

Lil B Johnson  
PLAINTIFF(S)

Lucy J Fuller et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

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

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

Petitioner's Motion to Reconsider (filed on December 2, 2019) is DENIED.

RECEIVED

Sep 17 2020

SC Court of Appeals

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/20/2020 .

Lil B Jordan for Leonard R Jordan, Jr  
Leonard R Jordan, Jr for Lil B Jordan

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



Richland Common Pleas

**Case Caption:** Lil B Johnson vs Marian J Kirk , defendant, et al  
**Case Number:** 2018CP4000726  
**Type:** Order/Electronic Form 4

So Ordered

Jocelyn Newman

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE ESTATE OF:  
LIL B. JORDAN, DECEASED

Leonard R. Jordan, Jr., as Personal  
Representative of the Estate of Lil B. Jordan,

Petitioner,

vs.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-40-00726

**PETITIONER'S MOTION TO  
RECONSIDER, ALTER OR AMEND  
THE VERDICT AND JUDGMENT**

Petitioner, Leonard R. Jordan, Jr., as Personal Representative of the Estate of Lil B. Jordan, by and through his undersigned counsel, respectfully moves, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, for the Court to reconsider, alter or amend the Verdict and Judgment ("Newman's Order") filed on November 21, 2019. Petitioner contends that the Honorable Jocelyn Newman, Circuit Court Judge, erred in numerous respects, primarily including altering the Order Granting Petitioner's Motion, for Partial Summary Judgment issued by the Honorable L. Casey Manning, Circuit Court Judge and filed on November 2, 2018 ("Manning's Order"). Although ruling in court, and in Newman's Order, that she "declines Respondents' request to revise the [November 2, 2018 Order] and instead chooses to incorporate it by reference into the instant Order," Judge Newman did, in fact, substantially alter and revise Manning's Order.

Newman's Order erred in the following particulars:

1. Failing to follow the terms of Manning's Order, even after choosing "to incorporate it by reference into the instant Order," and after finding and concluding that, Petitioner, in his capacity as Personal Representative of Decedent's Estate, is entitled to recover for the estate the

sum of \$2,480.00 in actual damages on his Bankers Life Claim . . . (and) the sum of \$21,857.80 in actual damages” on the Bank of America Claim (together with pre-judgment interest). (emphasis added)

2. Altering Manning’s Order, which provides: “That the Respondents (jointly) shall turn-over to the Petitioner the amount of \$37,739.59 (together with interest after October 9, 2018, until paid.)” (emphasis added)

3. By concluding that “any amounts recovered by the estate by virtue of this Order must be equally divided among Petitioner and Respondents, as the sole heirs of the estate,” and then diverting (or forgiving) two-thirds of such “amounts” so they would not be “recovered by the estate,” Newman’s Order fails to comply with its own conclusions. (emphasis added)

4. By ordering that, “it would be both burdensome and inefficient for Respondents to be required to pay into the estate their own one-third shares of this award,” without any specific finding in that regard and without citing any authority for revising Manning’s Order.

5. Altering Manning’s Order by reducing the judgment debt by two-thirds, with no citation of authority, thereby re-writing Manning’s Order to effectively award “negative” punitive damages and, potentially, to reduce the attorney’s fee earned by Petitioner’s counsel, who agreed with Petitioner to handle this case on a one-third contingency-fee basis. Petitioner was required to retain counsel to collect the monies that were the property of the Estate and Petitioner’s attorney’s fees and costs (authorized by Decedent’s Will) should be deducted from the amount recovered before the share to which each heir is entitled is determined.

6. Revising Manning’s Order without any formal, affirmative claim (counterclaim) whereby Respondents requested this relief (e.g. setoff).

7. Concluding that the gross judgment debt was \$37,775.74 when the judgment debt

awarded in Manning's Order (\$37,739.59) would include, in addition, pre-judgment interest from and after October 9, 2018, at the per diem amount of \$5.83 until the entry of the final judgment on December 10, 2018.

8. Failing to include interest at the judgment rate(s) commencing the day following the date of filing of the final judgment, which date would be December 10, 2018 (the filing date of Judge Manning's Order for Judgment). Interest at the judgment rate will accrue thereafter on the judgment debt at the rate of 8.50% (for the period January 1, 2018, through January 14, 2019) and at the rate of 9.50% (for the period January 15, 2019, through January 14, 2020), compounded annually. The judgment rate is subject to change annually on January 15.

9. Failing to acknowledge that the judgment amount would also include the suit costs. Petitioner has filed a Motion for Costs supported by an Affidavit, pursuant to Rule 54(d), SCRCP.

10. Failing to conclude that Respondents should not be entitled to any portion of the interest that accrued on the original debts (\$21,857.80 + \$2,480.00). Respondent Kirk did not divulge to Petitioner until 2017 that she had taken the money in 2010 and then split it with Respondent Fuller in 2014. To give Respondents any portion of the accrued pre- or post-judgment interest rewards them for this misconduct.

11. Failing to consider and conclude that: (a) leaving to the Probate Court the issue of Respondent's liability for reasonable expenses incurred by the estate in collecting Respondents' debt to the estate will, or likely will, result in additional litigation, as the Respondents have, for years, demonstrated an unwillingness to pay any debt owed by them to the estate, even when sued and when ordered by the court to do so; and (b) a purpose of collecting the entire judgment debt (awarded in Manning's Order) is for Petitioner to have a sufficient money available to pay estate expenses, thereby negating the need for additional litigation.

12. Failing to distinguish between the two Wells Fargo Accounts: X1206 and X1783, only one of which (X1206) was made known to Petitioner by Respondent Kirk. In December 2005 (by which time, Decedent was considered by all of the parties to be incompetent to handle her financial affairs), Respondent Kirk added her name to Wachovia/Wells Fargo Account X1206, which thereafter designated Decedent and Ms. Kirk as joint owners. In 2009 (over 3 years after Decedent was deemed incompetent), Ms. Kirk opened another bank account: Wells Fargo Account No. X1783, which account also designated Decedent and Ms. Kirk as joint owners. Due to Decedent's incompetency, these actions were improper and resulted in Ms. Kirk being unjustly enriched. No notice of this account was given by Ms. Kirk to Petitioner.

13. Failing to conclude that Respondent Kirk did not inform Petitioner of her claim of right of survivorship until 2016 (over three years after the filing by Petitioner of the Inventory and Appraisement).

14. Failing to conclude that, by quoting to Petitioner (upon his inquiry about estate assets maintained by her) the amount of \$23,980.82 (which equates to the aggregate balances of the Wells Fargo Accounts X1206 and X1783), Respondent Kirk thereby effectively acknowledged to Petitioner that said amount was an asset of Decedent's estate, which Petitioner reported accordingly to the Probate Court in January 2013.

15. Failing to consider the payment by Respondent Kirk of Decedent's long-term care expenses from another source rather than using insurance proceeds, which were ear-marked for that purpose. After January 2012 through Decedent's death in June 2012, no portion of the Bankers Life Long Term Care insurance proceeds was used, even indirectly, for long-term care expenses incurred by Decedent. Decedent's long-term care expenses were paid from another source of money (stock brokerage account with Morgan Stanley), upon which no claim of joint account/right

of survivorship existed. Ms. Kirk exclusively determined into which bank accounts the long-term care insurance checks were deposited and from what source the long-term care expenses were paid, notwithstanding that she had no formal authority to make such determinations. The result of this payment strategy utilized by Ms. Kirk was to allow certain bank accounts to build-up balances, as no bills (debts) whatsoever were paid by these accounts during the stated timeframe, which account balances she intended to claim under right of survivorship.

16. Failing to mention Defendants' Motion to Reconsider, Alter and Amend filed on November 11, 2018, and Judge Manning's Order filed on November 20, 2018, which summarily denied the said Motion. The only issue raised by Respondents to Manning's Order had to do with the defense of statute of limitations with regard to the limited claims addressed by Petitioner's Motion for Summary Judgment. Importantly, even with knowledge of the adverse ruling (Manning's Order), no suggestion of a defense of set-off was raised by Respondents.

17. Concluding, somehow, that a lack of due diligence by Petitioner in collecting the \$2,480.00 (Bankers Life insurance proceeds) is conduct which is more attributable to delaying the estate's ability to take possession of such asset than Respondent Kirk's conversion (theft) of this asset.

18. Concluding that, "Respondents' conduct with respect to the Bank of America account was an isolated incident," which conduct was concluded in 2014, when Respondents had already claimed the same excuse ("self help") to justify their conversion of the Wells Fargo monies in 2013.

19. In addition, as Newman's Order addresses only matters of fact favorable to Respondents, while ignoring altogether matters of fact favorable to Petitioner, it should be modified to address the following important facts:

- a. Respondents admitted that all of the monies in each of the said bank accounts belonged exclusively to Decedent (at least until her death).
- b. On May 23, 2014, the balance in the said Bank of America account was disbursed by Respondent Kirk in equal shares to Respondent Fuller and herself. Ms. Fuller had no possible claim to right of survivorship – just a claim of entitlement for services performed in 2006 – six years before Decedent’s death. This disbursement was made without the knowledge of Petitioner. The timing of this disbursement was two weeks prior to Respondent Kirk’s closing on the purchase of her current residence, which was held on June 10, 2014.
- c. When the parties met in September 2015, to discuss a final disbursement of roughly \$25,000.00 purportedly held by Respondent Kirk, Respondents did not disclose to Petitioner that said monies were no longer held but had been disbursed to Respondents in 2013.
- d. Mr. Jordan (in a prior suit filed by him against Ms. Kirk in 2016) discovered Wells Fargo Account No. X8040, and he inquired of Ms. Kirk for many months about what happened to the account balance when that account was closed. After initially denying any knowledge of this matter, Respondent Kirk, on July 27, 2017, finally confessed to taking the money in 2010 and sharing the money with Respondent Fuller in 2014.
- e. Although including in the findings of fact that Petitioner lost \$15,000.00 (over several years, as a consequence of the 2008 stock market crash) investing Decedent’s money through Merrill Lynch, failing to include any finding that Respondent Kirk admitted to losing over \$33,000.00 (in a single year – before the

stock market crash in 2008) investing Decedent's money through Morgan Stanley, which losses greatly eclipsed Petitioner's investment losses.

- f. Petitioner's efforts in negotiating, and participating in the closings of, the sales of Decedent's house and condominium and in probating Decedent's estate (for which no compensation has been requested or received).
- g. While finding that Petitioner did not take steps to learn of the deposit by Respondent Kirk of the Bankers Life Company check in December 2012, without suggesting how Petitioner could have learned of a check sent directly to Ms. Kirk and held by her for six months before depositing same into some random account (unknown to Petitioner). Petitioner inquired of Ms. Kirk in late-2012, and Ms. Kirk declined to disclose this asset.
- h. While Petitioner acknowledged that the representations made by him to the Probate Court were not accurate, such representations were believed by Petitioner to be true, based upon the information provided by Respondent Kirk upon his specific inquiry. At the time (or even on January 11, 2013, or after), he was only aware of one Wells Fargo Account (X1206). Any discussion in Newman's Order about Wells Fargo "accounts" disclosed by Petitioner to the Probate Court in the Inventory and Appraisement, which implies that Petitioner was aware of multiple Wells Fargo accounts, is contrary to the facts known to Petitioner. Importantly, the amount cited as "Wells Fargo" in the Inventory and Appraisement was based upon Ms. Kirk's quote, which she voluntarily disclosed without raising any claim to a right of survivorship.

Respectfully submitted,

s/S.R. Anderson

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December 2, 2019