

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

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Case No. 2017-CP-08-1839

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Thomas C. Shoemaker and Caleb M.  
Shoemaker,

APPELLANT,

-V-

Sydney Bruce Shoemaker,

RESPONDENT.

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RECORD ON APPEAL

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**RECEIVED**  
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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 AMY M. BANNON ZENNER, )  
 Conservator for THOMAS C. SHOEMAKER )  
 And CALEB M. SHOEMAKER, )  
 )  
 Plaintiff, )  
 )  
 -versus- )  
 )  
 SYDNEY BRUCE SHOEMAKER, )  
 Defendant. )

---

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NUMBER: 17-CP-08-1839

ORDER FROM MOTION  
 TO DISMISS

MARY D. BROWN  
 CLERK OF COURT  
 BERKELEY COUNTY, SC

2018 NOV -5 PM 2:06

FILED

HEARING DATE:	October 30, 2018
JUDGE:	Doyet A. Early, III
PLAINTIFF'S ATTORNEY:	Ben F. Mack
DEFENDANT'S ATTORNEY:	Sean Zenner
COURT REPORTER:	Brenda Sigwald

THIS MATTER is pursuant to the Defendant's Motion to Dismiss the action based upon the Defendant that the Court of Common Pleas of the Ninth Judicial Circuit, Berkeley County, South Carolina, lacks subject matter jurisdiction with regard to the issues as raised in the pleadings.

A hearing on the Motion was held in this matter before Doyet A. Early, III, Judge of the Court of Common Pleas on October 31, 2018. Present at the hearing was the Plaintiff's attorney, Sean Zenner, of the Berkeley County Bar and the attorney for the Defendant, Ben F. Mack of the Dorchester County Bar.

Based upon the pleadings filed in this matter and the arguments of counsel made at the Motion hearing on October, 31 2018, this Court makes the following findings of fact.

*[Handwritten signature]*

1. The Plaintiff is a citizen and resident of the State of South Carolina, County of Berkeley, and has resided in said county and state for a period in excess of one year prior to the commencement of this action.

2. The Defendant is a citizen and resident of the State of Idaho.

3. The Plaintiff is the biological mother of the minor children, T.C.S., date of birth May 9, 2001 and C.M.S., date of birth May 9, 2001.

4. The Defendant is the paternal grandfather of the minor children, to wit: T.C.S., date of birth May 9, 2001 and C.M.S., date of birth May 9, 2001.

5. That pursuant to a Final Order and Decree of Divorce as entered in case number 2004-DR-08-2062 in the Family Court of the Ninth Judicial Circuit, Berkeley County, South Carolina, on February 12, 2007, the Plaintiff and the Defendant's son, Cameron Shoemaker, entered into an agreement in Paragraph Thirteen (13) of said Order wherein Cameron Shoemaker was required to keep and maintain his military life insurance policy for as long as he remained in the United States military, with the children named as the beneficiary. The Order requires that the Defendant act as trustee.

6. That on September 23, 2014, Cameron M. Shoemaker, died while on active duty with the United States Army. That subsequent to his death, life insurance benefits were paid pursuant to the coverage provided by the United States military. These life insurance proceeds were subject to the provision contained in Paragraph Thirteen (13) of the parties' Final Order and Decree of Divorce between the Plaintiff and the now deceased Cameron Shoemaker, which required that they be held in Trust by the Defendant.

7. That pursuant to the terms of the Decree of Divorce as entered into

*WBE*  
*#2*

between the Plaintiff, and Cameron Shoemaker, the Defendant received the proceeds of the deceased, Cameron Shoemaker's, military life insurance policy in the approximate amount of \$400,000.00 and placed said funds in a Trust hereafter known as the Cameron Shoemaker Life Insurance Trust which was executed on December 2, 2014, in the State of Idaho.

8. The Defendant executed a trust agreement on December 2, 2014, whereby the Defendant, as a resident of the State of Idaho, established the Cameron Shoemaker Life Insurance Trust naming the children of the deceased Cameron Shoemaker as the beneficiary of said trust, along with the child of the deceased, Cameron Shoemaker's subsequent marriage. The Defendant was named as trustee of said trust. The Defendant's wife, Cheryl J. Shoemaker of Riggins, Idaho and the Defendant's son, Matthew Shoemaker, of Rome, Georgia were named as alternative trustees. That said trust was executed on December 2, 2014 before a Notary Public in Lewis County, Idaho.

9. That on March 2, 2015 the Defendant, by and thru his attorney, filed a Trust Registration in Case Number CV43851, as filed in the District Court of the Second Judicial Circuit of the State of Idaho, in and for the County of Idaho. The filing of the Trust Registration was executed by the Defendant on December 18, 2014 and filed in the District Court of the Second Judicial Circuit of the State of Idaho on March 2, 2015. That said trust filing was in accordance with the dictates and requirements of the Idaho Uniform Trustee Powers Act.

10. That pursuant to the execution of the Cameron Shoemaker Life Insurance Trust on December 8, 2014, and the registration of said trust in the District Court of the Second Judicial Circuit of the State of Idaho in case number CV43851 on March 2, 2015,


Handwritten signature and initials, possibly "J. J. [unclear]" and "#3".

the children of the deceased Cameron Shoemaker, to wit: C.M.S., date of birth May 9, 2001; T.C.S., date of birth May 9, 2001 and C.M.S., date of birth January 16, 2011 are named as the beneficiaries of said trust, with their one-third beneficial interest to be distributed upon each child reaching the age of twenty-five (25).

11. The Defendant is currently the said Trustee of said established trust pursuant to the laws of the State of Idaho and registered in the State of Idaho. The Plaintiff has initiated litigation in this action questioning the Defendant's exercise of his fiduciary duties with regard to the interest of the three minor beneficiaries and request an accounting of funds received and distributions made pursuant to the terms of said trust.

12. The Defendant alleges that he continues to protect the interest of the three minor beneficiaries pursuant to the law of the State of Idaho wherein said trust is registered and administered and is taking no action detrimental to the interest of the three minor beneficiaries. The Defendant alleges that this Court lacks subject matter jurisdiction with regard to the litigation and issues related to the administration of the Cameron Shoemaker Life Insurance Trust which was executed on December 2, 2014 in the State of Idaho. That said trust continues to be registered and administered pursuant to the statutes of the State of Idaho.

13. The Defendant maintains that this Court lacks subject matter jurisdiction with regard to litigation of the issues relevant to the proper administration of said trust and that any proceedings with regard to said matter should be brought in the State of Idaho. The State of Idaho is the proper jurisdiction to exercise subject matter jurisdiction in that the determination of the proper administration of the trust will be determined pursuant to the statutes and regulations of the trust administration in the State of Idaho.

A handwritten signature in black ink, appearing to read "V. D. S.", with a horizontal line underneath and some scribbles below it.

14. Subject matter jurisdiction is defined as “the power to hear and determine cases with the general class to which the proceeds in question belong” citing *Doug v. Gold Kisd, Inc.*, 442 S.E. 2d, 598, 1994. This case involves the class of cases which determine the proper administration of a trust pursuant to the law of the State of Idaho. It is inappropriate for this Court to exercise jurisdiction determining the proper administration of a trust established in the State of Idaho and regulated pursuant to statutes and regulations in the State of Idaho.

15. This Court finds that the Motion of the Plaintiff should be granted and this case dismissed for lack of subject matter jurisdiction, based upon the fact that this case involves the interpretation of the administration of a trust that is created and registered in the State of Idaho and involves reviewing the administration of said trust pursuant to the statutes, laws and regulations of the State of Idaho. This matter should be more properly brought for determination of the issues as raised in the pleadings in the State of Idaho.

This Court makes the following findings of law:

This Court lacks subject matter jurisdiction with regard to the issues as raised in the pleadings which relate to an Idaho trust and that this matter should be adjudicated in Idaho based upon the fact that the trust in questions is established in the State of Idaho and regulated pursuant to the statutes and regulations of the State of Idaho.

Based upon the above enumerated findings of facts and conclusions of law, it is, therefore,


*JME*  
*#5*

ORDERED, ADJUDGED and DECREED that the within case is dismissed and ended based upon this Court's lack of subject matter jurisdiction with regard to the issues as raised in the pleadings.

AND IT IS SO ORDERED.

Nov 1, 2018

Bamberg, South Carolina

  
\_\_\_\_\_  
Doyet A. Early, III, Judge  
Court of Common Pleas  
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CASE NO: 17-CP-08-1839

AMY M. BANNON ZENNER, Conservator )  
for THOMAS C. SHOEMAKER and )  
CALEB M. SHOEMAKER, )

PLAINTIFFS, )

-V- )

SYDNEY BRUCE SHOEMAKER, )

DEFENDANT. )

COMPLAINT  
(JURY TRIAL DEMANDED)

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED  
2017 AUG -2 AM 11:30  
JLH

NOW COMES THE PLAINTIFFS, by and through their undersigned counsel, and state

as follows:

1. Plaintiff is a resident of Berkeley County, South Carolina.
2. Plaintiff is the former daughter-in-law of Defendant, having been married to Defendant's son, Cameron M. Shoemaker.
3. The Plaintiff is the sole custodian of Thomas Colton Shoemaker and Caleb Mitchum Shoemaker, the minor children of Amy M. Bannon Zenner (formerly Shoemaker) and Cameron M. Shoemaker.
4. Plaintiff is the appointed Conservator of the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker.
5. Defendant Sydney Bruce Shoemaker is a resident of the State of Idaho.
6. Defendant was ordered by the Courts of South Carolina on or about December 1, 2014, not to dispose of any funds and to hold the monies in trust for the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker, pending further Order.
7. Jurisdiction and venue are proper in this Court.

FOR A FIRST CAUSE OF ACTION  
BREACH OF TRUST

8. Paragraphs 1 through 7 are reasserted as if stated verbatim herein.
9. Plaintiff was the Plaintiff in action 04-DR-08-2062 in Berkeley County, South Carolina.

10. The Plaintiff and Cameron M. Shoemaker entered into an agreement to resolve the issues between them in their divorce.
11. The Plaintiff and Cameron M. Shoemaker were divorced by Order of this Court, dated February 8, 2007 and clocked February 13, 2007, in action 04-DR-08-2062 in Berkeley County, South Carolina.
12. The agreement of the Plaintiff and Cameron M. Shoemaker was incorporated into the February 13, 2007 Order of this Court, in action 04-DR-08-2062 in Berkeley County, South Carolina.
13. On September 23, 2014, Cameron M. Shoemaker passed away of a drug overdose while on active duty with the US Army.
14. Under paragraph 15 of the Final Order and Decree of Divorce, Sydney Bruce Shoemaker was to become trustee for insurance proceeds designated for the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker.
15. This agreement was based upon an understanding that Sydney Bruce Shoemaker would become more involved in the lives of his grandchildren and form a stronger relationship with them.
16. Defendant Sydney Bruce Shoemaker only ever saw his grandchildren, Thomas Colton Shoemaker and Caleb Mitchum Shoemaker, once when they were 5 months old.
17. Defendant Sydney Bruce Shoemaker has never sent a birthday card or gift to his grandchildren, Thomas Colton Shoemaker and Caleb Mitchum Shoemaker, since November, 2004.
18. Defendant Sydney Bruce Shoemaker has never sent a Christmas card or gift to his grandchildren, Thomas Colton Shoemaker and Caleb Mitchum Shoemaker, since November, 2004.
19. Plaintiff opposed Defendant Sydney Bruce Shoemaker holding any funds in trust whatsoever due to, among other issues, his lack of being bonded and insured, his lack of relationship with his grandsons and his character.
20. Once the Court placed the funds with Defendant Sydney Bruce Shoemaker Plaintiff sent his attorney, Michael Wasko, a copy of the final divorce decree clearly stating the order of the court.
21. Defendant Sydney Bruce Shoemaker did not hold the money in trust for the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker.

22. Defendant Sydney Bruce Shoemaker instead set up a life insurance trust under Cameron Shoemaker's name, with Mr. Bruce Shoemaker being the trustee, his wife, Cheryl Shoemaker, which is of no biological relation to my minor children as alternate trustee and his oldest son, Matthew Shoemaker as alternate trustee.
23. My minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker are not mentioned in the trust.
24. There is no valid reason why this trust should have been set up.
25. Defendant received \$400,311.46 on or about 12/8/14 and another \$106.87 on or about 3/19/15.
26. Defendant placed approximately \$200,313.31 into a money market account on or about January 1, 2015.
27. The other \$200,000.00 that is missing, and no documentation or receipts have been provided to Plaintiff for those funds.
28. On or about January 5, 2015 a withdrawal of \$200.00 and a withdrawal \$190,000.00 was removed from the money market account.
29. On or about December 4, 2015, a \$150.00 withdrawal was completed.
30. A total of \$1,428.00 was withdrawn in the month of March 2016.
31. The current ending balance in the money market account as of March 24, 2016 was \$8,634.16.
32. Defendant has continued to act in his best interest and not in the interest of the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker.
33. Defendant did not put this money in trust for the children but solely for himself.
34. Defendant has breached his trust position.
35. As a direct and proximate cause of Defendant's breach, the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker have been harmed.
36. Plaintiff, on behalf of her minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker, is entitled to actual damages in an amount to be determined at trial.
37. Plaintiff, on behalf of her minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker, is entitled to punitive damages in an amount to be determined at trial.

38. The Court should Order that these damages be paid over to the Conservator to be placed in the restricted account set aside for the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker.

FOR A SECOND CAUSE OF ACTION  
CONVERSION

39. Paragraphs 1 through 38 are reasserted as if stated verbatim herein.

40. Upon information and belief, Defendant has converted the funds he was supposed to hold in trust into his own use.

41. Plaintiff, on behalf of her minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker, is entitled to actual damages in an amount to be determined at trial.

42. Plaintiff, on behalf of her minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker, is entitled to punitive damages in an amount to be determined at trial.

43. The Court should Order that these damages be paid over to the Conservator to be placed in the restricted account set aside for the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker.

FOR A THIRD CAUSE OF ACTION  
CONTEMPT OF COURT

44. Paragraphs 1 through 43 are reasserted as if stated verbatim herein.

45. Defendant's acts and omissions were done in contempt of this Court and its orders.

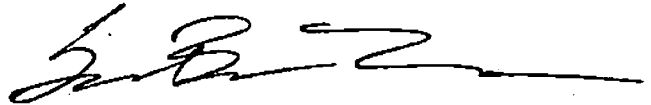
46. Such acts were willful, reckless and in gross disregard for the sanctity of this Court.

47. Defendant should be disposed of as the Court sees fit.

WHEREFORE, Plaintiff respectfully prays for the following relief:

- a. actual damages in an amount to be determined at trial;
- b. punitive damages in an amount to be determined at trial;
- c. the \$400,418.33 placed with Defendant be returned the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker;
- d. all of the funds should be released to the Conservator to be placed in the restricted account set aside for the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker.;
- e. Such other relief as the Court deems proper.

Respectfully submitted,



Sean Bannon Zenner, Esq.  
171 Woodbrook Way  
Moncks Corner, SC 29461  
843.455.6789

Moncks Corner, South Carolina  
August 2, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NUMBER: 17-CP-08-1839
	)	
AMY M. BANNON ZENNER,	)	
Conservator for THOMAS C. SHOEMAKER)	)	
And CALEB M. SHOEMAKER,	)	
	)	
	)	ANSWER AND COUNTERCLAIM
Plaintiffs,	)	
	)	
-versus-	)	
	)	
SYDNEY BRUCE SHOEMAKER,	)	
	)	
Defendant.	)	

FILED  
 17 SEP 14 PM 2:39  
 CLERK OF COURT  
 BERKELEY COUNTY, S.C.

The Defendant answering the Complaint of the Plaintiff alleges and says as follows:

1. The Defendant denies each and every allegation as contained in the Complaint of the Plaintiff unless specifically admitted or qualified herein.
2. The Defendant admits Paragraphs One (1), Two (2), Three (3), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Sixteen (16), Twenty-Two (22), Twenty-Five (25), Twenty-Six (26), Twenty-Eight (28) and Twenty-Nine (29) of the Complaint.
3. The Defendant denies Paragraphs Six (6), Seven (7), Eight (8), Fifteen (15), Seventeen (17), Eighteen (18), Twenty-One (21), Twenty-three (23), Twenty-Four (24), Twenty-Seven (27), Thirty (30), Thirty-One (31), Thirty-Two (32), Thirty-Three (33), Thirty-Four (34), Thirty-Five (35), Thirty-Six (36), Thirty-Seven (37), Thirty-Eight (38), Thirty-Nine (39), Forty (40), Forty-One (41), Forty-Two (42), Forty-Three (43),

BM

Forty-Four (44), Forty-Five (45), Forty-Six (46) and Forty-Seven (47) of the Complaint and demands strict proof thereof.

4. The Defendant has insufficient information to answer the allegation contained in Paragraph Nineteen (19) of the Complaint and therefore denies the same and demands strict proof thereof.

5. The Defendant has insufficient information to answer the allegations contained in Paragraph (20) of the Complaint and therefore denies the same and demands strict proof thereof.

**WHEREFORE**, having fully answered the Complaint of the Plaintiff, the Defendant requests the same be dismissed and pray the Defendant be granted by Counterclaim as follows:

#### **COUNTERCLAIM**

1. The Plaintiff is a citizen and resident of the State of South Carolina, County of Berkeley and has resided in said county and state for a period in excess of one year prior to the commencement of this action.

2. The Defendant is a citizen and resident of the State of Idaho.

3. The Plaintiff is the biological mother of the minor children, T.C.S., date of birth May 9, 2001 and C.M.S., date of birth May 9, 2001.

4. The Defendant is the paternal grandfather of the minor children to wit: T.C.S., date of birth May 9, 2001 and C.M.S., date of birth May 9, 2001.

5. That pursuant to a Final Order and Decree of Divorce as entered in case number 2004-DR-08-2062 in the Family Court of the Ninth Judicial Circuit, Berkeley County, South Carolina, on February 12, 2007, the Plaintiff and the Defendant's son,

Cameron Shoemaker, entered into an agreement in Paragraph Thirteen (13) of said Order wherein Cameron Shoemaker was required to keep and maintain his military life insurance policy for as long as he remained in the United States military, with the children named as the beneficiary. The Order requires that the Defendant act as trustee.

6. That on September 23, 2014, Cameron M. Shoemaker, died while on active duty with the United States Army. That subsequent to his death, life insurance benefits were paid pursuant to the coverage provided by the United States military. These life insurance proceeds were subject to the provision contained in Paragraph Thirteen (13) of the parties' Final Order and Decree of Divorce between the Plaintiff and the now deceased Cameron Shoemaker, which required that they be held in Trust by the Defendant.

7. That pursuant to the terms of the Decree of Divorce as entered into between the Plaintiff, and Cameron Shoemaker, the Defendant received the proceeds of the deceased, Cameron Shoemaker's, military life insurance policy in the approximate amount of \$400,000.00 and placed said funds in a Trust hereafter known as the Cameron Shoemaker Life Insurance Trust which was executed on December 2, 2014, in the State of Idaho.

8. The Defendant executed a trust agreement on December 2, 2014, whereby the Defendant, as a resident of the State of Idaho, established the Cameron Shoemaker Life Insurance Trust naming the children of the deceased Cameron Shoemaker as the beneficiary of said trust, along with the child of the deceased, Cameron Shoemaker's subsequent marriage. The Defendant was named as trustee of said trust. The Defendant's wife, Cheryl J. Shoemaker of Riggins, Idaho and the Defendant's son,

Matthew Shoemaker, of Rome, Georgia were named as alternative trustees. That said trust was executed on December 2, 2014 before a Notary Public in Lewis County, Idaho.

9. That on March 2, 2015 the Defendant, by and thru his attorney, filed a Trust Registration in Case Number CV43851, as filed in the District Court of the Second Judicial Circuit of the State of Idaho, in and for the County of Idaho. The filing of the Trust Registration was executed by the Defendant on December 18, 2014 and filed in the District Court of the Second Judicial Circuit of the State of Idaho on March 2, 2015. That said trust filing was in accordance with the dictates and requirements of the Idaho Uniform Trustee Powers Act.

10. That pursuant to the execution of the Cameron Shoemaker Life Insurance Trust on December 8, 2014, and the registration of said trust in the District Court of the Second Judicial Circuit of the State of Idaho in case number CV43851 on March 2, 2015, the children of the deceased Cameron Shoemaker, to wit: C.M.S., date of birth May 9, 2001; T.C.S., date of birth May 9, 2001 and C.M.S., date of birth January 16, 2011 are named as the beneficiaries of said trust, with their one-third beneficial interest to be distributed upon each child reaching the age of twenty-five (25).

11. The Defendant has faithfully administrated the terms of the Cameron Shoemaker Life Insurance Trust for the benefit of the three beneficiaries to wit: C.M.S., date of birth May 9, 2001; T.C.S., date of birth May 9, 2001 and C.M.S., date of birth January 16, 2011. The Defendant has utilized distributions from the trust solely for the purposes of trust administration including the payment of accounting fees, taxes, and attorney's fees incurred with regard to the administration of the trust for the benefit of the three minor beneficiaries.

12. The Defendant has competently exercised his fiduciary duties with regard to the interests of the three minor beneficiaries and maintained a complete accounting of all funds received and disbursed pursuant to the terms establishing said Trust and has administered the Trust for the benefit of the three minor beneficiaries. The Defendant continues to protect the interests of the three minor beneficiaries of the Cameron Shoemaker Life Insurance Trust, pursuant to the laws of the State of Idaho, wherein said trust is registered and administered, and has taken no action detrimental to the interest of the three minor beneficiaries of said trust. Trust funds are invested in appropriate financial assets at appropriate financial institutions.

13. The Plaintiff has initiated actions in the Probate Court of South Carolina, and in the Family Court of the Ninth Judicial Circuit, Berkeley County, South Carolina, addressing the administration of the trust pursuant to the terms of the Divorce Decree established between the Plaintiff and the deceased, Cameron Shoemaker. The Plaintiff's actions have previously been dismissed by the Probate Court of Berkeley County, South Carolina and the Family Court of the Ninth Judicial Circuit, Berkeley County, South Carolina.

14. The Plaintiff has continued to malign and disparage the Defendant's action in establishing the Trust, and administering the Trust, for the benefit of the minor dependents of the deceased Cameron Shoemaker. The Defendant has acted faithfully to comply with the terms of the Final Decree of Divorce between the Plaintiff and the deceased Cameron Shoemaker.

15. The Plaintiff has no factual basis for the allegations of malfeasance contained in the Complaint filed in this action. The Plaintiff initiated a criminal

investigation by the Sheriff's Department in Idaho County, Idaho, alleging that the Defendant was committing fraud in his administration of trust funds. That said allegation was made without foundation and led to the initiation of a criminal investigation against the Defendant in the State of Idaho, based upon the Plaintiff's malicious allegations.

16. The Defendant is retired and served twenty-seven (27) years as a law enforcement officer in the State of Idaho. The allegations against the Defendant by the Plaintiff slandered and maligned the reputation of the Defendant based upon the unfounded allegations. That criminal charges in the State of Idaho have not been initiated by the prosecuting authorities and are technically still pending.

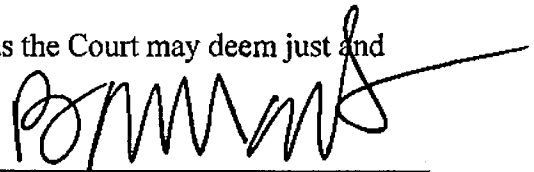
17. The Plaintiff's actions in initiating the within Complaint against the Defendant are frivolous and without foundation. The Defendant is informed and believes that the Plaintiff's actions filing the within action are in violation of §15-36-10 S.C. Code of Laws, 1976, as amended, known as the South Carolina Frivolous Civil Proceedings Sanctions Act. The Plaintiff should be subject to sanctions provided for pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, §15-36-10 and the Defendant is entitled to the payment of attorney's fees and costs to be paid by the Plaintiff for violation of said act.

18. The Defendant is informed and believes that the Plaintiff has slandered and maligned the Defendant by alleging misconduct in the administration of the Trust he administers for the benefit of the minor children of the Plaintiff. That said slander has negatively maligned the reputation of the Defendant. The Plaintiff should be required to pay actual and punitive damages for slander in an amount to be determined by a jury.

19. The Defendant alleges that the Plaintiff has failed to allege a cause of action for which relief may be granted.

WHEREFORE having fully answered the Complaint of the Plaintiff, the Defendant requests the same be dismissed and that the relief prayed for in the Counterclaim of the Defendant be granted as follows:

- a. For an Order of Dismissal of the action based upon the failure of the Plaintiff to allege a cause of action upon which relief may be granted.
- b. For a finding that the Plaintiff's actions in initiating the within Complaint against the Defendant are frivolous and without foundation. The Defendant is informed and believes that the Plaintiff's filing of the within action is in violation of the §15-36-10 S.C. Code of Laws, 1976, as amended, known as the South Carolina Frivolous Civil Proceedings Sanctions Act. The Plaintiff should be subject to sanctions provided for pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, §15-36-10. That the Defendant is entitled to the payment of attorney's fees and costs to be paid by the Plaintiff, for violation of said act.
- c. For a judgment finding that the Plaintiff has slandered and maligned the Defendant by alleging misconduct in the administration of the Trust he administers for the benefit of the minor children of the Plaintiff. That said slander has negatively maligned the reputation of the Defendant. The Plaintiff should be required to pay actual and punitive damages for slander in an amount to be determined by a jury.
- d. For attorney's fees and costs for the defense of this action.
- e. For such other and further relief as the Court may deem just and proper.



Ben F. Mack  
110 North Main Street  
Summerville, South Carolina 29483  
843-285-7100  
843-285-7199 fax

August 30, 2017  
Summerville, South Carolina

Attorney for the Defendant

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CASE NO: 17-CP-08-1839

AMY M. BANNON ZENNER, Conservator )  
for THOMAS C. SHOEMAKER and )  
CALEB M. SHOEMAKER, )

PLAINTIFFS, )

-V- )

SYDNEY BRUCE SHOEMAKER, )

DEFENDANT. )

REPLY

MARY A. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

17 SEP - 6 PM 3:01

FILED

NOW COMES THE PLAINTIFFS, by and through their undersigned counsel, and  
replies to the Defendant's Answer and Counterclaim as follows:

1. Plaintiff denies each and every allegation as contained in the Answer and Counterclaim of Defendant unless expressly admitted in either Plaintiff's Complaint or herein and demands strict proof thereof.
2. Paragraphs 1 through 5, preceding the captioned Counterclaim constitute Defendant's Answer and require no response but to the extent one is deemed required, are denied unless expressly admitted in either Plaintiff's Complaint or herein.
3. Defendant knew or should have known the truth of Paragraph 4 of Plaintiff's Complaint, having been provided a copy of Exhibit E (attached) on March 22, 2017 by US Postal Service Regular Mail and on August 2, 2017 by US Postal Service Regular Mail and Restricted Delivery Mail, which he refused on August 20, 2017, and it being a matter of public record, and falsely denied the same in Paragraph 1 of his Answer and Counterclaim.
4. Defendant knew or should have known the truth of Paragraph 6 of Plaintiff's Complaint, it being part of the Order of this Court on December 1, 2014, signed March 15, 2015 and filed March 25, 2015, (Exhibit B, attached) and falsely denied the same in Paragraph 3 of his Answer and Counterclaim.
5. Defendant knew or should have known the truth of Paragraph 27 of Plaintiff's Complaint, since he provided the document dated March 30, 2016 showing a balance of only \$200,313,31 on January 1, 2015 and has provided no further documents related to the trust (Exhibit C, attached) and falsely denied the same in Paragraph 3 of his Answer and Counterclaim.

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6. The second Paragraph 1 of the Answer and Counterclaim of Defendant is admitted.
7. The second Paragraph 2 of the Answer and Counterclaim of Defendant is admitted and Plaintiff would point out that it is in conflict with the first Paragraph 1 of the Answer and Counterclaim of Defendant causing Defendant to plead that he is simultaneously not a resident of Idaho and a resident of Idaho.
8. Upon information and belief, the second Paragraphs 3 and 4 of the Answer and Counterclaim of Defendant are admitted to the extent that the initials T.C.S. refer to Thomas Colton Shoemaker and the initials C.M.S. refer to Caleb Mitchum Shoemaker.
9. The second Paragraph 5 of the Answer and Counterclaim of Defendant is denied. Plaintiff affirmatively states that Paragraph THIRTEEN of the Agreement as read on the record, Paragraph 15 of the Order portion in action 04-DR-08-2062 (attached as Exhibit A) stated what the Defendant indicated as Paragraph 13 and that Defendant's son had breached the agreement and was in contempt of the Court's order on the day he died.
10. Paragraph 6 is denied. Plaintiff affirmatively states that on September 23, 2014, Cameron M. Shoemaker passed away of a drug overdose while on active duty with the US Army. Plaintiff affirmatively states that these proceeds were paid out but not pursuant to Paragraph 15 of the Order portion in action 04-DR-08-2062 (attached as Exhibit A) due to Defendant's son being in contempt of that Order on the day of his death. Plaintiff affirmatively states that these funds belonged to the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker pursuant to Paragraph 15 of the Order portion in action 04-DR-08-2062. Plaintiff affirmatively states that the Order placing the funds in Defendant's trust is the Continuance Order of Judge Coreen B. Khoury, given on December 1, 2014, signed March 15, 2015 and filed March 25, 2015, (Exhibit B, attached).
11. Paragraph 7 is denied. Plaintiff affirmatively states that the Order placing the funds in Defendant's trust is the Continuance Order of Judge Coreen B. Khoury, given on December 1, 2014, signed March 15, 2015 and filed March 25, 2015, (Exhibit B, attached). Upon information and belief, no funds were placed in the trust until December 8, 2014 as evidenced by the document previously provided by Defendant (Exhibit C, attached).
12. Plaintiff does not possess sufficient information to admit or deny Paragraph 8. Plaintiff states that upon information and belief based upon what has been obtained from the Clerk of Court for the Second Judicial District of the State of Idaho, Idaho County, (Exhibit D, attached) the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker are not mentioned as beneficiaries of the trust. Plaintiff affirmatively states that Paragraph 8 is an admission of being in violation of Paragraph 15 of the Order portion in action 04-DR-08-2062 (attached as Exhibit A) and the Continuance Order of Judge Coreen B. Khoury, given on December 1, 2014, signed March 15, 2015 and filed March 25, 2015, (Exhibit B, attached), in that Conner Mitchell Shoemaker (upon information and belief, the alleged child of the deceased's subsequent marriage) has been added to the

trust depriving the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker of the money placed in Defendant's trust on their behalf. Plaintiff further affirmatively states that Paragraph 8 is an admission of Paragraphs 21, 32, 34, 35, 40, 45 and 46 of her Complaint, which were falsely denied in Paragraph 3 of Defendant's Answer and Counterclaim, in that Conner M. Shoemaker has been added to the trust depriving the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker of the money placed in Defendant's trust on their behalf.

13. Upon information and belief, Paragraph 9 is admitted, said registration already being provided herein as Exhibit D.
14. Paragraph 10 is denied and strict proof demanded thereof. Plaintiff affirmatively states that Paragraph 10 is an admission of being in violation of Paragraph 15 of the Order portion in action 04-DR-08-2062 (attached as Exhibit A) and the Continuance Order of Judge Coreen B. Khoury, given on December 1, 2014, signed March 15, 2015 and filed March 25, 2015, (Exhibit B, attached), in that Conner M. Shoemaker (upon information and belief, "C.M.S., date of birth January 16, 2011") has been added to the trust depriving the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker of the money placed in Defendant's trust on their behalf and in denying them access to said funds upon them reaching the age of majority. Plaintiff further affirmatively states that Paragraph 10 is an admission of Paragraphs 21, 32, 34, 35, 40, 45 and 46 of her Complaint, which were falsely denied in Paragraph 3 of Defendant's Answer and Counterclaim, in that Conner M. Shoemaker has been added to the trust depriving the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker of the money placed in Defendant's trust on their behalf and in denying them access to said funds upon them reaching the age of majority.
15. Paragraph 11 is denied and strict proof demanded thereof. Plaintiff affirmatively states that only 2 valid minor beneficiaries of the trust exist: Thomas Colton Shoemaker and Caleb Mitchum Shoemaker.
16. Paragraph 12 is denied and strict proof demanded thereof. Plaintiff affirmatively states that only 2 valid minor beneficiaries of the trust exist: Thomas Colton Shoemaker and Caleb Mitchum Shoemaker.
17. Paragraph 13 is denied and strict proof demanded thereof. The only matters related to this action brought in Probate Court is the actions for Appointment of Conservator (2017-GC-08-04, 2017-GC-08-05), which resulted in the attached Certificate(s) of Appointment (Exhibit E, attached). These being a matter of public record, it appears that Defendant has falsely proffered this pleading.
18. Paragraphs 14 and 15 are denied and strict proof demanded thereof. Defendant, by his own pleadings, has admitted to being in violation of Paragraph 15 of the Order portion in action 04-DR-08-2062 (attached as Exhibit A) and the Continuance Order of Judge Coreen B. Khoury, given on December 1, 2014, signed March 15, 2015 and filed March 25, 2015, (Exhibit B, attached), in that Conner M. Shoemaker has been added to the trust

depriving the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker of the money placed in Defendant's trust on their behalf.

19. Paragraph 16 is denied and strict proof demanded thereof. Plaintiff affirmatively states that upon information and belief, the criminal charges have been dropped due to the direct intervention of the Idaho County Sheriff Giddings on Defendant's behalf, but based upon the admissions of Defendant in his pleadings the charges are supported if the investigating authorities ever deem it proper to pursue them.
20. Paragraphs 17 and 18 are denied and strict proof demanded thereof. Defendant, by his own pleadings, has admitted to being in violation of Paragraph 15 of the Order portion in action 04-DR-08-2062 (attached as Exhibit A) and the Continuance Order of Judge Coreen B. Khoury, given on December 1, 2014, signed March 15, 2015 and filed March 25, 2015, (Exhibit B, attached), in that Conner M. Shoemaker has been added to the trust. Defendant further, through his pleadings, gave an admission of Paragraphs 21, 32, 34, 35, 40, 45 and 46 of Plaintiff's Complaint.
21. Paragraph 19 is denied and strict proof demanded thereof.

FOR A FIRST AFFIRMATIVE DEFENSE  
TRUTH OF THE MATTER ASSERTED

22. Paragraphs 1 through 21 are incorporated herein as if stated verbatim.
23. Plaintiff states that based on her pleadings and Paragraphs 8 and 10 of Defendant's Answer and Counterclaim, her allegations made in Paragraphs 21, 32, 34, 35, 40, 45 and 46 are true.
24. Defendant is barred from relief.

FOR A SECOND AFFIRMATIVE DEFENSE  
UNCLEAN HANDS

25. Paragraphs 1 through 24 are incorporated herein as if stated verbatim.
26. Plaintiff states that any confusion on her part about the facts relating to Defendant as Trustee, including but not limited to the trust, its formation, its administration, and its current status are the direct and proximate result of Defendant misleading her and by Defendant failing to provide documentation to allay her concerns.
27. Defendants acts and omissions serve to bar him from relief under the doctrine of unclean hands.

WHEREFORE, Plaintiff respectfully prays for the following relief:

- a. actual damages in an amount to be determined at trial;
- b. punitive damages in an amount to be determined at trial;
- c. the \$400,418.33 placed with Defendant be returned the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker;
- d. all of the funds should be released to the Conservator to be placed in the restricted account set aside for the minor children Thomas Colton Shoemaker and Caleb Mitchum Shoemaker.;
- e. dismissal of Defendant's Counterclaim in its entirety;
- f. Such other relief as the Court deems proper.

Respectfully submitted,



Sean Bannon Zenner, Esq.  
171 Woodbrook Way  
Moncks Corner, SC 29461  
843.455.6789

Moncks Corner, South Carolina  
September 6, 2017

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State of South Carolina )  
County of Berkeley )

In the Court  
Of Common Pleas

Docket Number: 2017CP0801602

Amy M. Bannon Zenner, )  
Conservator for Thomas C. )  
Shoemaker and Caleb M. )  
Shoemaker, )  
Plaintiff, )

vs.

Transcript of Record

Sydney Bruce Shoemaker, )  
Defendant. )

State of South Carolina )  
County of Berkeley )

In the Court  
Of Common Pleas

Docket Number: 2017CP0801839

Amy M. Bannon Zenner, )  
Conservator for Thomas C. )  
Shoemaker and Caleb M. )  
Shoemaker, )  
Plaintiff, )

vs.

Transcript of Record

Estate of Cameron M. )  
Shoemaker and )  
Sydney Bruce Shoemaker, )  
Defendant. )

May 14-15, 2018  
Berkeley, South Carolina

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B E F O R E:

The Honorable Doyet A. Early III, Judge.

A P P E A R A N C E S:

Sean Bannon Zenner, Esquire  
Attorney for the Plaintiff

Bernard A. Mack, Esquire  
Attorney for the Defendant

Brenda J. Sigwald, Circuit Court Reporter  
To The Honorable Doyet A. Early III  
P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no exhibits  
entered during this hearing.)

1 MOTION HEARING

2 THE COURT: All right. Looks like I am down to 37,  
3 perhaps? A motion to consolidate and transfer cases, Amy  
4 Banner Zenner, Conservator v. C.M. Shoemaker.

5 You are --

6 MR. ZENNER: I am Sean Zenner, Your Honor, I am  
7 here on behalf of my wife and my children, stepchildren.  
8 It is my motion.

9 THE COURT: Well, where's Mr. Mack?

10 MR. ZENNER: I do not know where Mr. Mack is. He  
11 actually received notice of this, I believe, on the 4th of  
12 May. And that was actually the same day I served the  
13 motion on him by mail. But I haven't seen any e-mails or  
14 anything to him objecting to being here today, so I'm not  
15 sure where he is.

16 We're actually here tomorrow on another case.

17 THE COURT: With him?

18 MR. ZENNER: With him as well.

19 THE COURT: A different kind of case? Different  
20 case? Same case different motion?

21 MR. ZENNER: Different case. Different case  
22 different motion.

23 THE COURT: Where does Mr. Mack practice?

24 MR. ZENNER: He practices out of Summerville, Your  
25 Honor.

1 (There was a pause in the proceedings.)

2 THE COURT: Would it be an imposition for you to  
3 step out and call him?

4 MR. ZENNER: Not at all, Your Honor. I'll be happy  
5 to.

6 THE COURT: Thank you.

7 (A brief recess was observed until the following  
8 day.)

9 **MAY 15, 2018**

10 THE COURT: Okay. Back to 32. Amy Barron Zenner,  
11 Conservator versus Sydney Bruce Shoemaker. Mr. Zenner and  
12 Mr. Mack.

13 MR. MACK: Yes, sir.

14 MR. ZENNER: Yes, sir, Your Honor.

15 THE COURT: Didn't we have one from yesterday as  
16 well?

17 MR. MACK: Yes.

18 MR. ZENNER: Yes, sir, Your Honor.

19 THE COURT: What was that? Different case, same  
20 case?

21 MR. MACK: Different case.

22 MR. ZENNER: Different case.

23 MR. MACK: Very similar though.

24 MR. ZENNER: I believe that was number 37,  
25 yesterday, Your Honor, if I'm correct.

1 THE COURT: Good memory. Well, that is a motion to  
2 consolidate, 37, from yesterday. And today is what? A  
3 motion to dismiss?

4 MR. ZENNER: Yes, sir, Your Honor.

5 THE COURT: What's the best way to hear them?  
6 Dismiss first? If I dismiss it --

7 MR. MACK: The second case -- they're different,  
8 different parties.

9 THE COURT: All right. Which one y'all want to do  
10 first? I don't care.

11 MR. ZENNER: Dismiss is fine.

12 THE COURT: All right. We're going to do 17CP  
13 081839.

14 MR. MACK that's correct, Your Honor.

15 THE COURT: That's Zenner, conservator versus  
16 Shoemaker. And this is a motion to dismiss for lack of  
17 subject matter. It is whose motion?

18 MR. MACK: My motion, Your Honor.

19 THE COURT: Okay.

20 MR. MACK: Thank you, Your Honor.

21 THE COURT: Good morning, how are you.

22 MR. MACK: I'm fine sir. We're here before you --

23 THE COURT: Where do you practice?

24 MR. MACK: Summerville, sir.

25 THE COURT: Summerville. The big city.

1 MR. MACK: Yes, sir.

2 (Off the record conversation - not related to  
3 motions.)

4 THE COURT: All right. Tell me what we got here.

5 MR. MACK: Judge, my client, the defendant, Mr.  
6 Shoemaker, this action is being brought pursuant to alleged  
7 malfeasance with regard to a trust that was established  
8 pursuant to a will of a deceased party. The issue is that  
9 Mr. Shoemaker is a citizen and resident of the State of  
10 Idaho and the -- his son died.

11 Pursuant to the decree of divorce out of Berkeley  
12 County, in this courtroom, there was provision for the  
13 creation of a trust instrument naming Mr. Shoemaker as the  
14 trustee of the trust in the event of his death. He died  
15 and left the funds of approximately \$400,000 in -- to --  
16 and it went into the hands of Mr. Shoemaker, my client.

17 THE COURT: As the trustee.

18 MR. MACK: As the trustee.

19 THE COURT: To administer.

20 MR. MACK: To administer.

21 Mr. Shoemaker, my client, is a resident of the  
22 State of Idaho. The trust instrument is created in the  
23 State of Idaho. It is registered in the State of Idaho.  
24 And it is being administered in the State of Idaho. So my  
25 argument is that this Court does not -- or lacks subject

1 matter jurisdiction with regard to --

2 THE COURT: Does the trust -- is it mainly liquid  
3 funds? Or is it property? Or is it --

4 MR. MACK: It is liquid funds.

5 THE COURT: So the cash is also deposited in the  
6 State of Idaho?

7 MR. MACK: It's in a Raymond James account, I  
8 believe, that is in the State of Idaho.

9 THE COURT: Okay.

10 MR. MACK: And so we're asking for a dismissal of  
11 this action. This would properly, would more properly or  
12 would absolutely be properly brought in the State of Idaho  
13 against my client. This Court lacks subject matter  
14 jurisdiction over --

15 THE COURT: Is there any connections at all to the  
16 State of South Carolina? Any nexus to the State of South  
17 Carolina other than the fact that it started out as a part  
18 of a divorce settlement, the parties were here when it was  
19 created?

20 MR. MACK: Except that the beneficiaries of the  
21 trust are two 17-year-old boys who are residents of South  
22 Carolina, reside here in Berkeley County.

23 THE COURT: And they -- I assume under the terms of  
24 the trust, they get some money from it and the money comes  
25 from Idaho sent to them here in Berkeley County and --

1 MR. MACK: I don't believe they are drawing any  
2 benefit at the present time.

3 THE COURT: They are future benefits?

4 MR. MACK: Yes, sir. For future.

5 THE COURT: So no benefits have been paid.

6 MR. MACK: Right. Now, Mr. Zenner has made  
7 allegations with regard to the management of that and  
8 whatnot, but those are issues for trial in this matter to  
9 go to properly the interpretation --

10 THE COURT: But you take the position that there's  
11 absolutely no connection to the State of South Carolina,  
12 which voids this Court of -- this Court does not have  
13 jurisdiction.

14 MR. MACK: Yes, sir, that's basically it.

15 THE COURT: It's a long-arm type rule, argument in  
16 the reverse.

17 MR. MACK: Yes, sir.

18 THE COURT: All right. Why -- what connections do  
19 we have here that give me, give this Court jurisdiction?

20 MR. ZENNER: Thank you, Your Honor. Sean Zenner  
21 for both my wife and my stepsons.

22 THE COURT: Let me make sure I understand. Your  
23 wife divorced a guy.

24 MR. ZENNER: My wife is Amy Zenner --

25 THE COURT: -- divorced a guy, the trust was part

1 of the settlement of the divorce for the benefit of her two  
2 children, who are now your stepchildren?

3 MR. ZENNER: Yes, sir, absolutely.

4 THE COURT: Okay.

5 MR. ZENNER: And the connection to South Carolina  
6 is, first of all, the way that the money got put into his  
7 hands, it didn't originally come into his hands when the  
8 decedent passed. The decedent --

9 THE COURT: The decedent was her former husband?

10 MR. ZENNER: Correct.

11 THE COURT: Okay.

12 MR. ZENNER: The decedent's wife at the time  
13 actually took control of the funds immediately.

14 THE COURT: He remarried.

15 MR. ZENNER: Right, he remarried.

16 So the decedent's wife took control of the funds  
17 immediately. We had a hearing here back in December of  
18 2014. That Court said, pending further order, we're going  
19 to go ahead and put it in the hands of Mr. Shoemaker,  
20 you're going to hold it in trust for these children.

21 Our -- we're alleging that he then turned around  
22 and took this money and instead of doing it for the  
23 children, he didn't follow that order at all and he  
24 converted the money to his own use. And in the trust  
25 document he actually prepared, it's not exclusively for

1 these two children. There's some language in there that we  
2 feel actually needs to be adjudicated, which we believe  
3 he's perpetrated a fraud on the Courts of South Carolina,  
4 and that these minor children, who both live in South  
5 Carolina, are being negatively affected thereby.

6 THE COURT: So the -- when the ex-husband died --

7 MR. ZENNER: Correct, and he died in Sumter.

8 MR. MACK: And his probate is being handled in  
9 Sumter, which goes to the other motion you're going to  
10 hear.

11 THE COURT: Well, let me just make sure I got all  
12 the facts right. He dies, but he didn't remarry at that  
13 time. The monies that were originally in the divorce  
14 decree ended up in the new wife's hands pursuant to court  
15 order it was then put into a trust to be handled and  
16 administered by Mr. Shoemaker in the State of Idaho.

17 MR. ZENNER: No, sir, it did not say where he was  
18 -- it only said that he was to hold this money in trust for  
19 these two minor children.

20 THE COURT: But it ended up in Idaho.

21 MR. ZENNER: It ended up in Idaho, yes, sir.

22 MR. MACK: December 2nd, 2014, he created the  
23 Cameron Shoemaker Life Insurance Trust, naming the children  
24 of the deceased, Cameron Shoemaker, as the beneficiaries of  
25 the trust and him as the trustee. It was registered. He

1 filed a trust registration and case number as outlined in  
2 my complaint CV43851. It's filed in the District Court of  
3 the Second District Court for the State of Idaho, in the  
4 County of Idaho. The filing of the trust registration was  
5 executed by the defendant on December 18, 2014 and filed in  
6 the District Court of the Second Judicial Circuit of the  
7 State of Idaho on March 2nd, 2015. The trust filing was in  
8 accordance with the dictates and requirements of the Idaho  
9 Uniform Trust Powers Act.

10 THE COURT: How is Shoemaker kin to the two  
11 children?

12 MR. ZENNER: He is their grandfather.

13 MR. MACK: He's the paternal grandfather.

14 THE COURT: Paternal. So that's her ex-husband's  
15 dad.

16 MR. ZENNER: Dad.

17 MR. MACK: Mr. Zenner's wife --

18 THE COURT: Your wife's ex-husband's dad.

19 MR. ZENNER: Yes, sir.

20 MR. MACK: Yes, sir.

21 THE COURT: Okay.

22 MR. MACK: And we allege that he has fully  
23 administered the dictates of that Idaho trust. I've  
24 provided Mr. Zenner with all the documentation, the  
25 accounts. But we -- the issues go to the administration of

1 the trust. And if we get to those issues, my position,  
2 it's properly before the Court in the State of Idaho where  
3 this trust is registered.

4 THE COURT: Anybody got any kind of case law?

5 MR. ZENNER: I've looked. I've got a little bit.

6 THE COURT: Got a little bit? Better than none.

7 MR. ZENNER: I'll pass it around.

8 THE COURT: That's an interesting question.

9 MR. MACK: And it's also interesting in light of  
10 counsel's motion on the other case because there's a  
11 separate case that -- and we also had a probate action here  
12 in Berkeley County that was dismissed, right?

13 MR. ZENNER: Well, and that's the other thing. His  
14 clients availed themselves to the South Carolina courts as  
15 well. He did it actually in probate court through another  
16 attorney to actually try to set aside the conservatorship.

17 THE COURT: Well, when your wife's ex-husband died,  
18 he died in Sumter?

19 MR. ZENNER: In Sumter, yes, sir.

20 THE COURT: And his estate was open in Sumter?

21 MR. MACK: And it's still open in Sumter.

22 MR. ZENNER: And it's still --

23 THE COURT: Still open in Sumter.

24 MR. ZENNER: Yes, sir.

25 THE COURT: And the fund was -- the trust was

1 funded by proceeds from a life insurance policy?

2 MR. MACK: Yes, sir. And part of it -- there's an  
3 interpretation of that that's going to have to be addressed  
4 at some point because some of it was military, he was in  
5 the military.

6 THE COURT: He being the ex-husband?

7 MR. ZENNER: Yeah, that's the other case that we're  
8 going to be going into.

9 THE COURT: Well, let's do this. Let's talk about  
10 the other case and I'll just -- and here I thought  
11 everything was going so smooth here.

12 MR. ZENNER: Well, the other case will be fairly  
13 fast.

14 THE COURT: Well, I'm not talking about fast. I'm  
15 talking about this one's a little complicated.

16 MR. ZENNER: Hopefully the other one won't be too  
17 complicated.

18 All right. On 17CP081602, Amy Bannon Zenner versus  
19 the estate of Cameron M. Shoemaker, we're putting forward a  
20 notice of motion -- I'm sorry, a motion to consolidate and  
21 transfer of cases. What has occurred in this is, I filed a  
22 motion here in circuit court. Apparently two or three days  
23 later, prior to me even serving the defendant estate, it  
24 filed a declaratory action --

25 THE COURT: It being?

1 MR. ZENNER: The estate, through it's personal  
2 representative, Ms. Shoemaker, filed a declaratory action  
3 in probate court.

4 THE COURT: In Berkeley County?

5 MR. ZENNER: In Sumter County.

6 THE COURT: In Sumter County.

7 MR. ZENNER: So --

8 THE COURT: A declaratory judgment action for --  
9 declaring what?

10 MR. ZENNER: There's a separate life insurance  
11 policy worth \$250,000 which was also in existence from the  
12 same decedent. And we're arguing that -- our position is  
13 that it's part of the divorce agreement. Her position is  
14 it's not and she's the right beneficiary.

15 THE COURT: Her being the new wife?

16 MR. ZENNER: Her being the new wife, yes, sir, Your  
17 Honor. I apologize for not clarifying that.

18 So she had done a declaratory judgment in probate  
19 court. I had actually filed this here to sort of ascertain  
20 her rights. And the problem being, I've looked at this  
21 again and I've kind of been going back and forth. I think  
22 family court actually has jurisdiction over this as well as  
23 over the probate case. So if this does get moved to family  
24 court, they'll have to deal with consolidation once they're  
25 both moved over there because the Sumter case hasn't been

1 dealt with yet.

2 If it is ripe in circuit court because you don't  
3 believe that the estate has standing, then it would not --  
4 then we would actually have to keep it here. And the  
5 reason is family court's got jurisdiction over all of the  
6 parties to the divorce agreement.

7 THE COURT: Family Court in Berkeley.

8 MR. ZENNER: That was in Berkeley, that's right.

9 Finally -- I'll deal with -- so family court has  
10 jurisdiction over the parties to that divorce agreement.  
11 The question is, is the estate and Ashley Shoemaker a party  
12 to that agreement or not. That's the real big question on  
13 this. If they are considered to be a party to that  
14 agreement, then I believe it's in family court that this  
15 should be --

16 THE COURT: Well, I assume the family court  
17 agreement was made before anybody contemplating the  
18 ex-husband dying. So the agreement was between your wife  
19 and her ex-husband.

20 MR. ZENNER: Yes, sir.

21 THE COURT: Then he died -- then they divorced, he  
22 marries, so obviously, she was not part of the agreement;  
23 she being the new wife.

24 MR. ZENNER: Correct.

25 THE COURT: Was not part of the agreement at that

1 time.

2 MR. ZENNER: Correct.

3 THE COURT: Nor was Mr. Shoemaker, who is his dad,  
4 who's now a trustee as a result of the ex-husband's death.  
5 He wasn't a party to that agreement either.

6 MR. ZENNER: No, he's not in that case.

7 THE COURT: Gracious.

8 MR. ZENNER: But the estate is and that's the  
9 question. Is the decedent's estate seen as being the  
10 decedent for the purposes of family court jurisdiction  
11 because he's standing in his shoes.

12 MR. MACK: I don't know that -- to me there's no  
13 way that the estate can be a party now to a new family  
14 court proceeding. The only way we --

15 THE COURT: You represent him in the Sumter action?

16 MR. MACK: No, sir. She's got another lawyer in  
17 Sumter. She has hired me down here because I was with  
18 Mr. Shoemaker and then she got sued in Berkeley County as  
19 well in this action. So we've got -- Judge Landis, here in  
20 Berkeley County dismissed the action at one point. And  
21 then they ended up going up to -- to file this action in  
22 Sumter.

23 THE COURT: To the probate court in Sumter.

24 MR. MACK: Yes. And it's the -- I just don't see  
25 how it can go back to family court. The only way you have

1 continuing jurisdiction in family court is if this party  
2 had died during the pendency of the divorce action that  
3 continues.

4 THE COURT: That's a tough --

5 MR. MACK: Now that is an order of finality and all  
6 that can be done is enforcement of that order of the  
7 divorce decree, if somebody violates the terms of that  
8 order.

9 THE COURT: So where do we stand if I grant your  
10 motion that this Court doesn't have jurisdiction.

11 MR. MACK: I think he's got to go Idaho to sue my  
12 client and he does whenever he does in Sumter County  
13 with --

14 THE COURT: With the wife on that new policy?

15 MR. MACK: -- with the wife on that new policy.

16 MR. ZENNER: I've got a case real quick if I can  
17 hand it up, hand it over.

18 THE COURT: Certainly.

19 MR. ZENNER: I've highlighted the parts that I felt  
20 were relevant and this is just basically the Supreme Court  
21 detailing the jurisdiction of family court.

22 THE COURT: All right.

23 MR. ZENNER: So I just highlighted the general  
24 session there. This is Hammer versus Hammer and is from  
25 the appeals court. And then on page 4 --

1 THE COURT: Do you know who Howard Hammer was?

2 MR. ZENNER: Sir?

3 THE COURT: Do you know who Howard Hammer was?

4 MR. ZENNER: Unfortunately, I do not, Your Honor.

5 THE COURT: He was a very, very, very, reputable  
6 lawyer in Columbia.

7 MR. ZENNER: I do know this case has a long history  
8 because there was a subsequent Supreme Court case with him.

9 THE COURT: His son practices with Gedney Howe  
10 then.

11 MR. MACK: He's my neighbor.

12 THE COURT: I think this is his dad.

13 MR. MACK: Yeah, he was a very --

14 THE COURT: Al was just like his daddy, was very  
15 smart.

16 MR. MACK: Yes, he is.

17 THE COURT: Good guy.

18 MR. MACK: Very quiet.

19 THE COURT: Was one of the very first appellate  
20 lawyers around. Everybody went to Mr. Hammer on difficult  
21 appellate issues, both he and his wife.

22 MR. MACK: Just in reading this, I would take  
23 exception.

24 MR. ZENNER: Page 5 is actually -- probably the  
25 most relevant summary.

1 MR. MACK: I see that, but this is clearly  
2 addressing a contract in which the parties to the divorce  
3 were involved in and stating that the family court has  
4 exclusive jurisdiction.

5 THE COURT: Well, let's do this. Let me decide  
6 this jurisdictional issue first and that's -- I'm going  
7 to --

8 Did y'all file memorandums?

9 MR. ZENNER: We did not, Your Honor.

10 MR. MACK: We did not.

11 THE COURT: All right. I'm going to do this. How  
12 about -- is 30 days? Is that too quick or too little or  
13 too what -- I want two proposed orders on each side on the  
14 jurisdictional question.

15 MR. ZENNER: Okay.

16 THE COURT: Is 30 days too long to give you, too  
17 little to give you, or -- I'm going to give you 30 days.  
18 If you see you need a few extra, just shoot me an e-mail.

19 MR. MACK: Yes, sir.

20 THE COURT: Is that fair?

21 MR. MACK: Yes, sir.

22 THE COURT: Very interesting question. Go ahead.

23 MR. ZENNER: Did you want to see my case real  
24 quick? My main case on this issue? Because we were  
25 actually here on subject matter jurisdiction and I think

1 that the questions being raised is one more of personal  
2 jurisdiction not subject matter jurisdiction. Because I  
3 think he's basically saying, Well, my client's not in South  
4 Carolina. He's actually this Idaho. And as far as subject  
5 matter jurisdiction, you know, again, I've highlighted on  
6 page 2 of this case, it's basically whether or not the  
7 Court that we're in front of has the power to hear these  
8 cases.

9 And I would allege that this Court does have the  
10 power to hear this type of case, basically. Whereas we may  
11 be having a motion on personal jurisdiction or on venue,  
12 depending on how he views that. I think breach of trust  
13 and conversion, which are two of the three charges we've  
14 alleged. We've also alleged a contempt of court. I think  
15 all those are cases that are typically held in the circuit  
16 court.

17 So it would seem that we were in the correct court  
18 for subject matter jurisdiction.

19 I'm trying to find --

20 THE COURT: But your suing Mr. Shoemaker, aren't  
21 you?

22 MR. ZENNER: Yes, sir, Your Honor.

23 THE COURT: Don't you have to have jurisdiction on  
24 him?

25 MR. ZENNER: We do have to have personal

1 jurisdiction, but that was not today's motion. But my  
2 argument on personal jurisdiction is that he himself has  
3 already appeared in these cases and he's actually implied  
4 consent to the jurisdiction of the Court by doing so.

5 THE COURT: When he accepted the position as  
6 trustee?

7 MR. ZENNER: When he accepted the position as  
8 trustee from the South Carolina court; when he then just  
9 filed an action in probate court on his own merits and then  
10 when he is --

11 THE COURT: What action did he file in probate  
12 court?

13 MR. ZENNER: He filed an action to remove the  
14 conservator, or I'm sorry to reconsider the order  
15 appointing the conservator to be accurate.

16 MR. MACK: He had a different lawyer for that one.

17 MR. ZENNER: He had a different lawyer for that one  
18 as well.

19 MR. MACK: And the probate judge here ruled that  
20 the conservator could continue, basically with the idea  
21 that she was -- his wife was simply the conservator.

22 MR. ZENNER: Right.

23 MR. MACK: It didn't go to the issue of whether  
24 there was any malfeasance or inappropriateness in  
25 administration of the trust.

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THE COURT: All right. Very interesting situation.  
If you would give me proposed orders on the jurisdiction,  
dismiss the jurisdiction and then we'll go from there.

MR. ZENNER: Okay.

MR. MACK: Okay.

THE COURT: And thank you for agreeing to do both  
of them today and working with everyone.

MR. MACK: I thank Mr. Zenner as well, and I  
apologize to the Court for yesterday.

THE COURT: You got it.

\* \* \* \* \* END OF TRANSCRIPT \* \* \* \* \*

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State of South Carolina     )  
  )     **Certificate of Reporter**  
County of Aiken                    )

I, Brenda J. Sigwald, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas in and for the State of South Carolina on the 15th day of May 2018.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 17th day of February 2018.

*Brenda J. Sigwald*  
\_\_\_\_\_  
Brenda J. Sigwald,  
Court Reporter and Notary Public  
For the State of South Carolina  
My commission expires  
January 4, 2020

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State of South Carolina )  
County of Berkeley )

In the Court  
Of Common Pleas

Docket Number: 2017CP0801602

Amy M. Bannon Zenner, )  
Conservator for Thomas C. )  
Shoemaker and Caleb M. )  
Shoemaker, )  
Plaintiff, )

vs.

Transcript of Record

Sydney Bruce Shoemaker, )  
Defendant. )

State of South Carolina )  
County of Berkeley )

In the Court  
Of Common Pleas

Docket Number: 2017CP0801839

Amy M. Bannon Zenner, )  
Conservator for Thomas C. )  
Shoemaker and Caleb M. )  
Shoemaker, )  
Plaintiff, )

vs.

Transcript of Record

Estate of Cameron M. )  
Shoemaker and )  
Sydney Bruce Shoemaker, )  
Defendant. )

October 30, 2018  
Aiken, South Carolina

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B E F O R E:

The Honorable Doyet A. Early III, Judge.

A P P E A R A N C E S:

Sean Bannon Zenner, Esquire  
Attorney for the Plaintiff

Bernard A. Mack, Esquire  
Attorney for the Defendant

Brenda J. Sigwald, Circuit Court Reporter  
To The Honorable Doyet A. Early III  
P.O. Box 206, Jackson, South Carolina 29831

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E X H I B I T S

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(REPORTER'S NOTE: There were no exhibits entered during this hearing.)

## MOTION HEARING

1  
2 THE COURT: Gentlemen, I apologize for this snafu,  
3 but there's no sense in sugarcoating it, I just -- it got  
4 lost in the shuffle and I just looked at my notes and I  
5 couldn't reconstruct it, so...

6 I'll be glad to hear from you.

7 MR. MACK: Thank you.

8 THE COURT: We've got two -- both of you have  
9 motions if I recall; is that correct?

10 MR. ZENNER: Yes, sir, Your Honor.

11 THE COURT: Why don't you just tell me what the  
12 motions are, change of venue, consolidate the cases, what  
13 else?

14 MR. ZENNER: That's -- basically one is lack of --  
15 dismiss or lack of subject matter jurisdiction. That's  
16 Mr. Mack's. And then my motion is to transfer the cases  
17 and consolidate with one that's in probate court. But -- I  
18 don't think consolidation can be done yet.

19 THE COURT: In Sumter?

20 MR. ZENNER: In Sumter, yes, sir.

21 THE COURT: All right. Who wants to go first?

22 MR. MACK: I think I'll go first, that's --

23 MR. ZENNER: That's fine.

24 THE COURT: Give the court reporter your name for  
25 me, please.

1 MR. MACK: Ben Mack, M-A-C-K.

2 Your Honor, if it please the Court. I represent  
3 the defendant, Sidney Bruce Shoemaker. Mr. Shoemaker is a  
4 citizen and resident of the State of Idaho. He resides in  
5 -- up in the panhandle of Idaho. He has been sued in this  
6 action in his capacity of -- as trustee concerning a trust  
7 for the benefit of his grandchildren.

8 The plaintiff, Amy Zenner, and the defendant's son  
9 were previously husband and wife. They were divorced here  
10 in South Carolina and pursuant to the decree of divorce  
11 that was entered in Berkeley County in case 2004DR082062,  
12 on February 12th, 2007. The defendant -- the defendant in  
13 this case, the deceased's son, entered into an agreement in  
14 said order whereby his name being Cameron Shoemaker was  
15 required to maintain and keep military life insurance for  
16 as long as he remained in the United States military.

17 On September 23, 2014, Cameron Shoemaker died while  
18 in active duty with the United States army. Pursuant to  
19 his death, he had \$400,000 in life insurance benefits.  
20 Pursuant to -- those life insurance benefits, pursuant to  
21 the decree of divorce between these parties, required those  
22 to be held in trust by my client, the defendant, a resident  
23 of the State of Idaho.

24 He took receipt of those funds of approximately  
25 \$400,000 and created a trust in the State of Idaho.

1 THE COURT: That would have been, obviously,  
2 subsequent to many Cameron Shoemaker's death on 9/23/14.

3 MR. MACK: That's correct, Your Honor.

4 THE COURT: All right.

5 MR. MACK: That is he -- my client executed a trust  
6 agreement --

7 THE COURT: Mr. Shoemaker, your client's first  
8 name, is?

9 MR. MACK: My client's first name the Sidney Bruce  
10 Shoemaker.

11 THE COURT: Sidney.

12 MR. MACK: I've never actually met him.

13 THE COURT: Okay. So he took receipt of the  
14 400,000.

15 MR. MACK: That is correct.

16 THE COURT: And made -- and held it in trust, or is  
17 holding it in trust.

18 MR. MACK: On December 2nd, 2014, he, as a resident  
19 of the State of Idaho established the Cameron Shoemaker  
20 Life Insurance Trust, naming the children of the deceased,  
21 Cameron Shoemaker, of said trust, along with the child of  
22 the deceased's Cameron Shoemaker's subsequent marriage.

23 So there were four -- or three individuals involved  
24 with this, two children by the plaintiff's wife and one  
25 child by my client's son's second wife who is -- and that's

1 part of the action that's pending up in Sumter.

2 He then was named as a trustee of said trust. The  
3 defendant's wife, Cheryl Shoemaker of Redding, Idaho and  
4 the defendant's son, Matthew Shoemaker from Rome, Georgia  
5 were named as alternate trustees and the trust was executed  
6 on December 2, 2014, before a notary public in Lewis  
7 County, Idaho.

8 On March 2, 2015, the defendant, by and through his  
9 attorney, filed a trust registration in case number  
10 CV42851, as filed in the District Court of the Second  
11 Judicial Circuit of the State of Idaho in and for the  
12 County of Idaho.

13 The filing of the trust registration was executed  
14 by the defendant on December 18th, 2014 and filed in the  
15 District Court of the Second Judicial Circuit of the State  
16 of Idaho on March 2, 2015. The said filing was in  
17 accordance with the dictates and requirements of the Idaho  
18 Uniform Trust Powers Act.

19 Pursuant to the execution of this agreement, he  
20 registered said trust in the district court on March 2,  
21 2015, naming the children of the deceased, Cameron  
22 Shoemaker, as the beneficiaries of that trust to be  
23 distributed by each child reaching the age of 25.

24 My client Sidney Shoemaker is currently the said  
25 trustee, established said trust pursuant to the laws of the

1 State of Idaho and is a registered trust in the State of  
2 Idaho. The plaintiff is litigating any litigation in this  
3 action questioning the defendant's exercise of his  
4 fiduciary duties with regard to that trust in the interest  
5 of the three minor beneficiaries, and requests an  
6 accounting of the funds and distributions made pursuant to  
7 said trust.

8 We allege that --

9 THE COURT: The -- hold on a second. The action in  
10 Berkeley County is for an accounting, breach of fiduciary  
11 duties and distribution?

12 MR. MACK: Yes, sir.

13 We have answered that in alleging that there's been  
14 no breach of fiduciary duties and alleging that the Court  
15 in South Carolina lacks subject matter jurisdiction with  
16 regard to issues related to the administration of the  
17 Cameron Shoemaker Life Insurance Trust and that said  
18 jurisdiction of said matter would properly be in the State  
19 of Idaho. The trust continues to be administered in the  
20 State of Idaho, pursuant to the statutes of the State of  
21 Idaho. My client is a resident of the State of Idaho.

22 The Court would be required to apply the law of the  
23 State of Idaho in a determination of whether there had been  
24 any violation in the terms of trust and administration in  
25 the State of Idaho.

1 We, therefore, allege in this action that the Court  
2 here in Berkeley County South Carolina lacks subject matter  
3 jurisdiction with regard to the administrations as related  
4 to the administration of the trust and we would ask that  
5 the Court dismiss the action, based upon the lack of this  
6 subject matter jurisdiction.

7 Thank you, Your Honor.

8 THE COURT: Thank you.

9 All right. You want to respond to that particular  
10 motion and then I'll let you argue your motion and respond  
11 to his; is that fair?

12 MR. ZENNER: Yes, sir. May I approach with a  
13 memorandum?

14 THE COURT: You certainly may.

15 MR. ZENNER: I apologize in advance. My voice may  
16 give out in mid-sentence.

17 THE COURT: Well, if it gives out, there's some  
18 water right there and I'm certainly patient.

19 MR. ZENNER: I may have to repeat myself. I just  
20 had an examination. Apparently I damaged my voice chords  
21 due to reflux. Sometimes my voice will give out.

22 Much of what opposing counsel has said about the  
23 sort of progress of the case is accurate. There are a few  
24 things that we believe are relevant to this particular  
25 motion. We do understand that Mr. Shoemaker lives in

1 Idaho, but we believe that he has subjected himself to the  
2 jurisdiction of South Carolina. The decree of divorce and  
3 there was also a continuance order, which actually  
4 appointed or reaffirmed that he was the trustee. Both were  
5 issued by a South Carolina court. He actually put himself  
6 under the jurisdiction as trustee. The trust was created  
7 by that court, is our argument.

8 THE COURT: That's the family court where his son  
9 and wife were divorced?

10 MR. ZENNER: There are two -- yes, Your Honor,  
11 there are two decrees. The first one is the divorce decree  
12 when they were divorced. Incident to his death, a party  
13 who was not in this action had actually obtained these  
14 insurance funds that are central to this action. So an  
15 action was filed to enforce that order and in that action  
16 -- it was actually a motion, but on that motion of  
17 continuance order was issued that then said because the  
18 family court already says that Bruce Shoemaker is the  
19 trustee, we're going to keep him as trustee, pending  
20 further order of this Court.

21 THE COURT: And that was a family court order?

22 MR. ZENNER: And that was a family court order.  
23 That was Judge Courey.

24 THE COURT: So he was named as trustee in the  
25 family court?

1 MR. ZENNER: Twice, yes Your Honor.

2 THE COURT: Twice.

3 MR. ZENNER: By South Carolina.

4 He then took the funds -- and both of those orders  
5 say it's only for the two minor children, not for the  
6 three. He did take those funds, he did set up a trust, but  
7 the trust is for three children, plus there's provisions in  
8 there, wider provisions, we believe, than should have been  
9 included in the trust. And our argument is that all of  
10 that amounts to a conversion. Basically he took these  
11 funds that were entrusted to him, converted them to his own  
12 use and purposes. And that's actually what we've alleged.  
13 We've alleged conversion, breach of trust and that he's in  
14 contempt of the Court.

15 THE COURT: Well, why would it not be in the family  
16 court if he's in contempt of the family court order. Why  
17 is it in the circuit court?

18 MR. ZENNER: Because of the conversion and the  
19 breach of trust -- we've actually run this past family  
20 court. They said that it should be in probate court. The  
21 probate court said multiple things, including, you know, we  
22 can't do conversion and breach of trust here in probate  
23 court, it's -- they've also said the way this is set up now  
24 is it's an Idaho trust now, so we can't do anything with an  
25 Idaho trust because that would be an Idaho case. Because

1 their opinion is it's now his money that he's put in based  
2 on the documents we had at the time for the trust.

3 THE COURT: Let me make sure I understand.

4 MR. ZENNER: This is very complicated.

5 THE COURT: The two Shoemakers, husband and wife  
6 divorce. Under the terms of the divorce, an agreement was  
7 made that the life insurance proceeds would go to the two  
8 children.

9 MR. ZENNER: Yes, sir.

10 MR. MACK: It actually says for the benefit of his  
11 children. So that becomes an interpretation as to who his  
12 children were at the time of his death and which is why my  
13 client added into the trust for the child of the second  
14 marriage.

15 THE COURT: All right. So however that's  
16 interpreted, whether it's his children or these two  
17 children, that's the issue that you're -- you take the  
18 position it's the two children.

19 You take the position it's his children --

20 Go ahead.

21 MR. ZENNER: If I can get the order real quick.

22 THE COURT: Sure.

23 MR. ZENNER: I'm still listening, but I was getting  
24 the order out.

25 THE COURT: Sure.

1 MR. ZENNER: Okay. And the exact language is --  
2 and this was done at the time, and I can show this to  
3 opposing counsel.

4 It basically says with the children. We don't -- I  
5 mean, I guess we would have to define that, but I don't --  
6 I would think that's obviously on it's face when there's  
7 only two children involved in that marriage and that is the  
8 marital property being divided at the time that the only  
9 children involved would be two children that existed at  
10 that time. The second child, I don't think was born until  
11 2011, I believe. I'm not sure, maybe you know better than  
12 I do.

13 THE COURT: So whether or not it's the children,  
14 his children, the two children or all children, if it's --  
15 your position is if it's supposed to be the two children,  
16 he's converted funds to include the third child.

17 MR. ZENNER: Yes, Your Honor.

18 THE COURT: Which is a breach of fiduciary duty,  
19 alleged. And then you want an accounting, and then you  
20 want distribution under the terms of the trust.

21 MR. ZENNER: That would be -- yeah, that would be  
22 nice if we could get that done. But at the moment, we're  
23 trying to get a conversion, the breach of trust actions  
24 heard so we can actually say he did this, it was -- and  
25 obviously get our damages on that.

1 THE COURT: So it's a tort action or breach of  
2 fiduciary duty that if he were in South Carolina it would  
3 be no question this Court could hear it. The question then  
4 becomes because he is in Iowa --

5 MR. MACK: Idaho.

6 MR. ZENNER: Idaho, Your Honor.

7 THE COURT: -- Idaho, do we have jurisdiction here  
8 in South Carolina. It's -- it's registered out there, it's  
9 being administered out there, but -- everything is going on  
10 out there -- but for the fact that it was created here  
11 under a -- it was mandated to be created at the terms of a  
12 divorce decree.

13 MR. MACK: That's correct.

14 THE COURT: A South Carolina divorce decree.

15 MR. ZENNER: Correct. And then the fact that --  
16 I'm sorry.

17 THE COURT: Go ahead.

18 MR. ZENNER: And then, in addition, since that time  
19 he's availed himself to the Courts of South Carolina on  
20 several occasions. He's filed counterclaims, he filed a  
21 separate action to protest the appointment of the  
22 conservator.

23 THE COURT: That's where?

24 MR. ZENNER: That was in Berkeley County.

25 THE COURT: In the probate court.

1           In family court, he filed a counterclaim and then  
2           in probate court he did the action to ask for  
3           reconsideration of the appointment of the conservator.

4           MR. MACK: Those were in separate matters related  
5           to the estate. The estate is now being administered in  
6           Sumter County pursuant to Mr. Cameron, deceased's first  
7           wife being named as personal representative in that estate.  
8           So the creation of this trust is almost -- it's almost like  
9           a testamentary trust, although it didn't trigger until his  
10          death under the terms of the divorce decree in Berkeley  
11          County.

12          Now, Mr. Zenner took us back to the family court  
13          and Judge Landis wanted no part of it. He felt that there  
14          was no jurisdiction over that. Then they went to the  
15          probate court --

16          THE COURT: Do you have Judge Landis's order?

17          MR. MACK: I will have to locate that, Your Honor.  
18          That was before I was involved.

19          THE COURT: What is pending, gentlemen, in Sumter  
20          County now? That would be Mr. Zenner's, his estate.

21          MR. MACK: And I don't represent -- there are  
22          different lawyers in Sumter County.

23          THE COURT: Are you in the one in Sumter County?

24          MR. MACK: No.

25          MR. ZENNER: Yes, Your Honor, we haven't actually

1 even been served, oddly enough.

2 THE COURT: So in Sumter County, what's going on?  
3 He, being the former husband, died and his estate's being  
4 administered in Sumter County; is that correct?

5 MR. ZENNER: Correct.

6 THE COURT: And it was at his death that these life  
7 insurance benefits were paid into the Iowa trust that was  
8 created by the Berkeley family court previous to an  
9 agreement.

10 MR. MACK: Some passed outside the estate because  
11 they were benefits incident to a life insurance policy.

12 THE COURT: Y'all couldn't find anything easier to  
13 do this morning?

14 MR. MACK: Yes, sir.

15 MR. ZENNER: Unfortunately, no.

16 THE COURT: Gracious me.

17 So have you got Judge Landis's order?

18 MR. ZENNER: I'm trying to find it, Your Honor.

19 THE COURT: That's okay.

20 MR. ZENNER: Here you go. I believe that's it.

21 Actually robbing Peter to pay Paul on this one, I'm going  
22 back to this action in the probate court.

23 THE COURT: All right. Who is Ashley Shoemaker?

24 MR. MACK: That is the second wife of the deceased,  
25 Cameron.

1 THE COURT: He married her after the first wife.

2 MR. ZENNER: The plaintiff, right.

3 THE COURT: Amy.

4 MR. MACK: Right. And Amy --

5 THE COURT: And Amy is your wife.

6 MR. ZENNER: Yes, sir, Your Honor.

7 THE COURT: Okay. Mr. Lizzey represented her,  
8 Christopher Lizzey.

9 MR. ZENNER: Yes, sir.

10 THE COURT: He just tried a murder case in  
11 Charleston a few weeks ago, terrible case.

12 All right.

13 MR. ZENNER: And I believe at the time Mr. Schobe  
14 was representing Mr. Shoemaker, prior to this action.

15 THE COURT: Who? George Schobe out of Moncks  
16 Corner.

17 MR. MACK: And after this you went to Berkeley  
18 probate court; is that correct, Mr. Zenner?

19 MR. ZENNER: Pursuant -- yeah, pursuant to Judge  
20 Landis's order, we took this to Berkeley probate court.  
21 They refused the filing, saying based on what the filing  
22 was, this is -- whatever -- regardless of however this  
23 happened, this became an Idaho trust set up in Idaho by, as  
24 far as they could tell, Mr. Shoemaker, Sidney Shoemaker,  
25 I'm sorry -- by Sidney Shoemaker and they couldn't see any

1 connection to the funds that were ordered in this case; in  
2 the other case.

3 THE COURT: And Judge Landis said that this court,  
4 his court, family court, may have concurrent jurisdiction,  
5 finds that because of judicial efficiency, it's easier to  
6 be dealt with in the probate.

7 MR. ZENNER: Yes, sir, Your Honor.

8 THE COURT: With the probate of the decedent's  
9 estate, which I guess that's Sumter County. So he declined  
10 jurisdiction. He didn't find that he didn't have  
11 jurisdiction.

12 MR. ZENNER: Yes, sir, Your Honor.

13 THE COURT: I'm not sure what declined jurisdiction  
14 means.

15 MR. ZENNER: And at the time we were under the  
16 impression from side conversations that the estate had been  
17 closed, which is why we had gone to Berkeley.  
18 Subsequently, we went up to find out it was open and then  
19 we find out there was a declaratory action that hadn't been  
20 served. So it's still open in Sumter. They've done  
21 declaratory action, which we'll be talking about in a  
22 minute on that other case.

23 THE COURT: All right. So your basic argument is  
24 he just doesn't -- under this particular trust, there's no  
25 ties to the State of South Carolina, everything is under

1 Iowa. It was registered, it was formed, it was --

2 MR. MACK: The only connection here is it was  
3 created pursuant to a divorce -- an agreement in a divorce  
4 decree. Was once those life insurance proceeds were paid,  
5 they were paid to my client as the paternal grandfather to  
6 hold the funds in trust. Now, there's an issue as to  
7 whether that meant for the two children of --

8 THE COURT: Two or three.

9 MR. MACK: Two or three. Whether it just meant the  
10 two of Mr. Zenner's client's wife's children or does it  
11 refer to all three children because this was a second child  
12 born of the second wife. So there's three children all  
13 together. Mr. Zenner's client has two, and the second wife  
14 has one. My client has treated all of the children  
15 equally. He has not distributed any funds to any of the  
16 children. He's got the \$400,000 invested in Idaho and it's  
17 administered pursuant to this Idaho Trust Agreement. He's  
18 filing taxes in Idaho. He's doing everything in Idaho.

19 And it seems -- it's just improper for him to have  
20 to come here and litigate over this, over an issue of  
21 alleged -- allegation of impropriety of his administration.

22 THE COURT: Well that's --

23 MR. MACK: This Court would have to apply Idaho  
24 law.

25 THE COURT: That's sort of it in a nutshell.

1 All right. Anything else you want to add on the  
2 jurisdictional question?

3 MR. ZENNER: Yeah, I disagree that we would have  
4 Idaho law. I still believe we'd have South Carolina law.  
5 But our opinion is -- our position is that this money  
6 actually belongs to these children who are South Carolina  
7 residents. It was given to him by a South Carolina court  
8 to put in trust, so they created a constructive trust,  
9 basically until he did something with it.

10 He's subjected himself multiple times to the  
11 jurisdiction of the South Carolina courts. His attorneys  
12 have actually said previously that jurisdiction was proper  
13 on those actions, so we're arguing that this Court can  
14 actually hear this matter, it has subject matter  
15 jurisdiction, obviously, over these claims, that we have  
16 personal jurisdiction over the defendant because he's  
17 availed himself to the Courts and he's still under the  
18 jurisdiction of the South Carolina courts.

19 THE COURT: Has he availed himself to the Court in  
20 this particular action that -- I assume he filed in his  
21 answer and was 12(b)6, 12(b) whatever it is, lack of  
22 jurisdiction?

23 MR. MACK: That's subject matter jurisdiction, yes.

24 MR. ZENNER: He denied it.

25 MR. MACK: He denied it.

1 MR. ZENNER: He denied jurisdiction and then I  
2 filed this motion. And I don't think he'll counterclaim,  
3 do you?

4 MR. MACK: No.

5 THE COURT: All right. I think I got it.

6 MR. ZENNER: That's the gist of this. And our  
7 position is that the money belongs to the children and that  
8 it should be a South Carolina case for sure.

9 MR. MACK: These boys turn 18 when?

10 MR. ZENNER: That's another thing. They're turning  
11 18 in May. And under the terms of the trust they don't get  
12 their money. They don't get it until they're 25. There's  
13 nothing in the -- in the -- there's -- the stuff -- the  
14 order appointing trustee didn't give a lot of specifics as  
15 to how that trust is supposed to operate, so our position  
16 on that is they should get their money at 18. But that's  
17 another thing we're going to be arguing out.

18 THE COURT: I assume he's --

19 MR. MACK: By the time this -- they're going to be  
20 18 in May and the plaintiff will no longer be their  
21 conservator, they'll be acting in their own right so to  
22 speak.

23 MR. ZENNER: Right.

24 MR. MACK: Which further complicates it.

25 THE COURT: Thank you.

1 MR. ZENNER: And it may be moot if his client  
2 forwards the funds at 18.

3 THE COURT: All right. Then you have a motion.

4 MR. ZENNER: Correct.

5 THE COURT: I assume, your motion is if I find that  
6 this court has jurisdiction, you want to --

7 MR. ZENNER: My motion is actually on the other  
8 case against the second wife. There's two insurance  
9 policies. One has been put in trust with Sidney Bruce  
10 Shoemaker. There's a second policy that nobody's holding  
11 onto right now. The insurance company is waiting for an  
12 order specifically saying who owns it. So we filed an  
13 action, basically saying that there was fraud by Cameron  
14 Shoemaker --

15 THE COURT: Hold on, let's go back a minute now.  
16 We talked about insurance that was for the children. That  
17 went into the trust. There's a second policy.

18 MR. ZENNER: Yes, sir, Your Honor. Which was also  
19 issued on a military base, but it turns out is it not  
20 actually issued by the military.

21 THE COURT: Was it mentioned in the divorce decree.

22 MR. ZENNER: The divorce decree is vague on that.  
23 It says military insurance policy and their argument is  
24 basically there's only one policy, that's the one that the  
25 funds went to Bruce Shoemaker on. At least I believe

1 that's the argument. I can be corrected if I'm wrong.

2 The second policy, they feel is just an additional  
3 supplemental policy that's up for grabs. Our position is  
4 that they were --

5 THE COURT: Well, who was the beneficiary on the  
6 policy?

7 MR. ZENNER: The beneficiary was Ashley Shoemaker  
8 at the time of his death. But for four years of their  
9 marriage it had been Amy, at the time, Shoemaker. And  
10 represent -- he had represented the entire time that both  
11 policies were still set up for her, for the benefit of the  
12 minor children. Because this has been in litigation --

13 THE COURT: But when he died the beneficiary was  
14 the second wife.

15 MR. ZENNER: Yes, sir, Your Honor. He had changed  
16 the --

17 THE COURT: He changed beneficiaries.

18 MR. ZENNER: -- beneficiary without informing --

19 MR. MACK: Which our position is he had a right to  
20 do. I mean he was divorced from her.

21 THE COURT: Where should I look in the divorce  
22 decree to see about that one?

23 MR. ZENNER: It's the same paragraph, it's  
24 paragraph 15.

25 THE COURT: That refers to one life insurance

1 policy for as long as he remains in the military.

2 All right. Go ahead.

3 MR. ZENNER: And our position on that one is that  
4 that one was actually basically a scrivener's error, it  
5 should have been military policies because the  
6 understanding was this was a supplement to the -- this was  
7 done -- because as of 9/11, they had gotten this second  
8 policy, together, back when Amy Shoemaker was married to  
9 Cameron Shoemaker. I know this is very convoluted.

10 So the argument being made is that there was a  
11 breach of -- I'm sorry, not a breach, that there was fraud  
12 done because ever since that time he'd been representing to  
13 Amy that these funds were still for the children and she  
14 was still the beneficiary on both of these policies. And  
15 her position is that that was a material fact tied to her  
16 doing that agreement in the first place.

17 It was the only thing she got. She didn't get  
18 military retirement, she did get -- I think she got \$30 in  
19 alimony or something. But she didn't get any of his  
20 retirement benefits. She traded all of that for these two  
21 military policies is her position.

22 And then he subsequently changed the beneficiary  
23 without informing her. But the situation we're in now is a  
24 jurisdictional one.

25 We've alleged fraud. We've alleged breach of

1 contract. And -- I apologize I'm trying to recall what the  
2 third thing was.

3 THE COURT: And that is a separate case from what  
4 we've -- than the lack of jurisdiction?

5 MR. ZENNER: This is a separate case. We split the  
6 one policy off because there really had been -- they really  
7 stopped being connected when the money got turned over for  
8 Bruce. The problem we have with Bruce is basically we  
9 think he's turning money to his own use. That has nothing  
10 to do with who owns the other policy. So the other policy  
11 is this case that we're trying to consolidate.

12 And candidly, the law has sort of gotten me a  
13 little thrown off as to where we should be doing this. So  
14 we're doing fraud, negligent misrepresentation and breach  
15 of contract. Basically on his actions on doing the policy  
16 and the fact that he broke their agreement.

17 Family court said, since your asking for punitive  
18 damages and fraud and negligent misrepresentation, really  
19 breach of contract are circuit court actions, they don't  
20 belong here. And this was done by Judge Creech. So he  
21 struck those and so we're going to be moving forward with  
22 enforcing the order, which then became the one that Judge  
23 Landis sent over to probate court.

24 And we were left with leave to re-file that. And  
25 we were going to re-file that. We were actually hoping to

1 get some settlement agreement but eventually that didn't  
2 come to fruition. So we re-filed those three claims, the  
3 fraud, the negligent misrepresentation, and the breach of  
4 contract. The question now asks, how do we get an  
5 interpretation of that order and Court of Appeals says that  
6 that has to be determined by family court. And the same  
7 thing would happen with the declaratory action that's in  
8 probate court because they've done a declaratory action  
9 basically saying it's hers, she's the beneficiary, give it  
10 to her.

11 But again, they're going to have to interpret that  
12 family court order to determine what it said.

13 THE COURT: The appellate court has said it in this  
14 particular case or another case?

15 MR. MACK: No, sir.

16 THE COURT: You're citing precedent, not this case.

17 MR. ZENNER: I'm sorry, I forgot -- I'm sorry, I  
18 forgot the hand this up, Your Honor.

19 THE COURT: That's okay.

20 MR. MACK: This case has never gone up.

21 MR. ZENNER: This case has never gone up.

22 THE COURT: So you're just citing cases.

23 MR. ZENNER: I'm sorry, Your Honor. This is --  
24 this was actually done in Emory versus Smith. And there's  
25 also -- I've also attached a second case to that, Hammer

1 versus Hammer, which just really explains well the  
2 jurisdiction of family court, which is why I stuck it in  
3 there; and it actually refers to Emory versus Smith. And  
4 it seems that the family court has exclusive jurisdiction  
5 over interpreting their order.

6 The question is, is does a breach of contract then  
7 belong in their hands. Should they be looking at that  
8 claim and saying, yes, he violated this order or, no, he  
9 didn't violate this order. Is it really more of a contempt  
10 action than a breach of contract. Obviously fraud and  
11 negligent misrepresentation stand alone because that's  
12 based on his actions in dealing with Amy.

13 And if they do belong in family court, then that  
14 means a declaratory action also should be in family court.  
15 They should be consolidated. Family court should interpret  
16 that order for us and just as a form of convenience, I put  
17 Sumter since Sumter hasn't heard us yet.

18 THE COURT: So you want these cases filed in  
19 Berkeley County transferred to Sumter County where the  
20 probate action is pending.

21 MR. ZENNER: Well, I'd rather see --

22 THE COURT: But if it's subject to family court --

23 MR. ZENNER: I'd rather stay in circuit court. For  
24 -- obviously, because the fraud, negligent  
25 misrepresentation, and according to Judge Creech, even the

1 breach of contract has to go to circuit court. But my  
2 reading of Emory and of Hammer is that family court has to  
3 make that call. And I don't know how we do that. Do we  
4 send that over to family court or do we refer it to them to  
5 answer that question alone or do we refer it over to them  
6 and say, tell us if there's a breach. But I don't know if  
7 they feel they have the power to determine whether or not  
8 there's a breach.

9 I know they have power to determine whether or not  
10 he's in contempt.

11 THE COURT: What's your position on that?

12 MR. MACK: Position on the second issue with regard  
13 to this insurance policy is that there was a change in  
14 beneficiary after the divorce that had nothing to do with  
15 -- that's a choice he made, a right he made to make his  
16 second wife the named beneficiary. They have filed a  
17 lawsuit, served -- given notice of that to the insurance  
18 company of this allegation that there's some fraud involved  
19 with that. The insurance company is refusing to pay the  
20 proceeds of that benefit until such time as the Court  
21 directed them who to pay it to.

22 THE COURT: But his action he's before me on is Amy  
23 Bannon Zenner, Conservator.

24 MR. MACK: So he has sued both the estate and the  
25 second wife in Berkeley County.

1 THE COURT: And you represent the estate? Who do  
2 you represent?

3 MR. MACK: I represent Amy. The estate has a  
4 separate estate lawyer in Sumter County.

5 MR. ZENNER: Ashley.

6 MR. MACK: Ashley. The estate has a separate  
7 estate lawyer in Sumter County.

8 THE COURT: So what is your position on  
9 transferring it to Sumter out of Berkeley.

10 MR. MACK: I think that's more appropriate if the  
11 Court is going -- I agree. I would agree.

12 THE COURT: And that's what you're asking for  
13 right?

14 MR. ZENNER: Yes, Your Honor, I just don't know  
15 what we're sending it to family court for. Do you see what  
16 I mean? I don't know if they -- I don't know if the  
17 circuit court can refer a question down to family court.

18 THE COURT: I can't. Not that I know of.

19 MR. ZENNER: And not that I know of either. It  
20 seems to be a very unique situation. But it seems that the  
21 family court has to answer that question. What does that  
22 paragraph right there mean.

23 THE COURT: What is now pending in Sumter County  
24 probate court?

25 MR. ZENNER: A declaratory action saying that since

1 she is the listed beneficiary, the funds belong to her, as  
2 opposed to us saying, because of as of the way we --

3 THE COURT: She, being the second wife?

4 MR. ZENNER: Ashley, I'm sorry, yes, Ashley.

5 THE COURT: Well won't, I assume your position in  
6 that, no, you're not -- you may be the named beneficiary,  
7 but he didn't have the right to change the beneficiary.

8 MR. ZENNER: Yes, Your Honor and that's actually --  
9 Emory actually supports --

10 THE COURT: Well, isn't that --

11 MR. MACK: And that would require the  
12 interpretation of the family court order saying that he  
13 didn't have the right to change his beneficiary.

14 THE COURT: Well, isn't that the job of the probate  
15 judge in Sumter County to either decide or to ask -- to  
16 send it down to ask -- I don't know why he or she couldn't  
17 do that.

18 MR. ZENNER: Well, the problem too is we were first  
19 to file. So this case is actually in front of the  
20 declaratory action, judicially.

21 THE COURT: Well --

22 MR. MACK: The case in Berkeley.

23 MR. ZENNER: The case in Berkeley was first filing  
24 before the declaratory action and they basically --

25 THE COURT: Well, you're asking me to send it to

1 Sumter County so you -- to probate court and have them deal  
2 with it whether it be through the family court or them --  
3 the probate court itself; is that right?

4 MR. ZENNER: I was trying to send it to family  
5 court to have them determine this in Sumter and then just  
6 kind of clear that out because the only thing in the  
7 declaratory action is who owns it. And if the family court  
8 says she owns it, then that part of this case is moot.

9 THE COURT: The declaratory judgment action is  
10 filed in the probate court for Sumter County?

11 MR. ZENNER: Yes, sir.

12 THE COURT: Why don't you stay all this until they  
13 makes a decision and if they make a decision, well, one or  
14 the other may appeal it, but I, I mean it seems to me you  
15 got to get a decision made to see where you're going from  
16 there. Your problem is -- your question is whether the  
17 probate judge in Sumter County tried to interpret the  
18 family court order.

19 MR. ZENNER: Well, he can't, I don't believe  
20 because the appellate court says interpretation of that  
21 order is the exclusive jurisdiction of family court.

22 THE COURT: Then why has a declaratory judgment  
23 action not been filed in family court on the second policy?

24 MR. ZENNER: I don't know why they didn't file  
25 that. I guess we could file it from our side and sort that

1 out. But we still are going to have to deal with the  
2 declaratory action in probate court and somehow roll that  
3 over --

4 THE COURT: Well, I could say I don't have  
5 jurisdiction to determine that because the family court has  
6 to interpret the contract.

7 MR. ZENNER: Correct.

8 THE COURT: And with that order, I would assume a  
9 family court judge is going to -- if you file it in family  
10 court, they're going to listen to the declaratory judgment  
11 action to determine if he had the right to change the  
12 beneficiary under the terms of the divorce decree or the  
13 agreement.

14 MR. ZENNER: Correct.

15 THE COURT: Isn't that -- and I would assume that  
16 the probate judge in Sumter County would welcome the family  
17 court judge to do it too, because you say the law precludes  
18 he or she from doing that. It's a family -- exclusive  
19 family court matter.

20 MR. ZENNER: Correct. Unless someone's estate is  
21 involved and all the children are still alive as is  
22 Ashley's so nobody's estate is involved, none of the  
23 parties are an estate as far as who owns it.

24 THE COURT: So what's the quickest way to get it  
25 resolved for both of you?

1 MR. ZENNER: I guess we could file an action and  
2 get clarification from family court and that clarification  
3 will actually impact both cases, even though it's really  
4 going to be on the one.

5 THE COURT: It won't impact the trust case. It  
6 will impact the second insurance policy.

7 MR. MACK: That's correct. That's my  
8 interpretation. Dismiss the first case and proceed with  
9 the other case in Sumter.

10 MR. ZENNER: But if the first case is alive, I  
11 think that will determine who all the money -- it will --  
12 the Court's either going to say only the one policy that's  
13 involved in the first case belongs to the minor children  
14 and which children it applies to or they're going to say  
15 they both belong to the minor children and which children  
16 it applies to.

17 THE COURT: All right. I think what I'm going to  
18 do is take the jurisdictional question trust under  
19 advisement, get you a ruling quickly.

20 MR. ZENNER: Okay.

21 THE COURT: I think I'm going to say that the  
22 circuit court does not have jurisdiction to interpret the  
23 family court order and I'm going to dismiss the 1602 for  
24 lack of jurisdiction and order that it be sent for a new  
25 action brought in family court to interpret the decree and

1 that way either the -- interpret it in the family court or  
2 in the action that's currently pending in Sumter County.

3 MR. ZENNER: 1602 is going to be put on hold,  
4 correct?

5 THE COURT: Well, I can either dismiss it or put it  
6 on hold or stay it.

7 MR. ZENNER: Yeah, we would rather have it stayed  
8 because there's --

9 THE COURT: I'll stay it then. I'll stay it and  
10 send it to -- I'll just say I don't have jurisdiction to  
11 hear the -- to interpret the order, pursuant to the cases  
12 that you've given me. Then you have -- you pursue it in  
13 the probate court in Sumter or bring an action into family  
14 court to try to get them to interpret it.

15 MR. ZENNER: Which is really what we need is we  
16 need interpretation.

17 THE COURT: Well, you agree I can't interpret it.

18 MR. ZENNER: Yes, Your Honor, I agree you cannot  
19 interpret it.

20 THE COURT: Then I'm going to dismiss it without  
21 prejudice to give you an opportunity to proceed in family  
22 court where it was originated, where the order originated,  
23 which that was Berkeley County and/or through the probate  
24 court in Sumter County where a similar action is currently  
25 pending.

1 MR. ZENNER: But you can't stay it for us because  
2 of --

3 THE COURT: Well, dismissing it without prejudice  
4 is the same thing as staying it. You can bring it back.

5 MR. ZENNER: I understand, Your Honor. It's just  
6 another filing fee.

7 MR. MACK: We sent you proposed orders last time.  
8 You want us to resubmit them with today's date and --

9 THE COURT: You can just hand it to me.  
10 This is the lack of subject matter jurisdiction?

11 MR. MACK: Yes, sir.

12 THE COURT: Mr. Zenner, have you sent me one on  
13 lack of subject matter jurisdiction that I do have  
14 jurisdiction?

15 MR. ZENNER: I have sent a proposed order, and it  
16 is along the lines, actually, of the memorandum.

17 THE COURT: You need to put it back in an e-mail  
18 and send it to me.

19 MR. ZENNER: Yes, sir, Your Honor.

20 THE COURT: I'll do a form order with the other  
21 one, just dismiss it without prejudice due to the lack of  
22 jurisdiction to interpret the family court order, with  
23 leave being granted to plaintiffs to bring that action in  
24 family court in Berkeley County and/or where a similar  
25 action is pending in Sumter County to have it determined

1 there.

2 MR. ZENNER: Yes, sir.

3 THE COURT: All right. Thank you all.

4 MR. MACK: Thank you, sir.

5 MR. ZENNER: Thank you, Your Honor.

6 \* \* \* \* \* END OF TRANSCRIPT \* \* \* \* \*

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State of South Carolina )  
County of Aiken ) **Certificate of Reporter**

I, Brenda J. Sigwald, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas in and for the State of South Carolina on the 15th day of May 2018.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 17th day of February 2018.

Brenda J. Sigwald  
Brenda J. Sigwald,  
Court Reporter and Notary Public  
For the State of South Carolina  
My commission expires  
January 4, 2020

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )

IN THE NINTH CIRCUIT  
COURT OF COMMON PLEAS

CASE NO: 17-CP-08-1839

AMY M. BANNON ZENNER, Conservator )  
for THOMAS C. SHOEMAKER and )  
CALEB M. SHOEMAKER, )  
 )  
PLAINTIFFS, )  
-V- )  
SYDNEY BRUCE SHOEMAKER, )  
 )  
DEFENDANT. )

MEMORANDUM IN  
OPPOSITION TO  
DEFENDANT'S MOTION  
TO DISMISS  
FOR LACK OF SUBJECT  
MATTER JURISDICTION

### INTRODUCTION

The Court should deny Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction because the Court has jurisdiction over not only the subject matter but the parties in this action.

### FACTS

The facts relevant to this cause of action are as follows. Plaintiffs are residents of the State of South Carolina. Defendant is a resident of the State of Idaho. Amy Bannon Zenner (formerly Shoemaker) is the biological mother and Conservator of Thomas S. and Caleb S. Defendant is the paternal grandfather of Thomas S. and Caleb S. but has only had contact with them once at the age of 5-months-old.

Amy Bannon Zenner and Defendant's son Cameron Shoemaker were divorced in Berkeley County pursuant to a Final Order and Decree of Divorce in case 04-DR-08-2062, signed February 8, 2007. At the time of the divorce, two life insurance policies, one SGLI and one AFBA military policy, were in effect. Under Paragraph 15 of the Order, Cameron Shoemaker was required to keep those policies in effect so long as he remained

in the military, keeping Thomas S. and Caleb S. as sole beneficiaries. The same Paragraph named Defendant to act as trustee. This agreement was based on him being more active in the lives of Thomas S. and Caleb S., which he has failed to do. Subsequent to the Final Order and Decree, Cameron Shoemaker changed his beneficiaries in violation of the Final Order and Decree of Divorce.

On September 23, 2014, Cameron Shoemaker died of a drug overdose while on active duty with the United States Army. On December 1, 2014 a hearing was held on a Motion to Enforce the February 8, 2007 Order. The Court issued an Order of Continuance dated March 15, 2015 appointing Defendant trustee over the approximately \$421,000.00. He was further ordered to not dispose of any of the funds and to place the same in a trust for the sole benefit of Thomas S. and Caleb S. pending further Order of the Court. The Defendant never complied with this Order.

On December 2, 2014, Defendant attempted to create the Cameron Shoemaker Life Insurance Trust in the State of Idaho. This trust was registered with the District Court of the Second Judicial Circuit of the State of Idaho on March 2, 2015. The trust was listed as a revocable inter vivos trust established by the Defendant. No copy was provided to the Plaintiffs. The Plaintiffs were not notified of the filing. Only after demanding an accounting and requesting discovery, both of which were denied by the Defendant, was a copy obtained by the Plaintiffs directly from the Clerk of the District Court of the Second Judicial Circuit of the State of Idaho. No beneficiaries were listed on this filing.

At that time, litigation of the matter was being pursued in Shoemaker –v- Shoemaker, 15-DR-08-214, a case including other parties and causes of action, but as pertains to the Defendant, requesting his removal as trustee. Defendant filed financial records

purporting to show that he still retained all of the money in trust, yet the ending balance in the money market account for the Trust as of March 24, 2016 was \$8,634.16. The Ninth Circuit Family Court stated that Berkeley County Probate Court should use its joint jurisdiction to decide the removal matter.

Berkeley County Probate Court declined the filing since: the trust that had been created was an Idaho trust by an Idaho grantor for the benefit of a citizen of Idaho – the Defendant/Grantor, which contained no South Carolina beneficiaries, or any stated beneficiaries; the trust was unrelated to the trust established by the Family Court; and the allegations of Breach of Trust and Conversion are in the Jurisdiction of the Circuit Courts of South Carolina. Plaintiff Amy Bannon Zenner subsequently petitioned for and was awarded the position of Conservator for the minor children Thomas S. and Caleb S., an Order the Defendant subsequently unsuccessfully challenged. Having finally gathered enough evidence to support the claims, the present suit was filed alleging Breach of Trust, Conversion and Contempt of Court.

Through the discovery process to date, Plaintiffs received another purported trust that included beneficiaries. This Trust was not for the sole benefit of Thomas S. and Caleb S. The Defendant included another alleged minor child of the deceased Cameron Shoemaker. The Defendant appointed alternate Trustees. The Defendant granted to himself the power to determine what amount, if any, to allocate to each child. The best result Thomas S. and Caleb S, can hope for from their grandfather is that they lost only 1/3 of their money; the worst - that they lose it all except for a token dollar.

He placed those trust funds in the hands of an Edward Jones investment advisor. Those funds have yielded a scant 3% over a 4-year period of time, when the Dow Jones

gained 37.5% over the same period of time (12/05/2014 close - 17,958.79, 10/26/2018 close - 24,688.31), opening up the issue of waste. Greatly concerning is the fact that Defendant has been doing retirement planning for himself and his wife with these funds as evidenced by the Edward Jones documents themselves. Similar to the filing with the State of Idaho, none of this conformed to the Orders in 04-DR-08-2062.

Plaintiff alleges that Defendant committed a breach of trust in failing to comply with the Order of Continuance dated March 15, 2014. The Order created a constructive trust in South Carolina for the benefit of Thomas S. and Caleb S. and placed restrictions on the actions of Defendant. Plaintiff alleges that Defendant converted the assets entrusted to him by setting up a trust in the manner he chose, and not for the sole benefit of Thomas S. and Caleb S. in violation of the Order of Continuance dated March 15, 2014. Plaintiff alleges that Defendant is in contempt of this court and the sister courts of South Carolina. Defendant has engaged in behavior that is calculated to obstruct, degrade, and undermine the administration of justice. He has failed to follow the directives of the court and acted in opposition to its Orders.

#### ARGUMENT

#### **This Court has subject matter jurisdiction over this matter.**

“Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong.” *Dove -v Goldkist, Inc.*, 314 SC 235, 442 SE2d 598, 600 (1994) “There is but one Circuit Court in the State of South Carolina, with uniform subject matter jurisdiction “throughout the State.” *Id.*

Plaintiff’s causes of action must all be adjudicated in South Carolina. Breach of Trust is based on Defendant breaching the trust placed in him by the Courts of South Carolina.

Conversion of those funds began from the moment they were placed in a constructive trust with Defendant. Both of these causes rest squarely in the purview of the South Carolina Courts. Plaintiffs allege that Defendant is in contempt of this Court. "It is within the trial court's discretion to punish by fine or imprisonment all contempts of authority before the court. SC Code Ann § 14-5-320 (1976) In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice." Brandt -v- Gooding, 368 SC 618, 630 SE2d 258, 264. (2006) No court of any other state can hear this contempt matter.

Even were this case about interpretation and administration of the trust, South Carolina would again be the proper forum. It is South Carolina that set out the trust in question and said trust should have been prepared in South Carolina, according to the laws of South Carolina and pursuant to the Orders which created the trust. This matter involves the property of South Carolina minors, even though it is now located in Idaho. **This Court has personal jurisdiction over the Defendant.**

Although not expressly stated in Defendant's Motion, personal jurisdiction over the Defendant may be raised at arguments. The Defendant was appointed trustee by the Family Court of the Ninth Circuit pursuant to a divorce decree of the Ninth Circuit Family Court. This established a constructive trust and bound him to South Carolina's jurisdiction. His appointment was confirmed in the Order of Continuance dated March 15, 2015. By accepting this position and the constructive trust it created, Defendant consented to the jurisdiction of South Carolina.

Defendant has converted the funds entrusted to him. Defendant's acts have been done in violation of the Order of the Ninth Circuit Family Court entrusting him with

those funds. Even if those acts took place in Idaho, those acts were directed at South Carolina with consequences in tort. Said acts give rise to certain causes of action, including breach of trust, conversion and contempt. These causes of action directly arise out of Defendant's contact with the state.

Further, Defendant has purposely availed himself of the protection of the South Carolina Courts including filing an action in Probate Court for Berkeley County in an attempt to reconsider the appointment of the Conservator. Defendant has expressly consented to the jurisdiction of the South Carolina courts.

Even if Idaho were the proper venue as Defense counsel had argued, Defendants acts have bound him here. "A court sitting where venue is improper may nevertheless render judgment provided the party who possesses the venue right consents, either expressly or impliedly." *Dove -v Goldkist, Inc.*, 314 SC 235, 442 SE2d 598, 600. Finally, the only beneficiaries of the constructive trust reside in South Carolina. Being minors and having lost their father, they are "entitled to the court's special care and to the state's paternal protection." *Scheper -v- Scheper*, 125 SC 89, 118 SE 178, 183. (1921)

Defendant clearly has minimum contacts with South Carolina. He could expect to be sued in South Carolina in connection with his appointment as trustee. In addition, the exercise of jurisdiction by this Court is both reasonable and fair, not only because the Court held jurisdiction over the Defendant in appointing him, but also because he expressly and impliedly has submitted to its jurisdiction.

**Summary judgment is not appropriate in this matter for the Defendant, although it is for the Plaintiffs.**

“Summary judgment is appropriate when it is clear that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” *Brandt -v- Gooding*, 368 SC 618, 630 SE2d 259, 264. (2006) Based on the pleadings of both parties, Defendant committed a breach of trust in setting up the trust; converting the assets entrusted to him to his own use; and acting in violation of the Orders in case number 04-DR-08-2062. Defendant’s only disagreement with Plaintiffs’ causes of action is where they occurred, not if they did. Examining the facts in the light most favorable to the Plaintiff, she would prevail on her Complaint, therefore, summary judgment is not appropriate for the Defendant. Defendant’s own pleadings admit that he violated the Orders in 04-DR-08-2062, and therefore has committed the breach, conversion and contempt alleged, by at the very least deciding on his own to add beneficiaries that were not ordered by the Court. Examining the facts in the light most favorable to the Defendant, Plaintiff prevails.

CONCLUSION

For the reasons explained above, this Court should deny the Defendant’s Motion to Dismiss for Lack of Subject Matter Jurisdiction because the Court has jurisdiction over not only the subject matter but the parties in this action.

Respectfully submitted,



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Moncks Corner, South Carolina  
October 29, 2018

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

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Case No. 2017-CP-08-1839

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JUN 25 2019  
SC Court of Appeals

Amy M. Bannon Zenner,  
Conservator for Thomas C. Shoemaker  
and Caleb M. Shoemaker,

APPELLANT,

-V-

Sydney Bruce Shoemaker,


RESPONDENT.

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CERTIFICATE OF APPELLANT

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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.

  
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