

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Doyet A. Early III, Judge

Appellate Case No. 2019-000051
Case No. 2016-CP-02-02576

RECEIVED

JUL 31 2019

SC Court of Appeals

Vivy Haynes Bone,

Appellant,

v.

Robert G. Bone, et al.

Respondents.

MEMORANDUM ON BANKRUPTCY

July 29, 2019

Lexington, S.C.

Other Counsel of Record

Bryan P. Kelley
Attorney for Respondent Liberty Mutual
P.O. Box 1887
Greenville, SC 29602

Robert G. Bone, Pro se
888 Currytown Road
North Augusta, SC 29860

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803-359-2828
Attorney for Appellant

Albert D. Bone, Pro se
803 Vancouver Road
North Augusta, SC 29861

Appellant Vivy Haynes Bone, by and through her counsel, submits that the above matter is stayed by the Chapter 13 Bankruptcy filing of Robert G. Bone, on November 17, 2017. (See Att. 1)

The applicable Bankruptcy Code Section 362 – Automatic stay, provides:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

Appellant's cause of action is against Albert D. Bone and Robert G. Bone, which initially arose out of a Final Decree of Divorce, from the Aiken Family Court, filed May 28, 2015, (Att. 2, p. 7-10). This Domestic Matter is against Robert G. Bone, individually and as conservator of the Estate of Albert D. Bone, and Albert D. Bone. Thus, Robert G. Bone was appointed Conservator by the Probate Court for Albert D. Bone when the divorce action was pending, Thus, after being appointed Conservator Robert G. Bone had a fiduciary duty to Albert D. Bone, to take charge of and properly account for all assets in the Conservator estate. Appellant submits Robert G. Bone violated such duty.

Robert G. Bone, as conservator, is personally liable as per the South Carolina Code, for any loss due to his malfeasance in office as is provided as follows:

SECTION 62-5-429. Individual liability of conservator.

Section effective until January 1, 2019. See, also, Section 62-5-427 effective January 1, 2019.

(a) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the court of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(b) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(c) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(d) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

HISTORY: 1986 Act No. 539, Section 1.

Additionally, all the assets of then protected person, Albert D. Bone, vest in the Conservator, Robert G. Bone, according to South Carolina law:

SECTION 62-5-421. Recording of conservator's letters.

Section effective until January 1, 2019. See, also, Section 62-5-418 effective January 1, 2019.

Letters of conservatorship transfer all assets of a protected person to the conservator. An order terminating a conservatorship transfers all assets of the estate from the conservator to the protected person or his successors. Letters of conservatorship, and orders terminating conservatorships, shall be filed and recorded in the office where conveyances of real estate are recorded for the county in which the protected person resides and in the other counties where the protected person owns real estate.

HISTORY: 1986 Act No. 539, Section 1.

The within matter is affected by the automatic stay in bankruptcy, a powerful tool that protects a debtor in active bankruptcy, and it is found in 11 U.S.C.A. § 362. It is an injunction stopping any act to collect, enforce or perfect a debt owed by the bankruptcy filer, effective at the moment the petition is filed with the court. The stay is against the debtor, the debtor's property, and property of the bankruptcy estate.

While there are exceptions in Bankruptcy Code Section 362 (b) (2) in marital proceedings, they only apply as to this case as per the following exception, as verified by the following partial quote from the Section 362 of the Bankruptcy Code (b) (2):

(A) of the commencement or continuation of a civil action or proceeding— ...

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate;

In that the within matter seeks to determine, what marital property Robert G. Bone took possession of and what use Robert G. Bone made of the marital

property for his own benefit, and the liability of Robert G. Bone for malfeasance as to his misappropriation and misrepresentation of marital and conservatorship property. Further, this case addresses what part of the Bone marital estate that was in the conservatorship could have been misused to obtain Robert G. Bone bankruptcy property, and what of the bankruptcy estate property could be used to require Robert G. Bone to make payment to the Appellant as to all assets misappropriated due to his misconduct. Clearly, the exception does not apply.

In that Robert G. Bone testified that the major holdings of the marital estate were stocks, and that none existed while he was still conservator (Att. 3, p. 8), then the only assets available to transfer to the Appellant to replace the items wrongfully taken would be those of Robert G. Bone listed in the Bankruptcy Estate.

Appellant has not proceeded with any specific action against Robert G. Bone, his property, or the Bankruptcy Estate, after learning of the bankruptcy around March of 2018. Appellant was aware a violation of the automatic stay does not have to be done knowingly to incur penalties. Any acts taken while the stay was in effect are considered void, and of no legal effect.

Thus, it appears that any Order issued by the Court of Common Pleas after the November 17, 2017, filing date should be voided.

Appellant was aware a willful violation of the automatic stay leaves that party liable for damages, including costs and attorney fees and in some circumstances, possibly for punitive damages. Willful in Bankruptcy means that the party knew the stay was in effect and the party still acted to collect the debt.

These issues were addressed in the bankruptcy case of *In Re: Vitalis Ojiegbe*, Case No. 11-11426-TJC, wherein the Maryland Bankruptcy Court stated the following:

The filing of a bankruptcy petition operates as a stay, as relevant here, of "(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" and "(4) any act to create, perfect, or enforce any lien against property of the estate." 11 U.S.C. §§362(a)(3)–(a)(4). A debtor seeking to establish a violation of the automatic stay must establish, by a preponderance of the evidence, that: (1) the defendant knew of

the existence of the stay; (2) the defendant performed an intentional action; and (3) the action violated the stay. See *Brown v. Chesnut (In re Chesnut)*, 422 F.3d 298, 302 (5th Cir. 2005); *In re Suanders*, 2014 WL 811734 *2 (Bankr. D. Md. Feb., 28, 2014); *In re Clayton*, 235 B.R. 801 (Bankr. M.D.N.C. 1998) (holding that the standard of proof is the preponderance of the evidence standard).

A violation of the automatic stay subjects the violating creditor to liability for damages, but only if it is willful. §362(k)(1). The Fourth Circuit Court of Appeals has stated that in the context of §362(k)(1), willfulness does not require the specific intent to violate the automatic stay, only that the creditor knew of the stay and intentionally committed an act in violation of the stay. *Citizens Bank of Maryland, v. Strumpf*, 37 F.3d 155, 159 (4th Cir. 1994) rev'd on other grounds, 516 U.S. 16 (1995); *Budget Serv. Co. v. Better Homes*, 804 F.2d 289, 292–93 (4th Cir. 1986). (at page 9 of 22)

Thus, Appellant submits that the within case is stayed by the Bankruptcy filing of Robert G. Bone, and that all actions taken in this matter after November 17, 2017, should be declared null and void.

July 29, 2019

Lexington, S.C.



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803-359-2828

Attorney for Appellant

United States Bankruptcy Court
District of South Carolina

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 13 of the United States Bankruptcy Code, entered on 11/17/2017 at 3:03 PM and filed on 11/17/2017.

Robert Grady Bone
888 Currytown Road
North Augusta, SC 29860
SSN / ITIN: xxx-xx-7204
Tax ID / EIN: 57-1040064
aka Butch Bone
fdba Al's Family Restaurant

Darlene Delk Bone
888 Currytown Road
North Augusta, SC 29860
SSN / ITIN: xxx-xx-2645
Tax ID / EIN: 14-1901803
fdba The Sportsman Bar-B Que

The case was filed by the debtor's attorney: The bankruptcy trustee is:

Joseph E. Mitchell, III
Joseph E. Mitchell, III, PC
PO Box 2504
Augusta, Ga 30903
(706) 826-1808

William K. Stephenson, Jr.
PO Box 8477
Columbia, SC 29202
(803) 254-2981

The case was assigned case number 17-05830-hb to Judge Helen E. Burris.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://ecf.scb.uscourts.gov> or at the Clerk's Office, J. Bratton Davis United States, Bankruptcy Courthouse, 1100 Laurel Street, Columbia, SC 29201-2423.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Laura A. Austin
Clerk, United States Bankruptcy
Court



PACER Service Center			
Transaction Receipt			
03/26/2018 11:47:21			
PACER Login:	legalgal71:4788974:0	Client Code:	
Description:	Notice of Filing	Search Criteria:	17-05830-hb
Billable Pages:	1	Cost:	0.10

Att 1

17-05830-hb Robert Grady Bone and Darlene Delk Bone
Case type: bk **Chapter:** 13 **Asset:** Yes **Vol:** v **Judge:** Helen E. Burris
Date filed: 11/17/2017 **Date of last filing:** 03/17/2018

Case Summary

Office: Columbia
County: EDGEFIELD-SC
Fee: Paid

Origin: 0
Previous term:

Joint: y
Original chapter: 13
Current chapter: 13

Nature of debt: consumer
Pending status: Case Open
Flags: EXTTM, DEBTED, HRGLOC_Cola

Trustee: US Trustee's Office **City:** Columbia **Phone:** **Email:** USTPRegion04.CO.ECF@usdoj.gov
Trustee: William K. Stephenson Jr. **City:** Columbia **Phone:** (803) 254-2981 **Email:** stephenson@ch13.newsouth.net

Party 1: Bone, Robert Grady (Debtor)
 SSN / ITIN: xxx-xx-7204
 Tax ID / EIN: 57-1040064

Party 2: Bone, Darlene Delk (Joint Debtor)
 SSN / ITIN: xxx-xx-2645
 Tax ID / EIN: 14-1901803

Atty: Joseph E. Mitchell III **Represents party 1:** Debtor **Phone:** (706) 826-1808
Email: mitchellje@bellsouth.net
Atty: Joseph E. Mitchell III **Represents party 2:** Joint Debtor **Phone:** (706) 826-1808
Email: mitchellje@bellsouth.net

Location of case files:
Volume: CLI
 The case file may be available.

PACER Service Center			
Transaction Receipt			
03/26/2018 11:44:28			
PACER Login:	legalgal71:4788974:0	Client Code:	
Description:	Case Summary	Search Criteria:	17-05830-hb
Billable Pages:	1	Cost:	0.10

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 VIVY ANN HAYNES BONE)
)
 Plaintiff,)
)
 -vs-)
)
 ALBERT D. BONE, AND ROBERT)
 G. BONE, INDIVIDUALLY AND)
 AS CONSERVATOR OF)
 ALBERT D. BONE, PAIGE W.)
 JOHNSON, AS GUARDIAN AD)
 LITEM FOR ALBERT D. BONE)
)
 Defendants.)

SECOND JUDICIAL CIRCUIT
IN THE FAMILY COURT

10 DR 02 284

FINAL ORDER OF DIVORCE

STATE OF SOUTH CAROLINA,
 COUNTY OF AIKEN,
 I, L. Gordon, Clerk of Court of Common Pleas and Clerk of Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

MAY 28 2015

L. Gordon
 L. Gordon
 Clerk of Court of Common Pleas and Clerk of Sessions
 Aiken County, South Carolina

DATE OF HEARING: FEBRUARY 18, 2015

PRESIDING JUDGE: DOROTHY MOBLEY JONES

ATTORNEY FOR PLAINTIFF: JOHN E. CHEATHAM

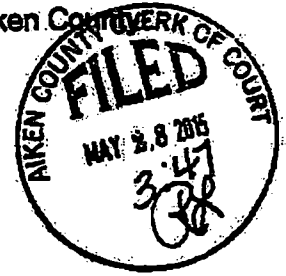
ATTORNEY FOR A.D. BONE: PRO SE

GUARDIAN AL LITEM FOR A.D. BONE: PAIGE W. JOHNSON

COURT REPORTER: T. Dayton Grainger, Jr.

The Court calls the case of Bone v. Bone case, number 2010 DR -32-0284, which is a case involving all marital issues between the parties, except that of custody which has become moot by virtue of the age of the parties' child being over 18 years. This matter was properly filed, commenced and served on the Defendants, who both made general appearances. I find this Court has jurisdiction of all parties and of all issues set forth in the pleadings filed herein, and venue is proper in Aiken County.

J#1



Att 2

Mr. Albert Bone, appeared, with his Court appointed Guardian *ad Litem*, Paige W. Johnson, Esq., and he also has a Probate Court Conservator, Robert G. Bone, as Albert D. Bone has been deemed incapacitated by the Aiken Probate Court. Robert G. Bone is also listed individually in this case.

Based upon representation by Paige Johnson, GAL for Albert D. Bone, and the finding of the Probate Court that he is in need of a conservator, I find that Mr. Albert D. Bone does not have the capacity to testify in this matter, and further, that his testimony would not be in his best interest.

I further find that the Conservator can bind him to the agreement reached by the parties, if the Court approves same, and if such is recommended to be in his best interest by the GAL.

The Court indicated to the parties that this was a 2010 case and that everyone was abiding by the applicable rules. That is, this case was going to be settled, tried or dismissed. The parties indicated they were trying to resolve the matter by assigning almost all assets to Vivy Haynes Bone and the transfer of other rights and claims to the Plaintiff, in order to resolve equitable apportionment by and between the parties.

Ms. Johnson represented that Mr. Albert D. Bone could not make any or all decisions on his own, but that his Probate Conservator Robert Grady Bone is here in that position and individually. The Court inquired of Robert G. Bone, and found him qualified to proceed *pro se* and as Conservator, as he is a fifty-five year old male, who has worked all of his life in construction, which required life skills that qualified him to proceed as Conservator.

At the Hearing the Court receive updated financial declarations from both parties.

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After consultation and negotiation, the parties reached an agreement that was read into the record by Ms. Johnson.

Prior to Ms Johnson so reading, the Court informed Mr. Albert D. Bone, Mr. Robert G. Bone, and Vivy Haynes Bone, to listen carefully to the comprehensive, lengthy agreement, as it was read into the record. The Court advised them that, after it was read into the record, all parties would be questioned about it being a correct agreement of all issues, that it was understood, freely entered into, and the Court had to consider additional matters to make sure the agreement is a full resolution of every issue in dispute.

MS. JOHNSON: "The Conservator, Robert G. Bone, individually and on behalf of Albert D. Bone, and the Plaintiff, Vivy Ann Hayes Bone, has agreed as follows:"

(Items in quotes [" "] are taken directly from the transcript in this case.)

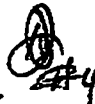
"Initially, the Conservator will continue paying alimony to Mrs. Bone; however, the alimony will be reduced to four hundred dollars per month, as of March, 2015, and twelve payments will be made at four hundred dollars a month. These will continue to be paid through the Clerk of Court's office for a total of \$420. It is a twelve month alimony payment, non-modifiable, except upon the death of Albert Bone or Vivy Bone." When Mr. Albert Bone's disability check is directly deposited into his account, then Merrill Lynch is automatically sending a check to the Clerk of Court's office every month.

The disability check does not come in until around the 18th of the month. So, we agree to say by the 25th of every month beginning March 25, 2015. If it is determined that there is any arrearage, it will be resolved as soon as possible. The Clerk of Court keeps the record of any payment that goes through that office. So, we will be using the

Clerk of Court's accounting records and printouts, because they are automated. So, it will be whatever the Clerk of Court records reflect. That if the Clerk of Court determines that there is any arrearage owed, that that arrearage must be paid before the alimony is terminated."

"The husband owns a two-twelfths interest in High Brass Plantation in Edgefield County. The wife will receive all of the husband's interest in High Brass Plantation; however, it will be subject to any liens that might be associated with husband's interest. There is no mortgage on the property, but attached to the financial declaration is a statement from a representative of High Brass that there's some past due dues, and then, there was some equipment bought that Mr. Bone did not contribute to, which total \$8,200.00. So, she is taking this subject to that, with the Plaintiff reserving the right to ask a representative of High Brass Plantation for verification of those expenses prior to any payment."

"There is a condo owned by the husband and wife at 25 Summit Court in North Augusta. The Conservator will deed the husband's interest in that condo to the wife. The wife will begin receiving the rent from the condo as of March 1, 2015. The rental account is located at, Merrill Lynch, and it has \$2,304.44 in that account. The Conservator will close that account on or before March 1, 2015. He will issue two checks. One will be issued to Nationwide Insurance Company for the Conservatorship Bond that is due March 25, 2015 in the amount of \$1,118.00. The remaining, \$1,186.44 will be issued to Paige W. Johnson as Guardian ad Litem as payment towards the two thousand dollars that she was to be paid many months ago when she was appointed Guardian ad Litem. That leaves a balance of \$406.78 each for the Plaintiff and for the

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Conservator to pay on the remaining balance to the Guardian which will be paid by May 18, 2015. The Guardian *ad Litem* agrees to accept the two thousand dollars as payment in full for all services rendered as Guardian *ad Litem*."

"In March the Plaintiff will open up her own rental account, and she'll be dealing directly with Meybohm who has the rental. Now, it's actually not a contract. So, if the Plaintiff decides to terminate the services of Meybohm she can do that, and the ~~Conservator will put Meybohm on notice of the change of ownership in the condo.~~"

"Mr. Albert Bone worked for twenty-eight years for Merrill Lynch who was then later bought out by Bank of America. So, part of that pension was premarital. We have found out specifically through a phone call this morning that at age sixty-five Mr. Albert Bone can draw \$687.52 a month as a pension. The Conservator has agreed that that annuity or pension will be divided equally with the Plaintiff and that the Plaintiff would be responsible for the preparation of the QDRO or any other paperwork necessary to affect that transfer to her, establishing an account or whatever needs to be done."

"The husband has a 2005 Ford Expedition. He will continue to be responsible for all costs associated with that and will maintain possession of that along with all personal property that he has in his household."

"The wife has been driving a 2003 Ford Expedition titled in the husband's name. If the wife has that title, she agrees to produce that title in the next few weeks. If she does not, the Conservator will apply for a duplicate title, and he will sign the title over to the wife for that automobile on or before April 1, 2015. At that point the wife will get her own car insurance. As soon as it goes into her name she's responsible for getting the insurance on that vehicle. The last day should be April 15, 2015."

5  #5

The Wife will maintain possession of that along with all personal property in her household.

"Each party is responsible for their own attorney's fees and costs. Mr. Bone will continue to be responsible for and will pay in full all of the past due IRS debt, which is reflected on his financial declaration. The parties last filed jointly in 2006, and this IRS debt is just in Mr. Albert Bone's name; and the Conservator has set up a payment plan, ~~which deducts six hundred a month out of Albert's checking account.~~"

"The Wells Fargo debt, Mr. Bone will be responsible for, even though Mrs. Bone is getting the condo. This is a debt associated with a heating and air unit that just had to be replaced in the condo, but Albert will continue to make those payments and will pay those in full."

"Mr. and Mrs. Bone will be responsible for any separate debt on his/her financial declaration." "Each party shall be responsible for his or her own medical and dental insurance, and any uninsured medical and dental expenses."

"If the Conservator for the Husband or the Wife refuses to sign any documents necessary to implement this agreement, that upon application to the Clerk of the Family Court, which has approved this agreement, the Clerk will sign such documents and in so signing will transfer all rights of the party refusing to sign as if that party had actually signed such document. So, in other words, the Clerk will sign anything to effectuate the intent of this agreement. That is if someone is either I guess impaired to the extent they can't do it or decides they don't want to, they're already bound to do it; therefore, the Clerk of Court has the authority for that person to execute whatever documents are necessary to comply with the intent of this agreement."

"The each party will take free and clear of all claims of the other, such furniture, fixtures, household goods, that type thing, in his/her possession."

"The parties agree they will not incur any bills or obligations for services, property or any other matter in the name of the other party, which is standard. In other words, you can't go out and start charging to the other party."

The Conservator affirmatively states that there is no other wealth than what has ~~been claimed on the financial declaration, there is no depositor accounts, cash stored,~~ stocks, bonds, anything else of value anywhere. Robert, individually and as Conservator represents Albert D. Bone never had any foreign accounts or investments, any investment within the United States not previously disclosed, and he's verifying and affirming that he has disclosed all items of value acquired before or after the marriage. Everyone understands that if any such asset has not been disclosed, then, the Wife will have the right to proceed with obtaining all of Albert's interest in anything of value not disclosed. Robert is also affirming, in any capacity, he has disclosed all of Mr. Albert Bone's interest in receiving payments from, having any monies deposited in or having anything of value connected with Merrill Lynch, Bank of America, JP Morgan Chase, Savannah River Plant Credit Union or any other like institution. That is, if the Wife discovers anything of value, including cash, including stocks, depository accounts, or anything of value undisclosed, all of that, she gets all of it. She gets every bit of it. If she finds an offshore account she gets every bit of it. So, the Wife gets anything and everything so discovered; and Husband agrees she can have it all and he waives any and all claims to such."


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"In consideration of equitable apportionment Robert G. Bone as Conservator for Albert D. Bone transfers and conveys all of Albert D. Bone's rights, titles, interest, claims and demands in and to all causes of action in or related to actions or inactions regarding any injuries, damages, money, assets, stocks, bonds, contracts and all other items of value arising out of any contract or agreement or transaction which Albert D. Bone may own or attain any interest in by virtue of any current interest in the same, and by non-disclosure of same in this matter."

"Mrs. Bone has an action pending in the Aiken County Probate Court for an accounting and malfeasance of the Conservator, and against Robert G. Bone individually, and anticipates additional litigation against Liberty Mutual Insurance, Merrill Lynch, Bank of America, and any other entities that may now hold or in the past have held, anything of value as to avoid it being included as marital and/or non-marital property in the proceeding before this Court. If there's some irregularities the Wife would want to proceed against any bond or entity liable. Then, if that happens and any recovery is made, then, none that item of value or recovery would go to Albert D. Bone; that money or item of value would be owned and/or payable to Vivy Haynes Bone."

"Further, if any civil action in any Court against Merrill Lynch, J.P. Morgan Chase, or Bank of America alleging that they allowed money to be withdrawn inappropriately and Vivy Haynes Bone makes some recovery, that recovery would go solely to Vivy Haynes Bone. The intent is to assign any interest to in and to of Albert D. Bone unto Vivy Haynes Bone, except for the items fully and specifically revealed by Albert D. Bone in this proceeding."

The Court inquired of Mr. Robert G. Bone if he was in a position to do that today, and he responded he was.

"Thus, Vivy H. Bone will have the right to bring such actions and/or assert such claims or demands in the name of Albert D. Bone and/or Robert G. Bone individually and as Conservator or in the name of Vivy H. Bone."

Vivy H. Bone will be solely entitled to the proceeds obtained, any money or ~~property obtained and anything of value she decides to settle if she decides to settle~~ any right, claim, demand or cause of action. "

If there's something that hadn't been disclosed, if something pops up that's out there, money, property, asset, whatever or a contract that's going to bring in some money and Mr. Albert Bone is entitled to it she gets it, unless it was disclosed.

Such agreement is binding against any and all persons, corporations, partnerships, sole partnerships, their heirs, personal representatives, successors and assigns arising out of the fact on which the cause of action is based. Vivy H. Bone accepts such assignment without recourse and with the understanding she owes no duty or recovery to the husband, and all decisions are to be in her sole judgment and for her sole benefit and without regard to any adverse result or consequence to the husband."

The Court has been advised that there are no existing life insurance policies on Albert Bone. However if a policy is discovered, the Wife Vivy will be made beneficiary of same.

The parties agree that whatever Mrs. Bone has agreed to today cannot be then turned and used against her to prejudice Mrs. Bone in any claim, action or entitlement she may have in another lawsuit or another court."

Upon inquiry of Vivy Haynes Bone and Robert G. Bone, I find there is no possibility of the parties considering a reconciliation of the marriage.

Upon agreement between the parties, the Plaintiff amended her complaint to ~~request a divorce on the grounds of one-year separation, without cohabitation.~~

Vivy Haynes Bone then testified she and her husband lived separate and apart for over one year prior to the commencement of this action; and that they last lived together as husband and wife in Aiken County. She requests a divorce on the grounds of one-year mutual separation with no cohabitation for one year.

She further testified these grounds are true and that no one is trying to defraud the Court into getting a divorce.

Robert G. Bone, being duly sworn, verified the fact that Vivy and Albert last lived together as husband and wife in Aiken County; and that he has known both parties for clearly several years and that they have lived separate and apart, without cohabitation, since 2006.

The Court established thirty days from the filing of this Order to transfer the deeds and titles between the parties.

The Court will retain jurisdiction to execute any further or supplemental orders, including qualified domestic relation orders. The QDRO will be submitted within 60 days of the filing of this Order Court. The Plaintiff shall be responsible for preparing the QDRO and for any expense involved.



The Court will terminate and release the GAL from any further services, upon the filing of this Order.

I find The Defendant is not in the Armed Services of the United States and is not entitled to protection under the Soldier's And Sailor's Civil Relief Act of 1940 as set forth in 50 USC Appendix Sections 501 ET SEQ.

Consideration of Agreement

~~I find that each party, the Plaintiff and the Conservator, freely and voluntarily, with~~
knowledge, entered into the agreement, which, which is intended to be a full and final resolution of all marital issues, save that of divorce.

I find the parties are entitled to have the Court consider their rights granted pursuant to Title 20 of the South Carolina Code of Laws, 1976, as amended, as it pertains to marital issues, including divorce, alimony, attorney's fees, and equitable distribution.

I find that both parties testified that: 1) each understood the agreement and that no further explanation of it was needed or desired; 2) that each understood that if approved, the agreement became a Court order and was enforceable by the contempt powers of this Court; 3) that each was waiving his/her right to bring each and every issue before this Court and have the Court rule upon each issue after a full trial; 4) that if approved and adopted by this Court that the provisions, including that of alimony, could not be altered; 5) that each had made a full and honest disclosure of their respective finances on the family Court Financial Declaration; 6) that neither desired any other or further financial information from the other, and that each had sufficient information to make a reasonable decision as to requesting approval of the agreement;

7) that neither was under the influence of any mind altering substance at the time the agreement was signed or at the hearing; 8) that each understood the ramification of the Court approving the agreement ; 9) that each was competent, or had someone competent, to enter into the agreement and did so freely and voluntarily; and 10) that each was satisfied with the agreement under the circumstances and each believed that it was in his/her best interest to have the Court approve same.

~~In that the within matter is before the Court pursuant to a divorce action, and in~~
that both parties want approval of the agreement, it is appropriate for the Court to consider such agreement dealing with the parties' marital issues. The Court is well aware of its duty to make an independent determination that the agreement is a fair resolution of such issues.

I find the benefits derived by the wife, a result of the agreement, are substantial, fair, and reasonable. Likewise, I am convinced that the benefits derived by the husband, a result of the agreement, are substantial, fair and reasonable under the circumstances.

Considering the principles, set forth by the South Carolina Appellate Court's pertaining to the respective rights of parties and those pertaining to the approval of agreements by the Family Court, I find the agreement should be approved and that such should be adopted by and merged into this Court's Order, and issued as its Order.

DIVORCE

I find the Plaintiff seeks a divorce on the grounds of separation, without cohabitation, for more than one year prior to the filing of this action.



I find the Defendant and the Plaintiff separated in 2006, and have lived separate and apart, without cohabitation, since that date. I find such testimony of the Plaintiff was appropriately corroborated by separate testimony from a witness whose name appears in the transcript of this matter, and as per *sua sponte*.

I thus find the parties have lived separate and apart continuously, without cohabitation, since their separation in 2006, and such is conduct within the meaning ~~contemplated by the laws of this State for authorizing the granting of a divorce to~~ Plaintiff. I find such conduct has interfered with the parties' marriage and the relationship between the parties has deteriorated to the extent that it has become impossible for Plaintiff to continue to live with the Defendant.

I find there has been no collusion or fraud between the parties for the purposes of obtaining a divorce, and that the grounds for divorce, that of mutual separation, without cohabitation, do in exist; and that the parties have complied with the Laws of this State as to the granting of divorces on such grounds.

I find the Plaintiff has complied with the laws of this state as to the proving grounds for a divorce, and thus find she is entitled to a complete divorce, a *vinculo matrimonii*, from the Defendant.

I find that the Guardian ad Litem has complied with the rules and statutes and has performed her duty in a satisfactory manner.

CONCLUSIONS OF LAW

I conclude as a matter of Law that this Court has Jurisdiction to hear and determine all issues in this action and that it has *in personam* jurisdiction of the parties. This Court has the authority to issue an Order of divorce and to grant relief incidental

thereto. Article XVII Section 3 of the South Carolina Constitution; and Title 20 of the South Carolina Code of Laws, 1976, as amended, including sections 20-3-140 and 20-7-420.

I conclude that the agreement should be adopted by the Court and issued as its Order, with right of enforcement as to any order of this Court.

IT IS THEREFORE, BASED UPON THE ABOVE FINDINGS OF FACT AS
~~APPLIED TO THE CONCLUSIONS OF LAW HEREIN SET FORTH,~~

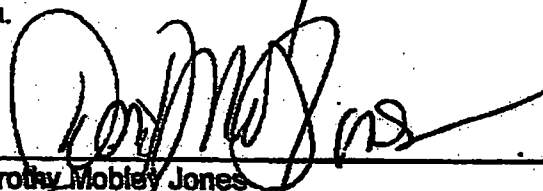
ORDERED, ADJUDGED AND DECREED that the parties' agreement as set forth above, is hereby approved and merged into this Divorce Decree.

IT IS FURTHER ORDERED that the Plaintiff is granted a divorce upon the grounds of mutual separation, without cohabitation, for a period of one year.

ORDERED that the Guardian ad Litem is relieved from any further responsibilities in this case, upon the filing of this Order.

AND IT IS SO ORDERED this 28 day of May, 2015, at

Aiken South Carolina.



Dorothy Mobley Jones
Presiding Family Court Judge

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF AIKEN)

Case Number: 2007GC02-00060

IN THE MATTER OF:)

ALBERT DEMPSEY BONE,)

An incapacitated person)

TRANSCRIPT OF HEARING

The matter of review of income)

tax returns regarding the years)

2010 through 2014 as submitted)

per Court Order dated)

February 24, 2016.)

HEARING:

May 10, 2016

BEFORE:

The Honorable Angela E. Little

Associate Judge of Probate

Aiken County, South Carolina

APPEARANCES:

Robert G. Bone, Conservator for Albert D. Bone

APPEARANCE OF COUNSEL:

**Bryan P. Kelley, Esquire: Attorney for Liberty Mutual Insurance Bonding
Company.**

Non-appearance: John E. Cheatham, Esquire: Attorney for Vivy H. Bone.

Honorable Angela E. Little: This hearing is being held in the chambers of the Probate Court for Aiken County, South Carolina on May 10, 2016. We're here in the matter of Mr. Albert Dempsey Bone. File Number: 2007GC02-00060. The Court scheduled this hearing regarding a clarification on 1099's that were filed previously. I would like the record to reflect that the attorney representing the bonding company is present and your full name, sir?

Bryan P. Kelley, Esq: Bryan Kelley.

Honorable Angela E. Little: Thank you, sir. Mr. Bone, the conservator is also present. Mr. Bone represents his brother Albert Dempsey Bone who was previously found incapacitated. Also, Mr. Cheatham is the attorney for his client Ms. Vivy Bone who had been going through a divorce settlement. Ms. Bone was previously married to the incapacitated Mr. Albert Dempsey Bone. The Notice of Hearing was sent out --- was mailed out on the 4th day of April by certified mail. We received notice that Mr. Cheatham just did pick it up later in that month on the 21st day of April. The attorney for the bonding company received his much earlier in the month but Mr. Cheatham did receive his notice. We've also received notification that Mr. Cheatham misread the hearing notice or his secretary made an error in writing it down on his calendar. At any rate, he has not appeared. On checking with his office, he is not in his office but at the Coroner's office. We checked with the attorney for the bonding company. He is not able to stay until 2:30 when Mr. Cheatham had it noted on his calendar so for courtesy sake I would ask you, sir, if you are not able to stay until 2:30? You are coming from Greenville? Is that how I understand it sir?

Bryan P. Kelley, Esq: Correct.

Honorable Angela E. Little: Okay, thank you, sir. The option then would be we can either schedule it for a different date or we can move forward with all the testimony here today and give Mr. Cheatham a chance to answer, whatever comes out today. So, I think for expediency we will move forward and we can provide Mr. Cheatham a transcript of the hearing. He'll have an opportunity to answer. At this point I would like to swear you in, sir. Would you raise your right hands, both you gentlemen?

ROBERT G. BONE

BRYAN P. KELLEY, ESQ.

HAVING BEEN DULY SWORN

AND TESTIFIED AS FOLLOWS:

Robert G. Bone:

Yes.

Bryan P. Kelley, Esq:

Yes.

Honorable Angela E. Little:

I would be glad to hear from you first, sir, representing the bonding company.

Bryan P. Kelley, Esq:

Your Honor, I don't have much to contribute, I guess, to this morning's proceedings and I did not anticipate the need to be heard. I'm mostly here in an observatory capacity. I think the Court based on the pleadings of record and my observations through hearings I've attended has this matter well in hand in terms of the issues at play. The only thing that I'll note is my understanding of the Court's Order from February that there was some need for clarification as to the \$177,000.00 of reported income on Mr. Bone's 2010 tax return. I have reviewed the documents that Mr. Bone submitted and I note that he included in his submission 2011 to 2014 which I assume is in response to the final paragraph to the Court's February Order which asks for some clarification of all tax returns and all income that had not been previously reported to the Court. Based on my review of the 2010 return that have been submitted along with the new documents that were submitted in response to the February Order it appears that there was an early distribution from what I believe was a IRA account with Merrill Lynch of \$190,000.00 one of those was for \$177,000.00 and the second one for \$13,000.00. It is my understanding that as a consequence of taking that early distribution in terms of a pre-retirement distribution that there was a significant tax penalty due to the fact that it was made early. In the 2010 report it indicates a net tax payment due of a little short of \$20,000.00 which is in addition to the \$26,611.00 in federal income taxes that had previously been withheld from the 2010 income. So, there was a significant tax burden as a consequence of taking (inaudible). It seems that the money, when it was withdrawn from Merrill Lynch and put into the conservatorship, I think that the question for the Court, I assume that the question for the Court is whether or not that money was put into the Conservatorship and once it got there whether it was properly distributed. I have not seen anything to indicate otherwise. Based on my review of the documents it seems that everything appears to be in order and having said that I am here to (inaudible) the Court as to your inquiry of our bonding of the conservator and as to whether any malfeasants occurred.

Honorable Angela E. Little: Did you have an opportunity to look over the CPA's explanation of the 2011 federal tax return? 2012, 2013 and 2014?

Bryan P. Kelley, Esq.: I did.

Honorable Angela E. Little: You did? It was dated March 31st.

Bryan P. Kelley, Esq.: Yes Your Honor I have it here in front of me.

Honorable Angela E. Little: And it said that there were IRA distributions of \$95,000.00, \$29,000.00 and the \$45,000.00?

Bryan P. Kelley, Esq.: I have reviewed that Your Honor.

Honorable Angela E. Little: And then also in 2012 there was \$71,000.00, \$29,000.00 and in 2013 \$3,700.00, \$51,000.00 and so on and so forth.

Bryan P. Kelley, Esq.: I have reviewed that Your Honor and I am not sure what specifically the Court is asking of me. I may be in a better position to respond or ask questions depending on different things, testimony on this. I certainly don't have any personal knowledge of those.

Honorable Angela E. Little: Thank you sir. I appreciate it. Mr. Bone if you would come up here please. Take a seat. Mr. Bone, I see that you did go to Ms. Judith Dooley to have the CPA try to clarify some of these distributions.

Robert G. Bone: Yes ma'am.

Honorable Angela E. Little: It appears that Merrill Lynch did distribute some funds to your brother or did they distribute them to you, yourself?

Robert G. Bone: They distributed them to a CMA checking account. Where then I paid bills with that money out of his checking account.

Honorable Angela E. Little: Okay. So in each of these cases, this \$177,000.00 that was stated in the 2010, that was \$177,000.00 worth of stock?

Robert G. Bone: Yes ma'am.

Honorable Angela E. Little: Okay, now did he actually receive \$177,000.00?

Robert G. Bone: No ma'am. You have to pay your ten percent penalty for early withdrawal. You have got a thirty-eight percent federal tax and a ten percent state tax that is taken out of all that money before it is ever distributed to your checking account.

Honorable Angela E. Little: Okay so of that \$177,000.00 he had, what percentage for income tax?

Robert G. Bone: Ten percent penalty for early withdrawal, you have to pay a thirty-eight percent federal tax and then a ten percent state tax.

Honorable Angela E. Little: So that is at least fifty percent then.

Robert G. Bone: Yes ma'am.

Honorable Angela E. Little: So of that half that he did receive of that \$177,000.00, that would be \$85,000.00 something like that.

Robert G. Bone: Yes ma'am.

Honorable Angela E. Little: What happened to that money?

Robert G. Bone: That money was distributed to his checking account which I disbursed to pay bills with.

Honorable Angela E. Little: Did you reflect that on your 2010 annual accounting?

Robert G. Bone: Yes ma'am. That is the top figure that you see on every annual accounting. That \$177,000.00 occurred throughout the year it was not all one disbursement.

Honorable Angela E. Little: Right it was several disbursements that added up to \$177,000.00.

Robert G. Bone: Right and on my annual accounting at the beginning of each year, that figure at the top of that accounting reflects because I am dealing in stock so I have to tell you that I have \$200,000.00 in stock it is not cash and then as I sell the stock to fund his checking account then that is the money that goes into his checking account which would then have a check wrote against it.

Honorable Angela E. Little: Okay so that top amount that is on the top of each annual accounting that is all part of what was on that initial Inventory then? That \$230,000 on the Inventory that was never in cash? That was all in stock?

Robert G. Bone: All in stock. That is all he ever dealt with is stock.

Honorable Angela E. Little: So the initial accounting on the inventory was in stock, what it was valued at, at that time.

Robert G. Bone: Yes ma'am.

Honorable Angela E. Little: Okay and we had previously noted from Merrill Lynch where they said that was because his, all his stock had been in that one Merrill Lynch stock which took a dive.

Robert G. Bone: Yes.

Honorable Angela E. Little: So you are saying that each year you started out with that amount that was in stock but when you cashed it, it was not that full amount because of these?

Robert G. Bone: Because of penalties and interest.

Honorable Angela E. Little: Okay.

Robert G. Bone: That is why you have a little deviation in the figures because the stock market would change every day. The stock market went up his figures went up, if it went down his figures would go down.

Honorable Angela E. Little: So at no point during these annual accountings that this cash that was shown you never had access to the cash then it was all stock.

Robert G. Bone: It was all stock.

Honorable Angela E. Little: It would have been so much easier Mr. Bone if you had relayed that to us so that we could have understood.

Robert G. Bone: I thought I had explained that several times that it was in stock not cash.

Honorable Angela E. Little: Okay.

Robert G. Bone: If I needed a \$1,000.00 to go in his checking account to pay bills I would end up having to pay, cash in \$1,500.00 to \$2,000.00 worth of stock to cover the interest and the penalties just to get the \$1,000.00 in the checking account.

Honorable Angela E. Little: I also noted that his retirement, he has not started receiving his retirement yet has he?

Robert G. Bone: No ma'am.

Honorable Angela E. Little: He has not started receiving his retirement.

Robert G. Bone: He is not old enough. He is only 59.

Honorable Angela E. Little: He is just 59 now, okay. What age would he be eligible for that?

Robert G. Bone: Anything after 62 I believe.

Honorable Angela E. Little: Like social security kind of thing. Okay.

Robert G. Bone: Those accounts are locked and nobody can mess with those. He couldn't do an early withdrawal and start retirement early if he wanted to or nobody can even pull money out of those accounts.

Honorable Angela E. Little: So then you would not know exactly what would be eligible for him to receive in retirement at this point anyway then would you?

Robert G. Bone: Family Court, in the Family Court when they started splitting up the marital assets they got a Court Order and went to Merrill Lynch and I think at age 62 it is going to be a little over \$18,000.00, I mean \$1,800.00 a month that he could draw at 62. So the Court split that money up he will get a check and Ms. Bone will get a check they split it up in half.

Honorable Angela E. Little: So it will probably be eight or nine hundred dollars each.

Robert G. Bone: Each month.

Honorable Angela E. Little: And until that time Ms. Bone does not receive any more alimony does she?

Robert G. Bone: We paid the last check in March.

Honorable Angela E. Little: She has received other monies though from the Family Court issue.

Robert G. Bone: Yes ma'am.

Honorable Angela E. Little: Is there anything that you would like to ask this gentleman while you are here sir?

Bryan P. Kelley, Esq.: I do have just a couple of questions.

Honorable Angela E. Little: Okay.

Bryan P. Kelley, Esq.: Mr. Bone, I know that the accountings for the conservatorship were prepared in 2015. Is that correct?

Robert G. Bone: Yes.

Bryan P. Kelley, Esq.: So you are not necessarily preparing these contemporaneously with preparing the returns, you went back and reviewed the returns after they were filed to determine the amounts that are in the accountings. Is that correct?

Robert G. Bone: Right.

Bryan P. Kelley, Esq.: In terms of calculating the net, you gave testimony about how the distributions were made and some taxes were deducted and then you got a net that was around fifty percent of the actual deduction amount. In determining that net figure did anyone assist you in that calculation? A CPA or accountant or anything like that?

Robert G. Bone: No sir.

Bryan P. Kelley, Esq.: What documents did you use to calculate those figures that are in the accountings?

Robert G. Bone: I usually called Merrill Lynch and deal with either Jim Cook or Jane Floyd who are stock brokers with Merrill Lynch. I would base it off of what my monthly statements were.

Bryan P. Kelley, Esq.: Did the individuals you identified at Merrill Lynch and Bank of America did they provide you any information about the tax deductions that were incurred in each of the distributions that are identified in the document dated March 31, 2016?

Robert G. Bone: No.

Bryan P. Kelley, Esq.: So how did you determine?

Robert G. Bone: They told me you know that we had to pay taxes on it, if that is what you are asking. They told me the percentage they were taking out. They asked me if I wanted to take out anymore or stick with the standard deductions. I told them just to stay with the standard deductions.

Bryan P. Kelley, Esq.: So if I understand you correctly, correct me if I am wrong. When you were determining the amounts the net amounts you were getting some assistance from Bank of America and Merrill Lynch in terms of determining the amount of the deductions that would apply to those distributions?

Robert G. Bone: Yes. They were the ones that told me how much stock I had to sell in order to get whatever money I needed to go in the checking account.

Bryan P. Kelley, Esq.: So you would go to Merrill Lynch or Bank of America and say I need this amount and then they would determine based on the deductions that would apply to the distribution the actual amount of the distribution.

Robert G. Bone: Right.

Bryan P. Kelley, Esq.: Is that correct?

Robert G. Bone: Right because what they would do, they would go look at his accounts and they would determine what stock they could sell to get me what I needed. The stock prices were all different. They wouldn't just go in and sell Merrill Lynch stock they might go in and he might have some in Crest or Colgate or whatever.

Bryan P. Kelley, Esq.: That is all the questions that I have.

Honorable Angela E. Little: So what you are saying Mr. Bone is that they determined which stocks to sell in order to facilitate?

Robert G. Bone: I had no idea what stocks he had. All I had was what all his stocks were worth.

Honorable Angela E. Little: The bottom line.

Robert G. Bone: Right.

Honorable Angela E. Little: And how much does he have in stocks remaining?

Robert G. Bone: We have none in stock now, I mean all that was sold and distributed between him and her. The only thing that he has left now is his corporate 401 retirement.

Honorable Angela E. Little: Anything else sir? Thank you Mr. Bone. Thank you Ms. Powell.

—THIS HEARING IS HEREBY CONCLUDED—

C E R T I F I C A T E

This is to certify that the foregoing 8 pages were transcribed by me or under my supervision; that I am neither employed by nor related to any of the parties to this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

This 19th day of May, 2016



Kim R. Griffin
Aiken County Probate Court

AFFIDAVIT OF MAILING
IN THE APPEAL OF BONE v. BONE, et al
IN THE COURT OF COMMON PLEAS
Case No. 2016 CP 02 – 02576

I, Alice L. Cameron, affirm under penalty of perjury, that on the 29th day of July, I mailed a Memorandum on Bankruptcy regarding the above-referenced case in envelopes properly stamped and correctly addressed with return addresses clearly visible to each of the persons listed below.

Bryan P. Kelley
Attorney for Respondent Liberty Mutual
P.O. Box 1887.
Greenville, SC 29602

Robert G. Bone
888 Currytown Road
N. Augusta, SC 29860

Albert D. Bone
803 Vancouver Road
North Augusta, SC 29861

RECEIVED
JUL 31 2019
SC Court of Appeals

Alice L. Cameron
Alice L. Cameron

Sworn to me this 10th day of January, 2017

John E. Cheatham
John E. Cheatham
Notary Public for South Carolina
My commission expires: 3/21/24

LAW OFFICES OF JOHN E. CHEATHAM, P.A.

102 Harmon Street
.Lexington, S.C. 29072.

Email: jcheathamlaw@gmail.com

Phone: 803-359-2828

Fax: 803-359-0642

July 29, 2019

V. Claire Allen
Deputy Clerk
Post Office Box 11629
Columbia, SC 29211

RECEIVED
JUL 31 2019
SC Court of Appeals

Re: Vivy Haynes Bone v. Robert Bone, et al.
Appellate Case No. 2019-000051

Dear Ms. Allen:

Please find enclosed one original and seven copies of Appellant's Memorandum on Bankruptcy for the above-mentioned case. I have included a SASE for your convenience in returning a filed copy to me. Additionally, a copy of this Memorandum on Bankruptcy is being sent to each of the following persons at their respective addresses:

Bryan P. Kelley
Attorney for Respondent Liberty Mutual
P.O.Box 1887
Greenville, SC 29602

Robert G. Bone
888 Currytown Rd.
N. Augusta, SC 29860

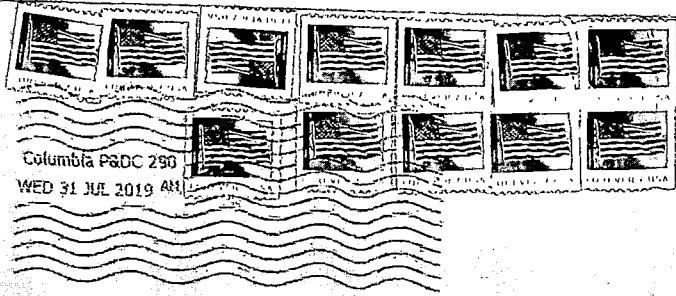
Albert D. Bone
803 Vancouver Rd.
North Augusta, SC 29841

Best regards,



John E. Cheatham
Attorney for Appellant

John E. Cheatham
102 Harmon St.
Lexington, SC 29072



RECEIVED

JUL 31 2019

SC Court of Appeals

V. Claire Allen
Deputy Clerk
Post Office Box 11629
Columbia, SC 29211

