE
X GUARDIAN
_ CONSERVATOR
_ TRUSTEE

in the above matter and that this appointment, having been executed on the 25th day of August, 2005, is now in full force and effect; that **WALTER KAUFMANN** is expressly empowered to consent to medical treatment of any kind, including, but not limited to diagnostic evaluations as to **NORMAN ROBERT KNIGHT, JR.'S** medical and/or psychiatric condition; to the administration of antipsychotic or any other psychiatric medications.

RESTRICTIONS:

1. **Walter Kaufmann, as guardian for Norman Robert Knight, Jr., shall consult Mildred Knight regarding major medical decisions, healthcare decisions and placement decisions, however the final decision is that of the guardian.**

Executed this 25th day of August, 2005.



TAMARA C. CURRY, Associate Probate Court Judge

Do not accept a copy of this certificate without the raised seal of the Probate Court.
Form #141PC (7/87)
SCPC 1-305, 3-103, 5-304, 5-421, 7-201

STATE OF SOUTH CAROLINA)
) PROBATE COURT
COUNTY OF CHARLESTON)

IN THE MATTER OF NORMAN ROBERT KNIGHT, JR.

CASE NUMBER 2004GC10-0099

CERTIFICATE OF APPOINTMENT

This is to certify that

FAMILY SERVICES, INC.

is the duly qualified

_ PERSONAL REPRESENTATIVE
_ GUARDIAN
X CONSERVATOR
_ TRUSTEE

In the above matter and that this appointment, having been executed on the 25th day of August, 2005, is now in full force and effect; including authorization to receive all monies, income, principal, interest and dividends of and belong to said estate.

RESTRICTIONS:

1. **Family Services, Inc., as conservator for Norman Robert Knight, Jr., shall consult Mildred Knight regarding major financial decisions, however the final decision shall be that of Family Services, Inc.**

Effective this 25th day of August, 2005.

TAMARA C. CURRY, Associate Judge of Probate

Do not accept a copy of this certificate without the raised seal of the Probate Court.
Form #141PC (7/87)
SCPC 1-305, 3-103, 5-304, 5-421, 7-201

Document: CHARLESTON,SC Date: 10/12/2007 Time: 8:43:41 AM Financial Payment Time: 84366 A00042-XPX0100-S

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Chloe Knight Tonney and
Norman Robert Knight, Jr.
(an Incapacitated Person),

Respondents,

vs.

Bobby Knight and Mildred
Knight (wife of Norman Robert
Knight, Jr.),

Appellants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2005-CP-10-3573

COPY

FILED
2006 JAN 30 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

NOTICE OF MOTION AND MOTION FOR NEW TRIAL

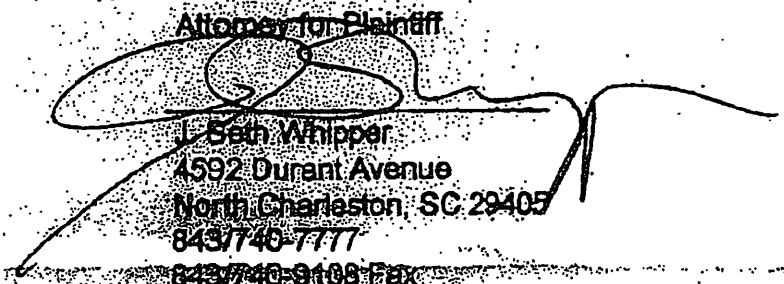
TO: HONORABLE KENNETH G. GOODE: THAD VINCENT, ESQ. Attorney for Chloe K. Tonney:

PLEASE BE ADVISED that the Plaintiff, by and through his attorney, moves this Honorable Court for a new trial. This motion is based on the following grounds: (1) Respondent Tonney's Motion to Dismiss Case No. 05-CP-10-2803 and 05-CP-10-2569 was not timely filed nor properly raised; (2) The Court did not consider the Probate Court's failure to give due accord to the rights and interest of Norman R. Knight, Jr. and Mildred Knight as joint tenants of the UBS account. See, *Spradley v. Houser, 247 S.C. 208, 146 S.E. 2d 621 (1966)* and *Carolina Production Credit Association v. Rogers, 282 S.C. 184, 318 S.E. 2d 357 (1984)*; (3) The Court did not secure an accounting or Return listing the devolution of assets according to the agreements on the individual assets of Norman Robert Knight, Jr. and Mildred Knight (see Attachment A); (4) The record does not contain a finding that Norman Robert Knight, Jr desires visitation with his daughters.

Plaintiff asks that this Motion be heard as soon as practicable and will move before this Court on the _____ day of _____, 2006 at _____ m. for an Order

setting this entire matter for retrial.

January 30, 2006



Attorney for Plaintiff
J. Seth Whipper
4592 Durant Avenue
North Charleston, SC 29405
843/740-7777
843/740-9108 Fax

2005-CP-10-3573

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas

APPEAL FROM CHARLESTON COUNTY
Probate Court of Charleston County

Tamara. Curry, Associate Probate Court Judge

Case No. 2004-GC-10-0099

Chloe Tooney Petitioner vs Norman Robert Knight Jr alleged incapacitated person; et al, Respondent(s),

v.

Bobby Knight, Appellant.

2005 SEP -1 PM 2:06
CLERK OF COURT
BY

2005-011125

NOTICE OF APPEAL

Bobby Knight appeals the order(s) [judgment] of the Honorable Tamara Curry dated August 11, 2005 AND August 25, 2005. Appellant received written notice of entry of these orders [judgments] on August 29th 2005.

August 30 2005

s/ Bobby Knight
Bobby Knight
3940 Hottinger Avenue
North Charleston, South Carolina 29405
(843) 296-4204
Pro Se for Appellant

Other Counsel of Record:
Charlie Condon for Mildred C Knight, 880 Johnnie Dodds Blvd, Mt Pleasant, SC
Glenn Churchill for Norman R Knight Jr, 174 East Bas St, Charleston SC
Thad Vincent, for GC-Petitioner Chloe Tooney and for GC-Respondent Linda Jones

2004GC10 0099 NORMAN R KNIGHT JR NOTICE FILE .0001 AUG 30 2005

Q. All right. And from what you know, was there ever a final order in this matter?

A. No, Daddy died.

Q. And was there ever -- let me show you.

THE COURT: The document just testified to, is that to be admitted in evidence?

MR. WHIPPER: Yes, your Honor.

THE COURT: I believe we are up to Respondent's 12. So the Family Court order just identified will be received and admitted without objection as Respondent's Exhibit 12.

(RESPONDENT'S EXH. 12, FAMILY COURT ORDER, was marked for identification and received into evidence.)

THE COURT: Is this the only copy?

MR. WHIPPER: That is my only copy, but that will be okay.

THE COURT: You may go ahead and have it identified, and I'll look at that after his testimony. Please proceed.

Q. All right. Mr. Knight?

A. Yes, sir.

Q. Have you looked at the exhibit? There are two parts to it.

THE COURT: I believe you need to ask

questions. The time for review of documents should have been before we commenced trial. So let's go ahead and ask him the questions now. We are delaying unduly.

Q. Mr. Knight, what is that document?

A. Well, it says it was in the Family Court. It is an attorney fee affidavit signed by Thad Vincent. So wanting to be paid for a Rule to Show Cause.

Q. And then you have -- what is that?

A. It is an order for motion for additional temporary relief.

Q. Okay. And turn the page.

A. And then there is an order for a Rule to Show Cause.

Q. And turn the page. And does that order attorneys' fees to be paid in that Rule to Show Cause?

A. Yes, it says that Mama was supposed to pay Thad Vincent $1,298 for that.

MR. WHIPPER: Okay. Your Honor, we would like to move that into evidence.

THE COURT: Okay. How many different documents are there?

MR. WHIPPER: It is all one exhibit,

Judge.

THE COURT: But does it contain multiple documents?

MR. WHIPPER: It does, your Honor.

THE COURT: We have done that before. I just want to make sure we know what it is that we are marking.

MR. GIBSON: Your Honor, objection to relevancy. Paying attorneys' fees arising from a Rule to Show Cause and deposing Mildred Knight has nothing do with Ms. Tonney's claim.

THE COURT: To the extent that there is a claim for attorneys' fees specifically paid to Mr. Vincent, I will overrule the objection, and I will have the clerk mark this document. It is all stapled together. It includes an attorney fee affidavit by Thad Vincent, a Family Court form order, and a Family Court order from Rule to Show Cause -- collectively marked Respondent's Exhibit 13.

(RESPONDENT'S EXH. 13, ATTORNEY FEE AFFIDAVIT AND FAMILY COURT ORDERS, was marked for identification and received into evidence.)

BY MR. WHIPPER:

Q. Mr. Knight, what other attorneys' fees

orders are there in that particular case?

A. None.

Q. What is that document there? I show you what has been marked as Claimant's Exhibit 6.

A. Yes, sir. It's Mr. Vincent's bill for representing in the Family Court case.

Q. Okay. And are there any redactions on that bill?

A. Yes, sir, telephone conference, 9/18/2007.

Q. All right. How much does he charge for that?

A. $106 for that one item.

Q. All right. And what was the date on that?

A. The entry is September 18th, 2007.

Q. Okay. What is your opinion about whether the estate should be charged with that expense?

THE COURT: I have already ruled on direct that that would not be allowed. The redacted line items would not be allowed. Let's move on to the next item.

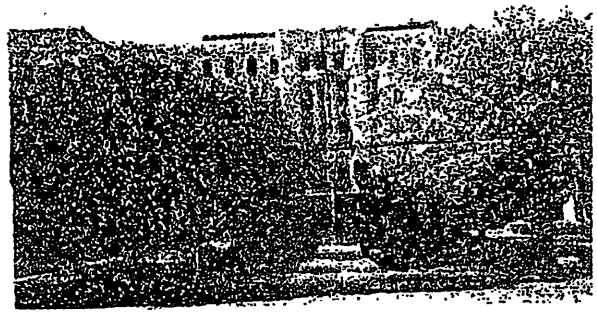
Q. Now, we are going to have -- what information -- whose funds were involved in paying

ROPER ST FRANCIS HEALTHCARE
P.O. BOX 751662
CHARLOTTE, NC 28275-1662

14772-L722

RETURN SERVICE REQUESTED

0101



ADDRESSEE:

NORMAN R KNIGHT
3940 HOTTINGER AVE
N CHARLESTON, SC 29405-7018

ACCOUNT NUMBER	DATE OF SERVICE
A0612900868	05/09/2006
PATIENT NAME	
NORMAN R KNIGHT	
STATEMENT DATE	TOTAL AMOUNT
05/27/2006	42,297.60
LOCATION	TYPE OF SERVICE
ROPER HOSPITAL	

652255 /05/

14772-L722*1T9127IG2000658

SUMMARY INFORMATION STATEMENT. THIS IS NOT A BILL.

If Insurance information provided below is incorrect, please call 843-402-5200 or 800-242-9990.

	CARRIER NAME	INSURED'S ID
PRIMARY INSURANCE:	MEDICARE	[redacted]2503A
SECONDARY INSURANCE:	BCBS FEDERAL EMPLOYEE	R50607252

DESCRIPTION OF SERVICES	AMOUNT
ROOM AND BOARD	$13,062.00
PHARMACY	$8,996.60
LABORATORY	$4,663.00
DIAGNOSTIC RADIOLOGY	$1,391.00
CT BODY	$5,874.00
OR SERVICES	$5,976.00
PHYSICAL THERAPY	$1,144.00
EVALUATION OR REEVALUATION	$106.00
OCCUPATIONAL THERAPY	$176.00
EVALUATION OR REEVALUATION OT	$106.00
RECOVERY ROOM	$803.00
TOTAL CHARGES	**$42,297.60**

Roper St. Francis Healthcare was pleased to serve you during your recent need for medical services. For your convenience, a summary of services has been provided. For any questions, please call Customer Service at 843-402-5200 or 800-242-9990. If insurance information was provided at the time of service, a claim will be filed to the insurance carrier. **IMPORTANT: DO NOT SEND THIS STATEMENT TO ANY INSURANCE COMPANY. THIS DOCUMENT IS FOR INFORMATION PURPOSES ONLY!**

CERT 0173 CERT 0173 CERT 0173

PLEASE SEE IMPORTANT INFORMATION ON REVERSE SIDE

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT**
COUNTY OF CHARLESTON	**CASE NO: 2005-CP-10-3573**
Chloe Knight Tooney and Norman Robert Knight, Jr. (an incapacitated person),	
Respondents,	
vs.	**CERTIFICATE OF MAILING**
Bobby Knight and Mildred Knight (wife of Norman Robert Knight, Jr.),	
Appellants.	

PERSONALLY APPEARED before me, the undersigned deponent, who first being duly sworn deposes and says that she mailed a copy of the **NOTICE OF MOTION AND MOTION FOR NEW TRIAL** to Glenn P. Churchill, Atty., P.O. Box 370, Charleston, SC 29402-0370. This service having been mailed on January 30, 2006 and deponent further states she has no interest nor connection herewith.

Shirley Lee

SHIRLEY LEE, AFFIANT

SWORN to before me this 30th day

of January, 2006

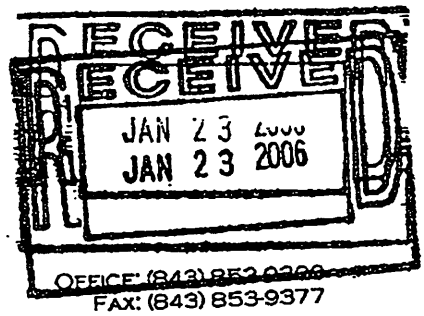
NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 6/15/15

GLENN P. CHURCHILL
ATTORNEY AT LAW

EAST BAY EXECUTIVE CENTER
174 EAST BAY STREET
SUITE 300

POST OFFICE BOX 370
CHARLESTON, SOUTH CAROLINA
29402-0370

OFFICE: (843) 853-9200
FAX: (843) 853-9377



Call & tell him to file petition for rule to show cause if he thinks it is warranted.

January 9, 2006

Hon. Roger M. Young
Charleston County Judicial Center
100 Broad Street, Suite 368
Charleston, SC 29401

Re: Norman Robert Knight, Jr.
~~2004-GC-10-0099~~
Report of the Guardian *ad Litem*
2005-CP-10-3573

Dear Judge Young:

I am submitting this report in my capacity as Guardian *ad Litem* for Norman Robert Knight, Jr. This matter is currently on appeal. The appeal has been heard, and I anticipate a ruling on it soon.

Pursuant to your order of October 5, 2005, I was to have access to Norman Robert Knight, Jr., within six (6) hours of my request to the office of Seth Whipper, Esq. Mr. Whipper is the attorney for Bobby Knight, the son of Norman Robert Knight, Jr. I have enclosed a copy of your order for your reference.

On January 5, 2006, I notified Seth Whipper by fax that I intended to visit Mr. Knight on January 9, 2006. On January 6, 2006, Seth Whipper notified his client, Bobby Knight, and Bobby's mother, Mildred Knight by fax of my visit. I have enclosed copies of each fax for your reference.

I arrived at the Knight residence at 10 a.m. on January 9, 2006. I both rang the doorbell and knocked on the door several times. After waiting on the porch for a few minutes it was apparent to me that nobody was home. I am, of course, concerned for the wellbeing of Mr. Knight. I am also concerned about why my visit would be denied, without explanation, in spite of your order.

I have also been informed that Mr. Knight's daughters were not permitted to deliver Christmas presents to Mr. Knight, and one of the daughters arrived at the Knight residence on January 1, 2006 for a scheduled visitation and nobody was home.

Please do not hesitate to call me if you have any questions about the matters contained in this report.

Sincerely,

Glenn P. Churchill

Cc: Thad H. Vincent, Esq.
J. Seth Whipper, Esq.
Ms. Mildred Knight

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

www3.charlestoncounty.org

132

KNIGHT, BOBBY
PRO SE
3940 HOTTINGER AVE
NORTH CHARLESTON SC 29405-7018

000127 D 06/02/2006 MOTION TO DISMISS APPELANTS MOTION F VINCENT, T (15)
P 01/30/2006 NOT/MOT FOR A NEW TRIAL WHIPPER, J (20)

HEARINGS WILL BE IN COURTROOM 3E OF THE JUDICIAL CENTER

FOR THE FOLLOWING HEARING:

KNIGHT, BOBBY
PRO SE
3940 HOTTINGER AVENUE
NORTH CHARLESTON SC 29405

2005-CP-10-003573
TOONEY, CHLOE ETAL VS KNIGHT, BOBBY
OCTOBER 06, 2006 11:00AM
100 BROAD ST. CHARLESTON, SC 29401
THE HONORABLE JOHN M MILLING

CERT 0177 CERT 0177 CERT 0177

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

www3.charlestoncounty.org

127

WHIPPER, J SETH
4592 DURANT AVE
NORTH CHARLESTON SC 29405-5211

000127 D 06/02/2006 MOTION TO DISMISS APPELANTS MOTION F VINCENT, T (15)
P 01/30/2006 NOT/MOT FOR A NEW TRIAL WHIPPER, J (20)

THIS MOTIONS TERM HAS BEEN CANCELLED.

FOR THE FOLLOWING HEARING:

WHIPPER, J SETH
4592 DURANT AVE
NO. CHARLESTON SC 29405

CERT 0178

CERT 0178

2005-CP-10-003573
TOONEY, CHLOE ETAL VS KNIGHT, BOBBY
OCTOBER 06, 2006 11:00AM
100 BROAD ST. CHARLESTON, SC 29401
THE HONORABLE JOHN M MILLING

CERT 0178

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2005-CP-10-3573
MILDRED KNIGHT and NORMAN ROBERT KNIGHT, III	)	
Appellants,	)	
-versus-	)	MOTION TO DISMISS APPELLANT'S MOTION FOR A NEW TRIAL
CHLOE KNIGHT TONNEY,	)	
Respondent,	)	
IN RE: Norman Robert Knight, Jr., an alleged incapacitated person,	)	
Respondents.	)	

FILED
2006 JUN -2 AM 9:45
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW the Respondent by and through her undersigned attorney, Thad H. Vincent, who moves for dismissal of Appellant's Motion for A New Trial on the grounds that it is timely barred.

This is based on the grounds that the Appellant was served by mail with Judge Kenneth G. Goode's order on January 20, 2006 which dismissed Appellant's appeals of orders issued by the Charleston County Probate Court. More than 30 days have expired and no notice of appeal has been served as required by Rule 203 (a) and (b) of the SC Appellate Court Rules. Therefore, Appellant is now barred.

THE VINCENT LAW FIRM, LLC

THAD H. VINCENT
ATTORNEY FOR RESPONDENT
834 Savannah Highway
Post Office Box 31842
Charleston, SC 29417-1842
(843) 769-6600

Charleston, South Carolina

This 2 day of June, 2006.

WHIPPER LAW FIRM

Attorneys and Counselors at Law
4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

December 31, 2013

Beaufort County Probate Court
Attn: Honorable Kenneth Fulp, Jr.
102 Ribaut Road
Beaufort, S.C. 29902

Re: *Est. of Norman R. Knight, Jr.*
Beaufort County Probate Court Case No.: 2012-ES-07-00998
Charleston County Probate Court Case No.: 2008-ES-10-00409
Supporting Material/ Documents

Dear Judge Fulp:

Enclosed with this letter are documents supporting the motions filed with the court, and also included is a list of those documents.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

JSW/jbl

XC: Beatrice Whitten, Esq.
C. Mack Gibson, Jr. Esq.
W.E. Applegate, III
Bobby Knight, III

List of Documents

1. The Affidavit of Mildred C. Knight
2. Notice of Appeal (2005-CP-10-3573)
3. Grounds on Appeal (2005-CP-10-3573) (Pg.1)
4. Notice of Appeal (2007-CP-10-4141)
5. Grounds for Appeal (2007-CP-10-4141) (Pg.1,7)
6. Motion Cover Sheet (2007-CP-10-4141)
7. Certificate of Service (2007-CP-10-4141)

PROBATE JUDGE
DORCHESTER COUNTY
2010 MAR 25 AM 11:55

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO.: 2008-ES-18-00-402
COUNTY OF DORCHESTER	)	
	)	
IN THE MATTER OF ESTATE OF NORMAN KNIGHT, JR.	)	
	)	
LINDA KNIGHT JONES	)	**AFFIDAVIT OF:** MILDRED C. KNIGHT
Petitioner,	)	
-versus-	)	
MILDRED CUMMINGS KNIGHT, NORMAN ROBERT KNIGHT, III and CHLOE KNIGHT TONNEY,	)	
Respondents.	)	

PERSONALLY APPEARED BEFORE ME, Mildred C. Knight, who after first being duly sworn deposes and states as follows:

I am the Movant in the above-captioned matter and series of cases. I make this affidavit of my own personal knowledge and experience and from my observations. Some of what I write is a recitation of what has occurred in this legal dispute. I wanted to finally and completely tell my side of the story and to emphasize some important facts which have been completely overlooked to date.

Too, I am making this an opportunity to refute the affidavits of Glen Churchill and Elizabeth Spencer whom both provided Walter Kauffman the interaction he requested to remove Norman from our home and my custody and care on January 31

2006 in violation of SC Code §62-1-308(c) and Judge Roger Young's Stay ORDER directing that "he (W. Kauffman) had no standing in these matters." [OCT 5, 2005]

My husband, Norman, and I are now older people, and we are what many people would consider 'old fashioned." We were married in 1949. I am today 80 years old; on March 25, 2006, Norman turned 82. On May 7 2006 we will have been married 57 years and we were not permitted to be with each other due to Mr. Kauffman's having violated SC §16-75-60 and other restrictions and prohibitions during these legal matters. Because of what I view as the 'kidnapping of my husband', I have not been able to see him freely or enjoy our birthdays or anniversaries nor our daily marital relationship.

When I was 17 years old, I opened a checking account at the South Carolina National Bank. When we married, I added Norman's name to tha account. That account existed at what is now known as the Wachovia Bank. It had always been "our account." Similarly, we have always lived in "our house" Norman and I had purchase the lot in 1948, before we were married, and set about building a house for his bride. It never occurred to us to put my name on it. We are not from a generation that views divorce as an option. We were able to pay off the house debt sometime in the 1960's. Norman finished the Citadel as a Veteran Student and transferred from the Charleston Post Office night shift to the Charleston Naval Shipyard as a civil engineer. He retired in 1975 as Senior Naval Architect. We never insured the home because we took care of it. While to many others this may seem old fashioned attitudes, it was simply the way we lived and saved and never thought twice about it. The house was deeded in only Norman's name the SCE&Gas was always in my name. I worked at the power company when we married and that meant we did not have to pay a deposit to turn on the utilities. The

electric service has always been in my name at both this home and the one next door. It was to be deeded solely in my name as it was granted to me by Louise Mae Reynolds in June 1997. Sonny Rozier, our attorney, was to file that deed. I have since learned differently.

Norman and I have three children; Linda 1950, Bobby 1952 and Chloe 1961. We have two grandchildren and one great, which I have not seen lovingly since the DSS complaint was filed against us in June 2004 and the daughters Power of Attorneys were revoked in July 2004. We hired attorney Suzanne Groff for that matter. We, Norman and I, have paid for educations for them all. For private school at First Baptist for Chloe and Linda's children, Angle and JP Jr. Norman and I come from a generation were the older folks stick together and take care of there offspring and not the visa versa. This has an exception for Bobby as he has had to provide his parents with his time and money since before the DSS complaint was ruled "unfounded". I now owe Bobby in excess of a well documented $108,000 since the Conservatorship was taken away from me for Alan Bolden's having written himself and paycheck and me paying Bobby a loan of $1,150.00 and me writing a check to DFAS (military base commissary) for $400. I have never had the opportunity to let that appeal be heard or properly plead either.

Norman and I took care of his parents and his mother both physically and financially, too! Again we had never given any of this a second thought, about taking care of the others.

With the exception of about 4 years in the early 1980's, when he was married and then divorced for his wife's infidelity, Bobby has always lived with us in our house. Bobby has for many years not been close to his sisters. This was so unfortunate, but

Norman and I could not dictate with whom our adult children wanted to spend their time. On many occasions, while the grand's were in school or college; Bobby's help with property maintenances and costly mechanical items – helped us to always have that extra money for the others. Bobby even provided the cash for Angles first computer and programs at her college and for the money for JPs Citadel sword and extras. Bobby did this anonymously through his parents hands.

I have a respiratory problem since 1993 0r 1994. Norman and I stopped smoking in 1960. Other than that COPD condition, I have remained fairly healthy in all aspects.

Norman and I had long used Attorney "Sonny" Elbert Rozier. In September 1977, with Sonny's help, we executed wills and General and Durable Power of Attorneys to each other. Norman had my Power of Attorney and I had his.

In about 2000 or 2001 Norman recognized that he was slowing down with age. He remained physically vibrant, still enjoying his walks, his yard work and Masonic Lodge with Bobby. However, he did not desire to drive as much. He liked to ride in Bobby's construction trucks and they went to the government contracts together as much as possible. Norman always liked the ships and fighter jets on Bobby's jobs. Then we would go to the commissary. Ice cream was a big treat for us on these outings. All that has been unjustly taken away from us. Norman and I realized that we should both take care of the finances and write out the bills together. Again, I will say that our marriage may have been too old fashioned in that Norman had always handled the monies for us in the past. He had his role and I had mine, until this time. Norman used to say "that he never expected to live this long." (with a laugh) I sure miss his laugh, his touch and jokes.

Norman had esophageal surgery in 2001. There is a letter from Dr Baumgartner from 2003 which mentions Alzheimer's disease. That letter was written after Norman's Surgery, when he had a mini-stroke. It is about this time that Norman and I started "to get our affairs in order" because of our advancing age. Norman was insistent about his wife knowing where all the check books were and insurance policies. The last check he signed was 21 August 2001. Most all our regular bills were paid from account drafts. All that stopped in May 2005 due to the Probate Petitions and Family Services calamity! Essentially, Norman and I had gone down our list of "end of life preparations" and that task was completed before 2003. (Norman even told me what color casket he wanted us to have, now those choices may have been taken away from us by these litigations)

These 'preparations' included fixing up the property: our home, the house next door that was granted to me by Louise Reynolds – mistakenly deeded by Sonny Rozier into Normans name in 1999 (adverse to the deed she signed in 1997 with Sonny's office) and the restoration of 3831 Rivers Avenue, Norman's childhood home. He asked Chloe for at least the past 8 years to set the title back to him. She kept putting us off. We always had possession and notoriety of ownership and paid the repairs and taxes. Chloe testified in Probate Court that she "had not even been on or in that property in the last 15 years" and that was two years ago now. She had the house raised. While Guardian and Conservator for Norman – with Sean Trundy as my attorney, we filed a Possession Case for the deed. That matter is still on the Court of Common Pleas Docket Case No. 2005-CP-10-2674.

I can and have the authority to speak for our marriage. I simply refused to give up hope of and our life together. This makes me the good wife that I promised to be to him.

I went to the hospital in December 2003. I had congestive heart failure. Norman and I had always agreed that we wanted no part of nursing home living. Norman accelerated the process of renovating the properties. He dictated what he wanted done and supervised and assisted Bobby. We made the bathroom door open out because one of Norman's lodge brother's door was a bath like ours and when his friend fell no one could open the door to help. We put up handrails and ADA hand grabs. We added another banister to the stairs. We made plans to add on a new bathroom shower addition large enough for assistance with showers, even from wheelchairs. I have that construction permit pulled from the City, but all our funds are being wasted paying lawyers – so construction is halted. Our yard is full of items to continue that renovation.

They put a new roof on the house. Bobby was signing for the materials when we would send him to the stores. Bobby's company, Construction Group was paying for the thousands of dollars in labor. Norman still vibrant was cutting shingles with Bobby in the yard to pass up to the workers on the roof even on New Years Day January 1 2004. The boys told me that the temperature was in the teens, but Norman still wanted to be with the men and share in the donuts and coffee breaks, too!

After my hospital stay, I stayed at Linda's for a few weeks in January 2004. Norman came over for dinner each night. Bobby would drop him off in one of the company trucks and pick him back up again to go home. They had the ceiling down in the living room and they were putting real plaster ceilings up. I wanted to avoid the dust even though the rest of the house was "bagged off for dust control."

During this time in January of 2004, Norman broke his hip at Linda's house. A broken hip is a big issue. Norman was in the hospital with a morphine drip daily. I was still being heavily medicated after my hospital stay.

It is during this time, when both Norman and I were on these powerful medications, that Chloe and Linda orchestrated the amendments to POA's with Attorney "Sonny" Rozier. These were signed on January 26, 2004, and with Power of Attorneys granted and filed. This change was contrary to our history and really was not requested by either Norman or me, and it is not what we really wanted. Chloe and Linda solicited all these filings & alleged thefts by "Bobby". Charlie Condon, our Probate Attorney investigated our finances and those of Bobby and found that Bobby had paid an excess of $40,000 towards our care and living conditions by that time – certainly not stolen $40,000. We had a full time care person paid for by Bobby until two months after Norman was taken away unjustly in January of 2006. Bobby has even paid for our medication co-pay while our money was being withheld by Family Services. We owe him that money as well. We would have died if not for our medicine – together almost $800 per month out of pocket had to be spent on us.

In June 2004, Chloe brought an eviction action against Bobby regarding 3831 Rivers Avenue. Chloe had stated it with a letter to the City Building and Zoning Department claiming it was her house. The city issued stop work orders on the permits and the Police issued Bobby a trespass notice - after calling Bobby at our home and asking him to meet them on the property. Bobby went and I followed in my car and they wrote Bobby thousands of dollars in citations. Bobby was there only as he had always been there working – at our requests – and working for free for us again.

Never in the 27 years since that property was transferred into Chloe's name, by " Sonny" Rozier, when Chloe was a minor child, while Norman was his Mother's POA. Never had Chloe paid anything or taken any real interest whatsoever regarding 3831 Rivers Avenue. Her own Probate Court testimony confirms this fact for the 15 years prior to 2004 she testified that she had not been to or inside the property. In fact, Chloe' s 1985 Will that she gave us a copy of, deeded us the house and dismissed Bobby. We never showed that to Bobby III. Chloe having put that the house at 3831 Rivers Avenue was to revert to us, so we would not worry about her not fixing the title back like it was promised to be done. This was wrong to not pursue the matter more firmly with her. I am very disappointed for being tricked. At the time our family plans preparing for her future were that she would go to law school – we would pay – but Chloe got married instead.

It is Chloe's eviction action June 3 2004 which truly sparked the beginning of this legal dispute between herself and her parents. Norman and I revoked those POA's on June 15, 2004. Bobby took us to Attorney Susan Dunn's Office, she listened and she referred us to her friend, Attorney Suzanne Groff. Suzanne reviewed and interviewed Norman and I – together and individually at her home-office, to make sure we were both competent to her satisfactions. After Suzanne was satisfied with our mental states, we returned to her to sign the papers she prepared having us returned to having each others POA's. Bobby had driven us, but we never considered giving him POA's – he never asked to be appointed – he had always done our wishes regardless anyway without question or delay. In fact, while we were at Suzanne's office – Bobby sat on her boat dock and waited on us to complete our business. Bobby took us home and Suzanne had process servers sent to Chloe and Linda immediately. The process server who found

Chloe called Bobby on the Nextel Radio, Norman and I was with Bobby. He said Chloe ran from him and was hiding in the garage. They gave that process to her husband because she would not roll down the car window. The process server could see her so we said to leave the papers. This is how I heard the situation with my own ears.

Suzanne included in the Revocations a clause prohibiting Chloe and Linda both from ever having any future involvement in "matters of our lives." Our Wills, however were returned to exactly as they were in September 1997. The Probate Court on October 20 2004 said that Norman's Will could not be rewritten – that he could not marry or divorce – that he could keep his drivers license and that he could Vote. I believe because of the revocations, did cause more legal retaliations by Chloe and Linda, for Norman and I taking back control of our lives and our futures. It all has been stolen away at a time when Norman and I should not have been coerced into signing any kinds of legal documents for POAs. In fact, we later learned that Roper Hospital will not notarize such POA documents as a matter of their strict Policy. That is why "Sonny" Rozier was commissioned by our daughter for the act. I wish I would have known that before then.

Linda Jones initiated an investigation of our home by the Charleston County Department of Social Services (DSS) after her POA revocation was served by Suzanne Groff's Process Servers. DSS investigated on July 17, 2004. The full DSS report was subpoenaed by our Attorney Charlie Condon and it is now in the offices of Ben Mack, my elective share attorney in Family Court. I remember that we were at our kitchen table with Norman when the DSS Investigator came to our house. She was a pleasant lady and Norman signed some papers for her and answered her questions. She said that she did not find any problems and even commented on how nice a job Maria was doing with our

housekeeping tasks. DSS did not find any problems and the DSS report was 'unfounded' and we received that report as signed off on July 26, 2004.

On August 5, 2004; after Chloe and Linda, did not get the results that they wanted out of the eviction actions and the DSS investigations, Chloe hired Attorney Thad Vincent to file their Petition to make Chloe my husband's Guardian and Linda my husband's Conservator. Thad Vincent, to his denials, represents both daughters as the culmination of many letters and documents show an appearance by him many times for both daughters' claims and allegations. Chloe is a Georgia resident living in Tucker, Georgia. It goes without saying that Norman and I were very alarmed about being sued. Norman and I decided to get our money and cash together out of this fear now before us. Most of the money was in CDs, some in my name only and some in both of our names. We hired Charlie Condon and he left our home with $90,000 total after his agreement to help. Norman always liked Charlie because his election commercials said he helped the elderly. We trusted him and believed him and he was there for us at the first on only time we had ever been in a court of law as victims. We have almost $60,000 per year in retired income together. Norman is a Navy Veteran. I have a letter with the DoD that Norman signed making me Norman's representative for all purposes on file with the government.

On August 19 2004, a hearing was held at Probate. Glenn Churchill represented that the emergency relief Petitioned by the daughters was not necessary. Glen was appointed by the Probate for Norman. This first 'emergency hearing" was continued. The court ordered Glen to monitor Norman's health.

On October 20, 2004, Probate issued an verbal ORDER making me, his wife, Norman's Permanent Guardian. The Law of the Case was set on this day. WE consented

and agreed to divide all marital property 50/50 at that time. Thad Vincent read that part of the agreement into the record on this day. However, that has never been implemented with by his clients, whose vendetta continues to this very day. During that month, October 2004, Bobby, who has truly been our caregiver since the decline of our heath, hired my assistant Maria Matias full-time. Bobby pays her weekly for this expense.

On November 9, 2004, the Probate Court adjudicated Norman as "incapacitated."[1] I was appointed Permanent Guardian and Co-Conservator with Alan G. Bolden, CPA. I later learned that the State Code does not approve but only "conservatorships." In fact the forms approved by the SC Supreme Court denote a space for the name of "the conservator" and the SC Legislature gave the duty to the SC Supreme Court to create the forms that the lower courts MUST use. Joint or Co Conservatorship must not have been sanctioned for true entities for these Probate form purposes. In fact, on our appointment form was altered with the word "conservator" as was XXXX'd out and the word Co-conservator typed in its place. Why? I do not feel that the Probate Court can take on the duty otherwise assigned to the Supreme Court and change the approved forms.[2]

Skipping forward somewhat, on May 19 2005, without a hearing, only a meeting with myself and my attorney, Charlie Condon with Judge Curry, the Probate Court removed me and Mr. Bolden as co-conservators and appointed Family Services as Temporary Conservator. This was likely after my son, Bobby, filed a *pro-se* Petition to remove Bolden for the reasons stated above and that Bolden's very first act was to put his name on every account – not just the conservatorship account the October 20 2004 Law

[1] The Probate Court was specific to allow Norman to keep his drivers license and to keep voters as he had gone to vote in 2004. I contest that the law does not allow Probate Court to reach or expand I[t's] jurisdiction into the lives of the Partially Incapacitated person. Norman was, at best did not meet that determination of 'incapacitated" permanently. Judicial discretion does not mean rewriting the SC Code.
[2] See Ftn No. 1.

of the Case created for Norman. The Probate Order says that "this was done on I[t's] own motion because the co-conservators have not acted as the ought to!"[3]

On August 25, 2005 the Probate Court removed me as Norman's Guardian. There also was an August 18, 2005 Probate Court Order. The were both faxed to my Attorney Charlie Condon on or about August 29/30 2005. The August 18 Amends all the 'preserved errors' that were part of Bobby's pending appeal process. In fact, these August 2005 Orders both are the result of Bobby's pending appeal pursuant to SC Code §62-1-308(c) which carries a statutory Automatic Stay.. So the Probate Court failed to schedule a proper and timely hearing for the Motion to Remove Bolden, see footnotes, and the Probate Court called and held the July 20 2005 hearing in violation of Rule 225 and §62-1-308(c) as July 25 2005 was the date for the grounds for the Appeal to be filed. The Probate Court did not first obtain permission from the Appeals Court to hold the July 20 2005 hearing nor did the Probate Court obtain permission of the Appeals court to issued the Orders described above. Those orders are still pending a series of appeal filed by myself and my son. In fact, it was not until July 25 2005 that Jack Sinclair – Attorney for Bobby – was allowed by Bobby to withdraw from the Appeal Jack file for Bobby. Charlie Condon filed my Appeal and then he obtained a Probate Order to withdraw. Charlie should have moved for the Appeal court to withdraw – not the court below. With Seth Whipper's Motion for New Trial (see CASE HISTORY attached hereto as my Exhibit A) for the particulars) Seth is Bobby's attorney of record at the Probate Court and the Motion for a New Trial – all pending the on the Ninth Circuit's Docket.

On August 29 and 30 Charlie Condon received letters from Dr's Derrick and Smith about Norman's health. (see EXHIBIT B & C attached hereto) In fact Mr. Vincent

[3] See Ftn No 1 & 2

spoke to Dr Derrick about changing his opinion. All the attorneys knew the opinion of the two doctors was good for Norman and the care he was receiving. On August 30 2005, Bobby filed a timely Appeal for the August Orders and Charlie Condon joined in for me.

On September 06 2005, I through Charlie Condon joined Bobby's Appeal.

On October 5 2005 a STAY ORDER is issued after a hearing before Judge Roger Young held on September 20 2005, I was appointed Temporary Guardian and Family Services – with some restrictions – was appointed to continue as a Temporary Conservator pending the outcome of the appeal process. That process continues and this is contempt by others against me as the wife and party. Judge Young orders me to account for the UBS funds ($42,957.99) Not pay it; but to account for it. We were under appeal and the funds were part of my bond as conservator. If the court wanted the money they could have made a claim to the bonding company directly. They did not!. The bonding company would have had issues as to the validity of co-conservatorships – Again an appeal issue for the court above – not the court below. Glen Churchill was to continue and Guardian Ad Litem and to visit Norman he had to give Seth Whipper 6 hours Notice. This was wrong as Seth Whipper was not my attorney. (See Stefan v Stefan SC S Ct Decision admonishing Charleston County Family court and instructing Family Court Judges to not give the authority of law or the courts to attorneys)

mcK

Family Services wrongfully canceled credit cards that belonged to only myself.

On January 17th 2006 Bobby through Attorney Seth Whipper filed a Motion for a New Trial as part of the Appeal process. That Motion was set to be heard October 15 2006 – hearing was canceled and to be moved to the next term of court. It is still waiting a day in court.

On January 31 2006, the Probate Court , issued an Emergency Order based on affidavits of Glen Churchill and of Elizabeth Spencer – I have never seen the Petition for the Order. In fact, Sean Trundy my attorney got first copies of these affiants on June 6 2006. At this Emergency Order, Probate has a duty to schedule a hearing within ten (10) days. That right to *due process* has never been afforded to either me or to Bobby. This Probate Emergency Order – among other grievous errors – found that Bobby and I were guilty of contempt of Probate Court about the very issues that were/ are pending before the Appeal Court. Again there is a violation of § 308(c) and Judge Young's ORDER. In fact, a study of my XHIBIT "A" CASE HISTORY will show that it (violations) have/has become *a routine habit and practice* for the Probate Court to Circumvent the Appeal Process, the SC Code §308(c), Judge Young and now Judge Mahon ORDERS as well as the Family Court Order of March 22 2007, paragraph No 2 about my annuities. That Emergency Order made Walter Kauffman the absolute Guardian of Norman. Kauffman – who notarized Elizabeth Spencer's Affidavit – which can be shown as not being of her personal knowledge and her personal involvement since her only visit to our home and lives was on August 5 2004. That visit with North Charleston Police was part of the retaliations from having hers and the daughters DSS Investigation dismissed as "unfounded". Again Charlie Condon told me that was a "double jeopardy" intrusion by Spencer and the City of Charleston Police Department. I have never seen or heard from them again other than her affidavit printed on Charleston POLICE Department Letterhead and referencing 'her many years of Law Enforcement Experience." She and Kauffman are impersonating someone with either a standing in another case at law or

falsely presenting an authority at law that neither of them possessed – at these times – and in these cases before the courts then or now. To me this was/is still a "sham litigation"

As a result of violations by Mr. Kauffman to be involved in this case by instructions given to him by Judge Young in open court, the EMERGENCY ORDER signed by Judge Curry at Probate Court continued i[ts] findings of this January 31 2006 series to circumvent my Guardianship granted by Judge Young's ORDER October 5 2006 almost one year ago now. (see CASE HISTORY EXHIBIT "A". Mr. Kauffman with his unlawfully obtain authority misused the authority of law and came to our home on January 31 2006 with a SWAT of police officers and removed Norman from our home and my life.

Ostensibly, my husband was kidnapped for protection that was not necessary or proven so by any use of due processes otherwise afford us by The Constitution and SC Code and the Rules of Civil Procedures.

What has occurred since shows what a farce this series of events has been. As much as four weeks after Norman was "taken" ; Mr. Kauffman and the daughters were still frantically attempting to locate doctors and refill medications. In February 2006, Norman missed at least two (2) major doctors scheduled appointments. On February 27 2006 Norman apparently required some emergency attention. (I know this occurred, but have not been allowed to know why it occurred) On April 28, 2006 Norman missed an appointment with his urologist. On May 1, 2006, Norman missed a scheduled ultrasound at the Lowcountry Medical Associates. Norman has suffered from kidney stones in the past and these are serious matters. In fact, the first date at Probate Court – no one

bothered to ask – but Norman and I and Bobby were at the hospital for having his kidney stoned blasted with the sonic machine. Charlie Condon put Norman's health above all else. I have no way of knowing if Norman has been receiving the quality of care he needs or the attention that I as his wife am lawfully entitled to provide. Bobby and I could recite then as to the medications and doctors for Norman. While we were busy bringing back his strength these others were busy 'throwing rock at us while we were doing it' with all this 'SHAM LITIGATION'. The Petition at Probate should be revoked as the daughters did not have a lawful standing to file such a demand. Certainly, a Probate Petition would invalidate one's POA – but it is for an Appeal Court to now rule or decide if a Petition at Probate Courts can automatically revoke a set of POAs that were already revoked, as our's were perfected by Attorney Suzanne Groff in June 2004 against the daughters.

While my husband, Norman, is under the questionable, unlawfully obtained control of his kidnappers, we will continue to not spend our lives together. I am a 80 year old lady who has always paid our taxes, taken care of her husband and children and grand children and the pets too! My husband has been stolen from me. My marriage has been almost completely destroyed by outsiders. My daughters apparently hate Bobby to such a degree that they are dizzy and misguided about him. He had never done anything to them that even remotely relates to all the unfounded allegations made. Why even on October 21 2004, only one day after our consent order agreement was made – the Law of the Case – Chloe was faxing affidavits to thwart the agreement from the Center of Disease and Control telephones at her job in Atlanta Georgia. So far the misuse of federal government time, machines, equipment and phones has destroyed my life and Bobby's

reputation in the community. These wrongful, malicious acts done with malice and forethought, and with conspiracy and collusion, only to name a few evil deeds; have only partially succeeded in completely taking control of my life, and the marital assets that Norman and I have worked a lifetime to acquire. This is a true tragedy that will not have a happy ending for anyone. This is sad as the largest part of our assets have been and still at risk of being gobbled up by the attorneys hired to defend our marriage and our home. I have happily given Bobby two Promissory Notes for the $108,000 he has spent on his parents care and my defenses up to June 2006. It has all been documented and validated to my satisfaction. My attorney in the Family Court will be able to present this at the proper time in this legal process.

I have not seen Norman but for three times since January 31 2006. The three times Kauffman did let me visit – it was at a cost of $140 per hour. It appears that the Probate Court allowed a way around our scrutiny of all 'their mistakes'. The most horrendous mistake is that it took until August 18 2005 to get an AMENDED ORDER changing the previous ones that said "Norman R Knight Jr will not be on the premises when he has visitors."

"The January 2006 Motion for a New Trial was timely filed by Seth Whipper", so said Judge Dennis in the Appeal Hearing set for June 9 2006. Note that yet again the Probate Court on June 2 2006, just like the Probate Court did on July 20 2005 has violated §308(c) and called for a hearing at Probate to "beat out" Appeal Jurisdictions. Then Judge Curry put both me and Bobby in the County Jail for Contempt of Probate Court Order to hand over the UBS $43,000. Bobby paid the $43,000 demand and we were out of jail on June 8th just in time for Judge Dennis to say that "yes, the Motion for

a New Trial by Seth Whipper was timely made and that he personally would not take any jurisdiction over the matter." Later the Clerk sent us a notice setting a hearing for October 15 2006. That hearing was canceled and was to be set at the next term of court. I am waiting for that day in court, too.

The same repeating *routine habit and practice* of Probate Court in Charleston County calling and ordering another hearing exactly one week before our appeal could be perfected and violating Rule 225 and §308(c). Without these *denials of due process* – Bobby and I would not have been in jail and I would not owe Bobby that ~$43,000. The matter of this money was part of the pending Appeal – that money was bonded by me. The Probate Court was mad and furious because on the previous month the conservatorship at Family Services could not cash in our annuities – see violations of the March 22 2007 Family Court Order and the April 11, 2007 Probate Court Order. Yet, again here is another *due process violation by the Probate Court* "unlawfully" *circumventing the Orders of the Courts above*. Again, this second time that I know of that the Probate Court Ordered attempts had failed to get the money saved for our caskets.

I have met with the Internal Revenue Service about our marital taxes this month. The conservatorship that took my place, Family Services, failed to finish filing our taxes as married and joint for the years 2004, 2005 and 2006. I have sent the IRS three 1040X forms. The IRS will ministerially sign the forms for Norman in the interim. The investigator will look into the incorrect filing status that claimed Norman as separated for the year 2005. Norman was with me in 2005. That "avoidable misleading falsity" will be corrected as there was no justification. Too, the IRS considers nursing homes as a *temporary residence* for these tax purposes. The Family Services conservatorship has

caused my marriage much grief and damage. They gave us $800 a month and held back thousands to pay attorneys which were instructed and directed by Chloe and Linda. This is conversion of funds to the nth degree. I want our money refunded with damages and interest to the full extent the law will allow. In fact, the last Petition filed by non-attorney Iris Albright in Probate Court, stated that she had been working closely with Chloe for the last two years. They made Chloe the Conservator and another Appeal is filed. My (our) marriage and privacy pursuant to USC Title 5 §552a has been grossly violated by these failures to protect my (our) personal files and records pursuant to the Privacy Act of 1974 and HEPA; by this uncontrolled and free flowing stream of otherwise protected information to the daughters and to them through the attorneys/guardians involved in numerous stages of this most complex litigation.

I pray for this very long and damaging ordeal to be over. I want my husband returned to me. I pray for the wrongs to be righted in in this legal process and for this nightmare to be over. I pray for the Appeal Court in SC to make Norman and I whole.

FURTHER THE AFFIANT SAYETH NOT

EXHIBITs "A, B, & C" attached hereto.

Mildred C. Knight

Mildred C. Knight, Affiant

NOTARY SEAL

Sworn to before me this 23rd day of March _____ 2010.

Notary Public for South Carolina

My commission expires : 6/15/15

CERT 0200 CERT 0200 CERT 0200

BK P 500PG796

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

POWER OF ATTORNEY REVOCATION

KNOW ALL MEN BY THESE PRESENTS that I, Norman R. Knight, Jr.,* of Charleston, Charleston County, South Carolina, hereby revoke all prior powers of attorney, whether limited or durable, including but not limited to the power of attorney recorded at Book R 482, page 599 in the RMC Office for Charleston County, South Carolina, and by these presents do specifically bar LINDA KNIGHT JONES and CHLOE K. TONNEY from acting as my attorney in fact, and otherwise in my name, place and stead, and/or on my behalf.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 28th day of June, 2004.

Norman R. Knight, Jr.

Norman Robert Knight, Jr. *aka ~~Norman R. Knight, Jr.~~
Social Security Number: 249-64-2503

Norman Robert Knight, Jr.,* states to us that this document is his Power of Attorney Revocation; he requested that we act as witnesses to him signing it, and he signed it in our presence. We, in his presence and in the presence of each other, sign as witnesses this 28th of June, 2004, at Charleston, South Carolina.

Suzanne C. Goff
Witness

Witness

CERTIFIED
TRUE COPY
CHARLIE LYBRAND
REGISTER MESNE CONVEYANCE
CHARLESTON COUNTY, SC
DATE: 7-9-04
BY: Charlie Lybrand, EB

CERT 0201 CERT 0201 CERT 0201

BK P 500PG 797

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me, Stephanie Hatcher, and made oath that he/she saw the within named NORMAN ROBERT KNIGHT, JR., sign, seal and as his/her act and deed, deliver the within written Revocation of Power of Attorney and that he/she with the other witness witnessed the execution thereof.

Stephanie Hatcher

SWORN to before me this
28th day of June, 2004.

Suzanne C. Goff
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 9/20/06

CERT 0202 CERT 0202 CERT 0202

Suzanne E. Groff
P.O. Box 12510
Chas SC 29422

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CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

Revoke/P/Attny
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IRVIN G. CONDON
Judge of Probate

TAMARA C. CURRY
Associate Judge of Probate

JACK I. GUEDALIA
Associate Judge of Probate

CHARLESTON COUNTY
SOUTH CAROLINA

COMMITMENT DIVISION
JUDICIAL CENTER
100 BROAD STREET, SUITE 469
CHARLESTON, SC 29401
PHONE: 843.958.5180
FAX: 843.958.5191

August 22, 2005

Mr. Norman Robert "Bobby" Knight, III
3940 Hottinger Avenue
North Charleston, SC 29405

RE: NORMAN ROBERT KNIGHT, JR.

Dear Mr. Knight:

Enclosed is a certified copy an Amended Order dated August 18, 2005 in the above entitled matter.

I have taken the liberty in forwarding a copy of this Amended Order to the Court appointed attorney and guardian ad litem, Glenn Churchill, Esquire. I have also provided sufficient copies of the Amended Order to Charles Condon, Esquire, who represents Mildred Knight; Thad Vincent, Esquire, who represents Chloe Knight Tonney; as well as an individual copy to Linda K. Jones.

A final Order from the most recent hearing of July 20, 2005 will soon be forthcoming.

Sincerely,

Tamara C. Curry

TAMARA C. CURRY
Associate Judge of Probate

TCC:ava
Enclosure

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO.: 2004-GC-10-0099

CHLOE KNIGHT TONNEY,

Petitioner,

vs.

NORMAN ROBERT KNIGHT, JR.
an alleged incapacitated person,
MILDRED KNIGHT and
NORMAN ROBERT KNIGHT, III

Respondents.

AMENDED ORDER

Date of Hearing: April 20, 2005
Presiding Judge: Honorable Tamara C. Curry
Attorney for Petitioner: Thad H. Vincent
Attorney for Respondent Mildred Knight: Charles Molony Condon
Attorney for Respondent Norman R. Knight, III: John Sinclaire, III
Visitor, Attorney and Guardian *ad Litem*: Glenn P. Churchill

ACC
1094
8/18/05

WHEREAS an Order was issued May 19, 2005 setting out the below facts. An Amended Order was issued May 23, 2005, correcting the year Mildred Knight and Robert Norman Knight, Jr. had been inhabitants of their residence, followed by a correction to the name of their grandson. This Court has since been advised that there was a misprint in the previous orders of this court dated May 19, 1005 and May 23, 2005, where Bobby Knight was listed as Bobby Knight, Jr., instead of Bobby Knight or Robert Norman Knight, III. This Court stipulates that Norman Robert Knight, Jr. shall hereinafter be referred to as either Norman Robert Knight, Jr. or Mr. Knight. This Court

further stipulates that Norman Robert "Bobby" Knight, III, shall hereinafter be referred to as either Norman Robert "Bobby" Knight, III, or Bobby Knight.

This matter came before the Court on the Petition for a Rule to Show Cause filed by the Petitioner, Chloe Knight Tonney who was represented by Thad H. Vincent, Esquire. By previous Orders of this Court, Glenn P. Churchill was appointed Visitor and Guardian *ad Litem* for Respondent Norman Robert Knight, Jr. Respondent Mildred Knight was represented by Charles Molony Condon, Esquire and Respondent Norman Robert "Bobby" Knight; III was represented by John Sinclaire, III, Esquire. Prior to the commencement of the hearing, the parties to this action submitted to the Court a proposed resolution of the issues in this matter. The Petitioner agreed to withdraw her Rule to Show Cause Petition, and the Court advised the attorneys that this would be the final opportunity to hear testimony regarding visitation of the incapacitated person by any interested party.

The Court finds that venue is proper, that the required notices have been given or waived. That the proposed protected person Norman Robert Knight, Jr. is a resident of the County of Charleston, and that Mr. Knight has assets requiring protective proceedings. Pursuant to the evidence presented and in accordance with the proposed settlement of the parties, this Court finds the following facts concerning the nature and degree of incapacity of Norman Robert Knight, Jr.:

FINDINGS OF FACT

Mr. Knight is an eighty-year-old Caucasian male who currently resides with his wife Mildred and their son, Bobby at 3940 Hottinger Avenue in North Charleston, South Carolina. Mr. and Mrs. Knight have been married for fifty-seven years and have been

living at their current address since 1949.

Mr. Knight has a long history of physical illness dating back to 1972. His history includes esophageal surgery, a splenectomy, polyp removal, chronic pancreatitis, hip replacement and several other medical conditions that require on-going medications and visits to the doctor. Mr. Knight was diagnosed with Alzheimer's disease in 2001, and his medical records reflect only symptomatic improvement of this condition while on Namenda. There have been a number of problems regarding visitation among the family members since the first hearing. The family members have agreed to allow the Court to set the visitation schedule with the assistance of Mr. Knight's private physician, F. Carl Derrick III, M.D.

1 CC
3914
5/18/05

Based on the testimony heard:

IT IS ORDERED that Chloe Knight Tonney and Linda Jones are allowed visitation every other Sunday afternoon for three hours. The visitation shall take place the first and third Sunday of each month between the hours of 1pm to 4pm.

IT IS ORDERED that the visitations may take place outside of Mr. Knight's residence, however, either party must make any necessary provision to accommodate any additional medical assistance that Mr. Knight may require, and they shall be responsible for the cost of the assistance.

IT IS ORDERED that Maureen Maguire must make bi-weekly visits at Mr. Knight's home and provide the Court a bi-weekly update of his health and daily care. The estate of Mr. Knight is responsible for such cost.

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IT IS ORDERED that Chloe Knight Tonney and Linda Jones are allowed weekly calls to Mr. Knight on the second and fourth Sundays of each month between the hours of 1pm to 4pm.

IT IS ORDERED that John Paul Jones, Jr. is currently denied visitation at the residence of Mr. Knight and is restricted from making any attempts to contact the residence without further Order of the Court.

IT IS ORDERED that Bobby Knight shall not be present during any visitation or drop off of Mr. Knight.

IT IS ORDERED that the failure by any party to adhere to this Order shall be considered Contempt of Court and appropriate sanctions shall be rendered.

1 CC
for
8/18/05

AND IT IS SO ORDERED.

Tamara C. Curry
Associate Probate Judge for
Charleston County

Charleston, South Carolina
August 18, 2005

ATTEST: A TRUE COPY
DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

IRVIN G. CONDON
Judge of Probate

TAMARA C. CURRY
Associate Judge of Probate

JACK I. GUERDALIA
Associate Judge of Probate

CHARLESTON COUNTY
SOUTH CAROLINA

COMMITMENT DIVISION
JUDICIAL CENTER
100 BROAD STREET, SUITE 469
CHARLESTON, SC 29401
PHONE: 843.958.5180
FAX: 843.958.5191

August 22, 2005

Mr. Norman Robert "Bobby" Knight, III
3940 Hottinger Avenue
North Charleston, SC 29405

RE: NORMAN ROBERT KNIGHT, JR.

Dear Mr. Knight:

Enclosed is a certified copy an Amended Order dated August 18, 2005 in the above entitled matter.

I have taken the liberty in forwarding a copy of this Amended Order to the Court appointed attorney and guardian ad litem, Glenn Churchill, Esquire. I have also provided sufficient copies of the Amended Order to Charles Condon, Esquire, who represents Mildred Knight; Thad Vincent, Esquire, who represents Chloe Knight Tonney; as well as an individual copy to Linda K. Jones.

A final Order from the most recent hearing of July 20, 2005 will soon be forthcoming.

Sincerely,

Tamara C. Curry

TAMARA C. CURRY
Associate Judge of Probate

TCC:ava
Enclosure

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE PROBATE COURT CASE NO.: 2004-GC-10-0099
CHLOE KNIGHT TONNEY, Petitioner, v. NORMAN ROBERT KNIGHT, JR. an alleged incapacitated person, MILDRED KNIGHT and NORMAN ROBERT KNIGHT, III Respondents.	**AMENDED ORDER**

Date of Hearing:	April 20, 2005
Presiding Judge:	Honorable Tamara C. Curry
Attorney for Petitioner:	Thad H. Vincent
Attorney for Respondent Mildred Knight:	Charles Molony Condon
Attorney for Respondent Norman R. Knight, III:	John Sinclaire, III
Visitor, Attorney and Guardian *ad Litem*:	Glenn P. Churchill

CC
Copy
8/18/05

WHEREAS an Order was issued May 19, 2005 setting out the below facts. An Amended Order was issued May 23, 2005, correcting the year Mildred Knight and Robert Norman Knight, Jr. had been inhabitants of their residence, followed by a correction to the name of their grandson. This Court has since been advised that there was a misprint in the previous orders of this court dated May 19, 1005 and May 23, 2005, where Bobby Knight was listed as Bobby Knight, Jr., instead of Bobby Knight or Robert Norman Knight, III. This Court stipulates that Norman Robert Knight, Jr. shall hereinafter be referred to as either Norman Robert Knight, Jr. or Mr. Knight. This Court

further s: pulates that Norman Robert "Bobby" Knight, III, shall hereinafter be referred to as either Norman Robert "Bobby" Knight, III, or Bobby Knight.

T his matter came before the Court on the Petition for a Rule to Show Cause filed by the P etitioner, Chloe Knight Tonney who was represented by Thad H. Vincent, Esquire. By previous Orders of this Court, Glenn P. Churchill was appointed Visitor and Guardian *ad Litem* for Respondent Norman Robert Knight, Jr. Respondent Mildred Knight v as represented by Charles Molony Condon, Esquire and Respondent Norman Robert "Bobby" Knight; III was represented by John Sinclaire, III, Esquire. Prior to the commenc ement of the hearing, the parties to this action submitted to the Court a proposed resolution of the issues in this matter. The Petitioner agreed to withdraw her Rule to S how Cause Petition, and the Court advised the attorneys that this would be the final opp rtunity to hear testimony regarding visitation of the incapacitated person by any interested party.

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3/18/05

T. e Court finds that venue is proper, that the required notices have been given or waived. That the proposed protected person Norman Robert Knight, Jr. is a resident of the Cou ty of Charleston, and that Mr. Knight has assets requiring protective proceedi gs. Pursuant to the evidence presented and in accordance with the proposed settlemen of the parties, this Court finds the following facts concerning the nature and degree of ncapacity of Norman Robert Knight, Jr.:

FINDINGS OF FACT

Mr Knight is an eighty-year-old Caucasian male who currently resides with his wife Mil. red and their son, Bobby at 3940 Hottinger Avenue in North Charleston, South Carolina. Mr. and Mrs. Knight have been married for fifty-seven years and have been

living a their current address since 1949.

Mr. Knight has a long history of physical illness dating back to 1972. His history includes esophageal surgery, a splenectomy, polyp removal, chronic pancreatitis, hip replacement and several other medical conditions that require on-going medications and visits to the doctor. Mr. Knight was diagnosed with Alzheimer's disease in 2001, and his medical records reflect only symptomatic improvement of this condition while on Namenda. There have been a number of problems regarding visitation among the family members since the first hearing. The family members have agreed to allow the Court to set the visitation schedule with the assistance of Mr. Knight's private physician, F. Carl Derrick II, M.D.

Based on the testimony heard:

IT IS **ORDERED** that Chloe Knight Tonney and Linda Jones are allowed visitation every other Sunday afternoon for three hours. The visitation shall take place the first and third Sunday of each month between the hours of 1pm to 4pm.

IT IS **ORDERED** that the visitations may take place outside of Mr. Knight's residence, however, either party must make any necessary provision to accommodate any additional medical assistance that Mr. Knight may require, and they shall be responsible for the cost of the assistance.

IT IS **ORDERED** that Maureen Maguire must make bi-weekly visits at Mr. Knight's home and provide the Court a bi-weekly update of his health and daily care. The estate of Mr. Knight is responsible for such cost.

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5/18/06

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IT IS ORDERED that Chloe Knight Tonney and Linda Jones are allowed weekly calls to Mr. Knight on the second and fourth Sundays of each month between the hours of 1pm to 5 pm.

IT IS ORDERED that John Paul Jones, Jr. is currently denied visitation at the residence of Mr. Knight and is restricted from making any attempts to contact the residence without further Order of the Court.

IT IS ORDERED that Bobby Knight shall not be present during any visitation or drop off of Mr. Knight.

IT IS ORDERED that the failure by any party to adhere to this Order shall be considered Contempt of Court and appropriate sanctions shall be rendered.

1 CC
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8/18/05

AND IT IS SO ORDERED.

Tamara C. Curry
Associate Probate Judge for
Charleston County

Charleston, South Carolina
August 18, 2005

ATTEST: A TRUE COPY
DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

IRVIN G. CONDON
Judge of Probate

TAMARA C. CURRY
Associate Judge of Probate

JACK I. GUEDALIA
Associate Judge of Probate

CHARLESTON COUNTY
SOUTH CAROLINA

COMMITMENT DIVISION
JUDICIAL CENTER
100 BROAD STREET, SUITE 469
CHARLESTON, SC 29401
PHONE: 843.958.5180
FAX: 843.958.5191

August 26, 2005

Mr. Norman Robert "Bobby" Knight, III
3940 Hottinger Avenue
North Charleston, SC 29405

RE: NORMAN ROBERT KNIGHT, JR.

Dear Mr. Knight:

Enclosed is a certified copy of an Order dated August 25, 2005 in the above entitled matter following the hearing held July 20, 2005.

I have taken the liberty in forwarding a copy of this Order to the Court appointed attorney and guardian ad litem, Glenn Churchill, Esquire. I have also provided sufficient copies of this Order to Charles Condon, Esquire, who represents Mildred Knight; Thad Vincent, Esquire, who represents Chloe Knight Tonney; as well as an individual copy to Linda K. Jones.

You will note that Family Services, Inc., has been named as permanent conservator and Walter R. Kaufmann, Esquire, has been named as guardian. Mr. Walter Kaufmann and Ms. Iris Albright of Family Services, Inc., have both been provided with a copy of the Order along with other pertinent documents. Mr. Kaufmann may be reached at 881-3445. Ms. Albright may be reached at 744-1348.

Sincerely,

Tamara C. Curry

TAMARA C. CURRY
Associate Judge of Probate

TCC:ava
Enclosure

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF CHARLESTON) CASE NO.: 2004-GC-10-0099

NORMAN ROBERT "BOBBY" KNIGHT, III,
Petitioner,

versus

NORMAN ROBERT KNIGHT, JR., an incapacitated person, and Mildred Knight, Linda K. Jones and Chloe K. Tonney, his next of kin,

Respondents.

ORDER

Date of Hearing:	July 20, 2005
Presiding Judge:	The Honorable Tamara C. Curry
Petitioner:	Norman Robert Knight, III
Guardian:	Mildred Knight Charles Molony Condon, Esquire
Temporary Conservator:	Family Services, Inc.
Guardian *ad Litem*:	Glenn P. Churchill, Esquire

VCC
1099
8/25/05

This matter came before the Court on the Petition for Removal of Allan Bolden as Co-Conservator for Norman Robert Knight, Jr., submitted by Norman Robert "Bobby" Knight, III; Motion for Attorney's Fees filed by Jack Sinclaire, III, Esquire; Appointment of permanent Conservator, and investigation of expenditures by the previous Co-Conservators.

Present at the hearing were Glenn P. Churchill, Esquire in his capacity as Guardian *ad Litem*; Mildred Knight, wife of Norman Robert Knight, Jr., represented by Charles Molony Condon, Esquire; Norman Robert "Bobby" Knight, III, son of Norman Robert Knight, Jr., who represented himself *pro se*; Chloe Knight Tonney, daughter of Norman Robert Knight, Jr., represented by Thad. H. Vincent, Esquire; Linda K. Jones, daughter of Norman Robert Knight,

Jr.; previous Co-Conservator, Allan Bolen, represented by Wendi Freeman, Esquire and Iris Albright and Jean Kennedy, representatives of the Temporary Conservator, Family Services, Inc.

This Court finds that venue is proper, that the required notices have been given or waived; that the protected person, Norman Robert Knight, Jr., is a resident of the County of Charleston, and that Norman Robert Knight, Jr. has assets requiring protective proceedings.

Prior to beginning the hearing, the Petitioner, Norman Robert "Bobby" Knight, III, advised the Court that he was withdrawing his petition for removal of Allan Bolden as Co-Conservator and would not be seeking any further legal action against the former Co-Conservator while serving in that capacity. Mr. Bolden also informed the Court that he no longer desired to serve as Co-Conservator and requested that the Court permanently remove him as Co-Conservator.

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This Court has been advised that there was a misprint in the previous Order of this Court dated May 9, 2005, wherein Norman Robert Knight, III was referred to as "Bobby Knight, Jr." or "Norman Robert Knight, Jr." This Court stipulates that Norman Robert Knight, Jr., the protected person in these proceedings, shall hereinafter be referred to as Norman Robert Knight, Jr. and further stipulates that Norman Robert "Bobby" Knight, III shall hereinafter be referred to as Bobby Knight, III.

PROCEDURAL HISTORY

Norman Robert Knight, Jr. was declared incapacitated by this Court per Orders dated November 9, 2004, appointing his wife Mildred Knight as his Guardian and Mildred Knight and Allan Bolden as his Co-Conservators.

By O der of this Court dated January 28, 2005, the children and grandchildren of Norman Robert Knig t, Jr. were granted visitation. The visiting parties were required to give the Guardian, M ldred Knight two (2) hours notice of the visit, and Bobby Knight, III, was not to remain in th area of the visit or was required to remain upstairs. The Order also required the Guardian, M ldred Knight, to retain the services of an elder care professional and submit a plan for the care of Norman Robert Knight, Jr. The assessment was completed and a report was submitted by Maureen Maguire, a licensed geriatric nurse with Seniors Choice.

Subs quently, this Court issued an Order for a Rule to Show Cause on February 17, 2005, ordering all parties to abide by the Court Orders. A further Rule to Show Cause Order was issued on M y 19, 2005, wherein a specific visitation schedule and procedures were given for the children of Norman Robert Knight, Jr. At this hearing, it was agreed by all parties that the family mem bers would allow the Court to set the visitation schedule with the assistance of Norman Ro ert Knight, Jr.'s private physician, F. Carl Derrick III, M.D. The Order further required M: aureen Maguire, of Seniors Choice to make bi-weekly visits to the home of Norman Robert Kni ht, Jr. and to asses his in-home care and report her findings to the Court.

A s tus conference was held with the Co-Conservators on May 19, 2005. The Court determined that credit cards had been used in violation of this Court's Orders, that the Co-Conservato s were not cooperating with each other and checks had been written to various parties wi iout each Conservator's knowledge. Based on this information, the Court immediate r removed Mildred Knight and Allan Bolden temporarily as Co-Conservators and appointed amily Services, Inc. as Temporary Conservator for Norman Robert Knight, Jr. The Order requ red the latter named parties to immediately turn over any and all checkbooks, money market ac ounts, credit cards, ATM cards, and any and all records of accounts and assets

belonging to or in the name of Norman Robert Knight, Jr. to Family Services, Inc. This Order also froze an restricted all credit cards usage in the name of Norman Robert Knight, Jr.

An Amended Order followed the May 19th Orders correcting the date at which Mildred and Norman Robert Knight, Jr. inhabited their home and the name of their grandson John Paul Jones, Jr.

FINDINGS OF FACT

At this hearing held July 20, 2005, Glenn Churchill, Esquire, reported that he had been denied access to Norman Robert Knight, Jr. in his capacity as Guardian *ad Litem;* therefore he could not submit a current Visitor's report.

Iris Albright and Jean Kennedy of Family Services, Inc. testified as to their representation while acting as Temporary Conservator for Norman Robert Knight, Jr. Ms. Albright testified that her investigation had been difficult to complete, because of lack of cooperation and lack of access to records in the name of Norman Robert Knight, Jr. Ms. Albright testified that several appointments had been cancelled by Mildred Knight; and that Mrs. Knight refused to turn over all of Norman Robert Knight, Jr.'s past and present bills or to establish a budget.

Ms. Albright testified that she established a household budget of $200.00 based on the limited information she had secured. She had advised Mrs. Knight to contact her should additional funds be needed or required. Weekly checks in the amount of $200 have been mailed to Mildred Knight to pay for food and other necessities; however they have not been cashed. Ms. Albright also testified that she had made arrangements to pay all other routine monthly bills that she had access to.

Ms. A bright further testified regarding a UBS account that had been held in the names of Norman Rob rt Knight Jr. and Mildred Knight. Ms. Albright gave account information for Norman Rob rt Knight, Jr. and stated that his UBS account had been all but closed, and a check had been disl ursed from the account totaling the $42,957.99. She was unable at that time to testify as to v ho had made the withdrawal, but had requested a copy of the withdrawal form from UBS. ' his withdrawal came after all assets had been ordered to be turned over to Family Services, Inc , as the Temporary Conservator.

Dau ıter Chloe Knight Tonney testified that she last visited her father, Norman Robert Knight, Jr., n June 5, 2005, but has since been unable to reach her father or mother, Mildred Knight, by t lephone. Ms. Tonney testified that her phone calls have not been answered during the schedule l visitation times.

Dau hter Linda Jones testified that she last visited her father, Norman Robert Knight, Jr., on June 5, 2005, but has since been denied access to him. Ms. Jones testified that she has gone by the hom during scheduled visitation times and no one has answered the door or telephone calls made ı uring the scheduled visitation times.

Mil red Knight, wife of Norman Robert Knight, Jr., testified that she has violated previous C urt Orders, and admitted to being somewhat uncooperative with the Co-Conservator Allan Bold n, because he had written some checks without her permission. Mrs. Knight also testified th : she withdrew/spent funds from the banking accounts and credit cards after the Court Orders dir :ted her not to for household expenditures.

Mr . Knight testified that she was holding onto the weekly checks mailed to her by Family Se ices, Inc., and had no plans to cash them until she needed them. Mrs. Knight further testified th n she hired an additional accountant to handle household finances without the Court's

knowledge. She testified that Bobby Knight, III pays expenses on both her behalf and Norman Robert Knight, Jr.'s behalf, but has not submitted verification of such payments.

Mrs. Knight further testified that she along with Norman Robert Knight, Jr. or Bobby III, withdrew the funds from the UBS investment/savings account, and the funds are currently held in a sole account in the name of Bobby Knight, III. She further testified that she knowingly withdrew the funds without Court approval.

When queried as to why she denied Mr. Churchill access to Norman Robert Knight, Jr., Mrs. Knight stated that he upset her when he stated that he needed to see Mr. Norman Knight, Jr. in his home she stated "that it is our home". Mrs. Knight was also unwilling to allow Mr. Churchill, as Guardian *ad Litem*, any unscheduled visitation.

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Mrs. Knight stated that she does not want her daughters Chloe Knight Tonney and Linda Jones in the house because they have caused problems and cost her money by bringing this action. Mrs. Knight stated that she did not believe her daughters should be allowed visitation and that she had removed Norman Knight Jr. from the home on the dates & times for scheduled visitation with the daughters. When queried as to her relationship with her daughters, Mrs. Knight stated there was no chance of reconciliation.

Lastly, Mrs. Knight further admitted that she has failed to turn over all requested records to the Temporary Conservator, Family Services, Inc. Mrs. Knight has refused to obtain homeowners insurance on the properties owned by Norman Robert Knight, Jr. because they have not done so in the past.

The Court also heard testimony regarding Bobby Knight, III request for approval for attorney fees that he has incurred as a result of this action.

CONCLUSIONS OF LAW

Based on the testimony and evidence presented, this Court has determined it would be in the best interest of Norman Robert Knight, Jr., that Walter Kaufmann, Esquire be appointed as Guardian for Norman Robert Knight Jr. This Court does not take lightly the institution of marriage. However considering Norman Robert Knight Jr.'s substantial health care needs, the continuous problems with visitation, the previous violations of this Courts Orders and the refusal of the parties involved to cooperate, that an independent person should be appointed Guardian.

This Court has further determined that it would be in the best interest of Norman Robert Knight, Jr. that the Temporary Conservator, Family Services, Inc. be appointed as permanent Conservator for Norman Robert Knight, Jr.; it is therefore

ORDERED that Mildred Knight be removed as Guardian for Norman Robert Knight, Jr., and Walter Kaufmann, Esquire be appointed as Guardian; and it is further

ORDERED that Mildred Knight and Allan Bolden be permanently removed as Co-Conservator; and it is further

ORDERED that the Temporary Conservator, Family Services, Inc. be appointed as permanent Conservator of the estate of Norman Robert Knight, Jr.; and it is further

ORDERED that Walter Kaufmann be present as long as needed for scheduled visitation times per the Courts previous orders to ensure that visitation is properly carried out. Mr. Kaufmann shall utilize all measures to ensure that the Court's visitation schedule is followed; it is further

ORDERED that Chloe Knight Tonney and Linda Jones are allowed visitation every other Sunday afternoon for three hours. The visitation shall take place the first and third Sunday

of each mon h between the hours of 1pm to 4pm; or any other times agreed upon with the Guardian; it i further

ORD ERED that the visitations may take place outside of Mr. Knight's residence, however, eit ter party must make any necessary provision to accommodate any additional medical assi ance that Mr. Knight may require, and they shall be responsible for the cost of the assistance; a d it is further

ORD ERED if the visitation schedule is violated by either Mildred Knight or Bobby Knight III, t at the Guardian, Walter Kaufmann, with the assistance of Family Services, Inc., shall locate . residential care facility or nursing home to house and care for Norman Robert Knight, Jr., nd this shall be done immediately or as soon as a facility can be located; and it is further

ORI ERED if Norman Robert Knight, Jr. is ultimately removed from the home, and placed in a .ursing home or residential care facility, the visitation schedule with his daughters Chloe Knig t Tonney and Linda Jones shall be held every Sunday between 11am and 3pm and every Tues ty and Thursday evening between 4pm and bedtime. Both Chloe Knight Tonney and Linda J nes are permitted nightly telephone conversations with Norman Robert Knight, Jr.; and it is fur ter

OI DERED if Norman Robert Knight, Jr. is removed from the home, that both Mildred Knight and Bobby Knight, III shall be permitted to visit Norman Robert Knight, Jr. every day except duri g the hours of visitation reserved for daughters, Chloe Knight Tonney and Linda Jones; and is further **ORDERED** that the Guardian, Walter Kaufmann is permitted to visit Norman Ro ert Knight, Jr. whenever necessary to fulfill his duties, but must call one (1) hour in advance; a d it is further

ORD ERED that the Guardian, Walter Kaufmann, shall keep all family members informed as o Norman Robert Knight, Jr.'s care and that Mildred Knight must be consulted regarding m: or medical care decisions, however the final decision is that of Walter Kaufmann; and it is furtl er

ORI ERED that the Conservator shall consult Mildred Knight regarding major financial decisions; a: l it is further

ORI ERED that Mildred Knight shall turn over any and all financial records to Family Services wit in five (5) days of the execution of this Order or she shall be found in Contempt of Court and si bject to a fine of $100 per day. If Mildred Knight fails to comply within 15 days of this Order, a hearing will be set to determine further sanctions; and it is further

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ORI ERED that Mildred Knight and Bobby Knight, III, shall turn over the proceeds of the UBS Ac ount liquidated May, 2005, in the amount of $42,957.99, to the Conservator Family Services, I :., within five (5) days of the execution of this Order or they shall be found in Contempt c : Court and subject to a fine of $100 per day per person. If Mildred Knight and Norman Rc ert "Bobby" Knight, III, fail to comply within 15 days of this Order as directed, a hearing wil be held to determine further sanctions; and it is further

OR DERED that the Petitioner's request for attorney fees is denied.

AN) IT IS SO ORDERED.

The Honorable Tamara C. Curry
Associate Judge of Probate

This 25 ay of August 2005.
Charleston South Carolina

ATTEST A TRUE COPY
DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

CERT 0223 CERT 0223 CERT 0223

IN THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	Case No.: 2005-CP-10-3573

Chloe Knight Toomey and Norman Robert Knight, Jr. (an incapacitated person)

Plaintiffs,

vs.

Bobby Knight and Mildred Knight (wife of Norman Robert Knight, Jr.)

Defendants.

ORDER

2005 OCT -5 PM 4:32
BY

This matter came before this Court on September 30, 2005, on Appellant's Motion to Stay Proceedings Pending Appeal. Based on the arguments presented at the hearing, now, therefore, it is

ORDERED that visitation must take place in accordance with prior orders of the Probate Court; and it is further

ORDERED Mildred McKnight remain Guardian and Conservator pending appeal; and it is further

ORDERED Mildred Knight and Bobby Knight III shall provide this court with an accounting of the $42,957.99 which was removed from the UBS account on or about May 2005 within 15 days of the filing of this order; and it is further

ORDERED Glen Churchill, Esquire, is to remain Guardian ad Litem; and it is further

ORDERED Glen Churchill, Esquire, shall be permitted to have access to Norman Robert Knight, Jr. within six (6) hours of his request to Seth Whipper, Esquire's office; and it is further

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ORDERED there shall be no further use of credit cards that are issued in the name of Norman Robert Knight, Jr.; and it is further

ORDERED the Clerk of Court shall set this appeal for an expedited hearing during the October 31, 2005 term of court.

ORDERED Family Services shall retain control over funds and continue to pay per previous arrangements that were in effect.

Violation of previous orders or the terms set forth in this order, that shall be cause for a Rule to Show Cause to change terms of the order.

AND IT IS SO ORDERED.

Roger M. Young
Presiding Judge

October 5, 2005

Charleston, South Carolina.

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STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT OF
)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2005-CP-10-3573
	2005-CP-10-2603
MILDRED KNIGHT and NORMAN)	2005-CP-10-2569
ROBERT KNIGHT, III, a.k.a.)	
BOBBY KNIGHT,)	
)	
Appellants,)	
)	
-versus-)	ORDER
)	
CHLOE KNIGHT TONNEY,)	
)	
Respondent.)	
)	
IN RE:)	
Norman Robert Knight, Jr., an)	
alleged incapacitated person,)	
)	
Respondents.)	
)	

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PRESIDING JUDGE: The Honorable Kenneth G. Goode
HEARING DATE: December 13, 2005
APPELLANT'S ATTORNEY: J. Seth Whipper
RESPONDENT'S ATTORNEY: Thad H. Vincent

THIS MATTER COMES BEFORE THIS COURT pursuant to the filing of four (4) Notices of Appeal which are more fully set forth below:

a) Notice of Appeal filed by Charlie Condon on behalf of Mildred C. Knight on June 20, 2005 appealing the order of the Honorable Tamara C. Curry dated June 6, 2005.. Case Number 2005-CP-10-2603

b) Notice of Appeal filed by John Sinclaire, III on behalf of Norman Robert Knight, III on June 17, 2005 appealing the order of the Honorable Tamara C. Curry dated June 6, 2005. Case Number 2005-CP-10-2569

c) Notice of Appeal filed by Bobby Knight a.k.a. Norman Robert Knight, III on or about August 30, 2005 appealing the orders of the Honorable Tamara Curry dated August 11, 2005 and August 25, 2005. Case Number 2005-CP-10-3573

d) Notice of Appeal filed by Charlie Condon on behalf of

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Mildred C. Knight on or about September 6, 2005 appealing the orders of the Honorable Tamara C. Curry dated August 18 and August 25, 2005. Case Number 2005-CP-10-3573

Present at the hearing were the Appellants, Norman Robert Knight, III a.k.a. Bobby Knight and his attorney, J. Seth Whipper, and Mildred Knight, who appeared pro se and did not present any case nor had she filed any grounds on appeal. Also present was the Respondent, Chloe Knight Tonney, and her atterney, Thad H. Vincent, and Glen Churchill, who is the court appointed counsel and Guardian ad Litem for the alleged Incapacitate, Norman Robert Knight, Jr.

The Respondent made an oral motion to dismiss the appeals which were filed in June on the grounds that they improperly requested relief from an order dated June 6, 2005 which was a denial of a Motion for Reconsideration. The underlying order was never appealed. Further, these appeals were never preserved as no grounds on appeal were ever filed with this court as required by South Carolina Code of Laws, §62-1-308.

After hearing arguments of counsel and reviewing the record, I find that the Order Denying the Motion for Reconsideration dated June 6, 2005 is interlocutory and, therefore, not appealable. Further, I find that said appeals were never preserved since the Appellants failed to file grounds on appeal within the statutory time. Therefore, I find that both appeals filed under case numbers 2005-CP-10-2603 and 2005-CP-10-2569 should be dismissed, with prejudice.

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Prior to the hearing, only the Respondent submitted a brief to the Court. Based on arguments of counsel, applicable case law and statutes, and a careful review of this file, I make the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. That a timely appeal was filed by Norman Robert Knight a.k.a. Bobby Knight on August 30, 2005 regarding an order issued by the Honorable Tamara Curry on August 25, 2005 and another order allegedly issued by Judge Curry on August 11, 2005. That this Court finds that there is no order which was entered on August 11, 2005 and, therefore, is not considering that part of this appeal. This Appellant timely filed and served his grounds on appeal on October 13, 2005.

2. That a timely appeal was filed by Mildred Knight by and through her then attorney of record, Charlie Condon, on September 6, 2005 regarding orders issued by the Honorable Tamara Curry on August 18, 2005 and August 25, 2005.

The Order dated August 18, 2005 was issued to correct and clarify a misprint in an order issued on May 19, 2005. The Appellant did not present any argument or evidence that the correction was in error. Further, since the order issued on May 19, 2005 had not been appealed, I find that any alleged error was not preserved and is not before this Court.

Further, Mildred Knight failed to preserve her appeal by

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filing and serving her grounds on appeal as required by SC Code of Law, §62-1-308. Therefore, I find that this appeal should be dismissed, with prejudice.

3. This Court finds that the only matter properly before it today is an appeal of the Order issued by the Honorable Tamara C. Curry on August 25, 2005 in the Charleston County Probate Court under case number 2004-GC-10-0099.

4. Since this Court finds nothing in Judge Curry's Order dated August 25, 2005 with respect to a finding that Norman Robert Knight, Jr. is incapacitated, that ground for appeal is deemed improper and dismissed.

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5. This Court finds that the Charleston County Probate Court, upon its own motion, removed Mildred C. Knight and Allan Bolden as Co-Conservators on the grounds that they failed to perform their duties as Conservators, and Family Services, Inc. was appointed as temporary Conservator. An evidentiary hearing was held on July 20, 2005 and, having been given proper notice through her attorney, Charles Condon, Mildred C. Knight did appear and gave substantial testimony.

This Court further finds that Judge Curry was in the best position to weigh the evidence and credibility of witnesses in order to determine that it was in the best interest of the Incapacitate not only to remove Mildred Knight as Co-Conservator but also as Guardian. The record clearly indicates that Mildred

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Knight wilfully violated court orders in the past and her own testimony indicated she would continue this behavior in the future.

6. This Court finds that the Appellant, Norman Robert Knight, III, a.k.a. Bobby Knight, failed to preserve his rights by alleging any errors regarding the right to grant adult children visitation which was initially granted pursuant to an order issued by the Honorable Tamara C. Curry on November 9, 2004 and, therefore, it is now the law of the case.

7. This court finds that the Charleston County Probate Court did appoint Glen Churchill of the Charleston County Bar to serve as attorney and Guardian ad Litem for the alleged incapacitated person which was set forth in orders dated August 16, 2004 and August 19, 2004.

8. This Court finds nothing in Judge Curry's Order dated August 25, 2005 with respect to the division of assets between Mildred C. Knight and Norman Robert Knight, Jr., the Incapacitate. Since the division of marital assets was addressed in an order by the Honorable Tamara C. Curry dated November 9, 2004, the Appellant failed to preserve his right by timely filing an appeal pursuant to the South Carolina Code of Law, §62-1-308.

CONCLUSION OF LAW

This court has jurisdiction over the subject matter and parties herein.

That the Appellants herein failed to preserve appeals filed

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in June under case numbers 2005-CP-10-2603 and 2005-CP-10-2569 in that they did not timely file grounds on appeals pursuant to the South Carolina Code of Law, §62-1-308. Therefore, since said appeals were not preserved, they are dismissed, with prejudice.

That the Appellant, Mildred Knight, failed to preserve the appeal she filed on or about September 6, 2005 under case number 2005-CP-10-3573, in that she did not file her grounds on appeal within the statutory time. Therefore, it is dismissed with prejudice.

That the Appellant, Norman Robert Knight, III a.k.a. Bobby Knight, filed an appeal of an order dated August 11, 2005. Since there is no corresponding order, the appeal is dismissed, with prejudice.

That the Order issued by the Honorable Judge Tamara Curry on August 25, 2005 was appealed in a timely fashion pursuant to the South Carolina Rules of Civil Procedure and is properly before this court.

That several of the grounds set forth by Norman Robert Knight, III involve rulings from orders issued prior to August 25, 2005 which were not properly preserved because he failed to file within the statutory time and, therefore, this Court is not considering those grounds.

Further, that the ground alleging that the Probate Court failed to appoint a Guardian ad Litem is unsubstantiated since

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the record contains two (2) separate orders appointing Glen Churchill of the Charleston County Bar.

That the Charleston County Probate Court was in a better position to weigh the credibility of the witnesses and determine its own findings of fact and "the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." Howard v. Mutz, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993).

This court further finds that "the authority of the probate court, derived from the statute and precedent case law, will not be disturbed absent a clear abuse of discretion." Parkman v. Hanna, 311 S.C. 20, 426 S.E.2d 743 (1992); Ex Parte: Tolbert In Re: Tolbert's Estate, 206 S.C. 300, 34 S.E.2d 49 (1945). This court did not find any such abuse of discretion in this case.

Based on the above findings of fact and conclusions of law, it is hereby

ORDERED, ADJUDGED, AND DECREED that this Court has jurisdiction over the subject matter and parties herein.

IT IS FURTHER ORDERED that the appeals filed by Mildred Knight under case numbers 2005-CP-10-2603 and 2005-CP-10-3573 were not timely pursuant to the South Carolina Code of Laws and they are dismissed with prejudice.

IT IS FURTHER ORDERED that the appeal filed by Norman Robert Knight, III under case number 2005-CP-10-2569 was not preserved

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since he failed to file his grounds on appeal within the statutory time and it is dismissed with prejudice.

IT IS FURTHER ORDERED that the appeal of an alleged order dated August 11, 2005 filed by Norman Robert Knight, III a.k.a. Bobby Knight is dismissed with prejudice.

IT IS FURTHER ORDERED that since several of the grounds set forth by Norman Robert Knight, III a.k.a. Bobby Knight were not preserved for appeal, they became the law of the case.

IT IS FURTHER ORDERED that since this Court finds that the Charleston County Probate Court did not err in its findings of fact nor was there any abuse of discretion, the appeal is dismissed with prejudice.

AND IT IS SO ORDERED!

KENNETH G. GOODE, Presiding Judge
Court of Common Pleas for the
Ninth Judicial Circuit

Mimmsboro, South Carolina
This 16 day of JANUARY, 2005

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & G.S.
BY
DEPUTY CLERK

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	OF CHARLESTON COUNTY
COUNTY OF CHARLESTON	)	Case No: 2004-GC-10-0099
CHLOE KNIGHT TONNEY	)	
Petitioner,	)	
	)	**EMERGENCY**
-vs-	)	**ORDER**
	)	**(On Petition of Guardian)**
NORMAN ROBERT KNIGHT, JR.	)	
an alleged incapacitated person	)	
MILDRED KNIGHT and	)	
NORMAN ROBERT KNIGHT III	)	
	)	
Respondents.	)	

This matter came before the Court on the Petition for Emergency Order submitted by Walter R. Kaufmann, Esquire, the Guardian in this matter.

FINDINGS OF FACT and CONCLUSIONS OF LAW

Based on the Petition of the Guardian, and the accompanying affidavits of the Guardian *ad Litem* in this matter, Glenn P. Churchill, Esquire, and of Elisabeth Spencer, and based on the Court's own extensive knowledge of the procedural history of this case, the Court finds that the granting of Guardian's petition is appropriate. The Court finds that, because of the continuing contempt of orders of this Court, and of the Circuit Court, by Mr. Norman Robert "Bobby" Knight III and Mrs. Mildred Knight, exigent and emergency circumstances make this action appropriate. The Court finds that, based on the belief and petition of the Guardian, that it is the best interest of the ward that the ward be in the custody of the Guardian. The Court has directed the Guardian to take custody of the ward, Mr. Knight. The Court finds that it is necessary for law enforcement personnel to be involved in this matter in order to best ensure the safety of all involved, and to accomplish the transfer of custody from the Respondents to the Guardian. The Court

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finds that the actions of the Respondents make it necessary for the Court to authorize the potential use of forcible entry, if the same be necessary, to the ward's own home in order to determine whether the ward is there or elsewhere.

It is therefore

ORDERED that the physical and legal custody of the person of Mr. Norman Robert Knight, Jr., is granted to his Guardian, Walter R. Kaufmann, and it is further

ORDERED that the Charleston County Sheriff's Office (or any other law enforcement agency or agencies, as may be appropriate) provide all means available and necessary to assist the Guardian in both in ascertaining the whereabouts and in gaining custody of the ward, Mr. Norman Robert Knight, Jr., and it is further

ORDERED that entry may be gained, by the use of force if necessary, to the ward's own home at 3940 Hottinger Avenue, N. Charleston, Charleston County, to ascertain whether or not the ward is on the premises, and it is further

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ORDERED That any law enforcement agency may take custody of the ward, Norman Robert Knight, Jr., subject to the further directions and instructions of the Guardian, and it is further

ORDERED that the Guardian has the sole authority as to who, if anyone, including any of the parties (with the exception of the Guardian *ad Litem* as provided below) is permitted to have visitation with the ward, and that such visitation is subject to any restrictions (including supervision of the visitation) imposed by the Guardian, including the denial of visitation to anyone, pending further order of this Court. The costs of any such restriction (*e.g.* supervision) shall be borne by the parties upon whom the Guardian places any such restriction, and it is further

ORDERED that the Guardian *ad Litem* shall have free access to visit the ward at any time upon reasonable notice to the Guardian.

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SO ORDERED this the 31st day of January, 2006, at Charleston, South Carolina.

HON. TAMARA C. CURRY
ASSOCIATE JUDGE OF PROBATE
CHARLESTON COUNTY PROBATE COURT

ATTEST: A TRUE COPY

DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

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Beatrice E. Whitten
Attorney and Mediator
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Phone: (843)881-1399 Fax: (843) 881-6695

June 20, 2008

Charles Goldberg, Esquire
Steinberg Law Firm
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Charleston, SC 29402-0009

C. Mac Gibson, Jr., Esquire
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Charleston, SC 29407

Ben F. Mack, Esquire
110 N. Main Street
Summerville, SC 29483

J. Seth Whipper, Esquire
PO Box 70070
N. Charleston, SC 29415

RE: Estate of Norman Robert Knight, Sr./mediation
Case No.: 2008-ES-10-409

Gentlemen:

I will not attend the mediation scheduled for next week. I do not want to cause any more expense to the estate than necessary, and I do not think my presence will add to the proceedings. If Mr. Goldberg would let me know the outcome of the mediation, I would be most appreciative.

I am willing to continue serving as Special Administrator for the entire probate of this estate, if that is what the parties agree to at mediation. Please note that my continued service as Special Administrator is subject to the following conditions:

- None of your clients will call, visit, mail, e-mail or contact me or my office staff in any way, for any reason. All communication should come through their respective attorneys.
- I would be allowed to fulfil the Probate Court's requirements for completing probate of the estate, without harassment or interference. Please be on notice that if I continued to serve, I intend to pay the two current claims against the estate, from Walter Kaufmann, Esquire, and Family Services. I understand that there is also a court order for payment of attorney fees; this has not been submitted to me yet, but I intend to comply with any orders from the court.

Good luck with the mediation.

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Sincerely,



Beatrice E. Whitten

A. Yes, and the response was that it was the estate.

Q. And that didn't trigger any concerns of yours as to what was to be expected of AIG relative to the heirs, to the widow? That didn't raise any issues for you?

A. No.

MR. WHIPPER: I would like to introduce this into evidence.

THE COURT: Any objection?

MR. GIBSON: No objection, your Honor.

THE COURT: Without objection, the document entitled "Libby Castle, Friday, December 19, 2008," will be received in evidence as Respondent's Exhibit 2.

(RESPONDENT'S EXH. 2, 12/19/09 E-MAIL, was marked for identification and received into evidence.)

THE COURT: You may proceed.

Q. What is this document?

A. This is the AIG annuity claim form.

Q. And it is signed by you; is that correct?

A. That's correct.

MR. WHIPPER: Your Honor, we offer that

into evidence as well.

THE COURT: Would you hand it over, please.

MR. WHIPPER: Yes, sir.

THE COURT: The document identified by the witness headed "AIG Annuity and Annuity Claimant Statement" will be received and admitted as Respondent's Exhibit 3.

(RESPONDENT'S EXH. 3, AIG ANNUITY AND ANNUITY CLAIMANT STATEMENT, was marked for identification and received into evidence.)

THE COURT: Proceed.

Q. Would you look at this again.

A. All right.

Q. That's the e-mail between you and Mr. Gibson and the letter from Ms. Tonney; is that correct?

A. Yes. It is not a letter. It's the funeral program that she wrote a note on.

MR. WHIPPER: We are entering this as evidence, your Honor?

THE COURT: Without objection, the two documents just identified -- well, one is the funeral notice headed "We are grateful to you" -- will be admitted as Respondent's Exhibit 4, and

secondly, a copy of an e-mail from Mac Gibson to Ms. Whitten, will be Respondent's Exhibit 5.

(RESPONDENT'S EXH. 4, FUNERAL NOTICE; RESPONDENT'S EXHIBIT 5, E-MAIL FROM MAC GIBSON, was marked for identification and received into evidence.)

THE COURT: All right, proceed.

Q. Ms. Whitten, you came on in '08?

A. Yes.

MR. WHIPPER: Thank you. No other further questions.

THE COURT: Okay. Any questions, Mr. Gibson?

MR. GIBSON: Your Honor, I just have several questions.

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. GIBSON:

Q. Ms. Whitten, when you became the special administrator, you in fact disallowed Chloe Tonney's claim; is that correct?

A. I did.

Q. You decided to leave it to the Court's discretion as to whether the claim would be accepted or not, correct?

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

May 27, 2013

Annuity Claims Manager

AIG Annuity Insurance Company

Annuity Administration

Post Office Box 871

Amarillo, Texas 79105-0871

Re: Name of Deceased: Norman Knight, Jr.

Contract Number: [redacted]8100

Beneficiary: Cummings, Mildred (Knight)

Dear Madam or Sir:

I represent the Estate of Mildred Cummings Knight. She is the widow of Norman Knight, Jr. Norman Knight, Jr. died March 11, 2008 and Mildred Cummings Knight died June 22, 2010. Before she passed, Mrs. Knight directed your company to pay the proceeds of an annuity she owned (FG208100) to her as owner and beneficiary. (See Enclosed Letter and executed Annuity Claimant Statement). These documents were mailed to your company on August 22, 2008.

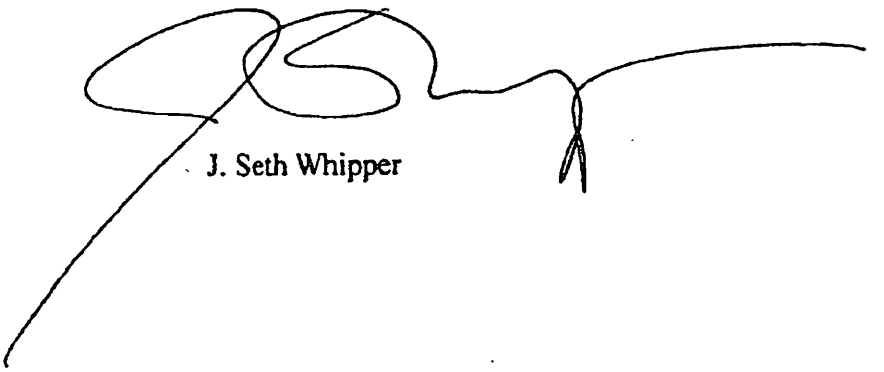
This year it came to our attention that these benefits were paid to the Estate of Norman R. Knight, Jr. The documents clearly show that Mrs. Knight instructed that these proceeds be paid to her. Please note that Mrs. Knight was always the owner of this annuity (See Initial Premium Payment Form Enclosed)

This letter comes to demand correction of this action and restoration of the annuity to its proper status. I also write as the attorney for the sole heir of the Estate of Mildred C. Knight.

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This letter is time sensitive. You may contact me at the above or email: jsw@whipperlaw.com.

Sincerely,



J. Seth Whipper

Enclosures

xc: Bobby Knight

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

August 27, 2008

B. M. Graves, Annuity Claims Manager
AIG Annuity Insurance Company
Annuity Administration
Post Office Box 871
Amarillo, Texas 79105-0871

Re: Name of Deceased: Norman Knight, Jr.
Contract Number: [redacted]8100
Beneficiary: Norman Knight Jr. Estate
Death Certificate

Dear Ms. Graves:

Find enclosed the Death Certificate for Norman Knight, Jr.

Sincerely,

WHIPPER LAW FIRM

LaTarah N. Coney
Legal Assistant to J. Seth Whipper, Esquire

LNC

Enclosure

xc: Mildred Knight

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

August 22, 2008

B. M. Graves, Annuity Claims Manager
AIG Annuity Insurance Company
Annuity Administration
Post Office Box 871
Amarillo, Texas 79105-0871

Re: Name of Deceased: Norman Knight, Jr.
Contract Number: [redacted]8100
Beneficiary: Norman Knight Jr. Estate

Dear Ms. Graves:

Find enclosed the completed Annuity Claimant Statement and an Authorization to Release Confidential Records, both executed by Mrs. Mildred C. Knight.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

JSW/lnc

Enclosures

xc: Mildred Knight

AIG AIG Annuity INSURANCE COMPANY

Annuity Claimant Statement

(Instructions on Page 4)

AIG Annuity Insurance Company
A Stock Company
205 East 10th Avenue
Amarillo, Texas 79101-3546
Telephone: 800.424.4990

POLICY NUMBER: [redacted]8100 GROUP CERTIFICATE NUMBER (if applicable): _____

1. FULL NAME OF DECEASED ANNUITANT (Participant): _____
2. FULL NAME OF DECEASED OWNER (if other than above): Norman Knight Jr
3. IN WHAT CAPACITY OR BY WHAT TITLE DO YOU CLAIM THE PROCEEDS? _____
   a. Full Name of Beneficiary Claimant: Cummings
   b. Date of Birth: [redacted]/27 c. Share of benefit claimed (percent or fraction amount): 100%
   d. Social Security or Tax ID Number: _____ (Complete Section 7 on Page 2)
   e. Address: 3940 Hottinger Avenue (843) 793-4601
      Street or Box Number — Home Telephone Number
      North Charleston SC 29405 ( ) N/A
      City — State — Zip Code — Work Telephone Number
   f. If death was accidental, give date of accident N/A and describe how and where accident occurred.

4. MANNER OF PAYMENT, OR OTHER OPTION, DESIRED:
   - X Lump sum payment. (If the amount payable is $10,000.00 or more, an AIG Annuity Bridge Account will be established. Please see the enclosed brochure.)
   - _____ Leave proceeds as "open claim" until further notice. (Please complete and return this form.)
   - _____ Spousal continuation.
   - _____ Annuitization – Please send annuitization quotes to me.

5. POLICY:
   - _____ The annuity contract identified on this form is enclosed.
   - X I hereby certify that the annuity contract identified on this form has been lost or destroyed and that said contract is not assigned, hypothecated or pledged in any way whatsoever. I therefore warrant and agree that should the original be found or in any way come into my possession, I will return or cause the same to be returned to AIG Annuity Insurance Company, its successors or assigns. It is distinctly understood and agreed that the original policy or certificate shall become null and void.

I, the undersigned, hereby make claim to the Death Benefit payable under provisions of the subject contract and agree that all papers called for by the Company shall be a part of this statement. I have read and I understand the important disclosure information located on page 3 of this form. **Death Certificate and Policy must be returned with this statement if not in the possession of the Company.**

FORM MUST BE NOTARIZED

August 22, 2008 — Mildred C. Knight
Date — Claimant's Signature

STATE South Carolina COUNTY OF Charleston

On this 22nd day of August, 2008 (Year), before me personally appeared a Mildred C. Knight known to me to be the identical person described in and who executed the foregoing statement, and acknowledged the execution of the same as a free act and deed for the purpose therein named.

My commission expires April 16, 2017 — Notary Public

Please complete and sign Pages 1 and 2 of this form. Failure to do so will delay your request.

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AMERICAN GENERAL ANNUITY

American General Annuity Insurance Company
A Stock Company
Home Office: [redacted] West 10th Avenue
Amarillo, Texas 79101-2494

READ YOUR POLICY CAREFULLY
This policy is a legal contract between the policy owner and the Company

Policy Number [redacted]8100 Policy Date
Initial Premium Payment $117,495.15 Annuity Date 9-18-03

The Interest Rate on the Initial Premium is 4.5% and is guaranteed for one year.
(Annuity interest is credited on a daily basis, providing you an annual yield equal to the interest rate as indicated above.)
The minimum guaranteed interest rate is 3% per year.

ANNUITANT
Full Name Norman R. Knight, JR. Marital Status M Sex M
Address 3940 Hottinger Avenue Social Security [redacted]-2503
N. Charleston, SC 29405 Date of Birth [redacted]-24 Age 79
Phone No. (Home)
Phone No. (Business)

OWNER
Full Name Mildred C. Knight Marital Status M Sex F
Address 3940 Hottinger Avenue Social Security [redacted]-4367 Age 76
N. Charleston, SC Zip 29405 Date of Birth [redacted]-21
Phone No. (Home) 843-744-6195
Phone No. (Business)

BENEFICIARY
On The Life Of Annuitant:
Primary Relationship
Contingent Relationship
On The Life Of Owner, If Applicable:
Primary Relationship
Contingent Relationship

The Right To Change The Beneficiary Is Reserved To The Owner

ANNUITY APPLIED FOR
Plan: Flexible Premium Deferred Annuity, Non Participating
Type of Annuity: (Non-Qualified) IRA Transfer $ ReCover $
(attach endorsement) Deposit Year $
Other Deposit Year $

Will any insurance or annuity now in force be replaced or changed by the annuity applied for on application? ___Yes ✓ No
If yes, give company, amount, year issued and reason

I understand this annuity is not Federally insured. On behalf of myself and any person who may claim any interest under this policy, I represent that all statements set forth are full, complete and true as written and correctly recorded to the best of my knowledge.

Any person who, with intent to defraud or knowing that he/she is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement, commits insurance fraud, which is a crime and subjects the person to civil and criminal penalties.

CHECKS MUST BE MADE PAYABLE TO AMERICAN GENERAL ANNUITY INSURANCE COMPANY.
DO NOT MAKE CHECKS PAYABLE TO THE AGENT OR LEAVE THE PAYEE BLANK.

SIGNATURES
Signed at North Charleston, SC this 22nd day of September 2003.
Signature(s)
Annuitant if age 16 or over X Norman R. Knight
Owner if different from Annuitant X _____ Joint Owner Mildred C. Knight
Licensed Agent Signature X [redacted]
Agency Name & Number [redacted] Licensed Agent & Number

FOR AGENT
To the best of your knowledge, is this insurance being purchased to replace or change any existing insurance or annuity? ___ Yes ✓ No
If yes, give company, amount, year issued and reason N/A

WHITE - Customer Copy YELLOW - Home Office Copy PINK - Agency GOLD - Agent Copy

SSO4-05-A 537551

SCANNED: 2003-10-02

WHIPPER LAW FIRM
Attorneys and Counselors at Law
4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

Mailing Address
P.O. Box 70070
North Charleston, SC 29415

AUTHORIZATION TO RELEASE CONFIDENTIAL RECORDS

I, Mildred C. Knight, do hereby authorize AIG Annuity Ins. Company to allow J. Seth Whipper to examine and/or copy all information or opinions or reports and any and all materials relevant to my Annuity Claim statement, Annuity account, and Annuity Contract.

YOU ARE FURTHER requested to disclose no information to any other person (s) without written authority from me to do so.

BE FURTHER ADVISED that all prior authorization is hereby canceled.

I hereby waive any privilege I have to the aforementioned information to my authorized legal representative.

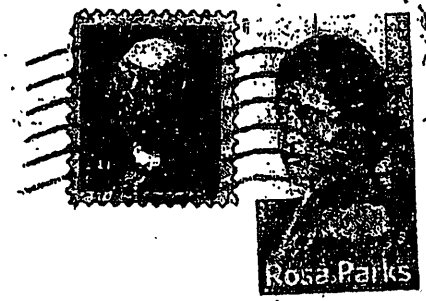
Mildred C. Knight
SIGNATURE
3940 Hottinger Avenue
North Charleston, SC 29405
ADDRESS
[redacted]-4367
SOCIAL SECURITY NUMBER

SWORN to before me, this 22nd day of August, 2008
[signature] (SEAL)
MY COMMISSION EXPIRES 04/16/14

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Whipper Law Firm
Attorneys & Counselors at Law
Post Office Box 70070
North Charleston, SC 29415

CHARLESTON SC 294
29 MAY 2013 PM 1 L



Bobby Knight
3940 Hottinger Avenue
North Charleston, SC 29405

29405$7018

CAROLINA NEUROLOGICAL CLINIC, L.L.P.

ALTON E. BRYANT, III, M.D.
JAMES L. BUMGARTNER, M.D.
THOMAS H. DUKES, III, M.D
THOMAS S. HUGHES, M.D
CHARLES S JERVEY, M.D.
THOMAS F. STOUT, M.D.

125 Doughty Street
Suite 460
Charleston, SC 29403
(843) 723-0202
Fax (843) 723-1052

November 10, 2003

Re: NORMAN KNIGHT

To Whom It May Concern:

This letter will serve to document that I have treated Mr. Norman Knight for Alzheimer's disease since 2001. He is maintained on Aricept, memantine, and Seroquel for this problem and will require long term therapy with these medications.

I will be pleased to provide additional documentation as needed. Thank you for consideration of Mr. Knight.

Sincerely,

James L. Bumgartner, M.D.

JLB/sf
cc: Ms. Linda Jones

BK R 482PG599

STATE OF SOUTH CAROLINA)
) GENERAL DURABLE POWER OF ATTORNEY
COUNTY OF CHARLESTON)

KNOW EVERYONE BY THESE PRESENTS, that I, NORMAN R. KNIGHT, JR., do hereby constitute and appoint LINDA KNIGHT JONES, of Charleston, South Carolina, my true and lawful attorney for me and in my name and stead. If she is not able to act as my attorney-in-fact, I hereby constitute and appoint CHLOE K. TONNEY, of Tucker, Georgia, my true and lawful attorney-in-fact for me and in my name and stead:

1. To enter upon and take possession of any lands, buildings, tenements, or other structures, or any part or parts thereof, that may belong to me, or to the possession whereof I may be entitled;

2. To ask, collect and receive any rents, profits, issues, or income, of any and all such lands, buildings, tenements, or other structures, or any part or parts thereof;

3. To make, execute and deliver any deed, mortgage or lease, whether with or without covenants and warranties, in respect of any such lands, buildings, tenements, or other structures, or any part or parts thereof, and to manage any such lands, and to manage, repair, alter, rebuild, or reconstruct any buildings, houses or other structures, or any part or parts thereof, that may now or hereafter be erected upon any such lands;

4. To demand, sue for, collect, recover and receive all goods, claims, debts, monies, interest and demands whatsoever now due, or that may hereafter be due, or belong to me (including the right to institute any action, suit or legal proceeding, for the recovery of any land, buildings, tenements, or other structures, or any part or parts thereof, to the possession whereof I may be entitled), and to make, execute and deliver receipts, releases, or other discharges therefore, under seal or otherwise;

5. To make, execute, endorse, accept and deliver any and all bills of exchange, checks, drafts, notes and trade acceptances,

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6. To pay all sums of money, at any time or times, that may hereinafter be owing by me upon any bill of exchange, check, draft, note or trade acceptance, made, executed, endorsed, accepted and delivered by me, or for me, or in my name, by my said attorney;

7. To deposit any monies which may come to his hands as such attorney with any bank or banker in my name, and any of such money or any such other money to which I am entitled which now is or shall be so deposited to withdraw, and either employ as he shall think fit in the payment of any debts, or interest, payable to me, or taxes, assessments, insurance, and expenses due and payable or to become due and payable on account of my real and personal estate, or in or about any of the purposes herein mentioned, or otherwise for my use and benefit, or invest in my name in any stocks, shares, bonds, securities or other property, real or personal, as my attorney may think proper, and to receive and give receipts for any income or dividend arising from such investments, and all and any such investments or other investments to vary or dispose of for my use and benefit as my attorney may think fit;

8. To sell any and all shares of stock, bonds, or other securities now, or hereafter belonging to me, that may be issued by any association, trust, or corporation, whether private or public, to make, execute and deliver any assignment or assignments of any such shares of stock, bonds or other securities, and to vote said shares of stock;

9. To defend, settle, adjust, compound, submit to arbitration and compromise all action, suits, accounts, reckonings, claims and demands, whatsoever, that now are, or hereafter shall be, pending between me and any person, firm, or corporation, in such manner and in all respects as my said attorney shall think fit;

10 To enter, make, sign, execute and deliver, acknowledge and perform any contract, agreement, writing, or thing that may, in the opinion of my attorney, be necessary or proper to be

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entered into, made, or signed, sealed, executed, delivered, acknowledged, or performed; and

11. Without, in anywise, limiting the foregoing, generally to do, execute, and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed, or that in the opinion of my said attorney ought to be done, executed or performed, in or about the premises, of every nature and kind, whatsoever, as fully and effectually as I could do if personally present.

12. Any provision of this instrument found to be prohibited by law shall be ineffective to the extent of such prohibition without the invalidating of the rest of this instrument.

13. The Power of Attorney expressed herein shall continue indefinitely at the pleasure of *NORMAN ROBERT KNIGHT, JR.

14. This Power of Attorney shall not be affected by physical disability or mental incompetence of the principal, which renders the principal incapable of managing his/her own estate. The authority conferred shall be exercisable notwithstanding physical disability or mental incompetence. All acts done by the attorney-in-fact pursuant to this 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 her heirs, devisees, legatees, and personal representative as if the principal were mentally competent and not disabled.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 26th day of January, 2004.

Elizabeth L. Buckles

Norman Robert Knight, Jr.

* AKA NORMAN ROBERT KNIGHT, JR.

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named NORMAN ROBERT KNIGHT, JR., (Grantor) sign, seal and as their act and deed, deliver the within instrument for uses and purposes therein mentioned, and that (s)he, with the other subscribed witnesses, in the presence of each other, witnessed the due execution thereof.

WITNESS

SWORN to before me this
26 day of January, 2004.

(LS)
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 3-5-12

We saw NORMAN ROBERT KNIGHT, JR., in our presence, sign this instrument at its end. He then declared it to be his Power of Attorney to LINDA KNIGHT JONES and requested us to act as witnesses to it. We believed him to be of sound mind and memory and not under duress or constraint of any kind. We then, in his presence and in the presence of each other, signed our names as attesting witnesses, all of which was done on the date of this instrument.

residing at 14 Wadecrest Drive, Charleston, SC 29412

residing at 3934 Hotteroga St, N Chas SC 29405

BK R 482PG603

Elbert Rozier
3691 Paramount Dr ste A
N. Chas, SC 29405
(2)

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BRAND
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CHARLESTON COUNTY SC

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IRVIN G. CONDON
Judge of Probate

TAMARA C. CURRY
Associate Judge of Probate

JACK I. GUEDALIA
Associate Judge of Probate

CHARLESTON COUNTY
SOUTH CAROLINA

ESTATE DIVISION
HISTORIC COURTHOUSE
84 BROAD STREET
CHARLESTON, SC 29401
PHONE: 843.958.5030
FAX: 843.958.5044

January 21, 2008

Honorable Tiffany Provence
Judge of Probate, Dorchester County
101 Ridge Street
St. George, S.C. 29477

RE: ESTATE OF NORMAN R. KNIGHT, JR.
CASE#2008ES10-00409

Dear Judge Provence:

I have enclosed the original of a creditor's claim filed on January 20, 2009 in reference to the estate of Norman R. Knight, Jr. A copy of the claim has been forwarded to the Special Administrator, Beatrice Whitten, Esq.

Sincerely,

Mary A. Hollenbaugh
Estate Clerk

mah:
Enclosure

cc: Chloe Knight Tonney

BEATRICE E. WHITTEN
Attorney and Mediator
1110 Queensborough Blvd., Suite A
Mount Pleasant, SC 29464
Phone 843-881-1399 Fax 843-881-6695

July 21, 2010

Seth Whipper, Esquire
Whipper Law Firm
PO Box 70070
North Charleston, SC 29415

JUL 21 2010

VIA FACSIMILE ONLY: 843-740-9108

Re: Estate of Norman Robert Knight, Jr.
Case No.: 2008-ES-18-402

Dear Mr. Whipper:

Your client, Bobby Knight, came by the office today and asked the receptionist for an appointment with Bea. As the receptionist did not know the history of this file, she made the appointment.

Bea stated in her letter dated June 20, 2008, that she agreed to serve as Special Administrator for this estate only if she is not to be contacted directly by any of the decedent's family members, only by their respective attorneys. Therefore, we have cancelled his appointment. Bea would be more than happy to talk to you about any questions Mr. Knight may have.

With kind regards, I remain

Sincerely,

Elizabeth Castle
Paralegal

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2012-ES-07-0998
IN THE MATTER OF	)	
ESTATE OF NORMAN ROBERT	)	RESPONDENT CHLOE TONNEY'S
KNIGHT, JR.	)	CLOSING ARGUMENTS
	)	

Respondent Chloe Tonney submits her closing arguments in support of her creditor's claim that she filed against the Estate of Norman Robert Knight, Jr. on or about April 17, 2009.

I. Statement of Facts

Norman Knight, Jr. died on March 11, 2008. The first notice to creditors was published on May 21, 2008. Respondent Chloe Tonney ("Tonney") filed a creditor's claim against the Estate of Norman Robert Knight, Jr. on January 20, 2009. This Court issued an Order that Tonney timely filed her creditor's claim. (Order dated July 29, 2013).

Tonney is seeking reimbursement for expenses that she incurred for the benefit of her father with the cooperation, consent, and knowledge of the court appointed guardian and conservator. The expenses include food, clothes, personal items, payments to Bishop Gadsden, furniture, legal fees, a payment to Family Services, Inc., and moving expenses.

On August 25, 2005, Walter Kaufmann ("Kaufmann") was appointed as the Guardian and Family Services, Inc. was appointed as the Conservator for Norman Robert Knight, Jr., an incapacitated person. (Petitioner's Exhibit #21). On October 5, 2005, presiding circuit court Judge Roger Young issued an Order that Mildred Knight would remain as guardian and conservator pending appeal. (Petitioner's Exhibit #22). On January 16, 2006[1], presiding circuit court Judge Kenneth Goode concluded and ordered that the Charleston County Probate Court did not err in its findings of fact or a showing of abuse of discretion, and the appeal was dismissed.

[1] Though dated January 16, 2005, this Order was filed with date stamped as January 20, 2006. Thus, a typographical error in the year was made on the signature page of the Order.

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(Petitioner's Exhibit #23). At that point, Kaufmann and Family Services, Inc. resumed as the guardian and conservator for Mr. Knight.

Judge Tamara Curry issued an emergency Order dated January 31, 2006, which authorized Kaufmann as the guardian to take physical and legal custody of Mr. Knight. Kaufmann testified that with the assistance of the City of North Charleston police department, he removed Mr. Knight from his primary residence and placed him at the Savannah House, an assisted living facility. Several months later, Kaufmann and the management of the Savannah House determined that Mr. Knight needed extensive and full time care so Mr. Knight was transferred to the Bishop Gadsden nursing facility.

A. Food, Clothes, Personal Items, and Furniture

Kaufmann as the guardian for Norman Robert Knight, Jr. was permitted to establish the ward's place of abode within South Carolina. Further, he was authorized to take reasonable care of Mr. Knight's clothes, furniture, and other personal effects per §62-5-312(a)(1) of the South Carolina Probate Code.

Kaufmann testified that at the time he removed Mr. Knight from his primary residence to the Savannah House assisted living facility, he did not take any of Mr. Knight's clothes, bed, or furniture due to the emergency nature of the removal. The rooms at the Savannah House assisted living facility had no furniture. The management at Savannah House permitted Mr. Knight to borrow a bed until a new bed could be procured.

Tonney talked to Kaufmann and Iris Albright, a representative of Family Services, Inc. as Conservator, about assisting her father in terms of purchasing clothes, furniture, and food. Tonney testified that due to Mr. Knight's health issues, he required multiple small meals between regular meals. The Savannah House did not provide small meals or snacks to their residents including Mr. Knight. Both Kaufmann and Iris Albright ("Albright") testified that they were in agreement for Tonney to purchase food, clothes, and furniture for her father with the expectation

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that she would be reimbursed. Such agreement was confirmed in a letter dated March 15, 2006, from Tonney to Albright. (Exhibit #13). In such letter, she asked for reimbursement from the expenses as shown below.

Tonney presented receipts from various stores for clothes, food, personal items, and furniture as follows:

Walgreens	$ 220.10
Dillards	$ 477.66
Harris Teeter	$ 132.75
Sears	$ 209.35
Citadel	$ 260.93
Bombay	$ 179.00
Wal-Mart	$ 208.42
Tuesdays	$ 59.60
Best Buy	$ 320.99
Parisian	$ 26.74
Stuckey Brothers	$ 5,060.48
(collectively Exhibit #12)	

Kaufmann and Albright stated such purchases were for the benefit of Mr. Knight at the time he resided at the Savannah House and Bishop Gadsden. Mr. Knight had sufficient assets to cover these expenses, though he did not have sufficient liquid assets because he had to pay separate maintenance and support to his wife per an Order from the Charleston County Family Court. Nonetheless, Kaufmann and Albright asserted that Mr. Knight benefitted from such purchases and Tonney should be entitled to reimbursement.

The Respondent made unsuccessful attempts to show that Mr. Knight did not receive any benefit from Tonney for the food, furniture, personal items, and clothes. Instead, the Respondent focused on the whereabouts of such goods after the passing of Mr. Knight. Tonney indicated the goods were beyond any value to anyone including the Respondent.

As the Court mentioned at the conclusion of the case, Ms. Tonney has to prove by the preponderance of the evidence that she expended funds for clothes, furniture, personal items, and food for her father's benefit, and she expected to be reimbursed and specifically stated so in her

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correspondence to Albright (Exhibit #13). The testimony of Kaufmann and Albright unequivocally showed they agreed for Tonney to purchase such goods, and she would be reimbursed when her father's funds were available. Additionally, Tonney proved that she purchased such goods with her personal check or with her credit cards. As a result, this Court should conclude by the preponderance of the evidence that Tonney is entitled to be reimbursed for the food, clothes, furniture, and personal items from the Estate of Norman Robert Knight, Jr.

B. Legal Fees to Thad Vincent and Mary Ann Hall

In November, 2006, Mildred Knight commenced an action for maintenance and support in the Charleston County Family Court. Mrs. Knight sought additional financial support from her husband to supplement the regular checks that she received from Albright. Such financial support included Mr. Knight's retirement accounts and pensions.

At the time Mrs. Knight initiated the family court action, Mr. Knight's health was not optimal and he needed assistance, which included the services of a guardian, conservator, and an attorney. Again, Tonney discussed with Kaufmann and Albright the need for her father to have legal representation to protect his assets. Tonney confirmed such discussion in a letter dated October 24, 2007 to Albright. (Exhibit #7).

Ms. Tonney stated in such letter to Albright that she would pay Thad Vincent's fees to represent her father in the family court action with the understanding that such payments to the Vincent Law Firm would be construed as a loan to her father at the prevailing interest rate that being 9.75%.

Thad Vincent issued a letter dated November 6, 2006 to Tonney. In such letter he stated he would represent Mr. Knight, however, he would expect payments from Tonney for charges that Family Services, Inc. was not able to pay. (Exhibits #1and #2).

Tonney presented an invoice dated March 13, 2007 from Vincent Law Firm in the amount of $1.701.39 and a check from her personal checking account for such amount. (Exhibit

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#4). This Court ordered that the charge dated December 13, 2006 in the amount of $21.20 would not be allowed because of the redaction for such service as shown on the invoice.

The Vincent Law Firm issued another invoice for services and costs rendered through June 11, 2007 in the amount of $1,588.06. (Exhibit #5). A check from Ms. Tonney's personal account to the Vincent Law Firm was presented to this Court. (Exhibit #5). Both invoice and check were admitted as evidence without objection.

Lastly, Tonney showed an invoice dated October 15, 2007 from the Vincent Law Firm in the amount of $2,801.64 for services provided as related to the family court action. Also, Tonney provided a check in such amount from an account in the names of Tonney and Linda Jones. (Exhibit #6).

During the pendency of the family court action, Thad Vincent retired from the practice of law. Tonney, Kaufmann, and Albright felt Mr. Knight needed another attorney to represent and preserve his interest in the family court action. Consequently, Tonney retained Mary Ann Hall. Tonney signed a fee agreement on behalf of her father. (Exhibit #8). Tonney paid a retainer in the amount of $5,000 to Mary Ann Hall. (Exhibit #9). Mr. Knight died before the conclusion of the family court action; therefore, Mary Ann Hall returned the balance of the retainer that being a sum of $1,808.03 to Tonney. (Exhibit #10).

Tonney has proved by the preponderance of the evidence that she expended a sum of $9,283.36 in legal fees for the benefit of her father. More importantly, Kaufmann and Albright as guardian and conservator for Mr. Knight felt that Mr. Knight needed to be protected in the family court action. Tonney confirmed their decision, and she expressed that such payments would be in the form of a loan. (Exhibit #7).

C. Payments to Bishop Gadsden

Kaufmann determined that Mr. Knight needed an extensive care that could not be provided in an assisted living facility. In consultation with Tonney and Albright, Kaufmann

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transferred Mr. Knight from the Savannah House assisted living facility to Bishop Gadsden nursing facility in 2007. Further, Tonney and Albright agreed if Mr. Knight's funds could not pay the full monthly amount, then Tonney would pay the difference.

Tonney presented a monthly statement dated October 31, 2007, from Bishop Gadsden in the amount of $13,306.71. Tonney paid a sum of $2,000 towards the balance as shown by a check from her and her husband's personal checking account. (Exhibit #17).

Tonney showed an invoice with a statement date December 31, 2007 from Bishop Gadsden. The total invoice was $6,708.50, which included a $20.00 deduction. According to Tonney's testimony, Family Services, Inc. as the conservator paid a sum of $3,100, and she paid the balance that being $3,608.50. Tonney provided a copy of a check for such amount from her and her husband's checking account. (Exhibit #15).

Family Services as the conservator for Mr. Knight paid $3,300 to Bishop Gadsden for the invoice dated January 31, 2008. Tonney paid the balance of the invoice that being a sum of $3,277.89 to Bishop Gadsden. The payment was made from her and her husband's personal checking account. (Exhibit #16).

Tonney wrote on each of the checks to Bishop Gadsden that each payment was a loan to "NRK Jr.". (refer to Exhibits #15-17). Tonney paid a total sum of $8,886.39 to Bishop Gadsden as a loan for the care of her father.

Respondent attempted to argue that Mr. Knight could have resided at his primary residence or at another facility that had a lower monthly charge. However, Respondent's witness dealt with primarily Medicaid residents. She admitted Mr. Knight did not qualify for Medicaid. Further, she was not familiar with the care that Bishop Gadsden provided to Mr. Knight.

The witness was not aware that Mr. Knight had to be removed from his primary residence per an Emergency Order from the Charleston County Probate Court; therefore, she could not address the feasibility of Mr. Knight remaining at home.

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Dr. Carey Fechter, a witness for Respondent, testified that he provided care for Mr. Knights for years. He did not examine or visit Mr. Knight at the time Mr. Knight resided at Bishop Gadsden. However, Dr. Fechter expressed that Bishop Gadsden is known to provide the best medical care of any nursing home facilities. Also, Dr. Fechter stated that Respondent told him that his father was receiving care in a very good place.

D. Additional Expenses

Tonney issued a personal check in the amount of $1,000 to Family Services on May 29, 2007. She made a notation on the check "care expenses". (Exhibit #14). Albright testified that she informed Tonney that her father did not have sufficient funds in the conservatorship account to cover his expenses. Tonney issued such check to Family Services for the benefit of her father with the expectation that she would be reimbursed.

Additionally, Tonney paid Collins to move her father's furniture and bed from Savannah House assisted living to Bishop Gadsden nursing facility. Tonney presented a check made payable to Larry Collins in the amount of $150.00, and such check account was in her and her husband's name. Also, Tonney noted on the check that such payment was for the moving expenses for the benefit of "NRK, Jr.". (Exhibit #11).

Upon the passing of her father, Tonney had to arrange for the transfer of furniture and other items out of Bishop Gadsden to a storage facility. She paid Collins a sum of $279.00 to move her late father's furniture and items out of Bishop Gadsden. The payment was made from her and her husband's checking account with the notation "NRK, Jr. BG moving expenses". (Exhibit #19). If Tonney had not made such arrangements, then Bishop Gadsden would have continued to charge the Estate of Norman Robert Knight, Jr. for the room.

II. South Carolina Probate Code and Case Law

A. Claims

The Court expressed in Matter of Margaret Dever Hover Gurnham a/k/a Margaret D.

Hover, Beach Firsts National Bank v. The Estate of Margaret Dever Hover Gurnham a/k/a Margaret D. Hover, and/or Brian Hover, Slip Opin.# 27360 (S.C. dated February 26, 2014) that "claims against a decedent's estate include all claims 'whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis.'" (cited In re Tollison, 320 S.C. 132, 463 S.E.2d 611(Ct. App. 1995) and §62-3-803(a) & (b)).

Further, the Court in Gurnham referred to Tollison in stating:

> "[b]roadly speaking, all claims against the decedent should be presented for allowance, and the word 'claims' included such debts or demands as existed against the decedent in his or her lifetime and that might have been enforced against him or her by personal actions for the recovery of money." 34 C.J.S. *Executors & Administrators* §548 (Supp. 2013) (footnotes omitted). 'Stated another way, the term included every species of liability that the personal representative can be called in to pay out of the general funds of the estate.' [cited In re Tollison]. "However, claims against an estate are not limited to obligations of the decedent that could have been enforced against him or her while living.'" Id.

Tonney presented evidence of undisputed expenses that she paid for the benefit of her father from 2006 until March 28, 2008. Further, Tonney showed letters that she wrote to Albright in her capacity as the Conservator for Mr. Knight that she made payments for her father as a loan with the expectation that she would be reimbursed. Albright and Kaufmann as the Guardian for Mr. Knight testified that they had an understanding with Tonney that she would be reimbursed for expenses that she incurred for her father. Further, the checks that Tonney presented to this Court showed the notation that the checks were in the form of loan or expenses for her father. Albright as the Conservator made clear that she had marshaled credit cards and other accounts owned by Mr. Knight, and that Tonney did not use any of her father's income or assets to pay his expenses.

The expenses that Tonney incurred fall within the definition of "claim" as held in Tollison and Gurnham. The expenses are the obligation of the estate which could have been

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enforceable against Mr. Knight during his lifetime, but for his lack of access to his funds due to appeals that Respondent and his mother filed. Tonney has the right to seek reimbursement of the expenses against the assets of the Estate of Norman Robert Knight, Jr.

Tonney proved by the preponderance of the evidence that she paid expenses for her father's benefit in the amount of $26,754.47 as indicated in the attached statement.

B. Interest on Claims

A claimant is entitled to interest at the legal rate or contract rate at the later of fourteen months after the date of the decedent's date or the last date upon which the claim could have been properly presented as expressed in §62-3-806(d) of the South Carolina Probate Code.

Tonney sent a letter to Albright on October 24, 2007 that the payment in the amount of $2,801.64 to the Vincent Law Firm would be treated as a loan with the interest rate at 9.75%. (Exhibit #7). Additionally, the checks that Tonney sent to Bishop Gadsden had a notation that such payments were loans for the benefit of her father. (Exhibits #15-#17).

Tonney is entitled to receive interest at 9.75% for the payments to Vincent Law Firm and interest at legal rate of interest for payments made to Bishop Gadsden in accordance with §62-3-806(d) of the South Carolina Probate Code.

Tonney further contends that her claim for all expenses that she paid for the benefit of her father should have been allowed by the special administrator; therefore, §62-3-806(d) of the South Carolina Probate Code is applicable to all expenses as accepted by this Court.

Tonney hereby requests this Court to find by the preponderance of the evidence that her claim in the amount of $26,733.27 as shown in the attached statements is allowed against the Estate of Norman Robert Knight, Jr. with interest thereon.

(SIGNATURE IS ON THE FOLLOWING PAGE)

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Respectfully submitted,

C. Mac Gibson, Jr.
1118 Savannah Highway
Charleston, South Carolina 29407
(843) 852-4646

May 23, 2014

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REIMBURSEMENT BREAKDOWN

1. Bishop Gadsden		$ 8,886.39
2. Thad Vincent, Esquire		$ 6,069.89
3. Mary Ann Hall, Esquire		$ 3,191.97
4. Stuckey Brothers		$ 5,060.48
5. Collins		$ 429.00
6. Walgreens		$ 220.10
7. Dillards		$ 477.66
8. Harris Teeter		$ 132.75
9. Sears		$ 209.35
10. Citadel		$ 260.93
11. Bombay		$ 179.00
12. Wal-Mart		$ 208.42
13. Tuesdays		$ 59.60
14. Best Buy		$ 320.99
15. Parisian-		$ 26.74
16. Family Services #14)		$ 1,000.00
	TOTAL	**$ 26,733.27**

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NORTH CHARLESTON, SC 29415

May 27, 2014

The Honorable Kenneth Fulp, Jr., Judge
Beaufort County Probate Court
P.O.Box 1083
Beaufort, S.C. 29910-1083

Re: *Estate of Norman R. Knight, Jr.*
ex. rel. Norman R Knight, III and Estate of Mildred C. Knight
Case No.: 2012-ES-07-00998 (Beaufort)
Case No.: 2008-ES-10-409 (Charleston)

Dear Judge Fulp:

Please find enclosed the Closing Argument (Removal of Special Administrator). By copy of this letter, I am serving the same on Beatrice E. Whitten, and C. Mac Gibson. Please have your clerks to clock the enclosed copy and return in the enclosed, self addressed stamped envelope.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

JSW:cfw

Enclosures

xc: Beatrice Whitten
Charles Mac Gibson, Jr.
Norman R. Knight, III

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2008ES1000409 (Charleston)
	)	CASE NO. 2012ES0700998 (Beaufort)
COUNTY OF CHARLESTON	)	
	)	
	)	
		CLOSING ARGUMENT
IN THE MATTER OF ESTATE OF NORMAN R. KNIGHT, JR.	)	(Removal of Special Administrator)
	)	
	)	

TO: HONORABLE KENNETH E. FULP, JR.: BEATRICE E. WHITTEN: C. MAC GIBSON:

The evidence and record clearly indicate that the Special Administrator cannot serve the testator in effecting the aims of his devise. Norman R. Knight, Jr. clearly decided that his wife would be the sole beneficiary of his will. The Special Administrator had no relationship with Mrs. Knight. Consequently, the Special Administrator was oblivious to the expectations of Mr. and Mrs. Knight relative to their testamentary plans. The status of Norman Knight, Jr.'s (Mr. Knight) estate at the moment of her appointment calls attention to the issue of locating assets, and locating assets is a priority aspect of the responsibility of the Special Administrator. The key assets were the annuities that were co-owned by the Knights. The record shows no contact with the Special Administrator and Mrs. Knight regarding her interest in those annuities. Moreover, the record shows no efforts by the Special Administrator to discuss or resolve the funeral expenses for Mr. Knight. Even with an outstanding balance, there has been no inquiries or reports to Mrs. Knight regarding the existence, status or accounting for these expenses. Funeral expenses are a top priority under the probate code.

The concern for dealing with this Special Administrator is best demonstrated in the failure to recover personalty that belongs to the Estate. When asked to explain why the Mitsubishi sedan had not been secured for the estate, the Special Administrator responded that she was told that the car was given to the holder. There is no evidence that establishes an intervivos transfer of that car during the time when Mr. Knight, Jr. was more capable of making that kind of transaction. As the evidence showed, the vehicle is clearly registered to Mr. Knight, Jr. So, with no more than anecdotal representations from the adverse parties and amid the distress to Mr. Knight's widow,

the Special Administrator allowed the vehicle to remain outside the estate: no discussion with the wife, no notice of any thought process for managing this item. This approach to the issue was repeated in the handling of the annuities.

Mrs. Knight and Bobby Knight deserve at least objective neutrality. Documents in the Special Administrator's file do not support objective neutrality. The documents reveal unilateral communication with the Special Administrator and they indicate that speakers were either denigrating Mrs. Knight and Bobby Knight or coordinating strategy to undermine the efforts of Mrs. Knight and Bobby Knight. The Knights cannot feel comfortable in their relationship with the Special Administrator when these contacts occur without their review.

There is no question as to Mr. Knight's intention in his will. The issues of this litigation do not involve a determination of heirs and it does not involve a will contest. Mr. Knight's will had been in the custody of the probate court for nearly three (3) years prior to his passing. Mr Knight's clear and direct instructions left nearly his entire estate to Mrs. Knight. Because of these clear objectives, the Special Administrator cannot act to diminish the intentions of the testator and must not become detached from the testator to the extent she acts against his desires. Her behavior cannot revise or rewrite his will.

Even acting as a neutral, the Special Administrator has a duty to the estate and its devisees. The Special Administrator's efforts must regard the estate: collect and manage the assets, preserve them, account therefor, and deliver them to the general personal representative upon his qualification. Cause for removal of the Special Administrator exists when removal would be in the best interests of the estate. . .or that the personal representative has disregarded an order of the court . . . (S.C.Code Section 62-3-611 (b)). In July 2013, the Special Administrator was ordered and instructed to recall her lis pendens on the real property of the estate. This order was absolutely disregarded. The relationship of the Special Administrator and the devisees is fatally flawed. The Special Administrator has not acted in the best interest of the estate.

Bobby Knight's request to de appointed Personal Representative should be granted. Bobby Knight is completely aware of all of the issues raised by the administration of this estate. He has administrative skills, he is comfortable communicating with the probate court, and he appreciates the importance of preserving

the estate. His business ownership has prepared him for complying with regulations and laws, and preparing reports. He is the only devisee of Mildred C. Knight, and therefore would bring consistency to the conclusion of all probate affairs.

In conclusion, the Special Administrator should be removed and Bobby Knight should be appointed as Personal Representative for the estate of Norman R. Knight, Jr.

Respectfully Submitted

J. SETH WHIPPER
ATTORNEY FOR PETITIONER

May 27, 2014

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2012-ES-07-998 Charleston County Case No. 2008-ES-10-409
IN THE MATTER OF NORMAN ROBERT KNIGHT, JR. deceased.	)	**CLOSING ARGUMENT** **Special Administrator**
Norman R. Knight, III, Petitioner.	)	

Special Administrator Beatrice E. Whitten submits her closing arguments regarding the petition for removal of Special Administrator, as follows:

Ms. Whitten ("Respondent") was appointed as Special Administrator for this estate by order of the Dorchester County Probate Court on December 15, 2008. This appointment came about after the heirs to the estate were unable, after mediating the matter, to reach agreement on the appointment of a Personal Representative. The Petitioner, Norman R. "Bobby" Knight III, later filed this action seeking to remove Ms. Whitten as Special Administrator and to have himself appointed as Personal Representative for the estate.

The Special Administrator submits that she was chosen for this appointment by the Charleston County Probate Court because of her years of experience in probate law, as well as her reputation for competent handling of similar prior appointments, her personal integrity, and her fair and reasonable charges for doing such work. At the time of her appointment, while all of the parties did not agree that any Special Administrator should be appointed, no party objected to her personally for such an appointment.

The Respondent will first address the potential appointment of Bobby Knight as Personal Representative. Mr. Knight in his testimony and closing argument asserts that he should be so appointed because he is "completely aware of all of the issues raised by the administration of this estate," although he does not state what those "issues" might be. He argues that he "is comfortable communicating with the probate court" and that his business ownership has prepared him to comply with laws and file reports.

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Contrary to these assertions, Bobby Knight has shown himself unwilling or unable to comply with laws and court orders, specifically the prior orders of the Charleston County Probate Court in relation to his father's estate. He admitted in his testimony that he was previously jailed for contempt of court by the Charleston Probate Court for willful violation of its orders. Charleston Probate Court ruled that his mother, Mildred Knight, was not qualified to serve as Personal Representative for the same behavior. Bobby Knight is also not qualified, for the same reasons.

Bobby Knight's remaining arguments are either irrelevant to the law relating to the duties of a Special Administrator, or fail to identify any failures on her part which would justify removal under that law. For example, Bobby Knight complains that the Special Administrator "had no relationship with Mrs. Knight."

There is no statutory or precedential requirement that a court-appointed Special Administrator for an estate (or any Personal Representative, for that matter) have a personal relationship with the heirs to an estate. Bobby Knight cites no authority for such a requirement. In fact, Ms. Whitten appears to have been chosen by the Charleston Probate Court precisely because she did not have any prior relationship with any of the parties, whom Bobby Knight testified had been at war with one another in some form of litigation for nearly a decade.

While Bobby Knight complained that Ms. Whitten chose not to have direct contact with him or his mother, he admitted that he and Mrs. Knight had been continuously represented by an attorney in these matters since the beginning of probate litigation in 2005. Ms. Whitten testified that contact through attorneys only was a condition which she applied evenly to all of the parties, all of whom were represented by counsel. She placed all parties and their counsel on written notice that this was a stipulation of her agreeing to serve as Special Administrator, via letter to counsel for all parties, dated June 20, 2008. None of the parties or their counsel objected to this condition, either before or after her appointment. She has remained accessible to counsel at all times since her appointment, as evidenced by the multitude of letters, telephone calls and emails that have passed between herself and counsel over the past six years.

Bobby Knight has failed to show any prejudice to himself, his interests or the estate because of this arrangement. The Special Administrator submits that the no-contact provision is

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value. She has therefore sought to keep her fees as minimal as possible, with the recognition that it would be inequitable to the heirs to accumulate charges which would greatly diminish the value of that small estate. That mindfulness extends to matters such as the aged automobile; in the Special Administrator's discretion, the cost of her efforts to recover a vehicle of limited or no value cannot be justified.

Bobby Knight's final grievance appears to be that the estate funeral bill has not yet been paid. The Special Administrator would point out that none of the creditors' claims have been paid because of the ongoing litigation in this estate, most of it instigated and extended by Bobby Knight himself. In fact, no funeral provider ever filed a timely claim against the estate. A late claim was filed by Carolina Memorial Gardens, which included multiple charges for both Norman R. Knight, Jr., and Mildred Knight. This claim was disallowed by the Special Administrator. The disallowance was not challenged and the claim is now legally barred. As this action has dispensed with a claim which if paid would diminish any final distribution payable to Bobby Knight, this has not caused any prejudice to him or to the estate.

In conclusion, the Special Administrator states that she has at all times, since her initial appointment, acted in the best interest of this estate. She has further applied her considerable experience, knowledge and skills in her best efforts to resolve and close the estate at the minimal possible cost to the estate. She is willing to continue her efforts and hopes to be allowed to finish this work, without the estate being required to start anew with an Administrator who has no knowledge of its extensive history.

Respectfully submitted,

Beatrice E. Whitten
Special Administrator
1110 Queensborough Blvd., Suite 100
Mt. Pleasant, SC 29464

June 9, 2014

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NORTH CHARLESTON, SC 29415

June 12, 2014

The Honorable Kenneth Fulp, Jr., Judge
Beaufort County Probate Court
P.O.Box 1083
Beaufort, S.C. 29910-1083

Re: *Estate of Norman R. Knight, Jr.*
ex. rel. Norman R Knight, III and Estate of Mildred C. Knight
Case No.: 2012-ES-07-00998 (Beaufort)
Case No.: 2008-ES-10-409 (Charleston)

Dear Judge Fulp:

Please find enclosed the Respondent's Closing Argument on the Disallowance of Claim. By copy of this letter, I am serving the same on Beatrice E. Whitten, and C. Mac Gibson. Please have your clerks to clock the enclosed copy and return in the enclosed, self addressed stamped envelope.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

JSW:cfw

Enclosures

xc: Beatrice Whitten
Charles Mac Gibson, Jr.
Norman R. Knight, III

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	))	IN THE PROBATE COURT CASE NO. 2008ES1000409 (Charleston) CASE NO. 2012ES0700998 (Beaufort)
IN THE MATTER OF ESTATE OF NORMAN R. KNIGHT, JR.	)	RESPONDENT'S CLOSING ARGUMENT (Disallowance of Claim)

TO: HONORABLE KENNETH E. FULP, JR.: CLERK; BEATRICE E. WHITTEN: C. MAC GIBSON

Because this matter is being argued to a single fact-finder, the credibility of the parties is important as a measure of the interest sought and the consistency of the facts offered to support the given arguments.

This claim comes before the Court because the Petitioner chose to remove her father from his home and based the need for his removal on the additional allegation that he was being abused. This was not the first time that Petitioner or her sister made this allegation. In 2004/2005, the allegation of abuse had been made by Petitioner's sister. The allegation was investigated by DSS and declared unfounded; and, Mr. Knight was determined to be well-cared for. This whole litigation saga became hyper-driven after Mr. and Mrs. Knight revoked powers of attorney once held by Petitioner and her sister. Moreover, there was other litigation regarding Petitioner's refusal to return possession of certain property to her father. The Probate Court litigation did begin in earnest after the revocation of the powers of attorney. So, we are at this stage of the testamentary process because Petitioner would not accept her parents' decision to act in all general matters without relying on Petitioner and her sister.

This claim is more than an aggrieved party seeking equitable relief. This is sibling rivalry without limits and irrespective of limits. This particular battle started during Mrs. Knight's lifetime, i.e. Petitioner filed the claim while her mother was living in the marital home. So, we know the level of hostility involved. Mrs. Knight prepared and submitted an affidavit (see pgs. 3-11) that is in evidence as a court record. The existence of intense conflict cannot be denied. The primary question that rises through

this entire rancor: why couldn't Petitioner and her sister just leave their parents in peace?

Credibility should matter in this claim. Is not the Petitioner hiding her relationship with the elderly Louise Reynolds a/k/a "Queenie" of the Queenie Account? A fact so shrouded that Petitioner would rather withdraw that allegation than to reveal the exact nature and substance of the relationship and the funds in the account. The Petitioner attempted to hide the fact that furniture purportedly bought for Mr. Knight was delivered to her sister's home. It took Petitioner until Attorney Mary Hall was subpoenaed to testify before she "remembered" that she paid Ms. Hall three thousand two hundred dollars ($3,200.00) instead of the five thousand dollars ($5000.00) she was claiming. Ms. Hall could not confirm how Ms. Tonney was identified as the holder of Mr. Knight's Power of Attorney in the December 2007 retainer agreement. Further, due to the appeal of her appointment as conservator, Petitioner was not entitled to claim that status. Petitioner wants to be reimbursed for items that she kept or converted to her own use such as the wall clock, wall pictures, and reclining chair. Petitioner also converted the therapeutic bed.

Petitioner is, at best, a gift giver. Her relationship had been with two people who had no authority to act — Walter Kaufman and Iris Albright. If we accept that their functions were not stayed by the appeals, then they acted contrary to the court orders that appointed them. They both admitted that they did not consult with Mrs. Knight as ordered before acting; therefore, their authority was not perfected. Mrs. Knight was never informed about any loan agreement or payment obligations or boarding arrangements for her husband. How do your interests in an estate become encumbered without the established safeguards being satisfied? There must be notice and an opportunity to be heard. At a minimum, those protections are intended by the orders appointing Albright and Kaufman. (Resp. Ex. 7 & 8)

Albright and Kaufman acted intentionally. In retrospect, their failure to act has placed an onerous and substantial burden on Mrs. Knight. Was she left to drown? Did they put a target on her back? Is this a type of conscious neglect or constructive inducement? Can conduct amount to a representation? Is this fraudulent inducement?

In order to establish a claim of fraud in the inducement to enter a contract, the proponent must demonstrate the following: (1) a representation, (2) its falsity, (3) its materiality, (4) knowledge of its falsity or reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of it falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to reliance on it truth (9) the consequent and proximate injury. M.B, Kahn Const. Co. v. South Carolina Nat. Bank of Charleston, 275 S.C. 381, 271 S.E. 2d 414 (1980). The representation in this fact pattern was a non-statement, an omission that caused Mrs. Knight to think that she was not in jeopardy, so she acquiesced to the arrangements. This unstated representation began the inducement. Certainly, the existence of a loan is material to Mrs. Knight as an heir to Mr. Knight and Albrights and Kaufmann's handling of the knowledge of the existence of this "loan" was a disregard for the truth or falsity of the representation. The intent that the representation be acted upon is clear. Mrs. Knight was totally ignorant regarding the falsity of her and her husband's situation. Mrs. Knight relied on what was said, and she had a right to rely on the presenters. The consequential and proximate inquiry is well established at this point. See M.B, Kahn Const. Co. v. South Carolina Nat. Bank of Charleston, id. Mrs. Knight, at the least, is a stakeholder in the estate of Mr. Knight. At the time of this incident, she was a recognized participant in the management of Mr. Knight's estate. She was, essentially, a recognized co-participant and third party beneficiary to the matters involving the management of Mr. Knight' s estate. As it turns out, she relied on her status and co-participants to her detriment.

The law on the automatic stay must be enforced. Although a ruling had been issued initially, a timely motion to reconsider had been filed and the automatic stay was still in place at the time Petitioner acted to remove Mr. Knight. 62-1-308(c). Respondents' exhibit 19, 9, 10, 14, 16, 17, and 18 substantiate the appeal status. The Petitioner knew that the matter was under review as indicated by her Motion to Dismiss (see Respondents' exhibit 18). Moreover, according to a response to the GAL letter of January 9, 2006, the Petitioner was advised to prepare a Rule to Show Cause (Resp. Ex. 15), an approach consistent with the automatic stay. Walter Kaufman admitted that Judge Young had displaced him (and any other new appointees.) by enforcement of

the automatic stay. The stain of disregarding the automatic stay can be purged only by rescinding all acts taken without authority.

In 2007, Bobby Knight appealed the appointment of Petitioner as Conservator (See Resp. Ex. 19), the automatic stay was never lifted. 62-1-308(c). The stain of disregarding the automatic stay can be purged only by rescinding all acts taken without proper authority.

The failures by Petitioner cannot be disregarded. A Party. . . " who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." Emery v. Smith, 361 S.C. 207, 220, 603 S.E. 2d 598, 605 (Ct. App.2004).

Petitioner cannot present clean hands. In January 2006, she went to the Probate Court alleging **abuse to remove Mr. Knight** from his home and then testifies, this year, that abuse was not the issue: it was a family feud over, visitation. Petitioner has offered no evidence of abuse, not a scintilla. "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." First Union National Bank of S.C. v. Soden, 333 S.C. 55, 568, 511 S.c. 2d 372, 379 (Ct. App. 1998).

Petitioner claims items were lost in a flooded storage unit and we have no evidence of engagement of a public storage company. Petitioner cannot produce a loan document, promissory note, or other contract from anyone agreeing to payment terms, interest rates or any other basis for binding Mr. Knight's estate. Petitioners' unilateral letter (Pets.Ex. 7) does not establish mutual assent.

Petitioner could have deposited money with the Conservator, Family Services, Inc., but instead made payments to Attorneys outside of the structure established by the Probate Court. Hence, her actions were insulated from Court oversight and notice to Respondents.

Petitioner's foray into the Family Court matter created an ethical quiet storm. She and her sister, Linda, hired the same lawyer for the probate matter and then hired

their probate lawyer to represent Mr. Knight in the Family Court. All of this was arranged without notice to the Probate Court for clearance on the conflict question.

Mrs. Knight had to file an action in Family Court in order to obtain the resources promised through agreements made in Probate Court. Testimony as to the agreement to "split resources 50/50" is uncontroverted. Mrs. Knight was successful in securing that support. For Petitioner to contest this matter and knowing the limitations in her parent's income, shows an insensitivity to the general welfare of either parent. Petitioner knew from the Family Court filings and the probate process that her parents could not afford to fund the lifestyle she had forced on them: residency at a nursing home far above their means and a protracted family court matter to establish what was already agreed upon. The Family Court did not award attorney fees in the matter, and the case was dismissed at the passing of Mr. Knight. Mrs. Knight was successful in obtaining temporary relief. Petitioner's expenditures on attorney fees did not benefit Mr. Knight, was not necessary for his care and sustenance and cannot be justified by any of the circumstances existing at the time the money was spent. Attorney fees in this Family Court matter are not a part of the care scenario. This expenditure did nothing for Mr. Knight's health. The whole approach is incredible.

Gloria Johnston testified that adequate, competent, skilled care was available for half of what was being spent by Petitioner. Ms. Johnston's background included licensing and management in the industry of care facilities. She has dealt with all levels of care. Dr. Fechter testified that seniors do not fare well when confronted with the kind of change Mr. Knight experienced. Dr. Fechter noted familiar surroundings are very important to beneficial care of seniors. He stated that longevity is positively affected by a stable, welcoming environment. Dr. Fechter testified that the Knight's home and marital relationship were good and supportive. Both Johnston and Fecther acknowledged Bishop Gadsden's top position in the care market place, but the Bishop Gadsden official, Lynn Kerrison, Johnston and Fechter also acknowledged the major expense involved in boarding at Bishop Gadsden. According to Mrs. Knight's affidavit and figures offered during the trial, the Knights' annual gross income was approximately $60,000.00. This is far below what would be required for residing at Bishop Gadsden

Homes. Iris Albright testified that in her more than 17 years of covering most of South Carolina as a Conservator, she has only encountered two other cases involving Bishop Gadsden Residents, even with helping households where the annual income was $100,000.00 and more. How can we hold Mrs. Knight under this kind of burden when she just wanted to be left alone with her husband?

Conclusion

This court should sustain the disallowance of this claim. In all regards, the Petitioner has improperly and unreasonably created these expenses. The procedural history in this case demonstrates that the Petitioner and those serving her interests acted without proper authority when they removed Mr. Knight from his home and lodged him at a nursing facility far above his means. Petitioner did not lift the automatic stays or pursue a rule to show cause as required by Judge Young's order (Pets. Ex. 22)

Equity requires clean hands from a party seeking relief. Petitioner as above argued cannot claim this status. Her behavior and her conscious disregard for her parents' actual status created the prejudice for Respondents.

The true nature of this conflict is not about Mr. Knight's care and support. The credible evidence sets out a sibling conflict that does not warrant the auspices of this court. Finally, all references to Mrs. Knight are conferred upon Bobby Knight.

Respectfully Submitted

J. SETH WHIPPER
ATTORNEY FOR RESPONDENTS

June 12, 2014

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE PROBATE COURT CASE NO. 2008ES1000409 (Charleston) CASE NO. 2012ES0700998 (Beaufort)
IN THE MATTER OF ESTATE OF NORMAN R. KNIGHT, JR.	)	RESPONDENT'S CLOSING ARGUMENT (Disallowance of Claim)

THIS is to certify that an original copy and a copy of the "Final Argument Disallowance of Claim" were mailed to the below listed individuals respectively by depositing the same in the United States mail, certified, with sufficient postage affixed thereto, this 12th day of June 2014.

The Honorable Kenneth E. Fulp, Jr., Judge
ATTN: Filing Clerk
Beaufort County Probate Court
P. O. Box 1083
Beaufort, SC 29910-1083

C. Mac Gibson, Jr., Esquire
1118 Savannah Hwy.
Charleston, SC 29407

Beatrice E. Whitten, Esquire
1110-A Queensborough Blvd.
Mt. Pleasant, SC 29464

J. SETH WHIPPER

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SOUTH CAROLINA BAR

JANUARY 21, 2010 ♦ Myrtle Beach, South Carolina

H.3803 – SUMMONS IN PROBATE COURT

Presented By:

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H.3803 - SUMMONS IN PROBATE COURT

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In the fall of 2006 the Probate, Estate Planning and Trust Section Council [PET Council] approved and established a subcommittee, known as the Summons/SCRCP Subcommittee [Summons Subcommittee], which met and held regular meetings beginning in November 2006. Kathryn Cook DeAngelo served as Chairperson of the Summons Subcommittee and the members since November 2006 were: Judge Waldo Maring (Georgetown), Judge Joshua Queen (Cherokee), Carolyn Rogers, Andrew Chandler, Lester Schwartz, and Kathryn DeAngelo. Catherine Kennedy joined the Summons Subcommittee in December 2007 as an active participant. In the spring of 2008, a Summons Subcommittee Report, which included recommendations and proposed legislative amendments to the Probate Code, was reviewed and approved by the PET Council. In January2010, the PET Council presented a Summons Subcommittee Report to the S.C. Bar House of Delegates, which was approved. Thereafter, the S.C. Bar approved the proposed legislation, and Rep. Bannister sponsored the bill as H.3803, a copy attached hereto. On April 30, 2009, H.3803 received a favorable report from the House Judiciary General Laws Committee.

By way of a more detailed history and explanation about the creation and development of H.3803, the following is the Report from the PET Council that was submitted to the S.C. Bar House of Delegates in January 2009:

SUMMONS SUBCOMMITTEE REPORT

The South Carolina Probate Code became effective in 1987. The South Carolina Rules of Civil Procedure [SCRCP] became effective in 1990. Some may ask, "What do the rules of civil procedure have to do with the probate code?" Well, the answer is, "Quite a bit." However, to many lawyers, as well as probate judges, it's not crystal clear or certain whether or how our separate rules of civil procedure apply in or to probate court proceedings. As a result, a great deal of confusion and conflict have been created for our bench and bar due to the lack of a uniform, consistent set of procedural rules for legal proceedings in our probate courts. One can survey probate courts county by county and find a patchwork of many procedural differences among the different probate courts, which

causes upset and stress for the probate bench and bar, as well as for the clients that the lawyer may represent in probate court proceedings.

The PET Council acknowledged this confusion and decided that it needed to be addressed and thus established the Summons Subcommittee to review, study and evaluate the rules of procedure in our probate courts and also study the application and interplay of the summons and the SCRCP in our probate courts. The Summons Subcommittee met and held regular meetings from November 2006 until the early part of 2008. From the outset, all members of the Summons Subcommittee recognized the problem, i.e., confusion, inconsistency, and conflicts created for our bench and bar due to the lack of a uniform, consistent set of procedural rules for proceedings and actions in our probate courts. The focus of our study efforts has been to research this issue, determine how we believe it may best be addressed and resolved legislatively, and report our findings and conclusions to the PET Council for its further consideration. Our Summons Subcommittee was fortunate to have Judge Maring and Judge Queen among its active members because these probate judges candidly shared with us the history and evolution of their, as well as many probate judges', thinking on this issue.

Judge Queen and Judge Maring informed us that without summons and proper service, they experience many problems at hearings, such as parties appearing unprepared or ill-prepared, surprised, confused, unclear about the issues, uncertain about what is going on at the hearings, and potentially subject to "trial by ambush." These serious flaws and problems are what the SCRCP were intended to address, so that parties are afforded procedural due process safeguards, "trial by ambush" is avoided, and a coherent set of rules govern legal proceedings, including discovery. The judges also candidly informed us to expect resistance from many probate judges.

The beginning point of our study focused on a single issue, which consumed a great deal of time, discussion, and evaluation, namely, the substantive distinction and difference between the notice requirements of S.C. Code §62-1-401 and the summons/petition requirements, which will be the primary focus of this presentation.

NOTICE

When the Probate Code was initially enacted more than twenty (20) years ago, S.C. Code §62-1-401 contained certain notice requirements, which provided as follows:

> **SECTION 62-1-401.** Notice; method and time of giving.
> (a) If *notice of a hearing on any petition* is required and, except for specific notice requirements as otherwise provided, the petitioner shall cause *notice of the time and place of hearing of any petition* to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:
> (1) by mailing a copy thereof at least twenty days before the *time set for the hearing* by certified, registered, or ordinary first class mail addressed to the person being

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notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known;
(2) by delivering a copy thereof to the person being notified personally at least twenty days before the time set for the hearing; or
(3) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence by publishing a copy thereof in the same manner as required by law in the case of the publication of a summons for an absent defendant in the court of common pleas.
(b) The court for good cause shown may provide for a different method or time of giving *notice for any hearing.*
(c) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.
[*emphasis added*]

After reviewing the language of S.C. Code §62-1-401, it is clear that the plain language of that statute address the notice requirements for *a hearing* on a petition and does not address proper commencement of an action or proceeding by summons. If a statute's terms are clear, the court must apply the terms according to their literal meaning. Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002). An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute. Id. On the other hand, other statutes and rules govern the proper commencement of a proceeding and, most importantly, afford due process by vesting subject matter and personal jurisdiction on the court.

The purpose of this notice requirement should be obvious. It is to prevent a party from being prejudicially surprised by a hearing. See State ex rel Ward v. Hill, 489 S.E.2d 24 (1997). But the foregoing code section and notice requirements therein were viewed by most judges and lawyers as a substitute or replacement for a summons. This meant that when a formal proceeding, such as a will contest, was commenced, the court required a notice of hearing but did not require a summons for the petition to contest the will. Judge Maring acknowledged that he, as well as many other probate judges, came to realize that notice of hearing is just that, giving notice of a hearing on a petition, and that it *does not* take the place of or substitute for summons and service of process in order to properly commence a civil action or proceeding. Since the notice requirements of S.C. Code §62-1-401 are for the purpose of notifying interested persons of a hearing, such notice is not a substitute for a summons. So then we studied and reviewed other statutes, case law, and the SCRCP to determine whether and how a summons and rules of procedure govern proceedings in the probate court.

SUMMONS

The next question is, what rules apply or govern the commencement of a legal action or proceeding? Under Rule 3(a), SCRCP, a civil action is commenced by the filing and service of a summons and complaint. Louden v. Moragne, 327 S.C. 465, 468, 486 S.E.2d 525, 526 (Ct.App.1997). And why is it so important to file and serve a summons upon defendants? Although quite elementary to an audience of lawyers, the Constitution of this State, and the Untied States, requires due process of law. Article I, §3 of our State constitution provides as follows:

> The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The sanctity and importance of a cohesive, uniform set of procedural court rules, which begins with process, is to ensure that all parties who come before the court *enjoy their constitutional right to due process,* beginning with proper notice of a proceeding and a meaningful opportunity to be heard. Any lawyer or judge who considers the seriousness and gravity of a guardianship and conservatorship proceeding in probate court easily appreciates that the respondent or defendant in such a proceeding faces potential loss of his or her life, liberty, and/or property, thus requiring due process of law. Generally, where a statute specifically prescribes the method by which to notify a party against whom a proceeding is commenced, service of the summons and complaint must be accomplished in that manner. Fulton v. Mickle, 518 S.E. 2d 518 (N.C. App. 1999)(emphasis added). "Service of the summons brings the defendant within the court's jurisdiction and gives the court the power to render a personal judgment against the person served." Id. The purpose of a service of summons is to give notice to the party against whom a proceeding is commenced to appear at a certain place and time and to answer a complaint against him. Farr v. City of Rocky Mount, 10 N.C.App. 128, 177 S.E.2d 763 (1970), cert. denied, 277 N.C. 725, 178 S.E.2d 831 (1971). Rule 4 of the South Carolina Rules of Civil Procedure, which governs process (summons) and service of process, is similar to Rule 4 of the Federal Rules of Civil Procedure.

The purpose of the rule is to provide notice of the commencement of an action and "to provide a ritual that marks the court's assertion of jurisdiction over the lawsuit." Wiles v. Welparnel Construction Co., 295 N.C. 81, 84, 243 S.E.2d 756, 758 [311 N.C. 542] (1978) (quoting Wright & Miller, Federal Practice and Procedure: Civil § 1063 p. 204 (1969)). Unless notice is given to the defendant of proceedings against him and he is thereby given the opportunity to appear and be heard or he appears voluntarily, the court has no jurisdiction to proceed to judgment even though it may have subject matter jurisdiction.[1]

---

[1] Beaufort County v. Mayo, 207 N.C. 211, 176 S.E. 753 (1934); *also see,* Mabee v. Onslow County Sheriff's Department, 174 N.C. App. 2210, 620 S.E.2d 307 (N.C.App.

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And it has also been recognized that although defective service of process may sufficiently give the defending party actual notice of the proceedings, 'such actual notice does not give the court jurisdiction over the party.' [citation omitted] Fulton v. Mickle, 518 S.E. 2d 518 (N.C. App. 1999).

The importance of the constitutional notice requirement afforded by summons and due process is illustrated by the case of McLain v. Ingram, 314 SC 359, 444 S.E.2d 512 (1994) (*per curiam*). In McLain, the plaintiff served the summons and complaint a day before such documents were filed with the court. The lower court dismissed the action finding that it was not properly commenced. The Supreme Court noted that prior to adoption of the South Carolina Rules of Civil Procedure, a civil action was commenced by service of the summons, which was changed by Rule 5(d), SCRCP, which now provides:

Rule 5. Service and Filing of Pleadings and Other Papers

(d) **Filing.** . . . *The summons and complaint shall be filed before service. . . .*

In McClain the Supreme Court recognized that the adoption of the South Carolina Rules of Civil Procedure in 1985 heralded in a new era in South Carolina's civil practice, modernizing and streamlining our system, including the procedure for commencing a civil action. The Court held: "The language of Rule 5(d) is clear: The summons and complaint must be filed prior to their service. Here, service preceded filing and thus this action was not properly commenced before expiration of the statute of limitations. *We recognize the harsh result reached in this case, and take this opportunity to remind practitioners that the interrelationships between various court rules are not always readily apparent.*" McLain, at 360 [*emphasis added*].

After understanding the legal importance of the summons and the civil procedure rules to properly commence a legal proceeding, one may then ask, how do the SCRCP apply to or govern proceedings in the probate court? First, we begin with a somewhat obscure code section -- S.C. Code §14-23-280 -- that contains a procedural rule applicable to the probate courts. This foregoing code section requires a summons for proper commencement of a probate proceeding and provides as follows:

SECTION 14-23-280. Commencement of proceedings; procedure.

2005)(The Court has unequivocally stated that when a statute prescribes the manner for proper notification, the summons must be issued and served in that manner.); Thomas and Howard Co., Inc. v. Trimark Catastrophe Services, Inc., 151 N.C. App. 88, 564 S.E.2d 569 (N.C.App. 2002)("Generally, where a statute specifically prescribes the method by which to notify a party against whom a proceeding is commenced, service of the summons and complaint must be accomplished in that manner." [citation omitted]); Long v. Cabarrus County Board of Education, 52 N.C. App. 625, 279 S.E.2d 95 (N.C.App. 1981)("Where a statute provides for service of summons by designated methods, the specified requirements must be complied with or there is no valid service. [citation omitted].

Proceedings in the court of probate may be commenced by petition or complaint to the judge of probate for the county to which the jurisdiction of the subject matter belongs, briefly setting forth the facts or grounds of the application. *A summons shall be issued to the defendants in such proceedings. The manner of service, time for answering and other proceedings relating to the trial, except trial by jury, shall conform as nearly as may be to the practice in the courts of common pleas as provided in this Code. [emphasis added]*

Also S.C. Code §62-1-304, which is a bit convoluted, also governs procedure and practice in the probate court and provides as follows:

SECTION 62-1-304. Practice in court.
Unless specifically provided to the contrary in this Code or unless inconsistent with its provisions, *the rules of civil procedure adopted for the probate court, and, in their absence, those adopted for the circuit court, govern formal proceedings under this Code.* [*emphasis added]*

This code section says if there are rules of civil procedure for the probate court, then those rules govern "formal proceedings." And how are formal proceedings defined:

SECTION 62-1-201. General definitions.
....
(15) "Formal proceedings" means those conducted before a judge with notice to interested persons.

S.C. Code §62-1-304 further provides that in the absence of such rules, then the circuit court rules SCRCP apply to formal proceedings in the probate court. So is there a separate comprehensive, cohesive set of "rules of civil procedure adopted for the probate court"? This was essentially answered in the case of Weeks v. Drawdy, 495 S.E. 2d 454 (Ct. App. 1997). In Weeks our appellate court recognized that the rules of probate court governing procedure address only a limited number of issues and that in the absence of a specific probate court rule, the rules of civil procedure applicable in the court of common pleas shall be applied in the probate court unless to do so would be inconsistent with the provisions of the Code. Weeks v. Drawdy, 495 S.E. 2d 454 (Ct. App. 1997). An exhaustive review of the probate code reveals that there are only a few procedural rules in the Probate Code (sale of lands), perhaps administrative in nature and somewhat limited in scope. However, our Probate Code *does not* contain a comprehensive set of civil procedure rules such as those contained in the SCRCP. Therefore, the abyss created by the absence of rules of civil procedure in the probate code must be filled by the rules of civil procedure adopted for the circuit court (SCRCP) to govern formal proceedings in the probate court.

This latter conclusion is further reinforced by Rules 1 and 81, SCRCP, which provide as follows:

RULE 1

SCOPE OF RULES

These rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

RULE 81

APPLICABILITY

These rules, or any of them, shall apply to every trial court of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law, and the procedure therein shall conform to these rules insofar as practicable. *They shall apply insofar as practicable in* magistrate's courts, *probate courts,* and family courts *to the extent they are not inconsistent with the statutes and rules governing those courts.* In any case where no provision is made by statute or these Rules, the procedure shall be according to the practice as it has heretofore existed in the courts of this State. *[emphasis added]*

Note:

This Rule 81 covers the same subject as the Federal Rule but is drafted to conform to the State court system, and *to make the procedure in all civil courts as uniform as possible. [emphasis added]*

The case of In Re: Estate of Timmerman, 331, S.C. 455, 502 S.E. 2d 920, 922 (Ct. App. 1998) is instructive in the application of Rule 81, SCRCP, in the probate court. In In Re: Estate of Timmerman, appellant surviving spouse/wife noticed appeal from an adverse order of the circuit court reversing the probate court's determination that appellant surviving spouse/wife was entitled to elective share. The Court of Appeals reversed this ruling of the circuit court premised on respondent beneficiary's failure to file in the probate court a timely motion to alter or amend the probate court's order pursuant to Rule 59(e), SCRCP. The Court of Appeals, relying on Rule 81, SCRCP, held that since a Rule 59(e) motion is not inconsistent with the Probate Code, it is therefore applicable in probate court proceedings. Numerous other appellate cases have recognized that the SCRCP apply to actions and proceedings in the probate court. See generally, Weeks v. Drawdy, 495 S.E.2d 454 (Ct. App. 1997); Truluck v. Snyder, 606 S.E.2d 792 (Ct. App. 2004); LaFaye v. Timmerman, 502 S.E.2d 920 (Ct. App. 1998).

Applying rules of statutory construction and reading the foregoing rules and statutes together, it becomes apparent that S.C. Code §14-23-280, as well as §62-1-304 and Rules 1 and 81, require that a summons shall be issued and that the SCRCP shall govern formal proceedings in probate court, including the "manner of service, time for answering and other proceedings relating to the trial," which is especially critical since the probate code does not contain a cohesive, uniform set of procedural rules to govern proceedings in the probate court.

CONCLUSION

After a careful review, discussion and analysis of the foregoing code sections, rules, and case law, our Summons Subcommittee concluded:

- That the SCRCP govern the procedure in "formal proceedings" initiated by petition in probate court
- That although there are a few limited procedural rules in the Probate Code, our Probate Code does not contain a comprehensive set of civil procedure rules such as those contained in the SCRCP
- That our Probate Code needs to make clear that the SCRCP apply to formal proceedings in probate court in order to help avoid the many problems the Courts and lawyers encounter, to promote consistency for our probate bench and bar, and to streamline our probate court system

We also recognized the burden that the application of the SCRCP could place on *pro se* litigants but did not believe there should be a different set of rules applied *pro se*, keeping in mind the importance of the rules affording due process.

After coming to the foregoing conclusions, the question then became how we should proceed in our work to revise and amend the Probate Code in order to clarify that the SCRCP govern procedure in "formal proceedings" without embarking on a full-scale overhaul of the Probate Code. We thought that this could perhaps best, and most easily, be accomplished by amending S.C. Code §62-1-304, especially since Judge Maring aptly observed that §§14-23-280, 62-1-304 and Rules 1 and 81, SCRCP, already speak to the application of the SCRCP to "formal proceedings." Then we decided it would be best to incorporate procedural requirements throughout relevant portions of the Probate Code (Articles 1, 2, 3, and 5) to ensure that there is more uniformity and better clarify the application of the SCRCP. We also recognized that the procedure involved for certain petitions, such as the Petition for Settlement, should not be governed by the SCRCP and should be excluded from such rules. As to these latter petitions, we decided they should be denominated as an "application" and thus be considered informal and not governed by the SCRCP. The Summons Subcommittee has worked for more than a year on proposed legislative amendments and revisions to Articles 1, 2, 3, and 5, hoping to *begin* the process of accomplishing the foregoing goals.

Based upon the foregoing, we attach and submit to the House of Delegates our final drafts of proposed legislative amendments to Articles 1, 2, 3, and 5 of the Probate Code for its review, consideration, and approval. In October 2008, the South Carolina Association of Probate Judges [SCAPJ] approved, with a few exceptions, the proposed legislative amendments to Articles 1, 2, 3, and 5. The Summons Subcommittee studied the exceptions and adopted certain of the exceptions. Also, the Summons Subcommittee submitted the foregoing Articles to the Elder Law Committee of the Bar, and such Committee approved of same.

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Respectfully submitted by Summons/SCRCP Subcommittee
on behalf of the PET Section Council

Kathryn Cook DeAngelo, Esq., Chairperson and members, Judge Waldo Maring, Judge Joshua Queen, Andrew Chandler, Esq., Carolyn Rogers, Esq., Catherine Kennedy, Esq., & Lester Schwartz, Esq.

Attachments: Proposed legislative amendments to Articles 1, 2, 3, and 5, Title 62

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2014-CP-10-5355
)	
IN RE ESTATE OF)	
NORMAN R. KNIGHT JR.,)	
ESTATE OF MILDRED C.)	
KNIGHT & NORMAN R.)	
KNIGHT, III . ET AL)	
)	
Plaintiffs-Appellants,)	
)	MEMORANDUM IN SUPPORT OF
vs.)	MOTION FOR NEW TRIAL OR
)	ALTER/ AMEND JUDGMENT
BEATRICE E. WHITTEN, and)	
CHLOE KNIGHT-TONNEY)	
)	
Defendants-Respondents)	
)	

FILED
2016 FEB 16 PM 2:55
JULIE J. ARMSTRONG
CLERK OF COURT

PERTINENT FACTS

This matter was tried before the Special Probate Judge in non-jury for two separate days. After post-trial motions a Notice of Intent to Appeal was filed by the estate of Mildred C. Knight and Bobby Knight. Plaintiffs are appealing the reward of $23, 914.73 plus 8.75% interest.

Plaintiffs contend that the Defendant Tonney has come to the Court with unclean hands and that her claim is controlled by the laws and rules of equity.

Defendant Beatrice E. Whitten was appointed Special Administrator of the estate of Norman R. Knight, Jr. Her appointment was unlawful because it was made by the resident Dorchester County Probate Court Judge. Moreover, Mrs. Whitten failed to regard a court order of a second Special Probate Court Judge. Also, Mrs. Whitten failed to manage the assets of the estate to achieve the intentions of the descendent.

ARGUMENT

Chloe Tonney did intend to seek restitution of money she expended on the costs of various bills created by removing her father from his marital home. Ms. Tonney's expectation resulted from her unilateral actions that created the circumstances giving rise to these expenditures. There was no formal agreement and no sum certain

creating an actual contract to pay. At best, the understanding for repayment is a quasi-contractual agreement. An action for accounting sounds in equity. Historic Charleston Holdings, LLC v. Matton, 381 S.C. 417, 427, 673 S. E. 2d 448, 453 (2000). Restitution and disgorgement are equitable remedies. Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 215-216 (2002); Key Corporate Capital, Inc. v County of Beaufort 373 S.C. 55, 63, 644 S.E. 2d 675, 679 (2007).Restitution is an equitable remedy. Wallace v Milliken. & Co., 305 S.C. 118, 120, 406 S.E. 2d 358, 359 (1991). Characterization of an " action as equitable or legal depends on the [appellants'] "main purpose" in bring the action" Ins. Fin. Services., Inc. v. S.C. Ins. Co., 271 S.C. 289,293,247 S.E. 2d 315, 318 (1978). The nature of the issues raised by the pleadings and character of relief sought under than determines the character of an action as legal or equitable. Bell v. Mackey, 191 S.C. 105, 119-20,3 S.E. 2d 816, 822 (1939).

The individuals charged with caring for Mr. Knight, Jr. did not fulfill their obligation to inform Mrs. Knight of the expectations of Chloe Tonney **(Exhibit A*& B)** and Ms. Tonney did not notify Mrs. Knight of her intentions until she filed a claim against her father's estate. A party failing to fulfill the requirements of its legal remedy cannot later come to the courts complaining of hardships, seeking an equitable remedy. Ellisdon Construction, Inc. v. Clemson University, 391 S.C. 552, 707 S.E. 2d 399 (2011).

Fairness and due process are clearly major measurements in evaluating the implications of the facts of this case. The allegations of abuse and neglect of the decedent have been entirely refuted and unfounded. Mr. Knight's estate and its devisee cannot be held responsible for the added expenses stemming from those allegations (Ex.) Because Mrs. Knight was not informed of Ms. Tonney's intentions until the claim was filed, she could not challenge the "arrangements" in advance. As noted in Ellisdon

Construction, Inc., id., notice to interested parties is a legal requirement that authorizes the claim.

In this case, lack of disclosure - another form of notice failure and due process defect - may have left the devisee without a firm defense. The Probate Judge quashed a subpoena that would clarify who was the actual payor for expenditures claimed by Ms. Tonney. The judge accepted the withdrawal of items linked to the subpoenaed material and based his ruling on that withdrawal. The Probate Judge found and ruled as follows: "No checks from the "Queenie" account were introduced in support of any other expenses claimed by Tonney, so the withdrawal of the portion of her claim pertaining to expenses paid form the "Queenie" account renders the subpoenaed documents irrelevant to the remainder of the Tonney claim which is subject to adjudication. Enforcement of the subpoena, under these circumstances, would require the disclosure of otherwise confidential personal financial information, protected by law, to no purpose relevant to the matter before the Court."

Ms. Tonney had testified that the "Queenie" account was an account used for the care of an elderly lady name Louise Reynolds. "Queenie" is Ms. Tonney's nickname for Louise Reynolds. Ms. Tonney testified to setting-up a bank account for the benefit of Louise Reynolds. The names on the particular account were Linda Jones, Chloe Tonney, and Queenie. The initial discovery responses were redacted to show only the name of Chloe Tonney. Motions had to be filed to obtain the other names. The subpoena sought information on the "Deposit and Withdrawal Acting /Records including identity of depositors and payees for the years beginning 2004 through 2009." The records would establish whose funds were used to pay for what expenditures; when these funds were used to pay for what expenditures; and where these funds originated.

This information was determined to be relevant without viewing the material. This information was crucial to the devisee's defense and the estate's protection.

Earlier in discovery and later at trial, the Probate Judge upheld the redaction of information in a letter as protected by attorney-client privilege **(Exhibit C).** The attorney writing the letter was hired by Ms. Tonney, but the letter in question was written to Ms. Tonney and a non-client third-party. The sums mentioned in the letter began at $2,800.00 and included an amount of $5,000.00. This redacted language must be relevant and more likely than not persuasive on the issues raised by the claim. This ruling is wrong on its basis and prevented the discovery of material or information that would be useful to the defense of this claim. The Probate Judge ruled without viewing an unredacted copy of the letter.

The jurisdictional issues stressed in this matter involve the use of a summons in the Probate Court and the appointment of special judges who do not reside in the county where the decedent resided at the time of his death. As a corollary to the latter position, this matter was appealed prior to this trial on the basis that the appointment of a Special Probate Judge is not transferable to others by order of the Special Probate Judge. The orders of the associates were voided and the matter was restarted. The Special Probate Judge in this version has granted judgment interest in the claim beginning 14 months after the date of the decedents' death. This interest formula must be adjusted to reflect the date upon which the claim first was allowed by a Judge with the authority to make that ruling. Appellants maintain that the summons is required to lawfully commerce a formal proceeding in Probate Court, and the Special Probate Judge must be a resident of the county having lawful venue and jurisdiction of the decedent's estate.

Beatrice E. Whitten failed to comply with a Court order. S.C. Code sec. 62-3-611(b) states that cause for removal exists when it is shown that the [Special Administrator] has disregarded on order of the court... or failed to perform any duty pertaining to the office. On July 17, 2013, the Court concluded a hearing by saying: "So, I'm going to allow 30 days for release of the Lis Pendens, okay? If you would provide evidence to the Court and counsel, Ms. Whitten, [that] that has been done." The Special Administrator responded: "I will, Your Honor." At present, nothing has been done on the removal of the Lis Pendens.

Mr. Knight left most (95%) of what he owned to his wife, Mildred C. Knight, including all of his motor vehicles. Mr. Knight died March 11, 2008; Mrs. Knight died June 22, 2010. Mrs. Knight left most (95%) of what she owned to her son, Bobby Knight. Bobby Knight has no knowledge of how Mr. Knight's 1995 Mitsubishi is now owned by the son of Linda Jones, Mr. Knight's daughter, even though Bobby has custody of the initial paperwork required for transferring title to that automobile.

Mrs. Knight owned the AIG annuity whose proceeds were paid to the estate of Mr. Knight. The Special Administrator did not inform the Knights regarding any issues concerning the right of Mrs. Knight vis-à-vis those proceeds. According to Bobby Knight's testimony, the annuity was owned by Mildred C. Knight. Mrs. Knight's status as the widow of a very modest estate required more attention and discussion about that AIG annuity.

There is no question as to Mr. Knight's intention in his Will. The issues of this litigation do not involve a determination of heirs and it does not involve a Will contest. Mr. Knight's Will had been in the custody of the probate court for nearly three (3) years prior to his passing. Mr. Knight's clear and direct instructions left nearly his entire estate to Mrs. Knight. Because of these clear objectives, the Special Administrator cannot act

to diminish the intentions of the testator and must not become detached from the testator to the extent she acts against his desires. Her behavior cannot revise or rewrite his Will.

The evidence and record clearly indicate that the Special Administrator cannot serve the testator in effecting the aims of his devise. Norman R. Knight, Jr. clearly decided that his wife would be the sole beneficiary of his will. The Special Administrator had no relationship with Mrs. Knight. Consequently, the Special Administrator was oblivious to the expectations of Mr. and Mrs. Knight relative to their testamentary plans. The status of Norman Knight, Jr.'s (Mr. Knight) estate at the moment of her appointment calls attention to the issue of locating assets, and locating assets is a priority aspect of the responsibility of the Special Administrator. The key assets were the annuities that were co-owned by the Knights. The record shows no contact with the Special Administrator and Mrs. Knight regarding her interest in those annuities. Moreover, the record shows no efforts by the Special Administrator to discuss or resolve the funeral expenses for Mr. Knight. Even with an outstanding balance, there has been no inquiries or reports to Mrs. Knight regarding the existence, status or accounting for these expenses. Funeral expenses are a top priority under the probate code.

Additionally, Beatrice E. Whitten as the Special Administrator cannot appear in her professional status as an attorney, i.e. her status as the special administrator must in all ways, appear only as a non-attorney individual. Any references to Beatrice E. Whitten as the attorney for the special administrator is not permissible as she cannot appear for the estate as the Special Administrator. To disregard this professional conflict is error.

The trial judge erroneously concluded that the Special Administrator appointment should remain unchanged.

*** Note that the word "excepting" in Exhibit A is misspelled, correct word is "accepting".**

Respectfully Submitted,

February 16, 2016

J. Seth Whipper, Esq.
Whipper Law Firm
Post Office Box 70070 (29405)
North Charleston, SC 29415
Phone (843)/740-7777
Fax (843)/740-9108

CERTIFICATE OF SERVICE

The undersigned herby certifies that the true copy of the foregoing pleading(s) ~~has~~ been served upon opposing counsel on the 16th day of February, 2016 via:

☐ United States Post Office ☑ Facsimile
☐ Electronic Email ☐ Personal Delivery

X _____
WHIPPER LAW FIRM

you do as a conservator, you were also instructed by a court order to discuss all of your decisions, any major decisions, with Mildred Knight; isn't that true?

A. That's true, yes.

Q. What discussions did you have with Mildred Knight about Bishop Gadsden?

A. I did not have a discussion with Mrs. Knight about Bishop Gadsden.

Q. Would I be wrong to say to you -- to ask you, or to say to you that Ms. Tonney and Bobby Knight, III, didn't get along?

A. I would say you would be correct.

Q. And excepting these letters or these notations about loans or whatever, you never sent any of that stuff to Mrs. Knight, did you?

A. No, I did not. Mrs. Night did not want to hear from me.

Q. Now, when you made the decision or had to change how you were going to deal with Mrs. Knight in her home, were there any kinds of letters or anything saying that you will now be responsible for A, B, C, D, E, F and G?

A. I believe I notified Mrs. Knight that she would be responsible for them. I also notified

Exhibit A

for him there?

A. Because it being one of the finest local facilities, if someone's family is willing to step in and fill the gap if there is going to be a gap -- which, of course, it turns out there is no gap, he died with an estate, as did Mrs. Knight, but if there is going to be a gap and a family member will step in, then I am happy to have a family member step in.

MR. GIBSON: I have no further questions.

THE COURT: Okay. Mr. Kaufmann, please answer any questions Mr. Whipper may have.

CROSS-EXAMINATION

BY MR. WHIPPER:

Q. Mr. Kaufmann, it is my understanding that when you were appointed as the guardian in this case, that you were under a strict restriction to consult with Mildred Knight regarding medical decisions, healthcare decisions, and placement decisions; is that correct?

A. Yes, sir.

Q. It goes without saying you did not consult with her before you made all of these decisions, did you?

Exhibit B

A. I disagree with that.

Q. Tell me how you disagree.

A. Well, I consulted with her as often as she would speak with me, but that was not very often. Most of the time she initiated contact. She discussed visitation with her husband. We discussed those issues not infrequently, but the dynamic between Mrs. Knight and Mr. Bobby Knight and myself went south so early on in the process that we did not have good open lines of communication as I did with Mr. Knight's daughters.

Q. Now, at the time you came in in August, were you aware that Mrs. Knight had been the guardian and the conservator?

A. Yes, sir, that was my understanding, yes, sir.

Q. Do you think that she had any concerns about why she was no longer the guardian?

A. I couldn't answer that. That would be speculation on my part.

Q. She never told you anything about that?

A. I don't recall.

Q. Were you aware that one of the girls had complained to DSS about the care that Mr. Knight was receiving?

Exhibit B

#2

Clemente w/objection

THE VINCENT LAW FIRM, L.L.C.
834 SAVANNAH HIGHWAY
P.O. BOX 31842
CHARLESTON, SOUTH CAROLINA 29417-1842

THAD H. VINCENT
KATHLEEN MORASKA FERRI

(843) 769-6600
FAX (843) 402-0119

October 16, 2007

Exhibit [redacted]

Mrs. Chloe Tonney
2655 Lake Road
Tucker, GA 30084

Walter R. Kaufmann, Esq.
P.O. Box 1173
Mt. Pleasant, SC 29456-1173

RE: Mildred Knight vs. Norman Knight, Jr.

Dear Chloe and Walter:

Mr. Knight's bill has now approximated $2800.00. I think we are all aware of the craziness involved in all of this.

I am unwilling to go any further in this case without getting paid the balance that is owed and getting a retainer of $5000.00. This is no one's fault other than [redacted], but these matters do have to be dealt with.

I want to make sure that everyone understands that I represent Norman Knight, Jr. in the family court matter. I cannot represent Chloe in anything in the family court matter. Obviously, Chloe and Norman's interests should be the same, but I represent Norman, Jr. in the family court matter. In the probate court matter, I represent Chloe and Linda.

I would appreciate phone calls from you and possibly we can have a conference call.

This matter gets worse rather than better.

Sincerely,

Thad H. Vincent

Thad H. Vincent

THV/lg
Enclosure

Exhibit C

000043

STATE OF SOUTH CAROLINA

ISSUED BY THE PROBATE COURT IN THE COUNTY OF CHARLESTON

IN RE: ESTATE OF NORMAN R. KNIGHT, JR.,
Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Norman R. Knight, III and Estate of Mildred C. Knight, Defendant

Case Number: 2012-ES-07-998:2008-ES-10-409

Pending in Charleston County

TO: Morgan Stanley, Custodian of Records, Subpoena Dep't, 485 Lexington Avenue, 11th Fl., New York, NY 10017

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

Deposit and Withdrawal Activity/Records including identity of depositors and payees for the years beginning 2004 through 2009 involving Smith Barney Account No: [redacted]2680 Account Holders: Linda Jones, Chloe Tonney and Queenie.

PLACE	DATE AND TIME
Whipper Law Firm, Post Office Box 70070, North Charleston, SC 29415	April 28, 2014 , 9:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature — 4/17/2014 Date — J. Seth Whipper Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number:
Attorney for Respondents, Whipper Law Firm, 4592 Durant Avenue, North Charleston, SC 29405; (843) 740-7777

Clerk of Court/Issuing Officer's Signature — Date — Print Name

Pro Se Litigant's Name, Address and Telephone Number:

SCCA 254 (11/2013) CERT 0305

CERT 0305

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

CERT 0305

PROOF OF SERVICE

SERVED	DATE April 17, 2014	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE 485 Lexington Avenue, 11th Fl, New York, NY 10017	☐YES ☒NO AMOUNT $
SERVED ON Morgan Stanley, Custodian of Records, Subpoena Department		MANNER OF SERVICE Mail and Facsimile
SERVED BY J. Seth Whipper		TITLE Attorney for Defendants

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

SIGNATURE OF SERVER

4592 Durant Avenue, North Charleston, SC 29405
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A)A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

LINDA K JONES
CHLOE K TONNEY
[redacted]
2655 LAKE RD
TUCKER, GA 30084

SMITH BARNEY
citigroup

55-7265/212

3/1/07
Date

⑆ 570090891 ⑈ 00 031507 ⑆ 57

Pay to the Order of Bishop Gadsden Rehab, Inc $ 445.50

Four hundred & forty five & 50/100 Dollars

FINANCIAL MANAGEMENT ACCOUNT
800-634-9855
Citibank F.S.B. Englewood Cliffs, N.J.

Linda K Jones

Chloe K. Tonney

For Dad's 11/16 - 2/12/07

Norman Knight Clinic [redacted] 119

000010

CERT 0308 CERT 0308 CERT 0308

031000040
07/10/2007
6510662223

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

[053000206] 07/10/2007
073374639

CHLOE K TONNEY
[redacted]
2655 LAKE RD
TUCKER, GA 30084

7/2/07

55-7265/212

Pay to the Order of Bishop Gadsden Rehab $ 526.80

Five hundred & Twenty-six & 80/100 Dollars

FINANCIAL MANAGEMENT ACCOUNT
800-631-9555
Citibank F.S.B. Englewood Cliffs, N.J.

Chloe K. Tonney

For Rehab Daddy

[redacted]

570152951 07/07/2007 S7

031000040
11/28/2007
631731088

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

[053000206] 11/28/2007
093646254

CHLOE K TONNEY
[redacted]
2655 LAKE RD
TUCKER, GA 30084

10/10/07
Date

35-7265/212

Pay to the Order of BG Rehab

$ 405.00

Four hundred & five & 00/100 Dollars

FINANCIAL MANAGEMENT ACCOUNT
800-631-9255
Citibank F.S.B. Englewood Cliffs, NJ

Sarah Jones

For Daddy

5701 16303 00 112807

Chloe K. Tonney

[redacted]

~~0311~~000040*
01/08/2008
611751520A

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

[053002067 01/08/2008 0396010446

CHLOE K TONNEY
[redacted]
2655 LAKE RD
TUCKER, GA 30084

12/15/07 — 55-7265/212
Date

Pay to the Order of BG Rehab $ 244.92

two hundred & forty four 92/100 — Dollars

FINANCIAL MANAGEMENT ACCOUNT
800-634-9855
Citibank F.S.B. Englewood Cliffs, N.J.

Knight 4119

For Dec - 10/20 + 11/27 mrsw

Chloe K Tonney

000015

CERT 0311 CERT 0311 CERT 0311

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

RECEIVED
DEC 29 2016
SC Court of Appeals

Submitted By:

J. Seth Whipper
WHIPPER LAW FIRM
P.O. Box 70070
N. Charleston, South Carolina 29415
(843) 740-7777
Attorney for Appellants

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED
DEC 29 2016
SC Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

CASE NO. 2014-CP-10-5355
Appellate Case No. 2016-000748

In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby" Knight, III, Appellants,

v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents.

SUPPLEMENTAL RECORD ON APPEAL

Jackson Seth Whipper
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Mt Pleasant, S.C. 29464
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Charleston, S.C. 29407
Attorney for Respondent
(843) 852-4646

INDEX

RE: SUPPLEMENTAL RECORD ON APPEAL (S.R.O.A.)

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3. TRANSCRIPT: Appellant's	002 - 018
4. TRANSCRIPT: Respondent's	019 - 059

CERT 0314 CERT 0314 CERT 0314

The Supreme Court of South Carolina

2008 AUG -6 AM 9:38

ORDER

I find that the Honorable Irvin G. Condon, Judge of Probate and Tamara C. Curry, Associate Judge of Probate for Charleston County, are disqualified from any further hearings In Re: Estate of Norman Robert Knight, Jr., 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 Mary Blunt, Associate Judge of Probate for Dorchester County, be, and hereby is, appointed as special probate court judge to sit in the above matter. As such special probate court judge, she shall have all the powers and duties appertaining to a probate court judge for Charleston County for the handling of the above matter.

JEAN H. TOAL, CHIEF JUSTICE

BY: Rosalyn Frierson

Rosalyn Frierson, Director
South Carolina Court Administration

August 5, 2008
Columbia, South Carolina

spouse or dependent individual who is a successor to title, those exemptions apply against any judgments against that estate, so this is where we are.

THE COURT: There are three aspects to this. First is that the title to the subject property is vested in Norman R. Knight, III. Is it your assertion that if it stood alone, it would be a ground for dismissal of the petition?

MR. WHIPPER: Yes, Your Honor, it is.

THE COURT: Then let's hear argument from other counsel. Is there any further argument on that subject?

MR. WHIPPER: Well, Your Honor, it is. It's past, and the property is not -- in other words, the claim is against the estate of Norman R. Knight, Jr., and the property no longer is in the hands of Norman R. Knight, Jr.

MS. WHITTEN: Your Honor, there is -- I mean, just to clarify, there is no currently pending petition for sale. I did file such a petition in Dorchester County. It was ruled upon, and I was moving for the sale. However, that was one of the orders that was invalidated because it was issued by the associate probate judge, and the other orders that were invalidated related to --

THE COURT: I understand. That's one of the petitions I thought we were going to be rehearing.

MS. WHITTEN: No, sir. I have not refiled it because that is dependent on whether these claims are approved. That is why I had to bring the petition. If the claims are not approved, there would be no reason to sell the real estate, so I'm holding that to see whether that will be needed. So I believe this is actually moot because there is no pending petition for sale, and if the claims are denied, I would have no need to sell the real estate.

THE COURT: My understanding is what Judge Dennis did was -- I just want to go to his order.

MS. WHITTEN: It's certainly not a clear path, Judge.

THE COURT: Well, if what you're saying is true, essentially -- my understanding of Judge Dennis' order is that the matter was reversed, and his -- at least his former order says it was remanded to the probate court.

MS. WHITTEN: The later order from the Supreme Court stated, Your Honor, that the associate judges did not have jurisdiction, did not have the authority to issue --

THE COURT: The later order from the Supreme

Constitution. You and other lawyer legislators are serving an invaluable public service by doing this, and the Chief Justice has recognized that in affording the protection she has, which I have recognized.

At the time we scheduled the hearing for July 17, it was -- we're still under the two-week rule, rather than the 30-day rule. And I am mindful, even though that was changed, you didn't seek additional time, and I appreciate that because that has brought us to this hearing and hopefully will allow us to go forward more expeditious while we can.

But the change of venue, though, is another thing. Are you still asking for change of venue, -- a formal change of venue?

MR. WHIPPER: I am, Your Honor.

THE COURT: You are?

MR. WHIPPER: I am.

THE COURT: Now, by change of venue, you mean all proceedings must be held in Charleston?

MR. WHIPPER: In Charleston County. Your Honor, I tell you -- again, Your Honor, the deal with what we have in our system is important, and part of the implications of what we have as our system is that, for one thing, fortunately probate court judges are elected officials, so they're elected by those

people in the county that they serve. So looking at that -- well, the first aspect, you think a person who lives in Charleston County would be served by the probate court.

THE COURT: Now, you're getting into a different area. I thought your motion was simply to change venue as in place of trial. But are you challenging my -- because I didn't -- the Chief Justice appointed me.

MR. WHIPPER: I'm making these points as a matter of law. You can see that there's some consistencies with having -- first legally -- having whatever occurs in a probate court for the County of Charleston to happen in Charleston County because that's where the constituencies for the probate court are. And so then there is the forum non conveniens argument that everything involved with this particular issue is located in Charleston County, so hence our motion.

THE COURT: I am sensitive to that, which is the main reason I scheduled this hearing. That, and also in order to get a hearing under our belt as quickly as possible.

Any argument on this motion?

MS. WHITTEN: None from me, Your Honor.

Q. And how much money is left in the estate today?

A. Around $7,000.

Q. And if the claim included Iris Albright on behalf of Family Services, and Walter Kaufmann as well as funeral expenses, is there any assets besides the $7,000 you just testified to available to satisfy those claims?

A. No, there isn't.

Q. And if this Court should accept Ms. Tonney's claim for whatever amount, again there is insufficient liquid funds to satisfy the claim, correct?

A. That's correct.

Q. And it would be necessary for you to sell the assets of the estate?

A. It might be.

Q. And at one point in Dorchester County did you not attempt to try to get an appraiser to do an appraisal of the two houses in North Charleston?

A. Yes, I was actually directed by the probate judge to do so.

Q. Was the appraisal ever conducted?

A. It was not. The appraiser conducted a

A. I would estimate about a month, Mr. Gibson. I attempted contact on several successive weekends. I went to go meet with Mr. Knight and was either met with complete silence at the door or I was told before I went there that I would not be allowed to come in if I went there, and after that happened several times, then I took other action.

Q. Did you ever get to see Mr. Knight?

A. Not prior to removing him from his home.

Q. You said prior to removing him. What happened?

A. Not being able to see him, I informed the Court that I was not able to discharge my duties as guardian, and I informed the Court that I thought it was an important exigent circumstance. I went ex parte to the Court and filed an affidavit that I was unable to contact my ward, and the Court issued an order that I was permitted to remove him from his home at that point.

Q. And did you remove him?

A. I did.

Q. How did you go about doing that?

A. With the cooperation of North

for him there?

A. Because it being one of the finest local facilities, if someone's family is willing to step in and fill the gap if there is going to be a gap -- which, of course, it turns out there is no gap, he died with an estate, as did Mrs. Knight, but if there is going to be a gap and a family member will step in, then I am happy to have a family member step in.

MR. GIBSON: I have no further questions.

THE COURT: Okay. Mr. Kaufmann, please answer any questions Mr. Whipper may have.

CROSS-EXAMINATION

BY MR. WHIPPER:

Q. Mr. Kaufmann, it is my understanding that when you were appointed as the guardian in this case, that you were under a strict restriction to consult with Mildred Knight regarding medical decisions, healthcare decisions, and placement decisions; is that correct?

A. Yes, sir.

Q. It goes without saying you did not consult with her before you made all of these decisions, did you?

Q. And then the next document is number 35, produced as part of the discovery. What does document number 35 represent?

A. These are sweatshirts that I bought for my father.

Q. And where did you purchase those from?

A. Parisian.

Q. And when did you make that purchase?

A. October 7th, 2006.

Q. And how much was that purchase?

A. $26.74.

Q. And how was that purchase made?

A. With my personal check.

Q. Going to the next document, which would be number 64, do you have that?

A. I do.

Q. And what does that document represent?

A. This is a recliner for my father.

Q. And when did you make that purchase?

A. February 1st, 2006.

Q. And where did the recliner go?

A. To Savannah House.

Q. That is where it was shipped to?

A. Yes.

Q. What was the total amount of the

questions. The time for review of documents should have been before we commenced trial. So let's go ahead and ask him the questions now. We are delaying unduly.

Q. Mr. Knight, what is that document?

A. Well, it says it was in the Family Court. It is an attorney fee affidavit signed by Thad Vincent. So wanting to be paid for a Rule to Show Cause.

Q. And then you have -- what is that?

A. It is an order for motion for additional temporary relief.

Q. Okay. And turn the page.

A. And then there is an order for a Rule to Show Cause.

Q. And turn the page. And does that order attorneys' fees to be paid in that Rule to Show Cause?

A. Yes, it says that Mama was supposed to pay Thad Vincent $1,298 for that.

MR. WHIPPER: Okay. Your Honor, we would like to move that into evidence.

THE COURT: Okay. How many different documents are there?

MR. WHIPPER: It is all one exhibit,

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Judge.

THE COURT: But does it contain multiple documents?

MR. WHIPPER: It does, your Honor.

THE COURT: We have done that before. I just want to make sure we know what it is that we are marking.

MR. GIBSON: Your Honor, objection to relevancy. Paying attorneys' fees arising from a Rule to Show Cause and deposing Mildred Knight has nothing do with Ms. Tonney's claim.

THE COURT: To the extent that there is a claim for attorneys' fees specifically paid to Mr. Vincent, I will overrule the objection, and I will have the clerk mark this document. It is all stapled together. It includes an attorney fee affidavit by Thad Vincent, a Family Court form order, and a Family Court order from Rule to Show Cause -- collectively marked Respondent's Exhibit 13.

(RESPONDENT'S EXH. 13, ATTORNEY FEE AFFIDAVIT AND FAMILY COURT ORDERS, was marked for identification and received into evidence.)

BY MR. WHIPPER:

Q. Mr. Knight, what other attorneys' fees

orders are there in that particular case?

A. None.

Q. What is that document there? I show you what has been marked as Claimant's Exhibit 6.

A. Yes, sir. It's Mr. Vincent's bill for representing in the Family Court case.

Q. Okay. And are there any redactions on that bill?

A. Yes, sir, telephone conference, 9/18/2007.

Q. All right. How much does he charge for that?

A. $106 for that one item.

Q. All right. And what was the date on that?

A. The entry is September 18th, 2007.

Q. Okay. What is your opinion about whether the estate should be charged with that expense?

THE COURT: I have already ruled on direct that that would not be allowed. The redacted line items would not be allowed. Let's move on to the next item.

Q. Now, we are going to have -- what information -- whose funds were involved in paying

A. The other one was Queenie.

Q. So what came to mind with that Queenie?

A. When I saw Queenie's name, then that is when Mom and Dad -- that is Louise Reynolds, like she said, and Mom and Dad always took care of her.

MR. GIBSON: Your Honor, I am going to object. He is talking about the Queenie account. We have withdrawn --

THE COURT: Mr. Gibson, you were present in the chambers conference where I told Mr. Whipper he was going to ask questions, and let's go ahead. The questions you were going to ask about deposits into the Queenie account, I said I would allow that. That is what I would like for us to go ahead and get to. You may ask those questions. You are aware of that, Mr. Gibson. I am overruling your objection if we can get to that question.

Q. And so the Queenie account, what did that mean to you about the deposits in that account?

A. In June and July of 2004, when Mom and Dad were getting the powers of attorney revoked, they had Louise Reynolds' power of attorney. We went to the bank, and that is when Mama found

out -- we all were there, Wachovia Bank. The lady's name was Judy, and she had informed us that the only thing Mom and Dad left in the lockbox for Louise were her bonds that she had bought since she was in the Navy, so maybe $160,000 or $180,00 worth of them.

Q. How much?

A. A hundred and sixty to eighty thousand. It was hard to tell the exact value because the face value is so old, you are supposed to get the interest calculated, is what Judy said, and then they will issue new bonds.

Q. And so what did you determine from making that visit?

A. That because Chloe and Linda had gotten Louise's power of attorney when they got Mama's in January of 2004, that that money had been taken away from there. The reason Mom and Dad never cashed any of those bonds -- I think this will get to the end of it real quick and make everybody happy --

MR. GIBSON: Objection, your Honor. It calls for speculation.

THE COURT: Mr. Gibson, let's get through this. Let's go ahead and let him answer

it.

A. Louise was kind of next door, part of our family, took meals over. She came over. One day in that year after Mary passed away -- that was her partner, lady partner, and Louise fell down. We found her out in front of Mama's house. She was coming over, and she scratched her head and broke her glasses. We got her in the house, got her to the doctor, and he sent her from his office straight to assisted living, and then Mom and Dad took care of her until my sisters used their power of attorney to stop Mama from going to see Louise.

Q. So the power of attorneys for Ms. Reynolds also came to Ms. Tonney at the same time as your mother and father?

A. Yes.

Q. The only access to that account was through --

A. Ms. Reynolds' money?

Q. But the only access was through?

A. Through Chloe Tonney and Linda Jones.

Q. And Chloe called Ms. Louise --

A. Well, Louise was Queenie, Daddy was Cooter Brown, Chloe used the name Rowenna.

Q. So who took custody of the money?

A. The last time we knew where the money was at -- there is one other part to that. Mary -- that was her partner, she had about the same amount of money in bonds. They lived together for their whole life. And Mary took care of her sister's son, and so when Mary passed away -- she was younger than Louise, so they never thought she would pass away first, and then Mom and Dad saw to it that Robert got the half of the bonds that he was supposed to get that had his name on it. But they never did anything with Louise's because she was in a nursing home. I have her will, and I am supposed to see to it that that gets done with.

Q. And that's why you felt that Queenie account would hold that money?

A. Yes.

MR. WHIPPER: I have nothing further.

THE COURT: Okay. Thank you.

Any cross-examination on that?

MR. GIBSON: No cross-examination.

THE COURT: Sir, you are now excused. You may step down.

(The witness was excused.)

THE COURT: Okay, any more witnesses to call at this time, Mr. Whipper, in defense of the

entire case and make a ruling on the merits based on a preponderance of the evidence in the case, which has not been done; therefore, I will -- at least my findings have not been done, so I will deny the motion for a directed verdict or the motion in effect to grant the petition without consideration of the respondent's evidence. That would not be appropriate, so I am going to deny your motion, and I will consider all of the evidence and reach a decision based on the preponderance of the evidence as determined in that case.

All right, so those two motions are denied. What we have agreed upon is, there is a lot of evidentiary exhibits to go through. There is testimony of various witnesses to be considered. We had testimony over the course of two different days of trial. All counsel have agreed to the following procedure: Within 30 days from tomorrow, and that is by May 29th of this year, 30 days from tomorrow, each petitioner -- the attorney for each petitioner will submit closing argument in writing by brief or memorandum by May 29th, and that is both on the petition for allowance of claim and the petition for removal of the personal

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representative. Within 15 days after service of the respective briefs, opposing counsel will have the right within 15 days from the date of such service to file argument in reply. Argument will then be closed, and the Court will review the evidence and all of the arguments submitted and reach a decision at the earliest possible date, which will be communicated to the parties, and the successful parties' attorneys will be directed to prepare an appropriate order or orders.

So with that, I would like to thank you for the cooperation of counsel in arriving at these stipulations. I thank everyone for their time and attention. The attorneys have all done an excellent job of presentation, and that always makes the Court's job a lot easier. So we will -- I would like to thank the court reporter for her services in the matter, and I would like to thank the deputy for his services, and we will now adjourn this proceeding. So we stand adjourned.

(The hearing was adjourned at 4:16.)

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Family Services, did Mr. Knight have sufficient funds to provide for his everyday necessary care?

A. Yes, he did.

Q. At some point was there -- well, let me ask this --

A. We were starting to run low.

Q. And did you ever have to contact Chloe Tonney for any assistance on her father's behalf?

A. Yes, I did.

Q. And why was that necessary?

A. When Mr. Knight was moved over to Bishop Gadsden, there was really not sufficient funds to maintain him in Bishop Gadsden for an extended period of time, and Ms. Tonney and I talked frequently about this, and she assured me that if there were not sufficient funds in the conservatorship account to meet his needs, that she would pay the difference.

Q. And was Family Services involved as the conservator at the time Mr. Knight was removed from his home to Savannah House?

A. Yes, they were.

Q. Was there any discussion between you and Ms. Tonney as to the need to buy personal items for her father?

A. She did buy personal items for him and furniture.

Q. And was that necessary expense for Mr. Knight?

A. Yes, it was.

Q. And do you know to your knowledge whether Mr. Knight had any clothes or any medicine taken with him to Savannah House?

A. My understanding was that Mr. Knight was removed from the home with just the articles of clothing he wore.

Q. And was there an understanding between you and Ms. Tonney as to any money that she had spent on behalf of her father would be treated as a loan?

A. Yes.

Q. Was there a discussion between you Ms. Tonney with regard to the legal fees that Ms. Tonney was paying to Thad Vincent on behalf of her father?

A. Ms. Tonney submitted a letter to me saying that she had paid Attorney Vincent's fees and that she was considering it a loan and that it was prime plus two.

Q. And that is what has been marked as

Petitioner's Exhibit Number 7. Is this indeed the letter you are referring to?

A. Yes, it is.

Q. Did you have any objection to the arrangement that Ms. Tonney made with Family Services?

A. No, I did not.

Q. Ms. Albright, did you feel that it was necessary for Ms. Tonney to pay legal fees on behalf of her father?

A. Mr. Knight did not have the funds to pay these fees and maintain his care.

Q. And do you know what happened by way of the Family Court action?

A. Yes. There was an order issued that Mr. Knight was to pay half of his civil service funds to Mrs. Knight.

Q. And as a result of that, did that have an impact on his financial ability to live at Savannah House as well as Bishop Gadsden?

A. It did.

Q. As a result of that financial burden, you made contact what Ms. Tonney?

A. Yes.

Q. For assistance?

A. Yes.
Q. Did she agree to assist her father?
A. Yes, she did.
Q. I have given you a letter from Ms. Tonney to you dated March 15th, 2006, which has been marked -- stamped number 1 as well number 2 for discovery purposes. Are you familiar with that letter?
A. Yes, I am.
Q. All right. And did you in fact receive this letter?
A. I did.
Q. Okay. And do you need a moment to review the letter to understand the content?
A. I am pretty familiar with it. I reviewed it last night.
Q. Okay. And in this letter -- what was the purpose of this letter? Was it to confirm an arrangement between you and Ms. Tonney?
A. It was to confirm that Ms. Tonney would supplement for anything that her father needed that the conservatorship could not pay.
Q. I direct your attention to the third paragraph on the first page. The information that Ms. Tonney provided in the letter, is all of the

information in there accurate, to the best of your knowledge?

A. Yes, it is.

Q. And did you have any objection or did you write a letter in response to this not agreeing to what she had said?

A. No, not that I recall.

MR. GIBSON: Your Honor, at this time I would move this as Petitioner Exhibit Number 13

THE COURT: You are not offering in evidence the copy of the Family Court order?

THE COURT: A copy of the letter just identified from Chloe Tonney to Family Services, Inc., dated March 15, 2006, will be received and admitted into evidence as Petitioner's Exhibit 13.

(PETITIONER'S EXH. 13, 3/15/06 LETTER, was marked for identification and received into evidence.)

Q. Ms. Albright, what kind of arrangement had been made between Family Services and Bishop Gadsden as far as payment for Norman Knight, Jr.?

A. We did not make any arrangements as far as payment is concerned. Ms. Tonney signed the guarantor statement.

Q. Was there an understanding that Family

Service as conservator for Mr. Knight would submit payment to Bishop Gadsden?

A. That is correct, yes.

Q. And how was it determined how much as a conservator could be paid out of Mr. Knight's account to Bishop Gadsden?

A. I would look at the funds that were available at the beginning of every month and forecast out what would need to be paid as far as the funds that needed to be paid for Mrs. Knight and prescriptions and items like that, and then I would send the rest to Bishop Gadsden.

Q. And was there any conferences between you and Ms. Tonney as to how much she needed to pay to satisfy the account?

A. There were times when I would have to call her -- at one point I told her that after I paid everything that I could, Mr. Knight would only have 67 cents in his account, and Ms. Tonney sent a check for a thousand dollars.

Q. Who did she send a check to? Was a check made payable to Family Services?

A. Give me one moment.

Q. That is the check that Family Services received from Ms. Tonney?

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A. That is correct, yes.

Q. And that is the check that has stamp number 3 from Chloe Tonney and Frederick Tonney dated 5/29/07 for a thousand dollars. What was the reason for Ms. Tonney sending the check to Family Services?

A. Because Mr. Knight had a balance in his account of 67 cents and he wouldn't have had sufficient money to pay any additional bills that came in, such as prescription, hygiene items, and things like that.

Q. Every time that you would contact Ms. Tonney for money, was she willing to provide for her father?

A. Absolutely.

MR. GIBSON: Your Honor, I am going to move this check as Petitioner's Exhibit Number 14.

THE COURT: Any objection?

MR. WHIPPER: Objection, your Honor. Again, unless -- I am sorry, no objection.

THE COURT: Without objection, the check of Chloe Tonney, number 2594, will be received and admitted in evidence as Petitioner's Exhibit 14.

(PETITIONER'S EXH. 14, CHECK 2594, was

you do as a conservator, you were also instructed by a court order to discuss all of your decisions, any major decisions, with Mildred Knight; isn't that true?

A. That's true, yes.

Q. What discussions did you have with Mildred Knight about Bishop Gadsden?

A. I did not have a discussion with Mrs. Knight about Bishop Gadsden.

Q. Would I be wrong to say to you -- to ask you, or to say to you that Ms. Tonney and Bobby Knight, III, didn't get along?

A. I would say you would be correct.

Q. And excepting these letters or these notations about loans or whatever, you never sent any of that stuff to Mrs. Knight, did you?

A. No, I did not. Mrs. Night did not want to hear from me.

Q. Now, when you made the decision or had to change how you were going to deal with Mrs. Knight in her home, were there any kinds of letters or anything saying that you will now be responsible for A, B, C, D, E, F and G?

A. I believe I notified Mrs. Knight that she would be responsible for them. I also notified

lawyer; you know, he doesn't have 5,000"?

A. Ms. Tonney and I spoke very frequently about the fact that he did not have substantial moneys, and she was very much -- that she wanted to provide for her father in the way that he was used to being -- the way he used to live and that she would take care of that.

Q. And did you not have any discussions with her about simply getting a court order to have his personal effects turned over to her?

A. Personal effects turned over to --

Q. Mr. Knight, Jr.'s, personal effects, his clothing he left at the house, his shoes, his shirt, his bathrobe.

A. Mr. Whipper, I tried to get a hospital bed moved from that house for Mr. Knight, and I was refused.

Q. When you say you tried to get it, how did you try to get it?

A. We contacted the family to have the hospital bed moved, and they would not allow the hospital bed moved.

Q. And you are saying you never got an order from Judge Young in any way telling you what to do after August of '05 in terms of paying bills?

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A. I would estimate about a month, Mr. Gibson. I attempted contact on several successive weekends. I went to go meet with Mr. Knight and was either met with complete silence at the door or I was told before I went there that I would not be allowed to come in if I went there, and after that happened several times, then I took other action.

Q. Did you ever get to see Mr. Knight?

A. Not prior to removing him from his home.

Q. You said prior to removing him. What happened?

A. Not being able to see him, I informed the Court that I was not able to discharge my duties as guardian, and I informed the Court that I thought it was an important exigent circumstance. I went ex parte to the Court and filed an affidavit that I was unable to contact my ward, and the Court issued an order that I was permitted to remove him from his home at that point.

Q. And did you remove him?

A. I did.

Q. How did you go about doing that?

A. With the cooperation of North

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Charleston police, a SWAT team.

Q. And when he was removed, what did he take with him?

A. He was in a wheelchair, and he was wearing some clothes, very light clothing. He may have had a sheet or blanket over his lap, but that was all.

Q. What about his medicine?

A. No medicine, no other clothing, nothing else ever came out of that house.

Q. And where was he taken to?

A. To Savannah House, which was prearranged.

Q. And how did the arrangement with the Savannah House come about?

A. I had had several wards that had lived at Savannah House prior to that period of time, and so I chose that location and just coordinated that they would be prepared to accept him when he got there.

Q. Were you the one that made that decision as to where his placement would be?

A. Yes.

Q. And was that also the role of guardian?

A. Yes.

Q. And at the time, or just prior to Mr. Knight going to Savannah House, did you have a chance to look at the room he was going into?

A. Yes, I was familiar with the rooms at Savannah House.

Q. And does Savannah House provide furniture, beds?

A. They do not. They normally have a little bit of furniture that they can let somebody borrow for a few days until arrangements are made. Sometimes people come out of a hospital or somewhere directly to there, and so sometimes they will offer, you know, a temporary piece of furniture or two, but normally not furnished at all.

Q. What kind of accommodations were made for Mr. Knight at the time he arrived at Savannah House?

A. Well, there was a bed put in his room that again was a loaner bed from the facility, but it was not his own hospital bed that he had had at home.

Q. What about furniture?

A. There was no furniture other than the bed in the room and perhaps a nightstand at that

point, something borrowed and just put in there temporarily.

Q. At some point in time was there furniture ever put in the room?

A. Yes.

Q. How did that come about?

A. Ms. Tonney purchased the furniture and provided it for him.

Q. And was there a discussion between you and Ms. Tonney with regard to the placement of the furniture?

A. Yes, there was.

Q. And did you feel the need that there be furniture for the room?

A. Absolutely.

Q. And did you have any objection to Ms. Tonney furnishing the room?

A. No, I was very grateful for her assistance through the rest of her father's life. She and her sister doted on their father and took amazing care of him.

Q. And how long did Mr. Knight remain at Savannah House?

A. Approximately six months.

Q. And how was he doing there?

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Very involved.

Q. Was Mr. Knight wheelchair-bound?

A. Yes, he was.

Q. And did he need physical therapy?

A. Need is difficult to say. He benefited from physical therapy certainly, and it was something that would keep range of motion and comfort even if he wasn't able to walk.

Q. And that was in his best interest?

A. I certainly thought it was in his best interest to have it, yes.

Q. I have what is marked as Petitioner's Exhibit Number 3 in this case. Are you familiar with that letter?

A. Yes, I am.

Q. And your name is on that letter from Thad Vincent?

A. Correct, I am one of the addressees of the letter.

Q. And why would you be one of the recipients of this letter?

A. In my position as Mr. Knight's guardian, it was between me and Ms. Albright to decide whether or not he should have legal representation for the Family Court case.

Q. And what was that decision?
A. The decision was that he should have representation.
Q. Did that include as to Thad Vincent and Mary Ann Hall?
A. Yes, Mr. Vincent and Ms. Hall.
Q. Why did you feel that Mr. Knight needed legal representation?
A. It might be a lawyer bias, but I think anybody involved in a Family Court case should be represented.
Q. And you had no objection to Ms. Tonney assisting her father with financial responsibility?
A. No, I didn't.
Q. In all of the payments and action undertaken by Ms. Tonney, was it for the benefit for her father?
A. Yes, absolutely.
Q. Did Ms. Tonney keep in touch with you in discussion of what would be best for her father?
A. All of the time.
Q. And did you have the authority to refuse his admission to Bishop Gadsden?
A. Yes, I did.
Q. And why did you feel it would be best

for him there?

A. Because it being one of the finest local facilities, if someone's family is willing to step in and fill the gap if there is going to be a gap -- which, of course, it turns out there is no gap, he died with an estate, as did Mrs. Knight, but if there is going to be a gap and a family member will step in, then I am happy to have a family member step in.

MR. GIBSON: I have no further questions.

THE COURT: Okay. Mr. Kaufmann, please answer any questions Mr. Whipper may have.

CROSS-EXAMINATION

BY MR. WHIPPER:

Q. Mr. Kaufmann, it is my understanding that when you were appointed as the guardian in this case, that you were under a strict restriction to consult with Mildred Knight regarding medical decisions, healthcare decisions, and placement decisions; is that correct?

A. Yes, sir.

Q. It goes without saying you did not consult with her before you made all of these decisions, did you?

A. I disagree with that.
Q. Tell me how you disagree.
A. Well, I consulted with her as often as she would speak with me, but that was not very often. Most of the time she initiated contact. She discussed visitation with her husband. We discussed those issues not infrequently, but the dynamic between Mrs. Knight and Mr. Bobby Knight and myself went south so early on in the process that we did not have good open lines of communication as I did with Mr. Knight's daughters.
Q. Now, at the time you came in in August, were you aware that Mrs. Knight had been the guardian and the conservator?
A. Yes, sir, that was my understanding, yes, sir.
Q. Do you think that she had any concerns about why she was no longer the guardian?
A. I couldn't answer that. That would be speculation on my part.
Q. She never told you anything about that?
A. I don't recall.
Q. Were you aware that one of the girls had complained to DSS about the care that Mr. Knight was receiving?

presented to the Court, that being from Walgreens, which included some of his briefs?

A. Yes.

Q. Would you look at the second page, Ms. Tonney, which is the receipt from Harris Teeter, which is stamped number 22?

A. Yes.

Q. And we had most of the redactions. Before we get into that, were these items that were purchased for the benefit of your father?

A. Yes.

Q. And did you feel that these items were essential for his needs?

A. Yes. At Savannah House there was a small kitchenette in each room, and because of his digestive situations, he was required to have small meals and snacks in between regular meals, which Savannah House did not offer.

Q. And so you took it upon yourself to buy various items for your father?

A. Yes.

Q. And these items were purchased at Harris Teeter, and they were purchased by a check?

A. Yes.

Q. What was the amount purchased?

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A. $132.75.

Q. Okay. And down at the bottom, a check number, do you know what that represents?

A. Yes, a check written off my and my husband's bank account.

Q. Okay. And as part of the order for the judge, did you make an effort to retrieve that check to present to this Court?

A. I did.

THE COURT: To clarify my order, if the check had been sought in discovery, then it had to be unredacted.

MR. GIBSON: You couldn't get the check.

THE COURT: Okay.

Q. You made an inquiry with the Bank of America with regard to this particular check you had issued to Harris Teeter?

A. Yes, I did.

Q. And what I have presented to you is a note from Bank of America stamped number 62 as far as the discovery. Is this the correspondence you received from Bank of America?

A. It is.

Q. If you could indicate to the Court what

this statement from Bank of America represents.

A. Indicating that they do not retain records beyond five years and cannot provide those.

Q. In that same letter, it makes a reference to what check number?

A. 1673.

Q. And that's the same check you had issued to Harris Teeter?

A. Yes.

Q. And do you remember when that check was issued?

A. I do not. It was within -- it was probably within the first week or two that my father went to Savannah House, which was January of 2006.

Q. So you made a good-faith effort to try to obtain a copy of the check?

A. I did.

Q. And you continued to purchase more items for your father; is that correct?

A. I did.

Q. Okay. And you have in front of you several receipts from Dillard's identified as stamp number 23 and 24 for discovery?

A. Yes.

Q. And what was the purpose of you going to Dillard's?

A. To buy clothing for my father.

Q. And this is the time he was first admitted to Savannah House?

A. Yes.

Q. And did you feel the need to buy your father some clothes?

A. Yes. He had no clothes except what he left his home with.

Q. In regard to what appears to be a receipt on the left side of the document number 23, all of the clothes on this receipt were purchased for your father?

A. Yes.

Q. And what was the total amount of the clothes?

A. On that receipt, $197.56.

Q. And how was that paid for?

A. With my credit card, a Visa.

Q. And that is your name below that?

A. Yes.

Q. And going to the next column, again all of those clothes that were purchased were for the benefit of your father?

A. Yes.

Q. Did you keep any of those clothes for your own personal use?

A. No.

Q. How about for your husband?

A. Wrong size. No.

Q. And what was the total amount of that purchase?

A. $142.71.

Q. And how was that paid for?

A. With my credit card, a Visa.

Q. And what I want to do is, if I may, go back over to the first column. I apologize. What was the date of the purchase?

A. February 4th, 2006.

Q. And that was the time your father was at Savannah House?

A. The first week of his residency, yes.

Q. Going to the next page, which is document number 24, and what did you purchase at that time?

A. Bedding for my father.

Q. And what was the total amount of that purchase?

A. $137.39.

Q. And how was that paid for?
A. With my credit card.
Q. And when was that purchased?
A. February 5th, 2006.
Q. And when you made the purchase from Dillard's, were you in touch with Iris Albright, the conservator for your father?
A. I was.
Q. Any objection from her making those purchases?
A. No.
Q. Did you believe the purchases were necessary for your father's well-being?
A. Yes.
Q. According to the next page, document number 25, produced as part of the discovery, is it Sears?
A. Yes.
Q. And what did you purchase from Sears?
A. Pants.
Q. For whom?
A. My father.
Q. Did you keep any pants?
A. No.
Q. How about for your husband?

A. No.
Q. And when were the pants purchased?
A. June 4th of 2006.
Q. And what was the total amount of the purchase?
A. $63.81.
Q. And how was that paid for?
A. Check.
Q. Whose check?
A. My check.
Q. At that point in time, did you have any funds of your father in any of your accounts?
A. No.
Q. Did you have credit cards in the name of your father at that time?
A. No.
Q. Going over to the next column, what did you purchase?
A. One pair of pants.
Q. And for whom?
A. My father.
Q. And that was for your father only?
A. Yes.
Q. And what was total amount purchased?
A. $21.38.

Q. And how was that paid for?
A. My credit card.
Q. Did your father have a Sears credit card?
A. He did.
Q. Did you have possession of it?
A. No.
Q. So it was with your own personal account?
A. Yes.
Q. And when was this purchased?
A. April 14th, 2007.
Q. And were those items delivered to your father?
A. Yes.
Q. Did you have any discussion with Ms. Albright about the purchase?
A. Yes.
Q. Any objection?
A. No.
Q. Going to the next page, the document number 26, what did you purchase at Sears?
A. More pants.
Q. And when did you make the purchase?
A. February 2nd, 2006.

Q. And was the purchase solely for your father?

A. Yes.

Q. Did you keep any of the items?

A. No.

Q. And how was that purchase made?

A. With my credit card.

Q. Whose MasterCard?

A. Mine.

Q. Did you have a MasterCard in the name of your father?

A. No.

THE COURT: Just in order to move us along, you have previously asked her if she had any credit cards belonging to her father, and now that question is repeated with every item, so I think that has been asked and answered. I don't want hear that.

MR. GIBSON: Thank you, your Honor.

Q. The next item on document number 27, what is that?

A. That was a Citadel print. My father was a graduate of the Citadel, and he had various pieces of Citadel paraphernalia in his home, and I purchased this print because he had nothing to hang

on his walls, and I felt that was something that would look familiar to him.

Q. When was that purchase made?

A. That purchase was made the 4th of February 2006.

Q. And how was that paid for?

A. With my Visa.

Q. For how much?

A. $260.93.

Q. And the next document is document number 28 as part of the discovery. What is that document?

A. That is a receipt from the Bombay Company for a side table for my father.

Q. And when was that purchased?

A. February 4th, 2006.

Q. And where did that side table go to?

A. It went with him to Bishop Gadsden, and then from there, it was moved to a storage facility, where we -- it was torn up. We ended up giving it away, taking it to the Goodwill.

Q. How much did you pay for that?

A. $179.

Q. And how was that paid for?

A. With my Visa.

Q. And the next item, item number 29, starting on the left side first, what did you purchase at Walmart?

A. Various housekeeping things, telephone for Daddy, kitchen-type items, batteries, some food.

Q. And when did you make those purchases?

A. February 2nd, 2006.

Q. And what was the total amount purchased?

A. $133.60.

Q. And how was that paid for?

A. With my Visa.

Q. Is that your signature down at the bottom?

A. It is.

Q. Go to the next column. What did you purchase for -- what kind of items did you purchase?

A. Again, more housewares-type items for his kitchenette, and some snacks.

Q. For your father?

A. It looks like, yes. Oh, and a small television.

Q. And you are not claiming credit for the

television in this matter, are you?

A. No, I have a television.

Q. And how much did you pay for that?

A. $322.82.

Q. And you wish for the Court to deduct $248 from that amount?

A. Yes.

Q. And how was that purchase made?

A. With my Visa.

Q. Going to the next page, document number 30, what kind of purchase did you make there?

A. Again, these were houseware-type items, placemat for Daddy as well as some bathroom items.

Q. And when did you make the purchase?

A. February 4th, 2006.

Q. Were all of these purchases made shortly after your dad was removed from his personal residence?

A. Mostly, yes.

Q. And how much did you pay for those items?

A. $59.50.

Q. How was the purchase made?

A. With my credit card.

Q. Going to the next item, document number

64, will you tell the Court what that is?

A. Yes, that is a larger television I bought for Daddy.

Q. I am sorry, say that again.

A. A larger television that I bought for Daddy.

Q. I am sorry, I am looking at document number 64. I am sorry.

A. Sorry. I went to 34. I have got 64.

Q. I am getting ahead of myself.

MR. WHIPPER: The packet that I was given does not have 64 in it.

THE COURT: Mine doesn't either.

MR. GIBSON: I am sorry, this is one with the unredacted. You can have that.

THE COURT: The redacted version of which document I have? Or the unredacted version.

MR. GIBSON: Your Honor, I had the redacted and unredacted version. The redacted version is document number 31.

THE COURT: I don't have 31.

MR. GIBSON: Do you have 64, your Honor?

THE COURT: No. Mine are skipping from 30 to 34, and then I have 34, 35, 31, 32 -- I am

sorry, it was stuck to the back of 32. Okay, I am with you. I have got 64. Do you need 64?

MR. WHIPPER: He just gave it to me.

THE COURT: Have you moved on from 34, which is the Best Buy $320.99, the television? Have you moved on from that?

MR. GIBSON: Yes, sir. Your Honor, let's go back to number 34. I apologize for the inconvenience.

THE COURT: Is that the television?

MR. GIBSON: Yes, your Honor.

Q. What is document number 34?

A. This is a receipt for a larger television for Daddy. He wanted a larger television.

Q. When was that purchased?

A. July 15th of 2007.

Q. And where was your father residing at that time?

A. At Bishop Gadsden.

Q. What was the total amount of the purchase?

A. $320.99.

Q. How was that paid for?

A. With my husband's credit card.

Q. And then the next document is number 35, produced as part of the discovery. What does document number 35 represent?

A. These are sweatshirts that I bought for my father.

Q. And where did you purchase those from?

A. Parisian.

Q. And when did you make that purchase?

A. October 7th, 2006.

Q. And how much was that purchase?

A. $26.74.

Q. And how was that purchase made?

A. With my personal check.

Q. Going to the next document, which would be number 64, do you have that?

A. I do.

Q. And what does that document represent?

A. This is a recliner for my father.

Q. And when did you make that purchase?

A. February 1st, 2006.

Q. And where did the recliner go?

A. To Savannah House.

Q. That is where it was shipped to?

A. Yes.

Q. What was the total amount of the

purchase?

A. $1,777.49.

Q. How was that purchase made?

A. By me, cash.

Q. And when you say cash, did any part of that cash come from your father's account?

A. No.

Q. And did that recliner remain with your father for the duration of his life?

A. It did.

Q. And going to document number 32, what does that document represent?

A. These are other furniture items for my father, lamp, a cabinet for him to have some of his -- keep some of his clothing in, an end table.

Q. And where were these items purchased from?

A. From Stuckey Brothers.

Q. When were those items purchased?

A. February 3rd, 2006.

Q. And do you know where those items were delivered to, where your father was residing?

A. To Savannah House.

Q. And what was the total amount?

A. Total amount for item 32, $2,624.99.

Q. And how was that purchase made?
A. Cash, my check.
Q. And going to item number 33, what does that represent?
A. That is a small desk and cabinet. Again, my father was used to having a desk and needed the storage.
Q. Was the furniture delivered to where your father was residing?
A. Yes, at Bishop Gadsden.
Q. And when was that purchase made?
A. July 22nd of 2006.
Q. And what was the total amount of the purchase?
A. $658.01.
Q. And how was that purchase made?
A. Cash, by check.
MR. GIBSON: Your Honor, at this time I would move all of these items as Petitioner's Exhibit Number 12 collectively that we had discussed earlier here.
THE COURT: So everything you have identified, I think that includes everything that was in the package that you originally submitted, doesn't it?

Bishop Gadsden invoice of October 31, 2007, and the accompanying check of Chloe Tonney, number 3363, will be admitted collectively as Petitioner's Exhibit Number 17.

(PETITIONER'S EXH. 17, 10/31/07 BISHOP GADSDEN INVOICE AND CHECK 3363, was marked for identification and received into evidence.)

Q. Ms. Tonney, did your father receive physical therapy while he was at Bishop Gadsden?

A. He did.

Q. Was there a need for physical therapy?

A. There was a need. He had doctor's orders for physical therapy.

Q. And I present to you document number 55. Can you indicate to the Court what document number this is?

A. Yes, it's an invoice from Bishop Gadsden Rehab for my father's physical therapy.

Q. And the time period from 11/16/2006 up to February 12th, 2007?

A. That's right.

Q. And what was the total amount of that invoice?

A. $445.50.

Q. Did you issue a check for that amount?

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A. I did.

Q. Is that check represented on document number 55?

A. It is.

Q. And was that check written out by you?

A. Actually this check was written out by my sister.

Q. And that was sent to Bishop Gadsden Rehab?

A. Yes.

THE COURT: Did you want to move for the introduction?

MR. GIBSON: I am going to do it collectively.

THE COURT: Okay.

Q. Ms. Tonney, I present to you the document number 52 as well as 61. Going to document number 61, what does that document represent?

A. An additional invoice for physical therapy for my father from February 19th, 2007, to April 2nd, 2007.

Q. Were these invoices sent to you, or were they sent to the conservator and in turn sent to you?

A. They were actually left in my father's room.

Q. And what was the amount of the invoice which is represented on document number 61?

A. $243.30.

Q. And did you make a payment?

A. I did.

Q. Is that payment represented on document number 52?

A. It is.

Q. And did you issue that check?

A. Yes.

Q. Did that check clear to Bishop Gadsden Rehab?

A. Yes, it did.

Q. I present to you document number 65. What is that document?

A. That's a check to Bishop Gadsden Rehab, $405.

Q. And what's the date of that check?

A. October 10th, 2007.

Q. And what was the purchase for that check?

A. Again, to cover rehab services for my father.

Q. Do you have an invoice with that?
A. I do not.
Q. Now, was that check issued by you?
A. Yes.
Q. And according to this document in your possession, did that check clear?
A. Yes.
Q. And if you look on that check in the left-hand corner, what does it say?
A. Daddy.
Q. That was for the benefit of your father?
A. Yes.
Q. What's the total amount of that check?
A. $405.
Q. I am presenting to you a document stamped number 66. What is that document?
A. An additional check for physical therapy for my father.
Q. And what's the date of that check?
A. December 15th, 2007.
Q. And did you issue that check to Bishop Gadsden Rehab?
A. Yes.
Q. What is the total amount of that check?

A. $244.92.

Q. And based on the document that you have in your possession, does it show that check cleared?

A. Yes.

MR. GIBSON: Your Honor, at this time I would ask to move documents in regard to Bishop Gadsden Rehab as being documents 60, 55, 61, 52, 65, 66, as Petitioner's Exhibit Number 18.

THE COURT: Okay. Is there any objection?

MR. WHIPPER: Your Honor, same objections as to the original issues. There are no originals here on anything.

THE COURT: If I understand this, Mr. Gibson, you only have an invoice for one sum, for $243.30. I am talking about this batch here that you are asking to admit as Exhibit Number 18. Am I correct, is that the only invoice that supports those payments, is the invoice of April 3, 2007, to Bishop Gadsden?

MR. GIBSON: I have two invoices.

THE COURT: No, I mean in this last batch, I have only been given one. I am sorry, yes. You have got the invoice. The other invoice

check?

A. $279.

MR. GIBSON: Your Honor, at this time I would move this as Petitioner's Exhibit Number 19.

THE COURT: Okay. Mr. Whipper, any objection, or if it's the same objection as the last, you may restate that.

MR. WHIPPER: Same objection as the last, your Honor.

THE COURT: My ruling will be the same then. The Collins Office Supply invoice and the attached check of Chloe Tonney will be admitted as Petitioner's Exhibit Number 19.

(PETITIONER'S EXH. 19, COLLINS OFFICE SUPPLY INVOICE AND CHECK, was marked for identification and received into evidence.)

Q. Ms. Tonney, in regard to all of the expenses that you have testified to and have put forth as support, all of those expenses were for the benefit of your father?

A. Yes.

Q. And were those expenses paid out with the consent of Iris Albright?

A. Yes.

Q. And upon your father's passing, did you

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file a creditor's claim?

A. I did.

Q. And do you recall whether that creditor's claim was accepted or not?

A. It was not.

Q. And as a result of that, what did you do?

A. I requested a hearing.

Q. Ms. Tonney, I represent to this is the creditor's claim you have filed with the Charleston County Probate Court?

A. Yes.

Q. What is the amount of the creditor's claim?

A. $61,249.46.

Q. And as a result of that claim being denied, you have filed a petition to have that claim allowed?

A. Yes.

MR. GIBSON: Your Honor, I would ask to move that as Petitioner's Exhibit --

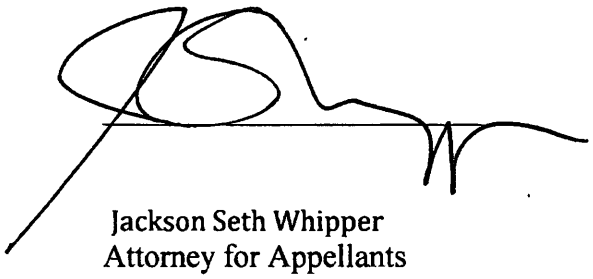
THE COURT: Well, that creditor's claim is already a matter of record. Why do we have to admit it in evidence?

MR. GIBSON: I am just trying to cover

The undersigned hereby certifies that the Supplemental Record on Appeal (S.R.O.A.) contains all material proposed to be included by any of the parties and not any other material.

Submitted By:

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December 27, 2016

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

CASE NO. 2014-CP-10-5355
Appellate Case No. 2016-000748

In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby" Knight, III, Appellants,

v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents.

Appellants' Final Brief

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STATEMENT OF THE CASE

In 2004, relations between Norman R. Knight, Jr., Mildred C. Knight, and their daughters, Chloe Knight-Tonney and Linda Jones became adversarial. In 2004, Mr. and Mrs. Knight revoked their Power-of-Attorney to their daughters. In 2004, the Charleston County Department of Social Services investigated the Knight home pursuant to allegations of elder abuse. In 2004, the investigation was terminated and the allegations were classified as unfounded.

Relations between the parties continued to deteriorate, becoming litigious and contentious. While an appeal was pending in the Circuit Court, Mr. Knight was removed from the home in 2006.

On January 20, 2009, Respondent Tonney filed a claim for reimbursement of moneys expended allegedly for the care of her father, Norman R. Knight, Jr. The Special Administrator, Beatrice E. Whitten, disallowed the claim and on or about April 20, 2009, Respondent filed a petition to allow the claim. After several years of litigation and appeals, on November 28, 2012, Beaufort County Probate Judge, Kenneth E. Fulp, Jr. was appointed Special Probate Judge for Charleston County exclusively for the Estate of Norman R. Knight Jr.

On May 29, 2013, Appellants filed a Summons and Complaint seeking the removal of the Special Administrator. On July 17, 2013 the initial set of motions were argued and an order filed on July 29, 2013. Appellants were the only movants; all motions were denied. On December 13, 2013, Appellant filed and served an Amended Complaint to Remove the Special Administrator. Numerous pre-trial motions were filed

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and argued. Appellant filed two series of Motions to Dismiss, Motion to Compel Discovery with issues of redaction, Motion to Amend Complaints and other motions regarding venue, all filed in pre-trial. On December 17, 2013, a motion hearing by phone was held and an order issued on December 23, 2013. This hearing was significant because the Court held certain documents had to be unredacted to comply with Appellants' motion to Compel. A second set of pre-trial motions were argued by telephone on January 6, 2014 and an order was filed on January 17, 2014. Appellants' Motion to Amend Special Administrator's Complaint was granted. Bishop Gadsden was allowed to withdraw its claim.

On April 22, 2014, Judge Fulp quashed Appellants' subpoena duces tecum to the Morgan Stanley Company, Morgan Smith-Barney. The subpoena required Morgan Stanley to provide information on the "deposit and withdrawal activity/records including identity of depositors and payees for the years 2004 through 2009 involving account holders: Linda Jones, Chloe Tonney, and Queenie."

This matter was tried before the bench in non-jury for two separate days, March 31, 2014 and April 28, 2014. Including post-trial proceedings, i.e. written closing arguments, a final order was filed on July 11, 2014. After post-trial motions, a Notice of Intent to Appeal was filed on September 3, 2014 by the Estate of Mildred C. Knight and Bobby Knight. Appellants are appealing the award of $23,914.73 plus 8.75% interest beginning May 11, 2009. This is an appeal of the orders of Special Probate Judge for Charleston County, Kenneth E. Fulp, Jr. and Common Pleas Court Judge, J.C. Nicholson, Jr. Judge Nicholson denied a Motion to Appeal on January 27, 2016 although Appellants did not file a "motion to appeal." Post-trial motions were denied with Notice of Entry of Judgment being received by Appellants on March 11, 2016.

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ARGUMENTS

I. LOWER COURTS ERRED BY ACTING ON A PETITION FILED AND SERVED WITHOUT SUMMONS

"Although quite elementary to an audience of lawyers, the Constitution of the State and the United States, requires due process of law. Article I, Sec. 3 of our State constitution provides as follows:

> The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life liberty or property without due process of law, nor shall any person be denied their equal protection of the laws." Summons Subcommittee, Probate, Estate Planning and Trust Section, Summons in Probate Court, p.4(1/21/2010)(R.p. 283).

"The sanctity and importance of a cohesive, uniform set of procedural court rules, which begins with process, is to ensure that all parties who come before the court enjoy their constitutional right to due process. Summons in Probate Court, at 4, Id. (R.p. 283).

In her attempt to process a claim against the estate of her father, Tonney has never filed and served a Summons upon the Special Administrator or any other party. The consequence of her failing to file and serve the required process is that this case has not been commenced and the court does not have jurisdiction of this matter.

In their report to the South Carolina bar, the Summons Subcommittee cited the following case: McLain v. Ingram, 314 S.C. 359, 444 S.E.2d 512 (1994) (per curium). The McLain Court held as follows: "The language of Rule 5(d) is clear: the summons and complaint must be filed prior to their service. Here, service preceded filing and thus this action was not properly commenced before expiration of the statute of limitations. *We recognize the harsh result reached in this case, and take this opportunity to remind practitioners that the*

interrelationships between various court rules are not always readily apparent." McLain *at 360 [emphasis added].* See, Summons in Probate Court, at 5 Id. (R.p. 284)

The major conclusion of the Summons Subcommittee Report is as follows: since 1985 the South Carolina Rules of Civil Procedure, through Rules 1 and 81 and pursuant to S.C. Code sec.14-23-280 as well as S.C. Code sec. 62-1-304, have always required the filing of a summons and complaint in Probate Court matters. See, In Re: Estate of Timmerman, 331 S.C. 455, 502 S.E. 2d 920, 922 (Ct.App. 1998); Weeks v. Drawdy, 495 S.E. 2d 454 (Ct. App. 1997); Truluck v. Snyder, 362 S.C 108, 606 S.E.2d 792 (Ct.App. 2004); LaFaye v. Timmerman, 502 S.E. 2d 920 (Ct.App. 1998).

Before a ...court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied. Omni Capital Int'l Ltd. V. Rudolf Wolff & Co., 484 U.S. 97,104 (1987); Service of summons is the procedure by which a court...asserts jurisdiction over the person of the party served. Mississippi Publishing Corp. v. Murphree, 326 U.S. 438, 444-445 (1946). "Where a court has jurisdiction, it has a right to decide any question which occurs in the cause, and whether its decision be correct or otherwise, its judgments, until reversed, are regarded as binding in every court. But if it acts without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments or sentence are considered in law as tresspassers. Elliott v Perisol, 1 Pet. 328, 340, 26 U.S. 328, 340, 7 L.Ed. 164 (1828).

The McLain decision sets the tone for applying these precepts. The orderly, fair operation of the courts is extremely important to the fundamental constitutional protections required by the Federal and State constitutions;

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and harsh consequences may accompany the failure to recognize certain requirements.

This claim must be dismissed because it never was properly filed and served, and that requirement existed before July 2010. (R.p. 279)

II. LOWER COURTS ERRED BY ALLOWING THE PROBATE COURT TO ACT WITHOUT A QUALIFIED ELECTOR SERVING AS THE SPECIAL JUDGE

A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court. Old Wayne Mut. L. Assoc. v McDonough, 204 U.S. 8, 27 S. Ct. 236 (1907). The Law provides that once State and Federal jurisdiction has been challenged, it must be proven. Main v. Thiboutot, 448 U.S. 1, 100 S.Ct.2502, 65 L.Ed.2d 555 (1980).

S.C. Code 14-23-1040 states: "No person is eligible to hold the office of judge of probate who ...has not become a qualified elector of the county in which he is to be a judge..." The Special Judge appointment must conform to the same standards and legal requirements as applied to the Probate and Associate Probate Judge relative to residency and territorial jurisdiction. Despite orders to the contrary, the statute is clear and unambiguous, and does not provide for exceptions. The Special Judge herein is not a qualified elector of Charleston County and therefore all orders issued by him are void and a nullity.

This present action has been affected by the Special Judge appointment and venue considerations since the fall of 2008 when Dorchester County Probate Court Judge, Mary Blunt, was assigned to the matter. The initial claim (2009) was appealed on the basis that the appointment of a Special Probate Judge is not transferable to others by order of that

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Special Probate Judge. The issues were reviewed at that time based on the South Carolina Supreme Court Order assigning the judge, and her appointment of associate judges. The Orders of the Associate Judges were determined to be void. Now, this issue returns with broader, more profound consequences for this case.

Beaufort County Probate Judge Kenneth E. Fulp, Jr., is a Beaufort County resident. He was assigned to this matter by the South Carolina Supreme Court Administration Director on November 28, 2012. In fact, this exercise of discretion by the Court Administration viewed through S.C. Code sec. 14-23-1040 creates a status that is dual office holding. The appointment of Judge Fulp, who is elected pursuant to 14-23-1040, to the Probate Court for Charleston County, expands his office to another county. Dual office holding is patently incorrect. Richardson v. Town of Mt. Pleasant 350 S.C. 291, 566 S.E. 2d 523 (2002). S.C.Code sec. 14-23-1040 cannot be construed as limited in its scope, as it occupies a location among the statutes cited by the Order appointing Kenneth E. Fulp, Jr. as Special Judge for Charleston County. This statute is not incongruent, but gives parameters on who is qualified to serve on the probate court even when managing conflicts and failures. Astoria Federal Savings and Loan Association v. Soliminmo, 501 U.S. 104, 111 S.Ct. 2166, 115 L.Ed.2d 96 (1991). (Similar superior values, of harmonizing different statutes and constraining judicial discretion in the interpretation of the laws, prompt the kindred rule that legislative repeals by implication will not be recognized, insofar as two statutes are capable of co-existence "absent a clearly expressed congressional intention to the contrary" citing Morton v. Mancari, 417 U.S. 535, 551, 94 S.Ct. 2474, 2483, 41 L.Ed 2d 290 (1974); Palmettonet, Inc. v. South Carolina Tax Com'n, 318 SC.102, 456 S.E.2d 385 (1995). Obviously, the legislature wants the Probate Judge to be an official, native to that county, and tied to the county

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with the kind of intimacy and accountability a resident elected official brings to his/her local institutions and population.

The venue issue was raised during Judge Blunt's assignment. Judge Blunt required all apprearances to occur in Dorchester County. Judge Blunt's approach was error. The appointment of a Special Probate Judge is not a transfer of venue. S.C. Code sec. 62-3-201 Venue is proper in formal/informal probate proceedings in the county where the decedent resided and died. S.C. Nat. Bank of Charleston v. May, 211 S.C. 290, 44 S.E. 2d 836 (1947). For Mr. Knight, venue was proper in Charleston County. The venue standards are another emphasis to the qualified elector requirement. Probate intestacy and testacy proceedings are provincial matters. Per the S.C. Nat. Bank of Charleston Court, "If any interested party had seasonably made application to the Probate Court of Charleston to have the order admitting the will to probate set aside or the appointment of the executor revoked upon the ground that the testator was a resident of Dorchester County, such party would have been entitled to a hearing on the latent jurisdictional question. Such a proceeding would have constituted a direct attack upon the jurisdiction of the Court. This was the procedure followed in the recent case of *Reed v. Lemacks*,204 S.C. 26, 28 S.E.2d 441." S.C. Nat. Bank of Charleston v. May, Id.

The orders issued by Judge Fulp and Judge Blunt must be vacated.

III. LOWER COURTS ERRED BY FAILING TO UNREDACT DOCUMENTS AND ADMITTED INTO EVIDENCE

Appellants sought to obtain information on a bank account showing Claimant Tonney's name.

The account was informally named the "Queenie Account." This account was

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held by Smith-Barney who has now become Morgan Smith-Barney. Specifically, the subpoena requested information on the "deposit and withdrawal activity/records including identity of depositors and payees for the years beginning 2004 through 2009 involving account holders: Linda Jones, Chloe Tonney, and Queenie." Early in the discovery stage of this case, Respondent Tonney had redacted the names of Jones and Queenie so there would be no inquiry. (R.P. 29) "Queenie" is a nickname for an elderly lady whose legal name is Louise Reynolds. During her testimony, Tonney would not say where Ms. Reynolds lived or give information on her status. (R.p. 74-75; tr.p. 186 L. 4 – p. 187 L. 4) Ms. Reynolds was known to possess a large sum of money. (S.R.p.14 L.4-6)

Ms. Reynolds has known all of the Knight siblings for more than thirty (30) years. She was their next-door neighbor, and someone for whom Mr. and Mrs. Knight cared. Appellants needed information on this "Queenie" account. Respondent, Tonney, filed a motion to quash the subpoena, the motion was denied and Respondent Tonney withdrew her claim based on this account. The trial court then granted the motion to quash Appellant's subpoena on the grounds that Tonney's withdrawal of the claim made the information irrelevant (R.p.19) This ruling is incorrect because Tonney did not move for a protective order per Crawford v. Henderson, 356 SC 389, 589, S.E.2d 204 (Ct.App. 2003). This material would have made the origin of funds used to pay Mr. Knight, Jr's expenses certain and set the record straight as to who is the true claimant.

In another request to unredact a letter used to establish Respondent Tonney's claim for attorney fees, the trial court refused to unredact the letter (R.p. 105) written by the decedent's attorney to Tonney and a third party. The trial court characterized this letter as attorney client privilege relative to the redacted material.

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The Appellants should have access to the blocked information. The fact that the letter was written to Tonney and a third party, not a co-client, means there is no attorney-client privilege, and the letter was produced as a response to discovery. Floyd v. Floyd 365 S.C. 56, 615 S.E.2d 465 (2005) (attorney-client privilege does not protect communications with non-clients). (R.p.56-57 L.18). To see this letter fully would provide a basis for establishing with certainty the character of this particular redacted item. This item would have led to a relevant and influential line of inquiry for discovery and trial purposes. (R.p.105). The Respondent Tonney should not be allowed to obfuscate the trial process in this way. The trial court did not protect the truth-finding process. The jurisprudence of South Carolina protects 'trial on the merits', not pro forma machinations designed to thwart the full and comprehensive examination of the facts. Knight v. Lee, 262 S.C. 17, 202 S.E.2d 19 (1974).

IV. LOWER COURTS ERRED BY FAILING TO APPLY THE LAW OF UNCLEAN HANDS TO A CLAIM FOR EQUITABLE RELIEF

This claim clearly sounds in equity and seeks equitable relief. There is no contract involved between any party or principal. Respondent only gave notice to the Conservator and the Guardian that she would be seeking restitution of funds used for expenses incurred by her father. (R.p. 76: tr. p. 22; 77: tr. p. 31; 78: tr. p. 119; 79-80: tr. p. 83-84). She did not give notice to any other party. At best, this claim is based upon quasi-contract. Characterization of an action as equitable or legal depends on the 'main purpose' in bringing the action. Ins. Fin. Services., Inc. v. S.C. Ins. Co., 271 S.C. 289, 293, 247, S.E.2d 315, 318 (1978). "The main purpose of the action should generally be ascertained from the body of the complaint." Id. "However, If necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light

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upon the main purpose of the action. Id. The nature of the issues raised by the pleadings and character of relief sought under them determines the character of an action as legal or equitable. Bell v. Mackey., 191 S.C. 105, 119-20, 3 S.E.2d 816, 822 (1939). Tonney testified that she wanted to be reimbursed. (R.p. 81: tr. p. 174 L. 7-13; 82: tr.p. 182 L. 13-19). Moreover, Tonney submitted an exhibit entitled reimbursement breakdown. (R.p. 83: tr. p. 173, L 18-19). During oral argument in the Circuit Court, Claimants' attorney repeatedly said that his client wanted to be reimbursed. (R.p. 57:L.24)

"In the case of actual contracts, the agreement defined the duty; while in the case of quasi-contracts, the duty defines the contract." In quasi-contracts the obligation arises, not from the consent of the parties as in the case of contracts express or implied in fact, but from the law of natural immutable justice and equity." 66 Am.Jur.2d Restitution and Implied Contracts Section 2 (1973). Restitution is an equitable remedy. Wallace v. Milliken & Co., 305 S.C. 118, 120,406 S.E. 2d 358, 359 (1991); restitution and disgorgement are equitable remedies. See, Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 215-16, 122 S. Ct. 708 (2002).

The doctrine of "unclean hands" precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. Ingraham v. Kasey's Associates, 340 S.C. 367, 559 S.E. 2d 287 (S.C. 2000). A party ... "who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." Emery v. Smith, 361 S.C. 207,220,603 S.E. 2d 598, 605 (Ct. App. 2004).

Tonney cannot present clean hands. In 2004, Tonney allowed her sister to file a

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bogus charge of adult abuse with the Department of Social Services. The charge was investigated and determined to be unfounded. (R.p. 70: tr. p. 212 L. 2-8). Also, in 2003/2004, Tonney and his sister, Linda Jones, simultaneously, argued that the decedent was incapacitated while accepting his Power of Attorney appointment. (R.p. 245-250). In January, 2006, Tonney alleged that the decedent was being abused (collaborated with the supposed guardian) and caused Mr. Knight to be removed from his home and testified in this action that one of the major motives was a feud over visitation. Tonney has never offered evidence of abuse, not a scintilla.

Tonney had Mr. Knight removed from his home without any of his clothing or toiletries. She never sought to obtain any of his personalty from his home, although she had an order to remove him. She then set-out to buy hundreds of dollars worth of items, place Mr. Knight in the most expensive home in this region and now seeks restoration of her money. "The doctrine of unclean hands precludes a plaintiff from recovering in equity if she acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." First Union National Bank of S. C. v. Soden, 333, S.C. 554, 568, 511 S.E. 2d 372, 379 (Ct. App. 1998). This litigation saga[1] became hyperdriven after Mr. and Mrs. Knight revoked powers of attorney once held by Defendant Tonney and her sister. (R.p.196-198). This particular battle started during Mrs. Knights' lifetime, i.e. Respondent Tonney filed the claim while her 80 year old mother was living in the marital home. Her initial claim was $60,000+. In fact, she did not spend that amount and the claim had to be reduced. In one of the items claiming repayment for attorney fees,

[1] At the death of Mr. Knight (3/ 2008) Linda Jones and Chloe Tonney filed a civil action to take control of Mr. Knight's remains from his wife, their mother, Mrs. Knight. The suit was not served and later dismissed by their attorney C. Mac Gibson.

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Tonney maintained a $5,000.00 figure for five (5) years, until the attorney was summoned to court. The claim was instantly reduced to $3,200.00 to reflect a refund that occurred more than six (6) years ago. Because of proceedings in the Probate Court and the Family Court financial declarations, Respondent Tonney knew that her parents could not afford the lifestyle she had forced on them: residency at a nursing home whose costs were far above their means, and protracted family court litigation to establish what was already agreed upon. For Respondent Tonney to collaterally contest the Probate Court settlement knowing the limitations in her parents' income, shows insensitivity and willful disregard for the general welfare of either parent.

Tonney wanted to be reimbursed for items that she kept or converted to her use such as a wall clock, office furniture, wall pictures, reclining chair, television, and a therapeutic bed. (R.p. 85: tr. p. 179 L. 2-5; 86: tr p. 181 L. 1-4). Through redaction, Tonney attempted to hide the fact that furniture purportedly bought for Mr. Knight was delivered to her sister's home. (R.p. 33: #3).

Finally, Respondent Tonney did not deposit money with the Conservator, Family Services, Inc., but instead, she made payments outside of the structure established by the Probate Court. Hence, her actions were insulated from Court oversight and notice to Mrs. Knight and her son. All of this was arranged without notice to the Probate Court.

Credibility should matter in this claim. Respondent Tonney is a cotenant on a joint account with an elderly lady named Louise Reynolds. That relationship was not revealed until the Court ordered her to unredact the exhibit that was evidence of that relationship. In order to block discovery of what proportion of this account belonged to Louise Reynolds, Respondent Tonney withdrew her claim for reimbursement on a check

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from the joint account with Louise Reynolds. Allowing Tonney's withdrawal of the claim to end the inquiry regarding the source of funding for that account was error. Crawford v. Henderson, supra. (R.p 58 L. 16-60 L.16).

Respondent Tonney did not offer any evidence that she notified her mother about her intentions to file a claim against her father's estate. She offered evidence of communication with the Conservator and the Guardian. The Record is clear about the depth of estrangement in this family. The record is clear that Respondent Tonney was advised to look at the estate for reimbursement as indicated by the testimony of the Guardian, Walter Kaufman. (R.p. 87: tr. p. 121 L. 25- p. 122 L. 6) (R.p. 88: tr. p. 130 L. 16-20) (R.p. 89: tr. p.174 L. 7-13). Tonney made no effort to inform her mother of her plans to force her father's estate to reimburse those expenses she {alleged} were necessary, beneficial, and reasonable. At its highest value, notice is constitutionally required when a taking of property is at hand. Timmons v. South Carolina Tricentennial Commission 175 S.E. 2d. 805 254 S.C. 378 (1970) Although the immediate relationship of the parties in this case does not include a governmental actor, South Carolina courts hold the issue of notice to be substantively material to matters in equity. In EllisDon Construction, Inc. v Clemson University, 391 S.C. 552, 707 S.E. 2d 399 (2011), the Court found that the Appellant had an adequate remedy at law, and, in order to avail itself of an equitable remedy, Appellant had to give a notice to the payor as required by law. The Court held that "a party failing to fulfill the requirements of its legal remedy cannot later come to the courts complaining of hardship, seeking an equitable remedy," Id. at 555.

Respondent Tonney had an adequate remedy at law in the legal principles of contract. She chose not to avail herself of these tenets: Offer, acceptance, and

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consideration. She never negotiated with her mother or her brother, who was the onsite caretaker for her parents. She did not insist that the Conservator or the Guardian negotiate or inform her mother that she would look to liquidate her father's estate in order to obtain reimbursement. Tonney's actions are more consistent with her contempt for Mrs. Knight and disdain for her brother. (R.p. 90 tr. p. 175 L. 14-18). Ms. Tonney had filed suit to take control of her father's remains and admitted on the record that she wanted her brother removed from their parents' home, despite his caretaker status. The EllisDon Construction, Inc., supra, holding is a further declaration by our Court that a party in equity must not come to the court with unclean hands. See, Webb v. First Federal Savings & Loan Association of Anderson, 300 S.C. 507, 388 S.E.2d 823(1989).

Equity cannot assist this type of behavior. Respondent Tonney carries too much responsibility for the destabilization of her parents' home, and her approach to settling her father's estate is vindictive. "The law will never impute a promise to pay for a benefit conferred where it would be unjust to the party to whom it would be imputed and contrary to equity." 66 Am.Jur.2d Restitution and Implied Contracts Section 2 (1973); Webb, 300 S.C. 507.

V. LOWER COURTS ERRED BY FAILING TO RECOGNIZE THE LAW OF AUTOMATIC STAY PURSUANT TO S.C. CODE SEC. 62-1-308(c)

When an appeal, according to the 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. S.C. Code Sec. 62-1-308(c)(1999).

In August 2005, the Probate Court issue two orders that were timely appealed. In

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October, 2005, the Circuit issued an Order clarifying the stay and directly enjoining the parties in order to give directions for responsibilities during the stay. The Circuit Court order essentially left the matter in the status existing prior to the August, 2005 orders. The most noteworthy item was Mildred C. Knight retained guardianship of her husband.

The Appeal was argued in the fall/early winter of 2005 and a decision was issued in January 2006 dismissing the appeal but a timely Motion for a New Trial was filed and served on all parties. Respondent Tonney knew that the matter was under review as indicated by her Motion to Dismiss. (R.p.174) The automatic stay was still in place at the time Respondent Tonney and Kaufman acted to remove Mr. Knight from the home. (R.p.91-92: tr. p. 124 L. 22-125 L. 11)

According to the response to a letter from the Guardian Ad Litem to the Circuit Court Judge, the Guardian ad Litem was advised to prepare a Rule to Show Cause (R.p. 170), an approach more consistent with the automatic stay. There were two guardians hovering around the case at that time, but according to the October, 2005 circuit court order, the Guardian (Kaufman) who participated in removing Mr. Knight from his home was relieved of any authority during the appeal. (R.p. 219). A series of exhibits substantiate the appeal status. (R.p. 169-174).

Because of Respondent Tonney's contempt for her mother and her brother, she and her representatives did not confirm or discuss the case status with anyone associated with Mrs. Knight or Bobby Knight. While away from home, important obligations, such as doctors' appointments, chemotherapy, medications, haircuts, routine excursions to see family and friends that she or her sister as non-custodial relatives did not have to contend with, became flash points of contention and offense because they were not oriented to be caretakers. Their behavior was the actual harm Mr. Knight endured.

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Respondent Tonney and advisers sought leverage on controlling Mr. Knight, Jr. but are tangled in the protections of the automatic stay.

In 2007, Bobby Knight appealed the appointment of Tonney as Conservator and the automatic stay was never lifted. (R.p.175-176). The stain of disregarding the automatic stay can be purged only by rescinding all acts undertaken without proper authority and restoring Mr. and Mrs. Knight to their 2004 status. Turner v. Malone, 24 S.C. 398, 401-02 (1885) ([J]udicial proceedings are void, when the court, in which they are taken, is acting without jurisdiction . . . If the jurisdictional defect appears in the record itself ... the judgment may be disregarded as a nullity whenever and wherever it is encountered, any proceeding direct or collateral.) These failures by Respondent Tonney cannot be disregarded.

VI. LOWER COURTS ERRED BY FAILING TO APPLY THE DOCTRINE OF FRAUD IN THE INDUCEMENT TO ENTER A CONTRACT

During the probate proceeding, two individuals were appointed as guardian and conservator, respectively, for Norman R. Knight, Jr. The certificates of appointments/ orders directed each individual to discuss all major decisions regarding the decedent with Mrs. Knight. Upon cross-examination, they admitted that they did not consult with Mrs. Knight before any action they undertook.

The guardian and the conservator acted intentionally. At the time of this incident, Mrs. Knight was a recognized participant in the management of her husband's estate and well-being. She was a stakeholder in his estate, and a third party beneficiary of the management of Mr. Knight's estate. She relied on her status and co-participants to her detriment. (R.p. 61L.19-63 L.4).

In order to establish a claim of fraud in the inducement to enter a contract, the

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proponent must demonstrate the following: (1) a representation, (2) its falsity, (3) its materiality, (4) knowledge of its falsity or reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of it falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to reliance on it truth (9) the consequent and proximate injury. M.B. Kahn Const. Co. v South Carolina Nat Bank of Charleston, 275 S.C. 381, 271 S.E. 2d 414 (1980). The representation in this fact pattern was a non-statement, an omission, that caused Mrs. Knight to think that she was not in jeopardy. The unstated representation began the inducement. Certainly, the existence of a loan is material to Mrs. Knight as an heir to Mr. Knight. The guardian and conservator in this case handled the knowledge of the existence of this "loan" with disregard for the truth or falsity of the representation. The intent that the representation be acted upon is clear. Mrs. Knight was totally ignorant regarding the falsity of her and her husband's situation. Mrs. Knight relied on what was not, and she had a right to rely on the presenters.

The consequential and proximate injury is well established at this point. See M.B. Kahn Const. Co. v. South Carolina Nat. Bank of Charleston, Id. See Restatement of (Second) of Contracts 161 and 173 (when the parties are in a fiduciary relationship, there is a duty to disclose material facts; failure to do so may constitute fraud).

In failing to discuss their issues with Mrs. Knight, the guardian and the conservator failed to perfect their authority to act as appointed. Perfect authority, i.e. perfect duty, is a duty that is not merely recognized by the law but is actually enforceable. See, Bryan A. Garner, Black's Law Dictionary at 522 & 1157 (7th ed. 1999). Not having the proper authority created void understandings, particularly for Respondent Tonney who urged these actions and now seeks to be compensated on the

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basis of these void "agreements."

"Fundamental fairness" says that Mrs. Knight was due some notice that a claim against her inheritance was being created and certain to be launched. Due process was sorely lacking in the way Mrs. Knight was treated: no notice, no confrontation, no voluntary waiver. These are the consequences of fraudulent inducement or negligent misrepresentation. Tonney's claim against this estate should be disallowed. Webb v. First Federal Savings & Loan Association of Anderson, 300 S.C. 507, 388 S.E. 2d 823 (1989)

VII. LOWER COURTS' ALLOWANCE OF RESPONDENTS' CLAIM IS AGAINST THE GREATER WEIGHT OF THE EVIDENCE AND AN ABUSE OF DISCRETION

Appellants placed in evidence two letters from reputable physicians that found Norman R. Knight, Jr. not to be incapacitated at the time relevant to Respondent Tonney's efforts to cast him as being gravely ill and abused. (R.p.157-158). These letters are a clear indication that Mr. Knight, Jr. was doing fine and was expected to progress and thrive. Both letters are written to Mrs. Knight's attorney and detail specifics of his condition. Dr. Derrick said, "I find him to be more alert and talkative than usual and feel that his general mental and physical health is improved." Dr. Smith found his "iron deficiency to be abated," his mental status intact," and "his energy level dramatically improved, "with adequate therapy, he has done extraordinarily well." This evidence is a direct conflict with the allegations of Tonney and they highlight inconsistencies in Tonney's own testimony. In the March 31, 2014 hearing, Tonney testified that her father was subject to a number of what she "deemed atrocities in terms of physical, financial, and psychological abuse" and in the same line of questioning, she admitted that as a result of her [petition] her mother, Mildred C. Knight was appointed

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guardian for her father. (R.p. 84: tr.p. 12 L.10-24) Later she admitted her sister made allegations that were determined to be unfounded. There is no conclusive evidence in the entire record for all these years of litigation that substantiate physical, financial, and psychological abuse.

The only evidence offered by Respondent Tonney was to propose the existence of expenditures. Respondent offered nothing to establish the need to remove Mr. Knight from his home. The Respondent did offer an opinion on the status of the facility where Mr. Knight died. There was no evidence offered to establish that Mr. Knight's removal from his home delivered him from death. Tonney offered no evidence of abuse. Tonney offered no evidence that Mr. Knight's removal from his home was necessary for his care. Howard, Matter of, 315 S.C. 356, 434 S.E.2d 254 (1993).

The failure to establish necessity to remove Mr. Knight from his home means that any expenditure for his shelter outside of his home is unreasonable. Merely declaring that funds were expended or presenting the existence of expenditure in this context will not satisfy the reasonableness requirements. 66 Am.Jur.2d Restitution and Implied Contracts Section 2 (1973) The only professional to testify on Mr. Knight's home situation was Cary Fechter, M.D. who thought that his home placement was supportive and preferable to outside placement. (R.p. 64-65:.p. 383 L.18 – . p. 384 L.1-20) Dr. Fechter had attended to Mr. Knight for several years. Moreover, a reasonable expenditure will not be exorbitant. Appellants offered professional testimony that, medically and ethically, less expensive care was available for Mr. Knight's outside placement. Gloria Johnston, Community Residential Care Facility Administrator for the Disability Board of Charleston County, testified that appropriate care was available for $3,000.00 to $4,000.00 per month, a figure significantly below

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the $6,000.00 minimum that Tonney was spending. Ms. Johnston made it clear that Mr. Knight could have been cared for at home. (R.p. 66-69:. p. 309 L.3- p. 312 L.8). Mr. Knight was cared for at home. (R.p. 70: tr.p. 212 L.2-8; 71: tr. p. 221 L.10- L.25).

In his final order, the trial judge excluded an item because it "was not reasonably necessary for Mr. Knight's maintenance." The trial judge also excluded expensive furniture because "such. . . . exceeded that which was reasonably necessary for Mr. Knight's support and comfort." (R.p.9 #18). In light of the totality of circumstances, this same standard should have been applied to all aspects of Tonney's claim. These kinds of inconsistencies indicate the trial court's failure to exercise the appropriate level of discretion. See, Means v. Gates, 348 S.C. 161, 558 S.E.2d 921 (Ct.App.2001).

Appellants objected to the use of copies of receipts and checks, especially copies of checks that showed no indication of being presented. The trial court overruled the objections. In Appellant's presentation, Appellants offered copies of transcripts without the sealed original, no one contended that the hearings did not take place. Bobby Knight and Respondent Tonney were part of a hearing where the parties settled issues of resources and support in the Probate Court. (R.p. 72: tr.p. 217 L.6-17).

The agreement was that all resources would be split "50/50." Bobby Knight was an eyewitness. Claimant was present. The agreement on marital assets was set-out in an October 20, 2004 hearing per the Probate Court. (R.p. 72:tr.p.217 L 6-17). The trial Court refused to consider this evidence. The trial court required the sealed copies and sustained an objection to the testimony. (R.p. 73: tr. p. 220 L. 4-25). Seventy-five percent of Tonney's exhibits were mere photocopies and financial instruments that were not certified.

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A court's ruling on the admission of testimony constitutes an "abuse of discretion" where the ruling is manifestly arbitrary, unreasonable, or unfair. Means v. Gates, 348 S.C. 161, 558 S.E.2d 921 (Ct. App. 2001).

The trial court's rulings on the redaction issues (discussed separately) also were inconsistent and prejudicial to Appellants. Appellants were not allowed to determine with reasonable certainty what funding sources were involved with Respondent's alleged contributions. The term "abuse of discretion" means only that [a] ruling of the trial court was without reasonable factual support, resulted in prejudice to the rights of appellant, and therefore amounted to error of law. Bridges v. Wyandotte Worsted Co., 239 S.C. 37, 121 S.E.2d 300 (1963).

Even though the guardian (Kaufman) and the conservator (Albright) testified forthrightly that they transgressed the restrictions placed in their certificate of appointments and included in the August 25, 2005 order appointing them, the trial court assigned no consequences to their contempt of a court order and the violation of their breach of duty per their certificate of appointments. (R.p. 62 L. 6-13).

These restrictions and order required that each of them consult with Mrs. Knight regarding major medical care decisions (Kaufman) and major financial decisions (Albright). These individuals gave no testimony to excuse their behavior or lead to a conclusion other than they failed in their duties and responsibilities to inform Mrs. Knight of these major decisions. Their actions prevented Mrs. Knight and her son from utilizing the courts and other options to protect the estate. A trial court cannot allow fiduciaries to spurn their principals. See, Restatement, Second, of Contracts, Sections 161 and 173, supra, (there is a duty to disclose material facts...) The evidence is complete and palpable on this issue. To not rule to sanction a clear breach of duty is nothing less than a failure in discretion.

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This behavior must not support the Respondent's claim. Bridges v. Wyandotte Worsted Co., Id.

VIII. LOWER COURTS ERRED IN HOLDING THAT RESPONDENT TONNEY'S CLAIM FOR REPAYMENT WAS TIMELY FILED

At the time of filing a claim against our decedents' estate, the proper court for filing the claim was the Dorchester County Probate Court. On January 20, 2009, Defendant filed her claim at the Charleston County Probate Court. January 20, 2009 was the final day for filing claims against the estate, if you were a creditor. Clearly, Defendant Tonney did not satisfy the requirement for filing the claim within the eight months after the date of the first publication of the notice to creditors. S.C. Code sec. 62-3-801(a) (1990).

The record indicates that after receipt of the claim by Charleston County Probate Court, an estate clerk subsequently delivered the claim to Dorchester County Probate Court and the Special Administrator by letter dated January 21, 2009. (R.p. 251) This measure cannot satisfy the statutory requirement that the Creditor file the claim within the eight month period. The proper procedure would be to return the claim to the maker with notice that the claim was sent to the incorrect court. Because the claim is untimely, the Probate Court cannot take jurisdiction of the claim and this matter must be dismissed. Beach First National Bank v. Estate of Gurnham (In re: Estate of Gurnham), 407 S.C. 194, 754 S.E.2d 875 (2014).

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IX. LOWER COURTS ERRED IN HOLDING THAT RESPONDENT CHLOE TONNEY HAD SATISFIED THE LEGAL REQUIREMENTS FOR CASE-IN-CHIEF

Respondent failed to establish the required foundation for properly presenting her Case-in-chief, i.e. eligibility for the relief she sought. The "case-in-chief" is the evidence presented at Trial by the party with the burden of proof. See Beck v. Clarkson, 300 S.C. 293, 387 S.E.2d 681 (1989). The "burden of proof" is a party's duty to prove a disputed assertion, allegation or claim. Black's Law Dictionary, supra, at 190. To fulfill this duty **at trial** all elements of the claim must be established **at trial**. Howard, Matter of, 315 S.C. 356, 434 S.E.2d 254 (1993) note 7 citing In re Estate of Kruger, 235 Neb. 518 455 N.W.2d 809 (1990) (in probate court, burden of proof is upon claimant against decedent's estate.) The validity of a claim upon an estate begins with the statutory requirement that the claim is (a) filed within a certain period of time, (b) delivered to specified entities and individuals, (c) presented in a particular format, (d) occurred at a point in time, (e) identified as necessary, reasonable, and beneficial, (f) and contained a particular value. These factors must be presented at trial. Defendant Tonney only presented evidence on items (d) through (f). S.C. Code Sec. 62-3-801,et seq. (1988).

X. LOWER COURTS ERRED BY REIMBURSING RESPONDENT TONNEY FOR ATTORNEY FEES IN PARENTS' FAMILY COURT MATTER AND ALLOWING FULL INTEREST ON JUDGMENT

The Family Court did not award attorney fees in the case of Knight vs. Knight. Mrs. Knight had to file an action in Family Court in order to obtain the resources promised through agreements made in Probate Court. Testimony as to the agreement to split the marital property "50/50" was incontrovertible. (R.p. 72; tr. p. 217 L. 6-19).

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Mrs. Knight was successful in securing that support and successful in obtaining temporary relief. Please note that Mr. Knight died during the Family Court litigation. An attorney's conduct constituted misconduct where she filed a lien for unpaid fees against her clients' property for services incurred in a dissolution of marriage action even though no attorney's fees had been awarded pursuant to Sec. 20-3-145. Matter of Jennings, 321 S.C. 440, 468 S.E.2d. 869, rehearing denied (1996). Further, in Huff v. Jennings, 319 S.C. 142, 459 S.E.2d. 886, rehearing denied, appeal dismissed (S.C. App. 1995), the Court said a lien filed by an attorney against a client for attorney's fees under Sec. 20-3-145 was invalid where, in the action on which the fees were based, there was no request that the client be ordered to pay her own fees, and the Family Court simply declared that each party would be responsible for his or her own fees. These Jennings standards apply to attorney fees claims in Family Court matters and the thrust of these standards should not be avoided by raising the non-attorney shield. Family Court litigation is exclusive jurisdiction and provides its on procedures for resolution of attorney fee issues. (See, S.C. Code sec. 20-3-125, -145, -670). S.C. Code sec. 20-3-670 is applicable because it provides a level of consideration for third parties. Mr. Knight's passing introduced third party concerns when he left a widow and three children. According to 20-3-670(C), "the statutory lien created by section 20-3-145 is not effective as against third parties unless this section has been complied with." In other words, no fee award, no statutory lien; if there is a statutory lien and no section 670 proceeding, then there is no priority against third parties.

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Respondent Tonney offered no evidence to establish that her expenditures on attorney fees benefitted her father, was necessary for his care and sustenance, and was a reasonable expenditure of his resources. Howard, Matter of, supra, note 7. Moreover, her approach to the family court matter cannot be justified by any of the circumstances existing at the time the money was spent. Mr. Knight's net monthly income was never more than $5,728.27. (R.p. 93; tr. p. 102 L.4). Attorney fees in this family court matter are not a part of the care scenario. This expenditure did nothing for her father's health. See, Dowaliby v. Chambless, 344 S.C. 558, 554 S.E.2d. 646 (S.C.App.2001) (...Because we find no statutory basis for an award of attorney's fees...Probate Court award of attorney fees must be reversed); Anderson v. Tolbert, 322 S.C. 543, 473 S.E.2d 456 (Ct.App.1996).

The first judgment (2010) on this claim was appealed to the Circuit Court on the basis that the appointment of a Special Probate Judge is not transferable to others by order of that Special Probate Judge. The orders of the associates were voided and the matter was restarted. The Special Probate Judge in this version granted judgment interest on the claim beginning 14 months after the date of the decedent's death. If there is a lawful claim against the estate, then this interest formula must be adjusted to reflect the date upon when the claim first was allowed by a judge with the authority to make that ruling. Appellants contend that Judge Fulp is not the duly authorized judge. The attorney fee award to Chloe Knight-Tonney must be denied and if interest is awarded, that interest must be adjusted as argued by Appellants.

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XI. LOWER COURTS ERRED BY NOT REMOVING BEATRICE WHITTEN AS SPECIAL ADMINISTRATOR

S.C. Code 62-3-611(b) states that, inter alia, cause for removal of a [special administrator] exists when removal would be in the best interest of the estate...or the [special administrator] has disregarded an order of the Court...

On July 17, 2013, the Court concluded the hearing by saying: "So, I'm going to allow 30 days for release of the Lis Pendens, okay? If you would provide evidence to the Court and counsel, Ms. Whitten, [that] that has been done." The Special Administrator responded: "I will, Your Honor." At present, nothing has been received on the removal of the Lis Pendens. (Vol.2: tr p. 363 L. 11-21) (7/17/13 Tr.p 57 L. 21-p.58 L. 24).

Mr. Knight left most (95%) of what he owned to his wife, Mildred C. Knight, including all of his motor vehicles. Mr. Knight died March 11, 2008; Mrs. Knight died June 22, 2010. Mrs. Knight left most (95%) of what she owned to her son, Bobby Knight. Bobby Knight has no knowledge of how Mr. Knight's 1995 Mitsubishi is now owned by the son of Linda Jones, Mr. Knight's daughter, even though Bobby has custody of the initial paperwork required for transferring title to that automobile.

Mrs. Knight owned the AIG annuity whose proceeds were paid to the estate of Mr. Knight. The Special Administrator did not inform the Knights regarding any issues concerning the right of Mr. Knight vis a vis those proceeds. According to Bobby Knight's testimony, the annuity was owned by Mildred C. Knight. Mrs. Knight's status as the widow of a very modest estate required more attention and discussion about that AIG annuity. S.C. Code sec. 62-3-703 (2005).

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There is no question as to Mr. Knight's intention in his Will. The issues of this litigation do not involve a determination of heirs and it does not involve a Will contest. Mr. Knight's Will had been in the custody of the probate court for nearly three (3) years prior to his passing. Mr. Knight's clear and direct instructions left nearly his entire estate to Mrs. Knight.

Because of these clear objectives, the Special Administrator cannot act to diminish the intentions of the testator and must not become detached from the testator to the extent she acts against his desires. Her behavior cannot revise or rewrite his will. S.C. Code Sec. 62-3-703 (2005). The evidence and record clearly indicate that this Special Administrator cannot serve the testator in effecting the aims of his devise. Norman R. Knight, Jr. clearly decided that his wife would be the sole beneficiary of his will. The Special Administrator had no relationship with Mrs. Knight. Consequently, the Special Administrator was oblivious to the expectations of Mr. and Mrs. Knight relative to their testamentary plans. The status of Norman Knight, Jr.'s (Mr. Knight) estate at the moment of her appointment calls attention to the issue of locating assets, and locating assets is a priority aspect of the responsibility of the Special Administrator. The key assets were the annuities that were co-owned by the Knights. The record shows no contact with the Special Administrator and Mrs. Knight regarding her interest in those annuities. Moreover, the record shows no efforts by the Special Administrator to discuss or resolve the funeral expenses for Mr. Knight. Even with an outstanding balance, there has been no inquiries or reports to Mrs. Knight regarding the existence, status or accounting for these expenses. Funeral expenses are a top priority under the probate code. S. C. Code sec. 62-3-805 (1994)

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Additionally, Beatrice E. Whitten as the Special Administrator cannot appear in her professional capacity as an attorney, i.e. her status as the Special Administrator must in all ways, appear only as a non-attorney individual.

Any references to Beatrice E. Whitten as the attorney for the Special Administrator is not permissible as she cannot appear for the estate as the Special Administrator and the Special Administrator's attorney of record.

To disregard this professional conflict is error. S.C. Code 62-3-610 (1997). The trial judge erroneously concluded that the special administrator appointment should remain unchanged.

CONCLUSION

The trial Court's decision should be reversed and the Respondent's claim denied in full, and the special administrator should be removed.

Respectfully Submitted
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January 20, 2017

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

CASE NO. 2014-CP-10-5355
Appellate Case No. 2016-000748

In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby" Knight, III, Appellants,

v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents,

---

Certificate of Compliance

I certify that Appellants' final briefs are prepared according to directions of the South Carolina Court of Appeals and the South Carolina Appellate Court Rules, specifically, Rule 211(b).

Respectfully Submitted,
Whipper Law Firm

January 25, 2017

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RECEIVED
JAN 27 2017
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

J.C. Nicholson, Jr., Circuit Court Judge

RECEIVED
JAN 05 2017
SC Court of Appeals

Case No. 2014-CP-10-5355

IN RE: ESTATE OF NORMAN ROBERT KNIGHT, JR., (deceased), ESTATE OF MILDRED C. KNIGHT (deceased) and NORMAN ROBERT "BOBBY" KNIGHT, III,

Appellants,

-versus-

BEATRICE E. WHITTEN, AS SPECIAL ADMINISTRATOR, and CHLOE KNIGHT-TONNEY, CLAIMANT,

Respondents.

FINAL BRIEF OF RESPONDENT CHLOE KNIGHT-TONNEY

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STATEMENT OF THE ISSUES

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II. THE PROBATE COURT JUDGE HELD CORRECTLY RESPONDENT CHLOE TONNEY WAS NOT REQUIRED TO SUBMIT A SUMMONS WITH HER PETITION FOR ALLOWANCE OF CLAIM PURSUANT TO S.C. CODE ANN. §62-3-806(b)(2008).

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X. APPELLANTS' CONTENTION THAT PROBATE COURT JUDGE ERRED IN ALLOWING RESPONDENT TONNEY TO BE REIMBURSED FOR ATTORNEY'S FEES ARISING OUT OF FAMILY COURT MATTER AND ALLOWING FULL INTEREST ON JUDGMENT IS NOT PRESERVED FOR APPEAL.

STATEMENT OF THE CASE

Norman Robert Knight, Jr. died on March 11, 2008, in Charleston County, South Carolina. The Estate of Norman Robert Knight, Jr. "(Knight Estate") was commenced on March 19, 2008, at the Charleston County Probate Court. The creditors' claim notice for the Knight Estate was first published in a local newspaper on May 21, 2008.

On July 30, 2008, the Honorable Irvin C. Condon and Honorable Tamara C. Curry, Judges for the Charleston County Probate Court, submitted a request to the South Carolina Court Administration for recusal from all matters pertaining to the Knight Estate. On August 5, 2008, the South Carolina Court Administration issued an Order of the Chief Justice for the appointment of the Honorable Mary Blunt, Probate Court Judge for Dorchester County, as the special Probate Court Judge to handle the Knight Estate. Further, the Order from the South Carolina Court Administration stated the Honorable Mary Blunt "shall have all the powers and duties appertaining to a probate court judge for Charleston County for the handling of the" Knight Estate.

On December 15, 2008, Judge Blunt as the special Probate Court Judge for Charleston County appointed Respondent Beatrice Whitten ("Respondent Whitten") as the special administrator for the Knight Estate.

On January 20, 2009, Respondent Chloe Tonney ("Respondent Tonney") filed at the Charleston County Probate Court a

creditor's claim against the Knight Estate for loans and reimbursement of expenses that she incurred for her father, Norman Robert Knight, Jr. Respondent Whitten filed a notice of disallowance of Respondent Tonney's claim on April 14, 2009. Respondent Tonney filed at the Charleston County Probate Court a Petition for Allowance of Claim on April 24, 2009.

On November 28, 2012, the South Carolina Court Administration issued an Order of the Chief Justice for the appointment of Kenneth E. Fulp, Jr., Probate Court Judge for Beaufort County, as the special probate court judge for Charleston County Probate Court in regards to the Knight Estate.

On or about May 27, 2013, Appellants Mildred Knight and Norman Robert Knight, III ("Appellants") filed a Summons and Complaint to remove Respondent Whitten as the special administrator for Knight Estate.

On the same date, Appellants filed Amended Motions to Recuse, Dismiss and Change Venue. Appellants contended Respondent Tonney's claim was time barred on the basis Respondent Tonney did not file her claim within one year after the death of Norman Robert Knight, Jr. Upon oral argument by the parties' attorneys on July 17, 2013, Judge Fulp denied Appellants' motions per an Order dated July 29, 2013.

On December 6, 2013, Appellants filed Motion to Dismiss and Motion to Dismiss, Deny, or Reduce Creditor's Claim. Further, on December 10, 2013, Appellants filed a corrected Motion to Amend Complaint regarding Respondent Whitten. Upon oral argument by

the parties' attorneys on January 6, 2014, Judge Fulp as the Special Probate Court Judge for Charleston County issued an Order dated January 17, 2014, which he concluded the applicable 2008 South Carolina Probate Code did not require Respondent Tonney to file a Summons with her petition for allowance of claim against the Knight Estate.

On March 31, 2014, and April 28, 2014, Judge Fulp presided over the hearing regarding Respondent Tonney's claim against the Knight Estate and Appellants' Complaint to remove Respondent Whitten as the special administrator for the Knight Estate. On July 11, 2014, Judge Fulp issued an Order, which he concluded Respondent Tonney was allowed to receive a sum of $23,914.73 plus interest against the Knight Estate. Further, Judge Fulp held Respondent Beatrice Whitten would remain as the special administrator for the Knight Estate.

On July 14, 2014, Appellants filed Motion for Relief from Judgment pertaining to an Order dated July 29, 2013. Judge Fulp denied the Motion per an Order dated August 15, 2014.

On July 28, 2014, Appellants submitted a Motion for New Trial and to Alter or Amend Judgment. Judge Fulp denied the Motion per an Order dated August 21, 2014.

The Appellants filed a Notice of Intent to Appeal with the Charleston County Clerk of Court on September 3, 2014. The Honorable J.C. Nicholson as the appellate judge denied the Appellants' motion for appeal on January 27, 2016.

The Appellants filed a Notice of Motion and Motion for New

Trial or to Alter Judgment at the Charleston County Clerk of Court on February 9, 2016. On March 4, 2016, the Honorable J.C. Nicholson as the appellate judge denied the Appellants' motion without a rehearing.

The Appellants filed the Notice of Intent to Appeal on April 19, 2016.

ARGUMENT AND AUTHORITY

ARGUMENT I

STANDARD OF REVIEW FOR AN ACTION AT LAW IS THE APPELLATE COURT MAY NOT DISTURB THE PROBATE COURT'S FINDINGS OF FACT UNLESS THERE IS NO EVIDENCE TO SUPPORT THEM.

"An appellate court's determination of the standard of review for matters originating in the probate court is controlled by whether the cause of action is at law or in equity." Rider v. Estate of Charles G. Rider, 407 S.C. 386, 391, 756 S.E.2d 136, 139 (2014) and Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (Ct.App. 1993). "To make this determination, the appellate court must look to the essential character of the cause of action alleged by the Petitioners in the court below." Dean, 313 S.C. at 259, 437 S.E.2d at 155. An appeal that is derived from a probate court's decision that involved an action in law, the circuit court and appellate court may not disturb the probate court's findings of fact unless a review of the record disclosed indicates there is no evidence to support them. Id., Tollison v. Anderson Area Medical Center, Inc., 320 S.C. 132, 135, 463 S.E.2d 611, 613 (Ct. App. 1995).

A petition to allow claims against an estate for money due is "ordinarily triable at law[; therefore] if there is any evidence which reasonably supports the factual findings of the probate judge", then the presiding probate judge's order must be affirmed. Tollison, 320 S.C. at 135, 463 S.E.2d at 613.

On January 20, 2009, Respondent Chloe Tonney ("Respondent Tonney") filed at the Charleston County Probate Court a creditor's claim against the Knight Estate. (S.R.p. 58, line 25- p. 59, line 19). Per Tollison, Respondent Tonney's cause of action is an action at law on the basis that she sought reimbursement from Knight Estate for funds that she expended on behalf of her father Norman Knight Jr. (R.p. 94; R.pp. 120-135; S.R.p. 58, line 17- p. 59, line 19).

ARGUMENT II

THE PROBATE COURT JUDGE HELD CORRECTLY RESPONDENT CHLOE TONNEY WAS NOT REQUIRED TO SUBMIT A SUMMONS WITH HER PETITION FOR ALLOWANCE OF CLAIM PURSUANT TO S.C. CODE ANN. §62-3-806(b)(2008).

Judge Fulp concluded in his Order dated January 17, 2014 that the requirement for the filing of the summons along with a petition to commence a formal proceeding in Probate Court did not take effect until June 7, 2010. Such requirement for the filing of the summons was effective after Respondent Tonney filed her petition for allowance. (R.p. 25).

The Estate of Norman Robert Knight, Jr. commenced on March

19, 2008; therefore, the Knight Estate was subject to the 2008 South Carolina Probate Code.

Respondent Tonney's petition for allowance of claim against the Knight Estate was subject to S.C. Code Ann. §62-3-806(b)(2008). Such statute as existed in 2008 stated:

> "Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the court in due time." (emphasis added).

The language in S.C. Code Ann. §62-3-806(b)(2010) concerning the commencement of the proceeding as related to the creditor's claim was not changed until June 7, 2010 as written:

> "Upon service of the summons and petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the court in due time." (emphasis added).

"When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. (citations omitted). If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning." University of Southern California v. Moran, 365 S.C. 270, 617 S.E. 135, 138 (Ct. App. 2005).

Furthermore, "[i]n the construction of statues there is a

presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision or clear legislative intent to the contrary. No statute will be applied retroactively unless that result is so clearly compelled as to leave no room for reasonable doubt:… the party who affirms such retroactive operation must show in the statute such evidence of a corresponding intention on the part of the Legislature as shall leave no room for reasonable doubt…."(emphasis added). Hyder v. Jones, 271 S.C. 85, 87-88, 245 S.E.2d 123, 125 (1978)(The Court held Section 15-5-210 did not show a specific provision that mandated retroactive application, and the Court did not find any legislative intent to make the statute retroactive.)

The amendment to S.C. Code Ann. §62-3-806(b)(2010), which required the filing of the summons with petition for allowance of claim, did not become effective until one year after Respondent Tonney filed the petition for allowance of claim.

Also, the disallowance of claim form that Respondent Whitten as special administrator mailed to Respondent Tonney stated the claimant had to file a petition for allowance in the Probate Court if the claimant wanted to contest the disallowance of claim. The disallowance of claim did not mention the filing of the summons with the petition for allowance because it was not required at the time Respondent Tonney received such disallowance of claim.

The Appellants did not prove that at the time the

Legislature amended S.C. Code Ann. §62-3-806(b)(2010) that the Legislature intended for the amendment to be applied retroactively. Consequently, Respondent Tonney complied with the applicable 2008 statute when she filed the petition for allowance of her claim against the Knight Estate.

ARGUMENT III

THE CHIEF JUDGE OF THE SOUTH CAROLINA SUPREME COURT HAS THE POWER TO APPOINT A SPECIAL PROBATE COURT JUDGE TO PRESIDE OVER A PROBATE PROCEEDING IN ANOTHER JURISDICTION.

"The probate court of each county is part of the unified judicial system of this State." S.C. Code Ann. §14-23-1010. As enumerated in S.C. Const. art. V, §4, "[t]he Chief Judge shall … have the power to assign any judge to sit in any court within the unified judicial system…. The Supreme Court shall make rules governing the administration of all the courts of the State." (emphasis added).

Additionally, the Chief Judge of the Supreme Court has the authority to appoint a special judge when the Chief Judge has determined there is cause to remove the sitting judge. S.C. Code Ann. §14-23-1080(1976).

On July 30, 2008, the Honorable Irvin G. Condon, the Judge of Charleston County Probate Court, and the Honorable Tamara C. Curry, the Associate Judge of the Charleston County Probate Court, filed a request to the South Carolina Court Administration for recusal on all pending and subsequent matters relating to the

Estate of Norman Robert Knight, Jr. Consequently, on behalf of Chief Justice Jean Toal, the South Carolina Court Administration issued an Order dated August 5, 2008, appointing the Honorable Mary Blunt, the Judge of Probate for the Dorchester County, as the special probate judge for the Charleston County Probate Court concerning the Knight Estate. (S.R.p. 01). After six years of litigation and appeals, the South Carolina Court Administration on behalf of Chief Justice Toal, appointed Kenneth E. Fulp, Jr., the Probate Court Judge for Beaufort County, as the special probate court judge for Charleston County regarding all matters of the Knight Estate. Such appointment occurred on November 28, 2012. (R.p. 45). Judge Fulp as the special probate court judge for the Knight Estate had the authority to preside and issue orders as related to the motions and trial.

Further, Judge Fulp noted in his Order dated January 17, 2014 that Appellants' attorney "confirmed at the July 17, 2013 hearing that he did not challenge my authority [per Chief Justice's Order to serve as the special probate court judge for Charleston County] in the matter, and appeared to concede the issue on the record during the January 6, 2013 hearing." (R.p. 27). Such action constitutes as a waiver of the right to challenge the authority of Judge Fulp.

The Appellants raised the issue of venue as an additional ground for the appeal. Yet, the Appellants' attorney withdrew his objection to the issue of venue at a motion hearing per an Order dated December 23, 2013; therefore, such issue should be

deemed abandoned. (R.p. 31).

ARGUMENT IV

THE PROBATE COURT JUDGE RULED CORRECTLY THE UNREDACTED DOCUMENTS WERE NOT ADMISSIBLE.

"The admission of evidence is within the trial court's discretion. (citations omitted). The court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law. (citations omitted). The trial judge's decision will not be reversed on appeal unless it appears he clearly abused his discretion and the objecting party was prejudiced by the decision." Floyd v. Floyd, 365 S.C. 56, 615 S.E.2d 465, 479 (Ct. App. 2005).

Additionally, relevant evidence has to be of such nature which tends to make "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Irrelevant evidence is not admissible per Rule 402, SCRE.

Judge Fulp ruled certain checks and receipts pertaining to Respondent Tonney's claim against Knight Estate had to be "produced in unredacted form, *except that* all but the last four digits of the account and credit card numbers and all payment-authorization codes may be redacted. Such limited redactions would appear to allow proper identification of the accounts from which the claimed expenses were paid, without compromising the security of the accounts." (original emphasis) (R.pp. 32-33).

Respondent Tonney sought a sum of $1,622.22 as a reimbursement for payments she made to Bishop Gadsden Rehab, Inc. for her father Norman Robert Knight, Jr. The payments were made from a Morgan Stanley account that she and her sister established. (S.R.p. 53, line 8- p. 57, line 5).

Appellants issued a subpoena to Morgan Stanley for copies of checks that were issued from the Morgan Stanley account which had been referred to as "Queenie Account". Respondent Tonney filed a motion to quash Appellants' subpoena. (R.p. 19). Judge Fulp refused to quash Appellants' subpoena; therefore, Respondent Tonney informed Judge Fulp that she would withdraw a part of her claim in the amount of $1,622.22 as a reimbursement for payments she made from the Morgan Stanley account to Bishop Gadsden Rehab, Inc. for her father Norman Robert Knight, Jr. (R.p. 20). As a result of Respondent Tonney's withdrawal of her claim in the amount of $1,622.22 pertaining to the payments she made to Bishop Gadsden Rehab., Inc., Judge Fulp quashed Appellants' subpoena. (R.p. 22).

Judge Fulp stated in his Order dated April 22, 2014 that "[n]o checks from the [Morgan Stanley] account were introduced in support of any other expenses claimed by Tonney, so the withdrawal of that portion of her claim pertaining to expenses paid from the [Morgan Stanley] account renders the subpoenaed documents irrelevant to the remainder of the Tonney claim which is subject to adjudication. Enforcement of the subpoena, under these circumstances, would require the disclosure of otherwise

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confidential personal financial information, protected by law, to no purpose relevant to the matter before the Court." (R.p. 21).

Also, Judge Fulp opined in the same Order that "[a]llowing [Respondent Tonney] to further reduce her claim by withdrawing the amounts paid from the [Morgan Stanley] account to Bishop Gadsden Rehab, Inc., eliminates those payments as a matter for trial or defense by [Appellants], and does not prejudice [Appellants]." (R.p. 21).

The Appellants asserted Respondent Tonney should have sought a protective order in regards to the [Morgan Stanley] account. (Appellants' Brief, p. 9). The Appellants did not raise such contention until the filing of this Appeal; therefore such contention should not be considered per Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505 (2006) (such contention must be raised and ruled upon the circuit court to be preserved).

Appellants further contended the letter dated October 16, 2007 from Thad Vincent to Respondent Tonney and Walter Kaufmann should not have been redacted. (Appellants' Brief, p. 9, R.p. 105).

Such letter is not relevant as defined in Rule 401, SCRE. Respondent Tonney filed a claim for expenses that she paid/loaned for the benefit of her father. Thad Vincent's letter regarding the fault of the party in a domestic action did not have any bearing or relevancy pertaining to Respondent Tonney's claim; therefore, such letter was irrelevant and not admissible per Rule

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402, SCRE.

Even assuming, *arguendo*, which is denied, that Thad Vincent's letter was not protected per attorney-client privilege as held by the trial judge, such error is not reversible unless there is a showing of prejudice to the complaining party. JKT Co., Inc, v. Hardwick, 274 S.C. 413, 265 S.E.2d 510 (1980). As previously stated, redaction in Thad Vincent's letter did not have a bearing on Respondent Tonney's claim; therefore, such exclusion was not prejudicial to the Appellants.

ARGUMENT V

DOCTRINE OF UNCLEAN HANDS IS NOT APPLICABLE IN A CASE THAT IS AN ACTION AT LAW.

The doctrine of unclean hands prevents a party from "recovering *in equity* if he acted unfairly in a matter that is the subject matter of the litigation to the prejudice of the defendant. (citation omitted). The equitable doctrine of unclean hands, however, has no application to an action at law." (original emphasis). Aaron v. Mahl, 381 S.C 585, 674 S.E.2d 482, 487 (2009). (The Court held the trial court erred in applying the doctrine of unclean hands because the Appellant was not seeking to recover in equity.)

"Petitions to allow claims against an estate are treated the same as any other proceeding for the purposes of ascertaining their legal or equitable nature. Tollison v. Anderson Area Medical Center, Inc., 320 S.C. 132, 135, 463 S.E.2d 611, 613 (Ct.

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App. 1995). When the proceeding involves a claim for money, such proceeding is "ordinarily triable at law." Id.

Respondent Tonney purchased items for her father's benefit when he was removed from his residence to an assisted living facility and later to a skilled nursing facility. (S.R.p. 36 - p. 52, line 17). The Appellants would not permit Iris Albright as an authorized agent for the court appointed conservator to retrieve Norman Knight, Jr.'s hospital bed from his home; therefore, a hospital bed had to be purchased. (S.R.p. 27, lines 15-22). Mrs. Albright discussed with Respondent Tonney about the need to purchase items for Norman Knight, Jr. Respondent Tonney treated the purchase of items as a loan. (S.R.p. 20, lines 12-16, R.pp. 136-137). Respondent Tonney presented receipts of items that she purchased for her father. (R.pp. 120-135).

Additionally, Respondent Tonney paid for the legal fees for her father arising out of a domestic law action. Family Services through Iris Albright as the court appointed conservator and Walter Kaufmann as the court appointed guardian believed Norman Knight, Jr. needed legal representation. (S.R.p. 32, line 22- p. 35, line 18). Respondent Tonney sent a letter dated October 27, 2007 to Iris Albright to confirm that all payments for attorney's fees for her father should be treated as a loan. (R.p. 113).

Mrs. Albright testified that an Order from Family Court required Norman Knight, Jr. to pay half of his civil service funds to his wife Mildred Knight. (S.R.p. 21, lines 13-17). Such

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Order impacted Mr. Knight's financial ability to live at Savannah House, an assisted living facility, and at Bishop Gadsden, a skilled nursing facility, so Mrs. Albright contacted Respondent Tonney for financial assistance. Respondent Tonney agreed to provide assistance. (S.R.p. 21, line 18- p.22, line 3).

At one point, Mrs. Albright had to contact Respondent Tonney for money because she only had 67 cents in his conservatorship account, and she needed funds to pay for Mr. Knight's prescription and hygiene items. Respondent Tonney sent a check in the amount of a thousand dollars to Mrs. Albright. (S.R.p. 24, line 16- p.25, line 11; R.p. 141).

Since Respondent Tonney's claim sought money from the Knight Estate for the loans and expenses that she incurred for the benefit of her father, such claim is treated as an action at law, not as an action in equity, per Tollison v. Anderson Area Medical Center, Inc.

The Appellants argued Respondent Tonney did not provide notice of her intent to file a creditor's claim to them. The South Carolina Probate Code does not mandate the creditor to notify family members of its intent to file a creditor's claim. The creditor is required to file a creditor's claim in the probate court that is administering the estate. Further, the creditor may send a copy of such creditor's claim to the personal representative of such estate that is subject to the claim. S.C. Code Ann. §62-3-804(1)(a)(2008).

The Appellants raised the issue of credibility to advance

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their argument of unclean hands. The appellate courts have issued plethora of cases in holding that a presiding judge is in a better position to see and hear the witnesses, judge their credibility and determine the weight to give to such testimony. Weathers v. Bolt, 293 S.C. 486, 361 S.E.2d 773 (Ct. App. 1987) and Ex Parte Blizzard, 185 S.C. 131, 193 S.E. 633 (1937).

Judge Fulp heard the testimony of the parties, and he weighed the credibility of the parties. Judge Fulp did not find Appellants' arguments including the purported facts regarding the doctrine of unclean hands to be persuasive.

ARGUMENT VI

THE LAW OF AUTOMATIC STAY WAS NOT APPLICABLE TO THE CASE.

"Section 62-1-308(c) of the South Carolina Probate Code does not apply to all orders of the probate court concerning the parties. The only proceedings required to cease are those proceedings addressed in the orders from which an appeal was taken." Ulmer v. Ulmer, 369 S.C. 486, 632 S.E.2d 858, 861 (2006).

On August 30, 2005, Appellants appealed to the Charleston County Clerk of Court an Order dated August 25, 2005 issued by Judge Tamara Curry, the presiding judge of the Charleston County Probate Court. The appeal was given a case number that being 2005-CP-10-3573. (Appellants' Notice of Appeal dated August 30, 2005). The Appellants asserted Judge Curry erred in appointing Walter Kaufmann as the Guardian for Norman Robert Knight, Jr.

Judge Roger Young in his capacity as the appellate judge issued an Order dated October 5, 2005, wherein he decreed that Mildred Knight was to remain as Guardian and Conservator pending appeal. (R.p. 219). Judge Young further ordered the Clerk of Court to expedite the appeal during the October 31, 2005 term of court. (R.p. 220). The Order showed case number 2005-CP-10-3573.

The appeal was heard by the Honorable Kenneth Goode on December 15, 2005. Judge Goode concluded in his Order dated January 16, 2005 (should have been January 16, 2006 as the year was a typographical error) that Appellants failed to timely appeal case numbers 2005-CP-10-2603 and 2005-CP-10-2569. Also, Judge Goode held Appellant Mildred Knight did not preserve her appeal for case number 2005-CP-10-3573, and such appeal was dismissed with prejudice. (R.p. 226).

Judge Goode opined that the appeal concerning Judge Curry's Order dated August 25, 2005, to be timely filed. (R.p. 226). In regards to Judge Curry's Order, Judge Goode held the "Charleston County Probate Court did not err in its findings of fact nor was there any abuse of discretion, the appeal is dismissed with prejudice[;]" therefore, the appeal of the Order dated August 25, 2005 was adjudicated and dismissed with prejudice. (R.p. 228).

The Appellants filed a Notice of Motion and Motion for New Trial on January 30, 2006, concerning Judge Goode's Order. The Appellants did not state in their Motion for a New Trial that Judge Goode erred in holding that the Charleston County Probate

Court did not abuse its discretion or its findings of facts were incorrect. (R.pp. 161-162). As a result, Judge Goode's ruling became the law of the case.

"An unappealed ruling is the law of the case and requires affirmance." Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). If the appealing party fails to raise all of the grounds upon which a lower court's decision was based, then such unappealed findings, even if incorrect, become the law of the case. Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009).

Additionally, the appeal of the August, 2007 Order is not applicable to the present case per Ulmer. The appeal of such Order involved Judge Curry's appointment of Respondent Tonney as the successor conservator for her father, Norman Robert Knight, Jr., upon the request of Family Services, Inc. to be relieved. Upon the appeal, the Charleston County Probate Court replaced Respondent Tonney with the re-appointment of Family Services, Inc. as the conservator. Family Services, Inc. served as the conservator for Mr. Knight until his passing. Therefore, the appeal of the 2007 Order was moot since Respondent Tonney never undertook the role of the conservator for her father. Moreover, the 2005 and 2007 Orders dealt with the conservatorship and guardianship of Norman Robert Knight, Jr., not with the administration of the Estate of Norman Robert Knight, Jr. The administration of the estate is not subject to a stay arising from unrelated cases as held in Ulmer.

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ARGUMENT VII

APPELLANTS' ARGUMENT CONCERNING THE DOCTRINE OF FRAUD FAILS FOR LACK OF EVIDENCE AND CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.

It is axiomatic that a party cannot raise an issue for the first time on appeal, and such issue "must have been raised to and ruled upon the trial judge to be preserved for appellate review." Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia, 409 S.C. 563, 762 S.E.2d 693,695 (2014).

Appellants did not raise the issue of fraud in their defense in any of numerous motions or during the trial. The issue of fraud was raised for the first time in the Appellants' appeal from the probate court to the circuit court.

In the alternative, the issue of fraud fails for lack of proof. A "fraud claim requires proof by clear and convincing evidence; thus, more than a mere scintilla of evidence must be presented to withstand a motion for summary judgment." Turner v. Milliman, 392 S.C. 116, 708 S.E.2d 766, 770 (2011).

The Appellants made allegations regarding Mildred Knight and her purported reliance on alleged statements in their initial brief. However, Appellants did not provide any proof of fraud. Mildred Knight died prior to the trial. The Appellants did not take the deposition of Mildred Knight prior to her death. Consequently, the Appellants failed to prove fraud by a clear and convincing evidence as required per Turner.

ARGUMENT VIII

APPELLANTS' ARGUMENT CONCERNING THE GREATER WEIGHT OF THE EVIDENCE AND ABUSE OF DISCRETION AS TO RESPONDENT TONNEY'S CLAIM IS THE INCORRECT STANDARD OF REVIEW.

"The rules governing appeals at law and in equity are well settled. If a proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court's finding of fact unless a review of the record discloses there is no evidence to support them. (citations omitted). If the probate court proceeding is equitable in nature, the circuit court, on appeal, may make factual findings according to its own view of the preponderance of the evidence." Howard v. Mutz, 315 S.C. 356, 361-262, 434 S.E.2d 257-258 (1993). The appellate court has to consider the essential character of the petitioner's cause of action in the lower court. Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (Ct.App. 1993).

Petition to allow claims against an estate for money due is "ordinarily triable at law[; therefore] if there is any evidence which reasonably supports the factual findings of the probate judge", then the presiding probate judge's order must be affirmed. Tollison v. Anderson Area Medical Center, Inc., 320 S.C. 132, 135, 463 S.E.2d 611, 613 (Ct. App. 1995).

Appellants contend Judge Fulp as the presiding probate court judge allowed Respondent Tonney's claim against the greater weight of the evidence, and she had failed to satisfy the legal requirements of her case. (Appellants' Brief p. 19). Such

contention is not the requisite standard of review as espoused in Howard. As previously stated, Respondent Tonney's claim is an action at law per Tollison. Therefore, the circuit court as appellate court is to affirm Judge Fulp's Order since the record supports his findings of fact.

Judge Fulp in his Order outlined specific findings of fact. He concluded there was evidence of discussion between Respondent Tonney, Walter Kaufman and Iris Albright of Family Services, Inc., guardian and conservator for Norman Robert Knight, Jr, respectively, about the need for clothes, medicine, food, and furniture for Mr. Knight. (S.R.p. 19, line 23- p. 20, line 5; S.R.p. 31, lines 9-21; R.pp. 136-137). Further, Iris Albright testified she agreed for Respondent Tonney to purchase food, medicine, clothes, and furniture for her father with the expectation that she would be reimbursed. (S.R.p. 20, lines 12-16; R.pp. 136-137).

Walter Kaufmann testified the need for such purchase for the benefit of Norman Robert Knight, Jr. arose from the emergency removal of Mr. Knight from his primary residence to an assisted living facility. (S.R.p. 28, line 22- p. 31, line 21). The Charleston County Probate Court issued an Order dated January 31, 2006, which authorized Mr. Kaufmann as the guardian to "take custody of the ward, Mr. Knight." (R.p. 230).

Respondent Tonney presented detailed receipts of food, clothes, and furniture that she purchased with her own funds or credit cards. (R.pp. 120-135). Judge Fulp concluded by the

preponderance of the evidence that Respondent Tonney made the purchases for her father with the expectation that she would be reimbursed. (R.p. 13).

Appellants further asserted Walter Kaufman and Iris Albright, guardian and conservator for Norman Knight, Jr., respectively, failed in their duty to inform Mildred Knight of major decisions regarding Mr. Knight; therefore, they breached their duty. (Appellants' Brief, p. 22). Such contention is incorrect.

Mrs. Albright testified that she did not contact Mildred Knight because Mrs. Knight did not want to hear from her. (S.R.p. 26, lines 14-18). Mr. Kaufman expressed in his testimony that he "consulted with her as often as she would speak with me, but that was not very often…, the dynamic between Mrs. Knight and Mr. Bobby Knight and myself went south so early on in the process that we did not have good open lines of communication as I did with Mr. Knight's daughters."(S.R.p. 35, lines 3-11).

The exhibits and testimony of Walter Kaufman, Iris Albright, and Respondent Tonney provide significant evidence to substantiate Judge Fulp's findings of fact; therefore, the Judge Fulp's Order is to be affirmed per Howard.

ARGUMENT IX

RESPONDENT CHLOE TONNEY'S CREDITOR'S CLAIM WAS TIMELY FILED.

The applicable claim statute that being S.C. Code Ann. §62-

3-803(a)(2008) required the claimant to file a claim against an estate within one year after the decedent's death or within the time provided in S.C. Code Ann. §62-3-801(a)(2008). Pursuant to S.C. Code Ann. §62-3-801(a)(2008), creditors of the estate must "present their claims within eight months after the date of the first publication of the notice or be forever barred."

"The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, and must file a written statement of the claim, in the form prescribed by rule, with the clerk of the probate court" per S.C. Code Ann. §62-3-804(1)(a)(2008).

The issue of the timeliness of Respondent Tonney's claim filing was presented in Judge Fulp's Order dated July 29, 2013. (R.p. 41). In such Order, Judge Fulp indicated the record reflected as follows: the decedent died on March 11, 2008; notice to creditors was first published on May 21, 2008; Chloe Tonney's claim was presented on January 20, 2009. "Those dates were stated on the record at the hearing, and none was questioned by Knight's counsel." (R.p. 41).

As indicated in Order dated July 29, 2013, Judge Fulp stated the Appellants' counsel did not question the date as they were stated on the record; therefore, Appellants' contention failed. (R.p. 41).

ARGUMENT X

APPELLANTS' CONTENTION THAT PROBATE COURT JUDGE ERRED IN ALLOWING RESPONDENT TONNEY TO BE REIMBURSED FOR ATTORNEY'S FEES ARISING OUT OF FAMILY COURT MATTER AND ALLOWING FULL INTEREST ON JUDGMENT IS NOT PRESERVED FOR APPEAL.

It is axiomatic that a party cannot raise an issue for the first time on appeal, and such issue "must been raised to and ruled upon the trial judge to be preserved for appellate review." Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia, 409 S.C. 563, 762 S.E.2d 693,695 (2014).

Appellants did not contend in their Motion for New Trial and to Alter or Amend the Judgment that Judge Fulp erred in allowing Respondent Tonney to be reimbursed for attorney's fees arising out of the family court action and allowing full interest on judgment. Appellants only raised the issue of attorney's fees as related to family court for the first time in their appeal from the Charleston County Probate Court to the Charleston County Clerk of Court as the appellate court. The issue regarding the allowance of interest judgment is raised for the first time on appeal from the Charleston County Circuit Court to the South Carolina Court of Appeals; therefore, both issues are barred.

If this Court concludes the Appellants properly preserved the argument concerning the award of attorney's fees arising out of a family court action, then Respondent Tonney contends the trial transcript is replete with testimony from Iris Albright of Family Services, Inc., conservator, and Walter Kaufman; the

guardian for Norman Robert Knight, that Mr. Knight needed representation in the family court matter. (S.R.p. 21, lines 8-17; S.R.p. 32, line 12-p. 33, line 11). Respondent Tonney apprised Ms. Albright in a letter dated October 24, 2007, that she would pay her father's legal expenses for the family court matter, and such payments would be treated as a loan. (R.p. 113). Judge Fulp concluded Respondent Tonney agreed to pay for her father's legal expenses, and she had made arrangements with Iris Albright as the conservator to Mr. Knight for such payments. (R.pp. 9-10).

As stated previously, if a proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court's finding of fact unless a review of the record discloses there is no evidence to support them. Howard v. Mutz, 315 S.C. 356, 361-262, 434 S.E.2d 257-258 (1993).

Appellants' arguments regarding attorney's fees and interest on the judgment are barred because they have been raised for the first time on appeal. In the alternative, there is substantial evidence in the trial record to prove that Respondent Tonney treated the payments of her father's legal fees as loans. Such payments were made with the consent of Iris Albright as her father's conservator.

CONCLUSION

Respondent Chloe Tonney's claim for reimburse from the Estate of Norman Robert Knight, Jr. is treated as an action in

law. The appellate court's review is limited to whether there evidence to support Judge Fulp's findings of fact.

Judge Fulp issued a detailed findings of fact based on the evidence that was presented to the Court. Judge Fulp concluded a Summons was not required when Respondent Chloe Tonney filed her petition for allowance against the Knight Estate in 2009 on the basis the applicable 2008 South Carolina Probate Code did not require the filing of the Summons.

Additionally, it is irrefutable that the South Carolina Court Administration on behalf of the Chief Justice of the South Carolina Supreme Court had the authority to appoint a special probate court judge per S.C. Const. art. V, §4 and S.C. Code Ann. §14-23-1080(1976). Appellants' attorney conceded such point in a motion hearing before Judge Fulp.

Moreover, Judge Fulp succinctly held the redacted documents regarding checks from a Morgan Stanley account were not relevant to Respondent Chloe Tonney's claim, and such ruling did not prejudice the Appellants. Judge Fulp pointed out Respondent Chloe Tonney withdrew a claim for $1,622.22 for a payment she made from the Morgan Stanley account to Bishop Gadsden Rehab, Inc. for her father Norman Robert Knight, Jr., and such checks were the only checks that were drawn from a Morgan Stanley account. Judge Fulp concluded in his Order dated April 22, 2014, that the withdrawal of such checks eliminated such payments as a matter for trial or defense by Appellants, and such withdrawal of the checks did not prejudice the Appellants.

Appellants' contention that the appeal of a 2005 Order and 2007 Order required the proceeding to be stayed does not have any merit. Judge Goode as the appellate judge concluded in the Order that Judge Curry's Order regarding the appointment of Walter Kaufman as the Guardian for Norman Robert Knight, Jr. was proper. Moreover, the 2007 Order only dealt with the appointment of Respondent Chloe Tonney as the successor conservator for Norman Robert Knight, Jr. The Charleston County Probate Court appointed Family Services, Inc. as the successor conservator so Respondent Chloe Tonney never undertook the role as a conservator. The 2005 Order and 2007 Order dealt with the conservatorship and guardianship of Norman Robert Knight, Jr., not with Respondent Chloe Tonney's claim against the Estate of Norman Robert Knight, Jr.; therefore, a stay was not applicable.

Respondent Chloe Tonney complied with the applicable 2008 South Carolina Probate Code regarding the submission of her creditor's claim against the Estate of Norman Robert Knight, Jr. As Judge Fulp stated in his Order dated July 29, 2013, Appellants' attorney did not question the dates, which included the date of the creditor's notice and the date that Respondent Tonney filed her claim.

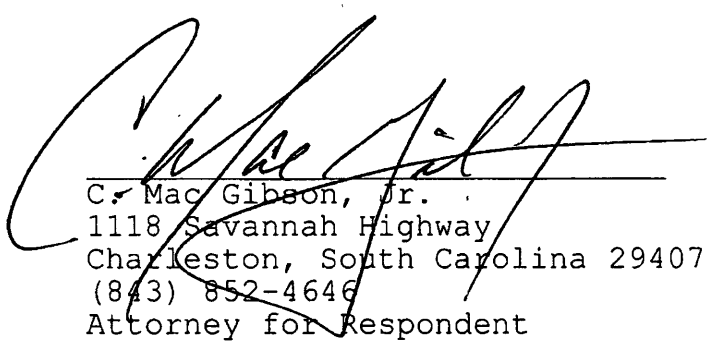
Appellants' arguments that Respondent Tonney is not entitled to reimbursement for attorney's fees arising from a family court matter and interest on judgment are not preserved on the basis the arguments are being raised for first time on appeal.

For the foregoing reasons, Judge Fulp's Order dated July 11,

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2014 is to be affirmed.

Respectfully submitted,



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January 3, 2017

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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

J.C. Nicholson, Jr., Circuit Court Judge

RECEIVED
JAN 05 2017
SC Court of Appeals

Case No. 2014-CP-10-5355

IN RE: ESTATE OF NORMAN ROBERT KNIGHT, JR., (deceased), ESTATE OF MILDRED C. KNIGHT (deceased) and NORMAN ROBERT "BOBBY" KNIGHT, III,

Appellants,

-versus-

BEATRICE E. WHITTEN, AS SPECIAL ADMINISTRATOR, and CHLOE KNIGHT-TONNEY, CLAIMANT,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

January 3, 2017

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2014-CP-10-5355

IN RE: ESTATE OF NORMAN ROBERT KNIGHT, JR.,
(deceased), and NORMAN ROBERT ("Bobby") KNIGHT, III,
Appellants,

-versus-

BEATRICE E. WHITTEN, AS SPECIAL ADMINISTRATOR,
and CHLOE KNIGHT-TONNEY, CLAIMANT,
Respondents.

FINAL BRIEF OF RESPONDENT SPECIAL ADMINISTRATOR, BEATRICE E. WHITTEN

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January 13, 2017

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STATEMENT OF THE ISSUE

THE PROBATE COURT CORRECTLY HELD THAT THERE WERE NO GROUNDS TO REMOVE THE SPECIAL ADMINISTRATOR.

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STATEMENT OF THE CASE

The decedent in this case, Norman Robert Knight, Jr., died on March 11, 2008. An estate was opened for him on March 19, 2008, with the Charleston County Probate Court. The Probate Judges for Charleston County recused themselves after being named defendants in a lawsuit brought by the Appellant, Robert ("Bobby") Knight, III. The case was thereafter transferred by South Carolina Court Administration to the Dorchester County Probate Court, which appointed Beatrice E. Whitten as Special Administrator on December 15, 2008. After subsequent transfers and recusals by Probate Judges in Lexington and Berkeley Counties, The Honorable Kenneth E. Fulp, Jr., of Beaufort County, was assigned the case by Court Administration in 2012.

The matters under appeal were heard by Judge Fulp on March 31, 2014, and April 28, 2014. Judge Fulp issued his final order on July 11, 2014, ruling that a claim brought against the estate by Respondent Chloe Knight-Tonney was allowed in part, and leaving the Special Administrator in place.

The Appellant appealed both issues to the Charleston Court of Common Pleas. This appeal was heard by The Honorable J.D. Nicholson, who issued a denial of the Appellant's appeal on January 27, 2016.

Respondent in this brief will address only the issue of the motion brought to remove the Special Administrator.

ARGUMENT AND AUTHORITY

A Special Administrator is basically a personal representative appointed by the Probate Court when such "appointment is necessary to preserve the estate or to secure its proper administration

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including its administration in circumstances where a general personal representative cannot or should not act." S.C. Code Ann. § 62-3-614(2). A special administrator has the power of a general personal representative unless otherwise limited by the order of appointment. S.C. Code Ann. § 62-3-617.

The December 15, 2008, order of the Dorchester County Probate Court, appointing Beatrice E. Whitten as special administrator, states, "The Special Administrator has the power of a general Personal Representative pursuant to S.C. Code § 62-3-617." (R.p. 50-55) The rules governing removal of a personal representative are therefore applicable to the issue of removing a special administrator.

The cause of action for removal of a personal representative is equitable in nature. As this equitable matter has been heard and decided by the probate court, and then affirmed by the circuit judge acting as an appellate court, the "two-judge rule" applies. This standard of review is whether there is any evidence which reasonably supports the circuit court's findings. "In an action at equity, tried first by the master or special referee and concurred in by the trial judge, the findings of fact will not be disturbed on appeal unless found to be without evidentiary support or against the clear preponderance of the evidence." *Geddings v. Geddings*, 460 S.E. 2d 376, 378, 319 S.C. 213 (S.C. 1995); *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); *Dean v. Kilgore*, 313 S.C. 257, 437 S.E.2d 154 (Ct.App.1993) (two-judge rule would apply in appeal from circuit court of an equity case originating in probate court where both courts agreed on material issues).

The legal standard for removal of a personal representative is a showing that such removal would be in the best interest of the estate, has disregarded an order of the court, has become

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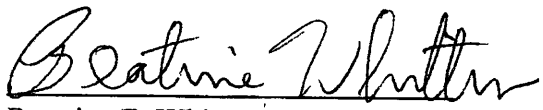
incapable of discharging her duties, has mismanaged the estate, or has failed to perform any duty of the office. S. C. Code Ann. § 62-3-611. The South Carolina Court of Appeals has further stated that "The power to remove a personal representative should be exercised with great caution, and not at all, unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud." *Church v. McGee*, 705 S.E. 2d 481, at 343 (S.C. Ct. App. 2011), *quoting Smith v. Heyward*, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920).

Appellant Bobby Knight failed to allege or prove any of the required grounds for removal of a personal representative. He made vague allegations both at trial and in appeals arguments. However, he failed to describe any damage or even prejudice caused to the estate by the current Special Administrator, even if his unproven assertions were considered true. In fact, Judge Fulp specifically found that continuing the Special Administrator's appointment would be in the best interest of the estate. (R.p. 3, lines 15-16) Judge Nicholson affirmed this finding. (S.R.p. 2) There is no indication that these findings lack evidentiary support or that they are against the clear preponderance of the evidence.

South Carolina appellate courts have declined to remove a Personal Representative even in cases where there were allegations of self-dealing, maladministration or actual documented conflicts between Personal Representative and beneficiaries. *See Blackmon v. Weaver*, 621 S.E.2d 42, 366 S.C. 245 (S.C. 2005); *Reed v. S.C. National Bank*, 360 S.E.2d 527, 293 S.C. 357 (S.C.App. 1987). In this case, Judge Fulp considered all of the testimony and documentary evidence and found that Appellant Bobby Knight's complaints about the Special Administrator, most of which he repeated in the Circuit Court appeal and again in this appeal, were factually unfounded. (R.p. 2, lines 3-5,

R.p. 3, lines 12-14) Judge Fulp's final order fully and fairly discusses and takes into consideration all of the evidence, leading to a logical decision which tracks all of the facts and fully complies with all legal standards. (R. pp. 15-18) His decision should be affirmed.

Respectfully submitted,



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January 13, 2017

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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

J.C. Nicholson, Jr., Circuit Court Judge

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Case No. 2014-CP-10-5355

In Re: Estate of Norman Robert Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert "Bobby" Knight, III,

Appellants,

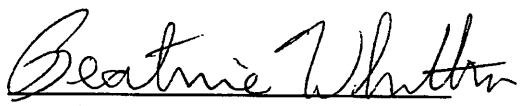
-versus-

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant,

Respondents.

CERTIFICATE OF COMPLIANCE

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



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January 19, 2017

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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

J.C. Nicholson, Jr., Circuit Court Judge

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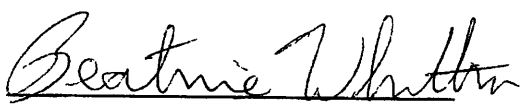
-versus-

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant,

Respondents.

CERTIFICATE OF COMPLIANCE

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

CASE NO. 2014-CP-10-5355
Appellate Case No. 2016-000748

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SC Court of Appeals

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Appellants' Final Reply Brief

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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J.C. Nicholson, Circuit Court Judge

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Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents.

Appellants' Final Reply Brief

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STATEMENT OF THE ISSUES ON APPEAL

1. LOWER COURTS ERRED BY ACTING ON A PETITION FILED AND SERVED WITHOUT SUMMONS

2. LOWER COURTS ERRED BY ALLOWING THE PROBATE COURT TO ACT WITHOUT A QUALIFIED ELECTOR SERVING AS SPECIAL JUDGE

3. LOWER COURTS ERRED BY FAILING TO UNREDACT DOCUMENTS OFFERED AND ADMITTED INTO EVIDENCE

4. LOWER COURTS ERRED BY FAILING TO APPLY THE LAW OF UNCLEAN HANDS TO A CLAIM FOR EQUITABLE RELIEF

5. LOWER COURTS ERRED BY FAILIING TO RECOGNIZE THE LAW OF AUTOMATIC STAY PURSUANT TO S. C. CODE SEC. 62-1-308(c)

5. LOWER COURTS ERRED BY FAILING TO APPLY THE DOCTRINE OF FRAUD IN THE INDUCEMENT TO ENTER A CONTRACT

7. LOWER COURTS' ALLOWANCE OF RESPONDENTS' CLAIM IS AGAINST THE GREATER WEIGHT OF THE EVIDENCE AND AN ABUSE OF DISCRETION

8. LOWER COURTS ERRED IN HOLDING THAT RESPONDENT TONNEY'S CLAIM FOR REPAYMENT WAS TIMELY FILED

9. LOWER COURTS ERRED IN HOLDING THAT RESPONDENT CHLOE TONNEY HAD SATISFIED THE LEGAL REQUIREMENTS FOR CASE-IN-CHIEF

10. LOWER COURTS ERRED BY REIMBURSING RESPONDENT TONNEY FOR ATTORNEY FEES IN PARENTS' FAMILY COURT MATTER AND ALLOWING FULL INTEREST ON JUDGMENT

11. LOWER COURTS ERRED BY NOT REMOVING BEATRICE WHITTEN AS SPECIAL ADMINISTRATOR

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STATEMENT OF THE CASE

In 2004, relations between Norman R. Knight, Jr., Mildred C. Knight, and their daughters, Chloe Knight-Tonney and Linda Jones became adversarial. In 2004, Mr. and Mrs. Knight revoked their Power-of-Attorney to their daughters. In 2004, the Charleston County Department of Social Services investigated the Knight home pursuant to allegations of elder abuse. In 2004, the investigation was terminated and the allegations were classified as unfounded.

Relations between the parties continued to deteriorate, becoming litigious and contentious. While an appeal was pending in the Circuit Court, Mr. Knight was removed from the home in 2006.

On January 20, 2009, Respondent Tonney filed a claim for reimbursement of moneys expended allegedly for the care of her father, Norman R. Knight, Jr. The Special Administrator, Beatrice E. Whitten, disallowed the claim and on or about April 20, 2009, Respondent filed a petition to allow the claim. After several years of litigation and appeals, on November 28, 2012, Beaufort County Probate Judge, Kenneth E. Fulp, Jr. was appointed Special Probate Judge for Charleston County exclusively for the Estate of Norman R. Knight Jr.

On May 29, 2013, Appellants filed a Summons and Complaint seeking the removal of the Special Administrator. On July 17, 2013 the initial set of motions were argued and an order filed on July 29, 2013. Appellants were the only movants; all motions were denied. On December 13, 2013, Appellant filed and served an Amended Complaint to Remove the Special Administrator. Numerous pre-trial motions were filed and argued. Appellant filed two series of Motions to Dismiss, Motion to Compel

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Discovery with issues of redaction, Motion to Amend Complaints and other motions regarding venue, all filed in pre-trial. On December 17, 2013, a motion hearing by phone was held and an order issued on December 23, 2013. This hearing was significant because the Court held certain documents had to be unredacted to comply with Appellants' motion to Compel. A second set of pre-trial motions were argued by telephone on January 6, 2014 and an order was filed on January 17, 2014. Appellants' Motion to Amend Special Administrator's Complaint was granted. Bishop Gadsden was allowed to withdraw its claim.

On April 22, 2014, Judge Fulp quashed Appellants' subpoena duces tecum to the Morgan Stanley Company, Morgan Smith-Barney. The subpoena required Morgan Stanley to provide information on the "deposit and withdrawal activity/records including identity of depositors and payees for the years 2004 through 2009 involving account holders: Linda Jones, Chloe Tonney, and Queenie."

This matter was tried before the bench in non-jury for two separate days, March 31, 2014 and April 28, 2014. Including post-trial proceedings, i.e. written closing arguments, a final order was filed on July 11, 2014. After post-trial motions, a Notice of Intent to Appeal was filed on September 3, 2014 by the Estate of Mildred C. Knight, and Bobby Knight. This is an appeal of the orders of Special Probate Judge for Charleston County, Kenneth E. Fulp, Jr. and Common Pleas Court Judge, J.C. Nicholson, Jr. Judge Nicholson denied a Motion to Appeal on January 27, 2016 although Appellants did not file a "motion to appeal." Post-trial motions were denied with Notice of Entry of Judgment being received by Appellants on March 11, 2016.

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ARGUMENTS

I. APPELLANTS' CHALLENGE OF LOWER COURTS' AWARD OF ATTORNEY FEES IS PRESERVED FOR APPEAL

At the conclusion of the two (2) day trial, Judge Fulp directed and instructed all counsel to submit closing arguments in writing. (S.R.p.17: tr.p. 396 L. 18-tr.p. 397 L.10).

In Appellants' closing Argument filed with the Beaufort County Probate Court on June 16, 2014, page 5, in the first paragraph, Appellants argued that "the Family Court did not award attorney fees in that matter, and the case was dismissed upon the passing of Mr. Knight." In that paragraph, Appellants went on to argue that an award of attorney fees was not justified under any of the circumstances then existing, and suggested to the trial court that the claim was not plausible.

In his testimony at trial, Appellant Bobby Knight stated that there was no order to pay attorney's fees except for one involving a Rule to Show Cause. (S.R.p.10-12: tr.p. 256 L. 14 – tr.p. 258 L.2).

Appellants then argued before the Circuit Court that attorney fees were not awarded by the Family Court; attorney fees were not a reasonable expenditure of Mr. Knight's limited resources; the attorney fee expenditure did not benefit Mr. Knight; the attorney fee expenditure was not necessary for his care and sustenance; Respondent Tonney made these payments outside of the Probate Court's structure, i.e. the Conservator. The arguments were made in Appellants' Initial Brief to the Circuit Court as well.

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The lower courts have had ample opportunity to rule correctly on this issue. Wilder Corp. v. Wilke, 330 S.C. 7, S.E.2d 731 (1998)

II. APPELLANTS'ARGUMENTS ON THE DOCTRINE OF FRAUD IN THE INDUCEMENT TO ENTER A CONTRACT IS PRESERVED FOR APPEAL

At the conclusion of the two (2) day trial, Judge Fulp directed and instructed all counsel to submit closing arguments in writing. (S.R.p.17-18: tr.p. 396 L. 18-tr.p. 397 L.10).

In Appellants' Closing Argument filed with the Beaufort County Probate Court on June 16, 2014, beginning on page 2, paragraph three (3) to page 3, Appellants argued the doctrine of fraud in the inducement to enter a contract. The same was argued in the Initial Brief to the Circuit Court and in all other arguments before that tribunal.

Respondent Tonney did not tell her mother of her desire to be reimbursed (R.p.76-80). The Conservator and the Guardian did not tell Mrs. Knight of any arrangement to reimburse Tonney. The Guardian and the Conservator were ordered to discuss these kinds of matters with Mrs. Knight and they did not inform her. There was clear evidence of a dismissive attitude and contemptuousness towards Mrs. Knight. The lower courts have had ample opportunity to correctly rule on this issue. Bailey v. Segars, 346 S.C. 359, 550 S.E. 2d 910 (S.C. App. 2001).

III. LOWER COURTS ERRED BY FAILING TO UNREDACT DOCUMENTS OFFERED AND ADMITTED INTO EVIDENCE

Appellants' motion to unredact certain documents were properly and timely filed. The Trial court granted the requests with two exceptions. The most

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notable was the ruling that prevented discovery on the source of money used to pay certain expenses of Mr. Knight. The other exception involved a letter (R. p. 105) written by the decedent's attorney to Tonney and the third party.

The Appellants objected to the admission of the attorney letter because we could not prepare for trial without the information that had been redacted. The court offered no options for viewing the screened information. The fact that the letter was written to Tonney and a third party, not a co-client, mean there is no attorney- client privilege, and the letter was produced as response to discovery. Floyd v. Floyd, 365. S.C. 56, 615 S.E. 2d 465 (2005). The lower courts have incorrectly held that this letter was protected by a privilege.

The exception that was most notable involved the subpoena of information acquired from the trial court's order to unredact checks from a certain account. Respondent Tonney filed a motion to quash the subpoena, the motion was denied and Respondent Tonney withdrew her claim based on this account. The trial court then granted the motion to quash Appellants' subpoena on the grounds Tonney's withdrawal of the claim made the information irrelevant. (R.p. 19-22). The quashed subpoena requested information on the "deposit and withdrawal activity/ records including identity of depositors and payees...." The request covered only a five (5) year period. This material would have led to a relevant and influential line of inquiry for trial purposes. The information would have made the origin of funds used to pay the decedent's expenses certain, and set the records straight as to who is the true claimant. Appellant Bobby Knight testified about the wealth of Louise Reynolds. (S.R.p.13-16: tr p. 292 L. 2 – tr.p. 295 L. 16). Respondent Tonney should not be allowed to blur the lines of the trial process. Tonney did not move for a protective order.

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Crawford v. Henderson, 356 S.C. 389, 589 S.E. 2d 204 (Ct. App. 2003).

The lower courts did not protect the truth-finding process. South Carolina Courts protect "trial on the merits," not guileful machinations designed to thwart the full and comprehensive examination of the facts. Knight v. Lee, 262 S.C. 17, 202 S.E. 2d 19 (1974).

IV. THE LAW OF AUTOMATIC STAY IS APPLICABLE TO THIS CASE

The automatic stay is clearly applicable to this matter. The language of the controlling statute is very direct: ". 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." The power and authority to stay proceedings are automatic and does not require special application or motion. The statute says "all proceedings in pursuance." The litigants cannot parse the orders for items that are not implicated. See, S.C. Code 62-1-308 (c) (1999). This section under the present statute is section 62-1-308 (h).

Appellants listed several bases for desiring a new trial: Tonney's Motion to Dismiss cases 2603 and 2569 was not timely filed nor properly raised; the Court did not consider Probate Court's failure to give due accord to the rights and interest of Mrs. Knight and Mr. Knight, Jr. as joint tenants of the UBS account; the Court did not secure an accounting or return listing the devolution of assets according to the agreements on the individual assets of N.R. Knight, Jr. and Mildred Knight; the record does not contain a finding that N.R. Knight, Jr. desires visitation with his

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daughters. These grounds have implications for any of the challenged Probate Court orders and Judge Goode's order.

Further, as a practical concern, Respondent Tonney and colleagues moved Mr. Knight, Jr. before the period for appeal ended. At the time they moved Mr. Knight, there was no appeal filed for them to determine what was an unappealed ruling. Consistent with past behavior, Tonney was looking to act surreptitiously and avoid accountability because seeking relief through Judge Goode and the Circuit Court required notification to Mrs. Knight and Bobby Knight—hence, Tonney's unsubstantiated allegations of abuse ex parte to the Probate Court. The restrictions of the automatic stay are intended to stop this kind of turmoil.

Respondent Tonny's arguments regarding mootness and distinction between a conservatorship and a decedents estate are not applicable to the issue of the automatic stay in this matter. Tonney was appointed conservator in 2007. Mr. Knight, Jr. died in 2008. Any acts by Tonney during the appeal of her appointment are void. Any acts by Walter Kaufman during the appeal are void. It is axiomatic that an automatic stay may not be lifted where a court is considering whether to grant a new trial. See Rule 225, and In re Steenstra, 280 B.R. 560 (Bankr. Mass., 2002). This New Trial motion and a contemporaneous Rule to Show Cause still await argument.

V. LOWER COURTS ERRED BY ACTING ON A PETITION FILED AND SERVED WITHOUT SUMMONS

The requirement of a Summons in formal proceedings predates the statutory clarification of July, 2010. The standards and directions of S. C. Code Sections 14-23-280 (1962), 62-1-304 (1986), and SCRCP Rules 1 and 81(1985) were applicable to the subject petition in 2008 and 2009.

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Summons Subcommittee, Probate, Estate Planning and Trust Section, Summons in Probate Court, p. 7 (January 21, 2010). (R.p. 286).

As noted by the Summons Subcommittee Report "the Constitution of this State, and the United States, require due process of law." Id. p.4. The clear implication is that the practice of not providing a summons was unconstitutional. Violations of constitutional rights are injuries that must be vindicated. Dixon v. Coburg Diary, Inc., 369 F. 3d 811 (4th Cir. 2004).

VI. LOWER COURTS ERRED BY ALLOWING THE PROBATE COURT TO ACT WITHOUT A QUALIFIED ELECTOR SERVING AS SPECIAL JUDGE

S. C. Code Section 14-23-1040 sets out the qualifications of the probate court judge in South Carolina. S.C. Code section 14-23-1080 establishes the criteria for when these "judges shall not sit in certain cases."

"The Special Judge, in appropriate circumstances, must substitute for these judges. In the probate court of South Carolina, the statute [14-23-1040] determines what qualifications these substitute judges must possess. There is no statutory requirement that the Special Judge be an elected judge of the probate court from another county. There is a statutory requirement that judges in the probate court are qualified electors of the county where they preside.

Appellants did not waive or concede any argument regarding their venue objections relative to assigning this case to nonresident judges. (S.R.p. 4-5: 44 L.12 - p.45 L. 19). Judge Fulp recognized the propriety of Appellants' position in light of the convenience to parties, court personnel, witnesses, and the law applicable to where a probate matter is located, and who tries the matter.

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However, he did not relinquish his assignment. Venue is proper in formal/informal probate proceedings in the county where the decedent resided and died. S.C. Nat. Bank of Charleston v. May, 211 S.C. 290, 44 S.E. 2d 836 (1947).

CONCLUSION

The Lower Courts' decisions should be reversed and the Respondent's claim denied in full.

Respectfully Submitted
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January 20, 2017

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

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SC Court of Appeals

CASE NO. 2014-CP-10-5355
Appellate Case No. 2016-000748

In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby" Knight, III, Appellants,

v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents.

Appellants' Final Reply Brief
(Special Administrator)

THE STATE OF SOUTH CAROLINA

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STATEMENT OF THE CASE

In 2004, relations between Norman R. Knight, Jr., Mildred C. Knight, and their daughters, Chloe Knight-Tonney and Linda Jones became adversarial. In 2004, Mr. and Mrs. Knight revoked their Power-of-Attorney to their daughters. In 2004, the Charleston County Department of Social Services investigated the Knight home pursuant to allegations of elder abuse. In 2004, the investigation was terminated and the allegations were classified as unfounded.

Relations between the parties continued to deteriorate, becoming litigious and contentious. While an appeal was pending in the Circuit Court, Mr. Knight was removed from the home in 2006.

On January 20, 2009, Respondent Tonney filed a claim for reimbursement of moneys expended allegedly for the care of her father, Norman R. Knight, Jr. The Special Administrator, Beatrice E. Whitten, disallowed the claim and on or about April 20, 2009, Respondent filed a petition to allow the claim. After several years of litigation and appeals, on November 28, 2012, Beaufort County Probate Judge, Kenneth E. Fulp, Jr. was appointed Special Probate Judge for Charleston County exclusively for the Estate of Norman R. Knight Jr.

On May 29, 2013, Appellants filed a Summons and Complaint seeking the removal of the Special Administrator. On July 17, 2013 the initial set of motions were argued and an order filed on July 29, 2013. Appellants were the only movants; all motions were denied. On December 13, 2013, Appellant filed and served an Amended Complaint to Remove the Special Administrator. Numerous pre-trial motions were filed and argued. Appellant filed two series of Motions to Dismiss, Motion to Compel

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Discovery with issues of redaction, Motion to Amend Complaints and other motions regarding venue, all filed in pre-trial. On December 17, 2013, a motion hearing by phone was held and an order issued on December 23, 2013. This hearing was significant because the Court held certain documents had to be unredacted to comply with Appellants' motion to Compel. A second set of pre-trial motions were argued by telephone on January 6, 2014 and an order was filed on January 17, 2014. Appellants' Motion to Amend Special Administrator's Complaint was granted. Bishop Gadsden was allowed to withdraw its claim.

On April 22, 2014, Judge Fulp quashed Appellants' subpoena duces tecum to the Morgan Stanley Company, Morgan Smith-Barney. The subpoena required Morgan Stanley to provide information on the "deposit and withdrawal activity/records including identity of depositors and payees for the years 2004 through 2009 involving account holders: Linda Jones, Chloe Tonney, and Queenie."

This matter was tried before the bench in non-jury for two separate days, March 31, 2014 and April 28, 2014. Including post-trial proceedings, i.e. written closing arguments, a final order was filed on July 11, 2014. After post-trial motions, a Notice of Intent to Appeal was filed on September 3, 2014 by the Estate of Mildred C. Knight, and Bobby Knight. This is an appeal of the orders of Special Probate Judge for Charleston County, Kenneth E. Fulp, Jr. and Common Pleas Court Judge, J.C. Nicholson, Jr. Judge Nicholson denied a Motion to Appeal on January 27, 2016 although Appellants did not file a "motion to appeal." Post-trial motions were denied with Notice of Entry of Judgment being received by Appellants on March 11, 2016.

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ARGUMENTS

I. LOWER COURTS ERRED BY NOT REMOVING BEATRICE WHITTEN AS SPECIAL ADMINISTRATOR

S.C.Code Sec. 62-3-611 lists five separate grounds for removing a Special Administrator. Appellants have offered solid evidence of at least three (3) of these items: (a) removal would be in the best interests of the estate; (b) the Special Administrator has disregarded an order of the Court; (c) has mismanaged the estate or failed to perform any duty pertaining to the office. Respondent Whitten relied on unsworn oral statements regarding the disposition of Mr. Knight's car (Mitsubishi, 1995) with no corroboration from Mrs. Knight; Respondent Whitten disregarded the Court's order to remove the Lis pendens on the martial property; Respondent Whitten failed to provide access to the AIG annuity that was co-owned by Mrs. Knight; and the kind of communications that were found in her file from the opposing party clearly indicate that the best interest of this estate would be accomplished by her removal. In an e-mail to Respondent Whitten from Tonney's attorney concerning motions filed by Appellants, Tonney's attorney states: "I was also thinking that some kind of timeline or explanation of the case history would be helpful. Did you do that already?" In a note written on a funeral program, Tonney informs Respondent Whitten that "We are grateful for you." Appellants cannot feel comfortable with this kind of exchange occurring without real time notice to them.

The Special Administrator is not nominated or selected by the testator. The protections and deference shown to Personal Representatives by our jurisprudence comes from our recognition of the testator's intent as the primary reference and guide

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for satisfying the directives of a will. Respondent Whitten seeks to fully clothe the status of the Special Administrator in the esteem and regard of the Personal Representative, and that is not possible. The Personal Representative in this case was the wife of the decedent--married for nearly 59 years. She was his only widow; she was the natural mother of their three (3) children. Neither Mr. Knight, Jr. nor Mrs. Mildred C. Knight had any children outside of their marriage. The Special Administrator is a position created to aid the Probate Court in administering estates. "Estranged wife of decedent had priority of appointment as personal respresentative . . ." Hatchell-Freeman v. Freeman, 340 S.C. 552, 532 S.E.2d 299 (Ct. App. 2000). The Special Administrator is not a Personal Representative.

The emphasis on achieving the intent of the testator was not being made by Ms. Whitten, and Mr. Knight, Jr.'s will had become an afterthought. Ms. Whitten has offered only one alternative for dealing with Tonney's claim: sell the real estate where Bobby Knight lives. (S.R.p.6: tr.p.375 L.15-17); (S.R.p.2-3: p. 35 L.20-p. 36 L.11). The Special Administrator's behavior is wholly prejudicial to the interest of the Estate of Mildred C. Knight and Bobby Knight.

Respondent Whitten, at the trial level, relied on the "at law" principles espoused by Claimant Tonney. Tonney urged the trial court according to the standards set out in Beach First National Bank v. Estate of Gurnham (In re Estate of Gurnham), 407 S.C. 194, 754 S.E.2.d 875 (2014), a case that raised questions of law. In her written closing argument, Respondent Whitten made no distinctions between the standards for assessing her issues and those of Claimant Tonney. According to the instructions of the trial court, all petitioners submitted their closing arguments first. This means

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that Respondent Whitten was aware of Appellants' position that Tonney's claim sounded in equity before Whitten submitted her closing argument. Whitten made no mention of her matter being one in equity when she delivered her Closing Argument.

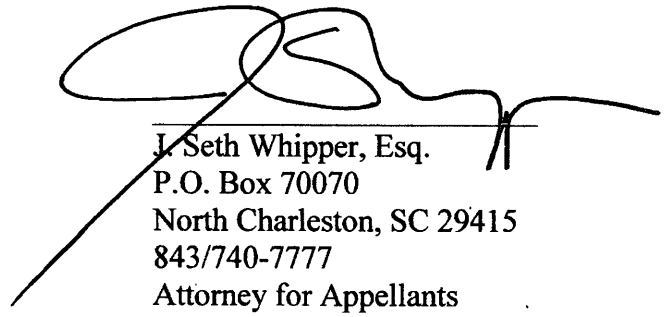
Respondent Whitten, in her own right, has failed to protect the estate. As noted earlier, Respondent Whitten was aware of the discord and rancor among the parties to this matter. Respondent Whitten had reason to challenge the allegations of abuse of the decedent. Respondent Whitten knew that decedent's assets at the time of his passing were marital property and devised to his spouse. Respondent Whitten knew that there is no Family Court order requiring payment of attorney fees to Tonney or the attorney representing her father in that court. Respondent Whitten knew that Mr. Knight died during the Family Court litigation and that litigation could not be prosecuted beyond that date. Respondent Whitten knew that certain retirement accounts were held in common or some similar status by Mr. and Mrs. Knight. Respondent Whitten knew that Mr. Knight, Jr. left a modest estate and a sole devisee who was wholly dependent on him for support. Notwithstanding these realizations, Respondent Whitten transferred an automobile belonging to Mr. Knight to Tonney's nephew who was not in the will. Whitten received and disbursed these common retirement funds without consultation with Mrs. Knight. Including the communications and the Lis Pendens, Respondent Whitten appears to be a cohort of the claimant, Tonney. Even a Personal Representative can get too close to the controversy. See Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013).

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CONCLUSION

The Lower Courts' decisions should be reversed and Beatrice Whitten should be replaced.

Respectfully Submitted
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January 20, 2017

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

CASE NO. 2014-CP-10-5355
Appellate Case No. 2016-000748

In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby" Knight, III, Appellants,

v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents,

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Certificate of Compliance

I certify that Appellants' final briefs are prepared according to directions of the South Carolina Court of Appeals and the South Carolina Appellate Court Rules, specifically, Rule 211(b).

Respectfully Submitted,
Whipper Law Firm

January 25, 2017

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JAN 27 2017
SC Court of Appeals

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
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In Re: Estate of Norman Robert Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert "Bobby" Knight, III, Appellants,

v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents.

Appellate Case No. 2016-000748

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2018-UP-365
Submitted June 1, 2018 – Filed September 12, 2018

AFFIRMED

Jackson Seth Whipper, of Whipper Law Firm, of North Charleston, for Appellants.

Charles Mac Gibson, Jr., of Mount Pleasant, for Respondent Chloe Knight-Tonney.

Beatrice E. Whitten, of Mount Pleasant, pro se.

PER CURIAM: In this appeal of an order granting Chloe Knight-Tonney's (Chloe's) claim against Norman Robert Knight, Jr.'s (Father's) Estate, Norman Robert Knight III (Bobby), Mildred C. Knight's (Mother's) Estate, and Father's Estate (collectively, Appellants) raise numerous issues, including whether the special administrator should have been removed for cause, whether Chloe was entitled to reimbursement for expenses paid for Father's care, and whether the probate court had proper jurisdiction over the matter. We affirm.

1. We find the lower courts erred by finding Chloe did not have to file a summons. Chloe filed her claim and petition for allowance of a claim in 2009, prior to the amendment of section 62-3-806(b) requiring the filing of a summons with a petition. However, at the time Chloe filed her petition, section 14-23-280 of the South Carolina Code and the South Carolina Rules of Civil Procedure (SCRCP) required her to file and serve a summons. *See* S.C. Code Ann. § 14-23-280 (2016) ("Proceedings in the court of probate may be commenced by petition or complaint to the judge of probate for the county to which the jurisdiction of the subject matter belongs, briefly setting forth the facts or grounds of the application. *A summons shall be issued to the defendants in such proceedings.*" (emphasis added)); Rule 81, SCRCP (providing the South Carolina Rules of Civil Procedure apply in probate court "to the extent they are not inconsistent with the statutes and rules governing [the probate court]"); Rule 3(a), SCRCP ("A civil action is commenced when the summons and complaint are filed with the clerk of court . . . .").

Appellants assert the lower courts lacked jurisdiction over them because Chloe failed to file or serve a summons. *See BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006) ("A court generally obtains personal jurisdiction by the service of a summons."); *Roche v. Young Bros. of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995) ("Rule 4, SCRCP[, the rule governing service of process,] serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action."). However, we find Appellants waived any objection to the failure to file or serve a summons and to the lack of personal jurisdiction by (1) failing to raise the failure to file or serve the summons in their first motion to dismiss, (2) failing to raise the lack of personal jurisdiction in a motion to dismiss or in a responsive pleading, and (3) appearing and arguing the merits of the action multiple times before the probate court and the circuit court. *See* Rule 12(h)(1), SCRCP ("A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, or that another action is pending between the same parties for the same claim is waived (A) if omitted from a motion [made pursuant to Rule 12] or (B) if it is neither made by motion under this rule nor included in a responsive pleading

or an amendment thereof permitted by Rule 15(a) to be made as a matter of course."); *Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007) ("Although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance."); *see also Cheraw Motor Sales Co. v. Rainwater*, 125 S.C. 509, 513, 119 S.E. 237, 239 (1923) ("The next assignment of error is the refusal to dismiss the proceedings because there was no summons and complaint served. The defendant filed his answer and tried his case on the affidavit in attachment, and thereby waived his right to his motion."). Accordingly, we affirm as to this issue.

2. We find the Office of Court Administration (the Court Administration), on behalf of the Chief Justice, appropriately assigned Judge Mary Blunt and then Judge Kenneth E. Fulp to preside over this probate case because the other judges presiding over the case were recused or disqualified. *See* S.C. Const. art. V, § 4 ("The Chief Justice . . . shall have the power to assign any judge to sit in any court within the unified judicial system."); S.C. Code Ann. § 14-23-1010 (2016) ("The probate court of each county is part of the unified judicial system of this State."); S.C. Code Ann. § 14-23-1080 (2016) (providing where a probate judge must be recused from a case, "the Chief Justice of the [s]upreme [c]ourt shall appoint a special judge to sit in the matter"). We also find venue was proper because (1) based on a 2012 memorandum from the Court Administration, Judge Fulp, as a special probate judge, could properly hold hearings in either Beaufort, his own county, or Charleston, the county where the case originated; (2) Appellants withdrew their objection to venue during a December 17, 2013 hearing; and (3) Appellants' alleged objections to venue while Judge Blunt presided over the case are not included in the record. *See Harkins v. Greenville County*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000) (stating the appellants have the burden of providing this court with an adequate record); *Ex parte McMillan*, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (providing an issue conceded in the trial court cannot be argued on appeal). Accordingly, we affirm as to this issue.

3. We find the probate court did not abuse its discretion by quashing Appellants' subpoena for the deposit and withdrawal records from 2004 to 2009 of the "Queenie" account because Chloe withdrew her claim for the $1,622.22 paid to the Bishop Gadsden nursing facility for Father's care that came from the account, rendering discovery of who deposited and withdrew money from the account irrelevant. *See Hollman v. Woolfson*, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009) ("A trial [court's] rulings on discovery matters will not be disturbed by an appellate court absent a clear abuse of discretion."); *id.* ("Rule 26(b)(1), SCRCP,

provides, unless otherwise limited by order of the court, '[p]arties may obtain discovery regarding any matter, not privileged, which is *relevant* to the subject matter involved in the pending action . . . .'" (alteration in original) (emphasis added) (quoting Rule 26(b)(1), SCRCP)). Additionally, we find the issue of whether Chloe should have moved for a protective order of the information from the "Queenie" account is unpreserved for appellate review because Appellants did not raise this issue until on appeal to this court. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review.").

We find the probate court erred by finding the redaction in the letter from Thad Vincent, Father's attorney in the family court case and Chloe's attorney in the probate case, to Chloe and Walter Kaufmann, Father's guardian, was protected by attorney-client privilege because (1) the letter pertained to Father's attorney's fees in the family court case, not to any confidential information given to Vincent by Chloe; (2) Vincent provided no legal advice to Chloe in the letter; and (3) Vincent did not represent Chloe in the family court case. *See Marshall v. Marshall*, 282 S.C. 534, 539, 320 S.E.2d 44, 47 (Ct. App. 1984) ("When the attorney communicates to the client, the privilege applies only if communication is based on confidential information provided by the client."); *id.* ("The attorney-client privilege, though, does not protect communications with non-clients."); *id.* ("A person attains the status of a 'client' when that person seeks legal advice by communicating in confidence with an attorney for the purpose of obtaining such advice."). Nonetheless, the redacted material in the letter regarding who Vincent believed to be at fault for the "craziness involved" in the family court matter was not relevant to Chloe's claim for Father's attorney's fees; thus, we find Chloe did not have to provide the unaltered letter in discovery. *See Hollman*, 384 S.C. at 577, 683 S.E.2d at 498 ("Rule 26(b)(1), SCRCP, provides, unless otherwise limited by order of the court, '[p]arties may obtain discovery regarding any matter, not privileged, which is *relevant* to the subject matter involved in the pending action . . . . '" (alteration in original) (emphasis added) (quoting Rule 26(b)(1), SCRCP)). Accordingly, we affirm as to this issue.

4. Because Chloe's claim sounds in law, as the relief requested is for money due and the nature of her claim is akin to repayment of a personal loan to Father during his lifetime, we find the doctrine of unclean hands cannot apply to bar Chloe's claim. *Aaron v. Mahl*, 381 S.C. 585, 594, 674 S.E.2d 482, 487 (2009) ("The doctrine of unclean hands 'precludes a plaintiff from recovering **in equity** if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the

defendant.'" (quoting *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 111 n.2, 531 S.E.2d 287, 294 n.2, (2000))); *id.* ("The equitable doctrine of unclean hands, however, has no application to an action at law."); *see also Matter of Howard*, 315 S.C. 356, 359, 362, 434 S.E.2d 254, 256, 258 (1993) (finding petition for allowance of claims for deceased's unpaid balance on loans from several family members was an action at law).

5. We find the probate court did not err by failing to recognize the automatic stay for appeals found in section 62-1-308(c) of the South Carolina Code (Supp. 2005)[1] because (1) Chloe did not file her creditor's claim until almost three years after the circuit court affirmed the probate court order appointing Kaufmann, and (2) the probate court orders appealed by Appellants did not address the administration of Father's estate because Father was still alive at the time of the orders and the appeal. *See* § 62-1-308(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 [s]upreme [c]ourt is had."); *Ulmer v. Ulmer*, 369 S.C. 486, 492, 632 S.E.2d 858, 861 (2006) ("Section 62-1-308(c) does not apply to all orders of the probate court concerning the parties. The only proceedings required to cease are those proceedings addressed in the orders from which an appeal was taken."). Accordingly, we affirm as to this issue.

6. We find the lower court did not err by failing to apply the doctrine of fraud in the inducement to enter a contract as a bar to Chloe's claim because Mother did not prove Kaufmann's and Family Services Inc.'s, Father's conservator's, failure to inform Mother that Chloe would be covering the costs of some of Father's expenditures was a false representation intended to be acted upon by Mother. *See M. B. Kahn Constr. Co. v. S.C. Nat'l Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980) ("In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear, cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury."); *id.* ("Failure to prove any one of the foregoing elements is fatal to recovery."). Accordingly, we affirm as to this issue.

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[1] Although not relevant in this appeal, we note section 62-1-308(c) has been amended since the time relevant to this case. *See* § 62-1-308(c) (Supp. 2017).

7. We find the lower courts did not err by allowing Chloe's claim against the greater weight of the evidence because (1) the proper standard of review of a probate court proceeding pertaining to an action at law is any evidence, and (2) evidence in the record supported the probate court's findings that Chloe's claims against Father's estate fell within the definition of claim found in section 62-1-201(4) of the South Carolina Code (Supp. 2017). *See* § 62-1-201(4) ("'Claims,' in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator . . . ."); *Matter of Howard*, 315 S.C. at 361, 434 S.E.2d at 257 ("If the proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them."). Therefore, they were allowable in the amount of $23,914.73 plus 8.75% annual interest.

Here, the record shows Chloe provided evidence in the form of her testimony, receipts, bills, and letters from Father's attorneys, as well as the testimony of Kaufmann and Family Services, Inc. that the expenditures she made were for Father's benefit, were not intended to be a gift, and were made with Kaufmann and Family Services, Inc.'s approval. Further, the record reveals the order removing Mother as Father's guardian and conservator was appealed and affirmed, and Father—an incapacitated elderly man suffering from Alzheimer's disease—was removed from his home in compliance with an emergency order issued by the probate court after his independent, court-appointed guardian was denied visitation. The record further reveals at the time of his removal and after, Father did not have access to his possessions or funds because they were in Mother's control or were "tied-up" in litigation commenced by Mother against Father. Accordingly, evidence in the record supports the $23,914.73 plus 8.75% annual interest awarded to Chloe from Father's estate as reimbursement for her claim, and we affirm as to this issue.

8. We find Chloe timely filed her claim because she filed within eight months of the first published notice for creditors to present their claims and within a year of Father's death. *See* S.C. Code Ann. § 62-3-803(a) (2009) ("All claims against a decedent's estate which arose before the death of the decedent . . . are barred . . . unless presented within the earlier of the following dates: (1) one year after the decedent's death; or (2) within the time frame provided by . . . Section 62-3-801(a) [of the South Carolina Code (2009)] for all creditors barred by publication."); § 62-3-801(a) (providing a creditor must file a claim within eight months of the date

the estate's personal representative first published notice in the newspaper for creditors to present their claims). Accordingly, we affirm as to this issue.

9. We find Appellants abandoned their argument that the lower courts erred by holding Chloe satisfied the legal requirements for a case-in-chief because in making this argument, Appellants presented no facts or specific law, citing only "S.C. Code Ann. § 62-3-801, et seq. (1980)," which arguably could be construed as a citation to the entire probate code. *See In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (holding an issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory), *modified on other grounds by Matter of Chapman*, 419 S.C. 172, 796 S.E.2d 843 (2017).

10. We find the lower courts did not err by reimbursing Chloe for attorney's fees resulting from the family court matter and granting her full interest on the judgment. We note Appellants' argument that the holdings in *Matter of Jennings*[2] and *Huff v. Jennings*[3] show Chloe's claim for attorney's fees is not valid because there was no order by the family court awarding fees. However, Chloe is not a lawyer attempting to collect unpaid fees, nor is she attempting to place a lien on property under section 20-3-145; accordingly, the holdings in *Huff* and *Matter of Jennings* are inapposite to whether Chloe is entitled to repayment for the money she expended on Father's representation in family court. Further, we find the probate court did not err in awarding Chloe repayment for the money she expended on Father's legal services in the family court because there was evidence in the record supporting its conclusion that the attorney's fees were allowable claims against Father's estate. *See Matter of Howard*, 315 S.C. at 361, 434 S.E.2d at 257 (proscribing any evidence standard of review for a probate court action at law). Accordingly, we affirm as to this issue.

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[2] 321 S.C. 440, 449 n.5, 468 S.E.2d 869, 875 n.5 (1996) (finding an attorney improperly filed a lien on property belonging to her client pursuant to section 20-3-145 of the South Carolina Code (2014), which allows an award of attorney's fees to "constitute a lien on any property owned by the person ordered to pay the attorney fee" because section 20-3-145 is not applicable where the court did not award attorney's fees (quoting § 20-3-145)).

[3] 319 S.C. 142, 145–47, 459 S.E.2d 886, 889–90 (Ct. App. 1995) (finding an attorney's practice of filing liens on property belonging to her clients when they failed to pay their bills was not statutorily authorized because section 20-3-145 allowed a lien for attorneys' fees only when an order by the family court awarded the fees).

11. We affirm the denial of Bobby's petition to remove Beatrice Whitten as special administrator because he did not provide an adequate record to complete appropriate judicial review of this issue. *See Harkins*, 340 S.C. at 616, 533 S.E.2d at 891 (providing the appellants have the burden of providing an adequate record on appeal).

AFFIRMED.[4]

SHORT, THOMAS, and HILL, JJ., concur.

[4] We decide this case without oral argument pursuant to Rule 215, SCACR.

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

J.C. Nicholson, Circuit Court Judge

RECEIVED
OCT 05 2018
SC Court of Appeals

CASE NO. 2014-CP-10-5355
Appellate Case No. 2016-000748

In RE: Estate of Norman R. Knight, Jr., (deceased), and Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby" Knight, III, Appellants,

v.

Beatrice A. Whitten, as a Special Administrator, and Chloe Knight-Tonney, Claimant, Respondents,

PETITION FOR REHEARING

COMES NOW the Appellants, calling the Court's attention to the following issues that result from the Court's holdings affirming the decisions of the lower courts or forgiving the error of the lower courts; and Appellants request a rehearing for further review on the following bases:

1. To commence a civil action in the probate court, the claimant must file and then serve a summons and complaint; Respondent did not comply with Rule 5(d), SCRCP.; Appellants did argue this point in the Probate Court;
2. To serve as a Probate Court judge in South Carolina the person must become a qualified elector of the county in which he is to be a judge; Judge Kenneth E. Fulp, Jr. is a Beaufort County resident, and dual office holding is patently illegal and his decisions are void;
3. The lower courts did not provide Appellants an opportunity for a fair trial because redacted material was not disclosed and the Courts decided the material was not relevant without reviewing the information;

4. Chloe Knight-Tonney's claim is an equitable action. Respondent Knight-Tonney is a volunteer with only an implied contract, and she has consistently requested restitution;
5. This Court has confused the decedent's estate with the incapacitated's estate, and is not recognizing that the Order under appeal dealt with Mildred C. Knight's appointment as Guardian;
6. This Court should not affirm a payment arrangement where court-appointed fiduciaries intentionally fail to disclose the conditions of the arrangement even though they were court-ordered to discuss details with Mrs. Knight;
7. This claim is not an action at law; it is a claim for equitable relief entitling the Appellants to de novo review that will show the abuse of discretion and preponderance of evidence in favor of the Appellants;
8. A further review of the circumstances show that the claim was filed untimely;
9. Appellants cited three cases and a statutory subpart dealing specifically with claims as support for its arguments;
10. According to law, Attorney's fees are a peculiar item and the recovery of attorney's fees are limited to certain persons by statue except under certain circumstances and, at law, Respondent Knight-Tonney does not qualify;
11. The record contains ample substance that demonstrates that Beatrice A.Whitten should not be the Special Administrator for the Norman R. Knight, Jr. Estate.

Wherefore, having recited these issues, Appellants request a rehearing of this appeal.

Signature on Next Page

Respectfully Submitted,

October 4, 2018

J. Seth Whipper
Attorney for the Appellants
P.O. Box 70070
North Charleston, SC 29415
843-740-7777

Other Counsel of Record:

Beatrice E. Whitten, Esquire
C. Mac Gibson, Esquire

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THE STATE OF SOUTH CAROLINA

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APPEAL from Court of Common Pleas of CHARLESTON COUNTY

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In RE: Estate of Norman R. Knight, Jr., (deceased), and Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby" Knight, III, Appellants,

v.

Beatrice A. Whitten, as a Special Administrator, and Chloe Knight-Tonney, Claimant, Respondents,

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

J. Seth Whipper
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P.O. Box 70070
N. Charleston, South Carolina 29415
(843) 740-7777
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Attorney for Appellants

ARGUMENTS

I. LOWER COURTS ERRED BY ACTING ON A PETITION FILED AND SERVED WITHOUT SUMMONS.

"In South Carolina , a civil action is commenced by filing and serving a summons and complaint. Until an action is commenced, there is no proceeding pending and, thus, nothing to refer." Chabek v. Nationwide Mutual Fire Ins. Co., 303 S.C. 26,28, 397 S.E. 2d 786,787 (Ct. App. 1990). Since 1985, the South Carolina Rules of Civil Procedure, through Rules 1 and 81, and pursuant to S. C. Code sec. 14-23-280 and sec. 62-1-304, have always required the filing of a summons and complaint in Probate Court matters. See, In Re: Estate of Timmerman, 331 S.C. 455, 502 S.E. 2d 920, 922 (Ct. App. 1998); Weeks v. Drawdy, 495 S.E. 2d 454 (Ct. App. 1997); Truluck v. Synder, 362 S.C. 108, 606 S.E.2d 792 (Ct. App 2004); LaFaye v. Timmerman, 502 S.E. 2d 920 (Ct. App. 1998). See Summons Subcommittee: Probate, Estate Planning and Trust Section, Summons in Probate Court, p. 5-7 (January 21, 2010) (R. p. 283).

" A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely voidable . 46 AmJur 2d, Judgments 331 (1994). Generally, a judgment is void only if a court acts without jurisdiction. Ross v Richland Co., 270 S.C. 100, 240 S.E. 2d 649 (1978). Irregularities which do not involve jurisdiction do not render a judgment void. Genobles v. West. 23 S.C. 154 (1885)." See, Thomas & Howard Company Inc. v. T.W. Graham and Co., 318 S.C. 286, 457 S.E. 2d 340 (1995). " A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court. Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S. Ct. 236 (1907). Proceedings in the Probate Court that are taken without the jurisdiction of the

court are **void ab initio** and such proceedings are not adjudications that can bind any party to the action. See Bradley, v. Rodelsperger, 17 S.C. 9 (1882). In Earle v. Cureton, 13 S.C. 19 (1880), the court observed that the Defendant , Cureton, had not been summoned to answer in the matter regarding his obligation as surety, then held that " Under such circumstances the judgment is wholly void... The obligation of Cureton in this case did not waive the right of defense or furnish any authority for taking a judgment against him..." In the United States Supreme Court case, Elliott v. Perisol, 1 Pet. 328, 340, 26 U.S. 328, 340, 7 L.Ed. 164 (1828), the court ruled as follows ".... But if [a court] acts without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments or sentence are considered in law as trespassers." " The language of Rule 5(d) is clear: the summons and complaint must be filed prior to their service." McLain v. Ingram, 314 S.C. 359, 444 S.E. 2d 512 (1994) (per curium).

Respondent, Chloe Knight-Tonney, did not commence an action in the probate court and nothing that occurred has legal substance. Ms. Knight-Tonney's claim is **void ab initio**. Chalek v. Nationwide Mutual Fire Ins. Co., id.

Please note that Appellant filed and argued the commencement issue before Judge Fulp and raised the issue in post- hearing motions before Judge Fulp issued his rulings on the challenged petitions. The motions were denied. (R.p. 24). (Attach. 1).

II. LOWER COURTS ERRED BY ALLOWING THE PROBATE COURT TO ACT WITHOUT A QUALIFIED ELECTOR SERVING AS THE SPECIAL JUDGE

A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court. Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S. Ct. 236 (1907). The

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Attachment # 1

claimant has failed to establish prima facie case for allowance of the claim, that along with failing to establish a case in chief that her claim was also filed in the proper court within the proper time on the years requirement.

Also, they failed to also submit a claim in the proper form that we talked about, your Honor, on the summons, the petitions. Those would be the grounds.

THE COURT: All right, petition for allowance.

Okay, Mr. Gibson, your response?

MR. GIBSON: Your Honor, just a couple of things quickly. One is the -- procedurally, the directed verdict is not proper. It has to be made after my client had rested her case for the directed verdict; therefore, that motion for a directed verdict is procedurally flawed.

Secondly, your Honor, as to the redaction, the Court had made a ruling. We complied with the order of the court. It was not appealed, and therefore that aspect of the motion should be denied.

Also, the failure to respond to disallowing the claim, again this Court had issued

Law provides that once State and Federal jurisdiction has been challenged, it must be proven. Main v. Thiboutot, 448 U.S. 1, 100 S. Ct.2502, 65 L.Ed.2d 55 (1980). S.C. Code 14-23-1040 sets a clear standard for who may serve as a judge in the probate court: no person is eligible to hold the office who has not become a qualified elector of the county in which he is to be a judge. The probate court allows for lay person judges and persons who are attorneys to serve as probate court judges. S.C. Code 14-23-1040. According to the Attorney General, an Associate Probate Judge must be a qualified elector of the county in which he or she is to be a judge. S.C. Op. Atty. Gen. (August 30, 2010) 2010 WL 3505049. The availability of other qualified electors to act as probate judges is the core of co-existence between the statutes involved in this issue. See, Astoria Federal Savings and Loan Association v. Soliminmo, 501 U.S. 104, 111 S. Ct. 2166, 115 L.Ed. 2d. 96 (1991) (legislative repeals by implication will not be recognized, insofar as two statutes are capable of co-existence " absent a clearly expressed congressional intention to the contrary"); Palmettonet, Inc. v. S.C. Tax Covin., 318 S.C. 102,456 S.E. 2d 385 (1995).

Beaufort County Probate Court Judge Kenneth E. Fulp, Jr. is a Beaufort County resident. The appointment of Judge Fulp to the Probate Court for Charleston County, expands his office to another county. Dual office holding is patently incorrect. Richardson v. Town of Mt. Pleasant. 350 S.C. 291 (2002). Judge Fulp cannot sit as a Special Probate Judge for Charleston County, and his rulings and authority are null and void.

Appellants did not concede the venue issue. Judge Fulp agreed to hold all hearings in Charleston County. The venue issue was raised in 2010 before one of the disqualified judges. (See Attach. 2). Judge Blunt was replaced after the orders of the disqualified judges were vacated. The orders issued by Judge Fulp and Judge Blunt must be vacated.

Attachment # 2

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	
COUNTY OF DORCHESTER)	Case No.: 2008-ES-18-000402
)	
IN RE: ESTATE OF NORMAN)	
)	
KNIGHT, JR.,)	
)	TEMPORARY ORDER
Bishop Gadsden,)	
Petitioner)	
)	
v.)	
)	
Norman R. "Bobby" Knight,)	
Respondent.)	

PROBATE JUDGE
DORCHESTER COUNTY
2010 SEP -3 PM 2:43

Hearing Date:	August 31, 2010
Presiding Judge:	Tiffany N. Provence
Petitioner:	Bishop Gadsden, C. William Trawick, CEO
Respondent:	Bobby Knight
Attorney for Respondent:	J. Seth Whipper, Esquire
Guardian for Decedent:	Walter R. Kaufmann

A hearing was held before the Honorable Tiffany N. Provence on August 31, 2010, to determine whether a claim filed by the Petitioner against the Estate of Norman Knight, Jr. should be allowed. At the hearing, Respondent put forth a Motion to Dismiss for Lack of Venue and a Motion for a Continuance. The Court makes the following findings of fact and conclusions of law in regard to Respondent's motions.

MOTION TO DISMISS FOR LACK OF VENUE

The Court denies Respondent's Motion to Dismiss for Lack of Venue. Respondent argued that since the decedent was a resident of Charleston County and all property owned in this matter was located in Charleston County, the only venue appropriate to hear this matter is Charleston County. While Respondent is correct that venue would be proper in Charleston County, through an Order dated August 5, 2008 the South Carolina Supreme Court transferred

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III. LOWER COURTS ERRED BY FAILING TO UNREDACT DOCUMENTS ADMITTED INTO EVIDENCE

A reviewing court may find abuse of discretion where an appellant shows that the lower court's conclusion is based upon an error of law or without evidentiary support. Fontaine v. Peitz, 291 S.C. 536, 354 S.E. 2d 565 (1987). Judge Fulp committed an abuse of his discretion by supporting Respondents efforts to hide relevant, discoverable material. Without seeing the "quashed" material and the information redacted in the October 16, 2007 letter, we cannot determine anything about its impact on Appellants' case. In otherwords, the rulings had no evidentiary support.

Appellants' cite to Knight v. Lee, 262 S.C. 17, 202 S.E. 2d 19 (1974) was used to support our contention on both " pro forma machinations" – withdrawing the " Queenie" claim (R.p. 19-22) (R.p. 303-306), and redacting the information in the October 16, 2007. (R.p. 105).

Appellants cited Crawford v. Henderson, 356 S.C. 389, 589 S.E. 2d 204 (Ct. App 2003) to support our contention of an error of law.

Please note that the Respondent is asking for $9,283.06 in attorney fees and a great portion of that was for the family court matter. (R.p. 111, 107, 10). The uncontroverted family court attorney fee total is $7,695.00.

Appellants should be allowed access to the subject material and given the opportunity to pursue the issues accordingly.

IV. LOWER COURT ERRED BY FAILING TO APPLY THE LAW OF UNCLEAN HANDS TO A CLAIM FOR EQUITABLE RELIEF

Chloe Knight-Tonney's claim is an equitable action. "This action for money paid was the appropriate action when the plaintiff's claim was in respect of money paid, not to the defendant, but to a third party, from which the defendant had derived a benefit. Historically,

the plaintiff had to show that the payment was made at the defendant's request : but we shall see that the law was prepared to "imply" such a request on certain occasions, in particular where the payment was made under compulsion of law or, in limited circumstances, in the course of intervention in an emergency on the defendant's behalf, which in this book we shall call necessitous intervention" Robert Goff & Gareth Jones. The Law of Restitution 3 (3d ed. 1986), (Harvard Law Review Association 1969).

"The essential elements of a quasi-contract are : (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by defendant of the benefit under conditions that make it inequitable for him to retain it without paying its value." 66 Am. Jur. 2d Restitution and Implied Contracts Section 4 (1973); Anno. 62 ALR. 3d 288, 294 (1975); Ellis v. Smith Grading and Paving Inc., 294 S.C. 470, 366 S.E. 2d 12 (1988). The decedent in the Howard case was far different from Norman R. Knight's circumstances, Howard, Matter of., 315 S.C. 356, 434 S.E. 2d 254 (1993). The Howard case involved executed promissory notes with interest obligations and other loans, all obtained by the decedent during his lifetime through his bargaining and business behaviors. Generally, in matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity prevail. Jaffe-Spindler Co. v. Genesco, Inc., 747 F.2d 253 (C.A.S.C. 1984).

The court needs to reverse itself on this holding.

V. LOWER COURTS ERRED BY FAILING TO RECOGNIZE THE LAW OF AUTOMATIC STAY PURSUANT TO S.C. CODE SEC. 62-1-308 (c)

The Probate Court Order on appeal at the pertinent time was the order changing the status of Mildred C. Knight, the decedent's widow. Norman R. Knight, Jr. was alive at this time and the order under appeal was issued by the therapeutic division of the Charleston County Probate Court. The status of Mildred C. Knight was front and center as it relates to the

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Automatic Stay. The stay permitted her to remain as her husband's guardian. There was another order issue by Circuit Court Judge Roger M. Young that clarified the authority and status of the guardians. (R.p. 219-220). Mildred Knight was to remain both Guardian and Conservator pending the appeal. (R.p. 219). Walter Kaufmann was not authorized or recognized to perform any functions during the pending appeal. (R.p 219-220). All of Kaufmann's actions from that point and during the appeal were illegal, null, and void. Turner v. Malone 24 S.C. 398, 401-02 (1885);

The behavior of Kaufman and Knight-Tonney created the added expense to Norman R. Knight, Jr's estate. Kaufmann and Knight-Tonney moved Mr. Knight on allegations that were unsubstantiated and in some aspects contrary to professional medical opinion. (R.p. 157-158, 64-65). These failures by Respondent Tonney cannot be disregarded.

The court's ruling should be reversed.

VI. LOWER COURTS ERRED BY FAILING TO APPLY THE DOCTRINE OF FRAUD IN THE INDUCEMENT TO ENTER A CONTACT

The Guardian, Walter Kaufmann, and the Conservator, Family Services, Inc., by and through their agent, Iris Albright, misled the wife, Mildred C. Knight, into accepting the arrangement of care for Mr. Knight. These appointees made no effort to notify Mrs. Knight of any pertinent details despite their legal obligations to involve her in these decisions. (R. p. 159-160); (R.p. 61, L.19-63,L.4). The conduct of the Guardian and Conservator was their false representation. M.B. Kahn Const. Co. v. South Carolina Nat. Bank of Charleston, 275 S.C. 381, 271 S.E. 2d 414 (1980). See, Restatement (Second) of Contracts 161 and 173 (when the parties are in a fiduciary relationship, there is a duty to disclose material facts; failure to do so may constitute Fraud). Mr.& Mrs. Knight were induced into this agreement.

This court must reverse its holding.

VII. LOWER COURTS' ALLOWANCE OF RESPONDENT'S CLAIM IS AGAINST THE GREATER WEIGHT OF THE EVIDENCE AND AN ABUSE OF DISCRETION

This claim is not an action at law, but a claim for equitable relief entitling the Appellant to de novo review. In Judge Young's Order to Stay Proceedings Pending Appeal, he ruled as follows: " Violations of previous orders or the terms set forth in this order, that shall be cause for a Rule to Show Cause." Respondent Knight-Tonney and the others authored unsubstantiated allegations in a separate new action and created these unnecessary costs.

The de novo review will show that Mrs. Knight was not represented during the period of Mr. Knight's removal, and because she was never informed of these arrangements to give restitution to Respondent Knight- Tonney, she was induced into cooperating with the arrangement.

The Respondent offered no evidence of abuse or neglect. Tonney offered no evidence that Mr. Knight's removal from his home was necessary for his care. Respondent offered no evidence to establish that Mr. Knight's removal from his home delivered him from death. Howard, Matter of., 315 S.C. 356, 434 S.E. 2d 254 (1993).

Further, the de novo review would show that the mother was left with no substantial income ($130.00 per month), because she was completely dependent on her husband and she had to contest the contempt of Respondent Knight-Tonney in order to maintain basic necessities. Mr. and Mrs. Norman R. Knight, Jr. had been married for nearly sixty (60) years and Mr. Knight always was the breadwinner. This relationship was no secret to the Respondent Knight-Tonney, but she totally disregarded her parents' relationship.

The court must reverse its holding.

VIII. LOWER COURTS ERRED IN HOLDING THAT RESPONDENT TONNEY'S CLAIM FOR REPAYMENT WAS TIMELY FILED

Ms. Tonney filed in the wrong county according to the order that moved the case to Dorchester County, (R.p. iii – 8.36). Ms. Tonney filed her claim in Charleston County on January 20, 2009, and then the claim was not filed or received in Dorchester County until January 22, 2009, at the earliest. (R. p 251). See, S.C. Code Sec. 62-3-801 (a), - 803 (a) (2).

Tonney's claim is untimely. Phillips v. Quick, 399 S.C. 226 , 731 S.E. 2d 327 (Ct. App. 2012).

IX. LOWER COURTS ERRED IN HOLDING THAT RESPONDENT CHLOE TONNEY HAD SATISFIED THE LEGAL REQUIREMENTS FOR CASE -IN-CHIEF

The Appellants' intent when citing S.C. Code Ann. 62-3-801. et. seq. (1980) was to refer only to Part 8, Creditors' Claims. The citation meets the standard recited in In Re McCracken, 346 S.C. 87, 92, 551 S.E. 2d 235, 238 (2001). When including the other authority cited in the argument, Howard, Matter of , 315 S.C. 356, 434 S.E. 2d 254 (1993) note 7 citing In re Estate of Kruger, 235 Neb. 518 455 N.W. 2d 809 (1990) and Stump v. Stump, 91 Md. 699, 47 A. 1034 (1900). Stump v. Stump, id., mentioned here because it is contained in the note. We do not believe Respondent Tonney was persuasive on any element mentioned and our reference to any item identified is to recognize the mere attempt.

The court must reverse its holding.

X. LOWER COURTS ERRED BY REIMBURSING RESPONDENT TONNEY FOR ATTORNEY FEES IN PARENTS' FAMILY COURT MATTER AND ALLOWING FULL INTEREST ON JUDGMENT

Respondent Knight-Tonney does not qualify to receive repayment of Attorney's fees involving Family Court litigation. If she were the party and died at the stage of litigation as Mr. Knight died, Knight- Tonney would be the deceased spouse in a family court matter that was dismissed with nothing owed to her. The Family Court did not order attorney's fees.

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to Respondent Knight- Tonney. Family Court attorney's fees in this situation are provided according to S.C. Code Ann. 20-3-145 (1979). Matter of Jennings 321.S.C.440, 468 S.E. 2d 869, rehearing denied (1996) and Huff v. Jennings , 319 S.C. 142, 459 S.E. 2d 886, rehearing denied, appeal dismissed (S.C. App. 1995) were cited to demonstrate the requirements for recovery of attorney's fees, i.e. Respondent Knight-Tonney is not an attorney.

Attorney's fees are a peculiar item according to law. Prevatte v. Asbury Arms, 302 S.C. 413, 396 S.E. 2d 642 (Ct. App. 1990). It is well established that attorney's fees are not recoverable unless authorized by contract or statute. Jackson v. Speed, 326 S.E. 289, 307, 486 S.C. 2d 750. 759 (1997). Knight-Tonney cannot meet these tests for receiving attorney's fees. There is no contract or statute that provides her eligibility for attorney's fees.

Finally, judgment interest must be adjusted according to period when the judgment becomes final. Howard, Matter of, 315 S.C. 356, 434 S.E. 2d 254 (1993).

XL. LOWER COURTS ERRED BY NOT REMOVING BEATRICE WHITTEN AS SPECIAL ADMINISTRATOR

The Record on Appeal contains the cross-examination of Beatrice Whitten (R.p 234-236). During the testimony she testifies that the Annuity documents raised no concern for Mr. Knight's only heir. (R.p. 234). She testified to e-mailing opposing counsel and not including all counsel. (R.p 234, 236). The record shows that she disregarded a direct order of the Probate Judge (R.p 293). (Attach. 3).

The Record substantiates that Whitten should not be the administrator for the Knight Estate. S.C. Code 62-3-703 (a) (2005).

CONCLUSION

Appellants are entitled to a rehearing in this matter.

Respectfully Submitted,

October 4, 2018

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Attorney for the Appellants
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843-740-7777

Other Counsel of Record:

Beatrice E. Whitten, Esquire
C. Mac Gibson, Esquire

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

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J.C. Nicholson, Circuit Court Judge

CASE NO. 2014-CP-10-5355
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In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert 'Bobby" Knight, III, Appellants,

v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents,

PROOF OF SERVICE

I certify that I have served 1 Original Copy of the Petition For Rehearing, 1 Original Memorandum In Support of Petition for Rehearing , 1 Original Proof of Service, and 6 Copies on South Carolina Court of Appeals by depositing a copy to them in the United States Mail, postage prepaid, on October 4, 2018, addressed to: Clerk, South Carolina Court of Appeals, Post Office Box 11629, Columbia, South Carolina 29211 and served the same on: Beatrice A. Whitten, Special Administrator, 1110A Queensborough Blvd., Mt. Pleasant, SC 29464; and C. Mac Gibson, Jr., 1118 Savannah Highway, Charleston, SC 29407.

October 4, 2018

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October 4, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

U.S. Mail Only

Re: **In Re: Estate of Norman R. Knight, Jr., (deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert "Bobby" Knight, III Appellants,**
v.
Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents.
Appellants' Case No.: 2016-000748
1 Original Appellants' Petition for Rehearing – For Filing
1 Appellants' Memorandum in Support of Petition for Rehearing- For Filing
1 Proof of Service- For Filing
6 Copies of Appellants' Petition for Rehearing, Memorandum in Support for Petition of Rehearing, and Proof of Service - For Filing

Dear Ms. Kitchings:

Find enclosed 1 Original Appellants' Petition for Rehearing, Memorandum in Support of Petition for Rehearing, Proof of Service, and 6 copies. Also, find enclosed check number #10398 in the amount of $25.00 for the filing fee. I've also enclosed a self-addressed, stamped envelope for the return of the Proof of Service.

By copy of this letter, I am serving a copy of the same on C. Mac Gibson, Esq. and Beatrice E. Whitten, Esq. attorneys for Respondents

Sincerely,
WHIPPER LAW FIRM

J. Seth Whipper, Esquire

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xc: Bobby Knight
Judith A. Brown

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10/4/18	☐ 10:30 AM ☐ 3:00 PM ☑ 12 NOON	$	$

Time Accepted	10:30 AM Delivery Fee	Return Receipt Fee	Live Animal Transport
3:23 ☐ AM ☑ PM	$	$	$

Special Handling/Fragile	Sunday/Holiday Premium Fee	Total Postage & Fees
$	$	$ 24.70

Weight	☐ Flat Rate	Acceptance Employee Initials
1 lbs. 8 ozs.		

DELIVERY (POSTAL SERVICE USE ONLY)

Delivery Attempt (MM/DD/YY)	Time	Employee Signature
	☐ AM ☐ PM	
10/5	6:38 ☐ AM ☐ PM	

LABEL 11-B, OCTOBER 2016 PSN 7690-02-000-9996 3-ADDRE

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post office Box 11629
Columbia, South Carolina 29211

CERT 0511

CERT 0511

The South Carolina Court of Appeals

In Re: Estate of Norman Robert Knight, Jr.,(deceased), Estate of Mildred C. Knight, (deceased), and Norman Robert "Bobby" Knight, III, Appellants,

v.

Beatrice E. Whitten, as a special administrator, and Chloe Knight-Tonney, Claimant, Respondents.

Appellate Case No. 2016-000748

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

Paul D. Thomas J.

D. Martin J.

Columbia, South Carolina

FILED

December 13, 2018

cc: Jackson Seth Whipper, Esquire
Beatrice E. Whitten, Esquire

Charles Mac Gibson, Jr., Esquire
Julie J. Armstrong