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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Rodger M. Young
Circuit Court Judge

Opinion No. 5716
Heard June 5, 2019 – Filed April 1, 2020
Petition for Rehearing Denied September 9, 2020
Appellate Case No. 2017-001131

Glenn Gunnells, Individually and as the Personal Representative of the Estate of Helen B. Gunnells.....Petitioner,

v.

Cathy G. Harkness .....Respondent

APPENDIX

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Glenn Gunnells, Individually and as the Personal Representative of The Estate of Helen B. Gunnells vs. Cathy G. Harkness

APPELLATE CASE NO. 2017-001131

INDEX TO APPENDIX

Index to Record on Appeal	i
ORDERS	
Respondent's Proposed Order dated April 18, 2016	1
Petitioner's Proposed Order dated April 19, 2016	16
Order of May 12, 2016	34
Order of August 25, 2016	51
Order of April 11, 2017	58
PLEADINGS	
Petition Opposing Will	66
Answer to Petition Opposing Will	71
Amended Petition Opposing the Will	79
Answer to Amended Petition	83
Petition for Removal of Personal Representative & Appointment Of a Special Administrator	86
Answer to Petition for Removal of Personal Representative & Appointment of Special Administrator	89
Notice of Intent to Appeal to Circuit Court	92
Notice of Appeal to Court of Appeals	94
MOTIONS AND MEMORANDA OF LAW	
Motion to Reconsider Order Voiding the Last Will & Testament	97
Memorandum in Opposition to Motion to Reconsider	123

Appellant's Initial Brief to Circuit Court 130

TRANSCRIPTS

Transcript of Circuit Court Proceedings 172

Transcript of Trial Proceedings Vol. I 200

Petitioner's Opening Statement 125

Respondent's Opening Statement 206

Direct Examination of Jack Brantley 209

Cross Examination of Jack Brantley 241

Direct Examination of Belinda Davis 251

Cross Examination of Belinda Davis 273

Court's Examination of Belinda Davis 285

Direct Examination of Cathy Harkness 294

Cross Examination of Cathy Harkness 316

Transcript of Proceedings Vol. II 340

Direct Examination of Sharon Lee Wechter 346

Cross Examination of Sharon Lee Wechter 352

Re-Direct Examination of Sharon Lee Wechter 354

Direct Examination of Jill Costa 356

Cross Examination of Jill Costa 364

Re-Direct Examination of Jill Costa 368

Recross Examination of Jill Costa 369

Redirect Examination of Cathy Harkness 370

Recross Examination of Cathy Harkness 379

Respondent's Motion for Directed Verdict 387

Direct Examination of Suzanne Klok 394

Cross Examination of Suzanne Klok 411

Court Examination of Suzanne Klok 423

Direct Examination of Annmarie Voytko 425

Cross Examination of Annmarie Voytko 432

Direct Examination of Glenn Gunnells 435

Cross Examination of Glenn Gunnells 486

Redirect Examination of Glenn Gunnells 508

Recross Examination of Glenn Gunnells 510

Transcript of Proceedings Vol. III 514

Court Examination of Glenn Gunnells 518

Redirect Examination of Belinda Davis 522

Redirect Examination of Glenn Gunnells 527

Recross Examination of Glenn Gunnells 531

Petitioner's Closing Argument 532

Respondent's Closing Argument 562

Deposition Transcript of Dr. Rhonda Chanson 589

Deposition Transcript of Helen Carroll 670

OTHER DESIGNATED MATERIALS

Appellant's Trial Exhibits [Listed as Respondent's Exhibits at Trial] 711

1. Last Will and Testament of Helen B. Gunnells 711

2. Cathy Harkness Letter to Father 717

3. Cathy Harkness Letter to Mother 731

4. Affidavit and Complaint in Claim & Delivery 735

5. Cathy Harkness Birthday Letter to Mother 737

6. Wechter Letter 739

7. Costa Letter 740

8. Deposition of Dr. Chanson [produced above] n/a

9. Glenn Gunnells Letter to Cathy Harkness 741

Respondent's Trial Exhibits [listed as Petitioner's Exhibits at Trial] 721

1. Jack Brantley E-Mail 743

2. Jack Brantley E-Mail 744

3. Jack Brantley Statement 745

4. Glenn Gunnells E-Mail 746

5. Respondent's Timeline 747

6. Deposition Transcript of Helen Carroll [produced above] n/a

7. Business Cards 778

Application for Informal Probate of Will of Helen B. Gunnells 749

Information to Heirs and Devisees 755

APPEAL MATERIALS

Final Brief of Appellant 756

Final Brief of Respondent 795

Final Reply Brief of Appellant 818

Opinion of Court of Appeals 825

Petition for Rehearing 835

Brief Opposing Motion for Reconsideration 855

Order Denying Petition for Rehearing 870

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2014-ES-10-202-2
	)	
Cathy G. Harkness,	)	
	)	
Petitioner,	)	
	)	
Glenn A. Gunnells, Individually and as Personal Representative of the Estate of Helen B. Gunnells.	)	RESPONDENT'S PROPOSED ORDER
	)	
Respondent.	)	
	)	
In the Matter of: Estate of Helen B. Gunnells	)	

THIS MATTER CAME before the Court on August 19 2015, at 9:00 a.m., on the Petition of Cathy G. Harkness ("Petitioner") to remove Glenn A. Gunnells ("Respondent") as Personal Representative of the Estate of Helen B. Gunnells, pursuant to S.C. Code Ann. § 62-3-611 (filed April 16, 2015). Appearing as counsel for Petitioner were Donald G. Howe, Esq., Michelle Weil, Esq. and Julie Jackson-Baily, Esq. of Charleston. Appearing on behalf of Respondent were Alexis M. Wimberly, Esq. and Robert B. Varnado, Esq. of Mt. Pleasant. Both Petitioner and Respondent were present in the courtroom but did not testify.

Upon careful consideration of the evidence and arguments of counsel, and for the reasons set forth herein, the Court DENIES the instant Petition and leaves the parties *status quo ante* pending final disposition of the Petitioner's July 28, 2014 Petition to set aside the Will of Helen B. Gunnells, as amended on April 16, 2015. At this time, the Court does not impose a bond on Respondent under S.C. Code Ann. § 62-3-603 herein.

PROCEDURAL HISTORY AND FACTUAL STATEMENT

Helen B. Gunnells ("Decedent") died testate on February 7, 2014 in Charleston County, South Carolina. She was the window of the late Aiken A. Gunnells and mother of Respondent and

Petitioner – as well as a third adult child, Ms. Belinda Davis, who is not a party to these proceedings. Decedent executed a Last Will and Testament ("Will") on July 3, 2013 which had been prepared by Suzanne Klock, Esq., of The Klok Law Firm, Mt. Pleasant. Therein, Decedent appointed Respondent as the Personal Representative of her Estate ("Estate") and made him the sole beneficiary under the Will. The Will replaced the Decedent's prior will of November 7, 2006 ("Standby Will").

The Court appointed Petitioner as the Personal Representative of the Estate on February 25, 2014 following his filing of the *Application for Informal Probate of Will of Helen B. Gunnells* and *Information to Heirs and Devisees*, on the same date and incorporated herein by reference. On April 10, Petitioner filed *Affidavit of Publication* evidencing notification to all creditors of the Estate administration. The *Inventory and Appraisement* was dated April 16, 2014 and filed April 20, 2014.

Erroneously, the *Inventory and Appraisement* did not identify any household items or personal property of the Decedent. As of the time of the hearing, the inventory had not been supplemented pursuant to S.C. Code Ann. § 62-3-708. The only significant Estate asset was the Decedent's residence located at 1931 Capri Drive, Charleston, South Carolina 29407 ("Residence").

With respect to the Residence, Respondent was the sole devisee and the Will specifically authorized Respondent to sell it. Accordingly, Respondent executed a *Deed of Distribution* on April 16, 2014 to himself. This Deed was not recorded in the Charleston County RMC office, however, until July 28, 2014.

On that same day (July 28, 2014), Petitioner filed a *pro se* petition to set aside the Will in this Court, which was served on Respondent on August 16, 2014 by Affidavit of Service filed with this Court on August 18, 2014.

Respondent subsequently listed and entered into a contract with Charles Medlock Proctor and Stacey Erin Jefferson ("Buyers"), who selected the local firm of Weeks & Irvine to handle the closing. The closing took place on November 25, 2014 with a sales price of $495,777.00. The proceeds from the sale of the Residence were used to satisfy a three-hundred thousand dollar ($300,000.00) reverse mortgage attached to the property, and Respondent received the balance after closing costs. Respondent ultimately purchased a new home using some of the proceeds as well as his own funds.

Petitioner served discovery relative to the petition to set aside on November 13, 2014, which Respondent's counsel answered on January 20, 2015 after being retained by Respondent. Petitioner took no further substantive action until April 16, 2015, when her new counsel filed the instant Petition [as well as amended petition to set aside the Will]. In the instant Petition, Petitioner listed the following as possible reasons for removal:

> "Petitioner is informed and believes that the Estate of Helen B. Gunnells may have claims against Glenn A. Gunnells, individually, for causes of action including but not limited to the following: (a) failure to provide and administer medications as prescribed after having undertaken the care of the decedent, Helen B. Gunnells; (b) breach of fiduciary duty that Glenn A. Gunnells owed to Helen B. Gunnells by virtue of a Power of Attorney which she had given to him." ¶ 4, Petition for Removal.
>
> "Petitioner is informed and believes that Glenn A. Gunnells as Personal Representative cannot effectively represent the Estate of Helen B. Gunnells in an investigation of and potential action against himself." ¶ 5, Petition for Removal.
>
> "Due to a potential action against the Respondent, the Petitioner is informed and believes that there exists a cause for concern that the Estate will not be properly or effectively preserved by the Respondent . . ." ¶ 6, Petition for Removal.

At the Removal Hearing, Petitioner failed to present any arguments to support paragraphs 4 and 5 of the Petition. As such, Petitioner has abandoned those arguments and they are considered waived.

To support Petitioner's sole remaining claim under the Petition for Removal, that "there exists a cause for concern that the Estate will not be properly or effectively preserved by the Respondent," Petitioner presented one witness at the Removal Hearing – Ms. Robin Ciaccio, Esq. – attorney for the Buyers of the Residence.

LEGAL AUTHORITIES

Under S.C. Code Ann. § 62-3-611(a), "[a] person interested in the estate may petition for the removal of the personal representative for cause at any time." Under S.C. Code Ann. § 62-3-611(b):

> Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this State to administer local assets.

However, there is a strong deference shown by the Courts to the personal representative chosen by the testator. *Church v. McGee*, 391 S.C. 334, 343-44, 705 S.E.2d 481, 486 (Ct. App. 2011).

> "The Courts have ever been reluctant to take the management of an estate from those to whom it has been confided by the testator, for to that extent the intention expressed in his will would be defeated. **The power to remove a personal representative 'should be executed with great caution, and not at all,** unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud.'"

Blackmon v. Weaver 366 S.C. 245, 621 S.E.2d 42 (Ct. App. 2005) (declining to remove personal representative for failing, *inter alia*, to collect a $70,000.00 debt of the estate).

In *Church v. McGee*, the Court of Appeals held that in the absence of credible evidence of malfeasance on the part of personal representative it will affirm a decision to reject a petition under S.C. Code Ann. § 62-3-611(b). 391 S.C. at 344, S.E.2d at 486 (declining to remove personal representative, *inter alia*, after he paid capital account value to buy decedent's interest in a real estate partnership which he later sold for more value). In *Blackmon v. Weaver,* the Court of Appeals similarly ruled that a "showing of fault" is a prerequisite for a petition to remove the personal representative. 366 S.C. at 251-252, 621 S.E.2d at 45 ("[w]ithout a showing of fault, the court will not remove a personal representative simply because the parties do not get along").

This requirement of a showing of malfeasance/fault by the personal representative resulting in injury to the estate is consistent with the pre-South Carolina Probate Code case law, where the Supreme Court held: "[i]n the absence of any allegation or proof of any wrongful act or omission on his part, which has resulted in loss or injury to the estate, or that there is any real danger of such loss or injury, the court was not warranted in taking from him the rights conferred upon him by the testatrix and by the law, under his appointment as executor." *Smith v. Heyward*, 115 S.C. 145,164-165, 105 S.E. 275, 282-283 (1920). *Smith* continues to be cited with approval nearly 100 years later. *Church*, 391 S.C. at 344, S.E.2d at 486; *Blackmon*, 366 S.C. at 251-252, 621 S.E.2d at 45.

In South Carolina, an action to remove a personal representative is considered to be equitable in nature. *Blackmon v. Weaver,* 366 S.C. at 246, 621 S.E.2d at 43; *Dean v. Kilgore,* 313 S.C. 257, 259, 437 S.E.2d 154, 155 (Ct. App. 1993). When sitting in equity, "[c]ourts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the

fullest extent possible." *Buckley v. Shealy,* 370 S.C. 317, 323–24, 635 S.E.2d 76, 79 (2006); *see also Regions Bank v. Wingard Properties, Inc.,* 394 S.C. 241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011).

In the *Regions Bank v. Wingard Properties* case, the Court of Appeals held:

> The notion "equity looks to substance rather than form" evolved out of judicial regard for that which ought to be done. This maxim applies by "dispensing with pure formalities which would otherwise defeat the equity." When applying this principle, courts look to the substance and intent of the parties, and give a construction consistent with such intent.

394 S.C. at 252, 715 S.E.2d at 354.

The decision to grant equitable relief is in the sound discretion of the trial judge. *Straight v. Goss*, 383 S.C. 180, 207, 678 S.E.2d 443, 458 (Ct. App. 2009). When a court is sitting in equity, and thus viewing evidence for its preponderance, it should "consider the equities of both sides, balancing the two to determine what, if any, relief to give." *Anderson v. Buonforte,* 365 S.C. 482, 493, 617 S.E.2d 750, 755 (Ct. App. 2005). When providing an equitable remedy, the Court may not ignore statutes, rules and other precedent – i.e. equity follows the law. *Wingard Properties*, 394 S.C. at 254, 715 S.E.2d at 355. However, in any event: "[a] judgment or decree, whether in law or equity, must accord with and be warranted by the pleadings and proof of the party in whose favor it is rendered. *Wingard v. Lee*, 287 S.C. 57, 62, 336 S.E.2d 498, 501 (Ct. App. 1985).

CONCLUSIONS OF LAW

After reviewing the evidence, weighing the credibility of the witness and the evidence, considering the arguments of counsel and reviewing the law, I make the following findings of fact and conclusions of law.

1. Administration of Creditors' Claims.

The first ground alleged by Petitioner at the hearing as justification to remove Respondent

as personal representative is his purported failure to satisfy creditor claims.

The Court records show that five (5) credit card companies filed notices of claims in the total amount of $17,415.78 in unsecured debt owed by the Decedent. No other creditors filed claims and the time to file creditor claims has lapsed. Petitioner does not challenge the sufficiency of the *Affidavit of Publication* nor has she demonstrated the existence of additional creditors with valid claims against the Estate. By order of July 15, 2015, this Court extended the filing deadlines for this Estate until August 15, 2015. Counsel for Respondent, as an officer of the Court, represented that four (4) of the claims had been allowed and compromised with the creditors; one (1) claim was disallowed due to the inability to locate the creditor, but Respondent's counsel averred that she had attempted to contact the creditor and was holding in her IOLTA account a sum sufficient to fully satisfy that last credit card company should it contest disallowance. Respondent's counsel further advised that she filed the Allowance/Disallowance forms with this Court and was waiting on Satisfactions.

Petitioner's counsel did not contest the resolution of the creditor claims, nor take exception to the statements of Respondent's counsel. Instead, Petitioner argued that the creditor claims has been resolved in an untimely manner. The Court is unpersuaded by this argument primarily because of the extension granted on July 15, 2015 and allowance/disallowance by the Court's deadline. Moreover, notwithstanding the extension, the Court is unpersuaded that any delay in resolution of the creditor claims reaches the level of maladministration, or resulted in prejudice to the Estate, the creditors or the Petitioner. In the absence of countervailing testimony or evidence from Petitioner, she has failed to prove there is any need to protect the Estate from any loss or injury resulting from the Respondent's administration of the creditor claims. I specifically find no malfeasance or willful misconduct on the part of Respondent with respect to the creditors, or any

cause under § 62-3-611(b).

Accordingly, in the absence of malfeasance or prejudice vis-à-vis the administration of creditor claims, and considering the equities of both sides, this Court finds that the Petitioner has not made a showing her burden on her first ground. *Church v. McGee*, 391 S.C. 334, 343-44, 705 S.E.2d 481, 486 (Ct. App. 2011); *Blackmon v. Weaver* 366 S.C. 245, 621 S.E.2d 42 (Ct. App. 2005); S.C. Code Ann. § 62-3-611(b); *Anderson v. Buonforte,* 365 S.C. 482, 493, 617 S.E.2d 750, 755 (Ct. App. 2005).

2. Title Issues as to the Residence and Failure to Escrow Closing Funds

The second ground alleged by Plaintiff at the hearing as compelling Respondent's removal as personal representative is based on the allegation that his conduct resulted in conveying faulty title to the Buyers of the Residence, and that he was required to escrow closing funds in an Estate Account. The Court is unpersuaded by these argument for the following reasons.

The Buyers' current attorney, Robin Ciaccio, Esq. of Conway, S.C., testified that her clients could not obtain title insurance through her agency relationship with Fidelity Title Insurance, for a home-equity type loan for renovations at the Decedent's former Residence. While the Buyers had been able to borrow some money unsecured from a bank in Conway, they could not borrow more without title insurance. Ms. Ciaccio explained that she could not convince Fidelity to write a title policy because (i) there was a need for Quit-Claim Deeds from Petitioner and Ms. Belinda Davis (the non-party sister) arising out of pre-Estate transfers between the Decedent and her late husband; and (ii) because of the cloud caused by the Petition to set aside the will. Under cross-examination, Ms. Ciaccio conceded several salient facts:

- the sale of the Residence was performed by a competent local law firm selected by her clients, who were in a dual representative capacity at the time of closing as consistent with common real estate closing practice;

- her clients purchased title insurance at closing through a reputable title insurance carrier, Stewart Title, whom she had made a claim against on their behalf but had not heard back from;

- she had never contacted Weeks & Irvine, nor reviewed that firm's file or title work;

- notwithstanding the foregoing fact, she conceded that the fact that the property was transferred via a chain of title including the Deed of Distribution would have been known and readily apparent at the time of the closing;

- she had not requested that Stewart Title to extend title insurance coverage for her client, nor sought out the closing attorney (Ray Smith, Esq.) to apply to Stewart for the same [because as she explained, she only wrote Fidelity policies and her clients had instructed her not to seek title insurance elsewhere];

- that she had not specifically asked Fidelity to reconsider their coverage denial based on the applicability of S.C. Code Ann. § 62-3-910(b).

It should be noted that Ms. Ciaccio did not opine to any maladministration or mishandling of the sale by Glenn Gunnells, his realtor or the closing attorney. Ms. Ciaccio's testimony did not mention any cause for removal of Respondent as the personal representative (in fact no witness testified to that effect).

While the Court is not unsympathetic to the Buyers predicament, their problems are not the responsibility of Respondent as a matter of law or equity. Under S.C. Code Ann. § 62-3-101, real property devolves to the person named as the devisee of the Decedent's last will – which under the Will is Respondent. Moreover, S.C. Code Ann. §§ 62-3-711(a), (b) and (c) together provide that a personal representative "has the same power over the title to property of the estate that an absolute owner would have" and if the Will permits, may sell the property to a purchaser for value, with that purchaser taking title clear of any claims pursuant to S.C. Code Ann. § 62-3-910(b).

Because the Buyers are protected by S.C. Code Ann. § 62-3-910(b) and the sale of the Residence was entirely lawful under the Probate Code, any title "deficiencies" which the Buyers face are not grounds to remove Respondent. Therefore, I find no malfeasance or maladministration

on the part of Respondent toward the Buyers, nor cause under § 62-3-611(b), arising out of the sale of the Residence to the Buyers. *Church v. McGee*, 391 S.C. 334, 343-44, 705 S.E.2d 481, 486 (Ct. App. 2011); *Blackmon v. Weaver* 366 S.C. 245, 621 S.E.2d 42 (Ct. App. 2005); S.C. Code Ann. § 62-3-611(b).

The Court rejects Petitioner's argument that Respondent failed in some duty to "pass clear title" under the facts at bar. First, it is unsupported by any case law or citation to authority; to the extent Ms. Ciaccio testified to a duty to pass clear title, that is an improper legal opinion. Second, she offers no compelling argument that clear title was not passed, or that any error in that regard does not lie with current and past counsel. Finally, the Will permitted the sale; applying rules of testamentary and statutory construction, under the Will and Probate Code, Respondent is in full legal compliance with his obligations and rights as devisee and Personal Representative. *Dreher v. Dreher*, 370 S.C. 75, 80-81, 634 S.E.2d 646, 648-649 (2006)("[t]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation"); *May v. Riley,* 279 S.C. 248, 250, 305 S.E.2d 77, 78 (1983)(holding that in construing a will, the purpose of the courts is to discover and give effect to the intent of the testator). The closing was handled by a reputable, local law firm, selected by the Buyers, and who furnished title insurance to them.

Petitioner's counsel further argued that the Respondent should have held the proceeds of the sale of the Residence in an Estate account. While this might be prudent practice, it is not mandated by the Probate Code. Thus, this Court finds no maladministration or malfeasance under § 62-3-611(b) on this ground, either, warranting Respondent's removal. *Church v. McGee*, 391 S.C. 334, 343-44, 705 S.E.2d 481, 486 (Ct. App. 2011); *Blackmon v. Weaver* 366 S.C. 245, 621 S.E.2d 42 (Ct. App. 2005); S.C. Code Ann. § 62-3-611(b).

Additionally, the equities do not favor Petitioner in advancing the argument that Respondent improperly handled the sale of the Residence. She never testified that she lacked notice of the listing or sale. She waited six (6) months after the closing on the Residence to file the instant Petition and argue alleged improprieties concerning the closing. Moreover, she failed to seek an order of restraint under S.C. Code Ann. § 62-3-607. She has shown little interest in seeking a hearing on the petition to set aside the will.

Finally, there is the issue that the Petitioner's entire argument is moot if she does not convince this Court that the Will should, in fact, be set aside. The Court has advised the parties it will set a hearing on that issue as soon as practical. As a matter of judicial economy it makes sense that the Court refrain from terminating the Respondent's appointment for cause, on such thin and unsubstantiated arguments, if the Court is not inclined to set aside the Will.

3. Issues with Inventory.

The third ground put forth by Petitioner in support of the Petition at bar is that Respondent erred in completing the Inventory and Appraisement by: (i) not including Decedent's personal property; and (ii) by failing to answer discovery questions relating to the Estate administration that were promulgated before this Petition was filed, as part of the Will contest.

With respect to the Inventory, the Court concludes that Respondent did err because S.C. Code Ann. § 62-3-706 obligated him to inventory the personal property. In spite of the foregoing, however, the Court declines to find this maladministration rises to the level of malfeasance that necessitates his termination. The Probate Code addresses the way this error can be easily corrected via S.C. Code Ann § 62-3-708 through filing of a supplemental inventory. Moreover, there was no testimony offered by Petitioner as to the value of any personal property unaccounted for, or whether she believes she has a personal claim to the same.

This failure of proof on the part of Petitioner is highly relevant. If there is no evidence regarding the value of the property, then Petitioner has not shown its value exceeded $10,000.00 which would have required an order of the Court to dispose under S.C. Code Ann. § 62-3-711(b). If there is undisposed personal property that might lawfully go to Petitioner, then the Respondent is well within his three (3) years from the date of death to distribute it. S.C. Code Ann. § 62-3-101. In any event, under the Probate Code title to personal property goes to the Personal Representative for use is payment of creditor claims and administrative costs. S.C. Code Ann. §§ 62-3-101, 62-3-711. It might very well come to pass that the personal property is of such low value that it is less than the 5% fee allowed by § 62-3-719 or his expenses in defending Estate litigation under § 62-3-720. Accordingly, weighing the equities here, I find Respondent's failure to complete the Inventory correctly can and should be corrected by a Supplemental Inventory. However, it does not rise to a level of malfeasance that would warrant his termination under S.C. Code Ann. § 62-3-611(b). The same holds true for errors in the Non-Probate Inventory.

The Court is also mindful of the holding in *Gibson v. Belcher*, 287 S.C. 315, 318-319, 338 S.E.2d 330, 332-333 (1985), in which the Supreme Court cited with approval *Williams v. Mower,* 29 S.C. 332, 339, 7 S.E. 505, 507 (1888)) and the following holding:

> "In the present case, the executor mistakenly failed to include the household goods in the inventory. As to unintentional errors or mistakes, the *Mower* case states, "It [the law] recognizes the liability [sic] of the best and most careful persons to make mistakes and omissions, and therefore we cannot say that an inventory returned under oath by an executor is so absolutely conclusive against the executor as to preclude him from offering evidence to show such errors."

Consequently, this Court takes the position that the South Carolina Courts will forgive administration errors that include failing to account for household goods, so long as the personal representative rectifies the same to the best of his ability. *Cf.* S.C. Code Ann. § 62-3-711

(permitting a personal representative to correct maladministration during pendency of petition to terminate him for cause).

With respect to the argument of Petitioner's counsel that Respondent "has done enough damage," the Court finds that rhetoric to be overheated. As to Respondent's discovery responses being inadequate, he would argue that any insufficiency, if any should exist, is not an adequate ground for removal as Petitioner could have moved to compel more definite answers; especially since no additional discovery was served with the instant Petition and the Respondent's discovery answers were entirely within the companion petition to set aside the Will.

The Court also finds the following matters salient to its decision to deny the instant Petition based on errors regarding the inventory.

First, the administration of the Estate is almost complete. Respondent, as Personal Representative, already furnished funeral costs and expenses, filed necessary paperwork, notified creditors, sold the Residence, paid off the reverse mortgage and other debts of the Estate and was wrapping up the Estate when the instant Petition was filed. Absent an Application for Settlement, which cannot be completed until after a final hearing on the Will Contest, there is nothing left to do with regard to the administration of the Estate. As such, removal of Glenn Gunnells as Personal Representative would serve no useful purpose at this time and would not be in the best interest of the Estate. This consideration is further grounds in support of my findings on Petitioner's first and second arguments.

Second, the instant Petition was filed fourteen (14) months after Decedent's death and a year after the Respondent filed the Inventory. As such, Petitioner's claim that Respondent failed to protect Estate assets is both untimely and self-serving. Petitioner essentially sat on her rights throughout the administration of the Estate only, at the final hour, to assert her possible claims,

which remain unfounded and unsubstantiated. She knew or should have known the Inventory did not include personal property but either (a) chose not to act; or (b) like Respondent did not understand the error. Either way, she should not be allowed to spring a trap on Respondent a year later. Under the case of *Reed v. South Carolina Nat'l Bank*, 293 S.C. 357, 360 S.E.2d 527 (Ct. App. 1987) – cited with approval as applicable in probate cases by the Court of Appeals in *Blackmon* – it is well within the court's discretion to find that by waiting nearly a year to raise this issue, the Petitioner waited too long. *Blackmon*, 366 S.C. at 251, 621 S.E.2d at 45.

Third, as with Petitioner's second argument, the Court is aware that concerns about failing to properly inventory the Decedent's household items – even if easily correctable – is moot if the Petitioner cannot prevail in setting aside the Will. Moreover, the Court is faced with the fact that by arranging to have the instant Petition heard first (and separately) from her petition to set aside the Will, the Court cannot consider at this time that the Will is invalid. In fact, "**[i]t is the settled law of this state that when the formal execution of a will is admitted or proved, a prima facie case in favor of the will is made out**, and that, as a general rule, the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation, and such burden remains upon the contestants throughout (emphasis added)". *In Re Last Will and Testament of Smoak*, 286 S.C. 419, 424, 334 S.E.2d 806, 809 (1985); *Byrd v. Byrd*, 279 S.C. 425, 426-427, 308 S.E.2d 788, 789 (1983). A court may not "by judicial construction make a will for the decedent that he has not made for himself." *Guaranty Bank & Trust Co. v. Byrd,* 287 S.C. 96, 99, 337 S.E.2d 231, 233 (Ct.App.1985). Because the will contest is not before the court now, the Court must deem that the Will is *prima facie* valid **now**.

4. Additional Considerations.

In addition to the fact that the Will must be deemed *prima facie* valid, the Court finds the Petitioner has not met her burden of showing the necessity for a Special Administrator. This Court does not find it necessary to appoint a Special Representative to preserve the Estate or insure its proper administration as per S.C. Code Ann. § 62-3-614(b) or that under these facts (and the fact the Estate is near completion), appointment of a Special Representative would promote speed and efficiency in the administration of this Estate, which is the purpose of the Probate Code. S.C. Code Ann. § 62-1-102(b)(3).

As to the allegations in the Petition which Petitioner did not advance at the hearing, or present any testimony or argument concerning, the Court considers them abandoned and rejects them as proper grounds to terminate Respondent's appointment.

CONCLUSION

For the reasons hereinabove set forth, this court finds the *status quo* should be maintained as it is in the best interest of the Estate that Petitioner shall remain the Personal Representative of the Estate. There is no need for the appointment of a Special Administrator for the reasons set forth above.

AND IT IS SO ORDERED.

_____

The Honorable Irvin G. Condon
Probate Judge

_____, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	:	Case No.: 2014-ES-10-202-2
COUNTY OF CHARLESTON	)	
IN RE: ESTATE OF HELEN B. GUNNELLS	)	
	)	
	)	ORDER VOIDING THE LAST WILL
Cathy G. Harkness,	)	& TESTAMENT DATED JULY 3, 2013
Petitioner,	)	AND ADMITTING THE LAST WILL
v.	)	& TESTAMENT DATED
Glenn A. Gunnells, individually and as	)	NOVEMBER 7, 2006 TO PROBATE
Personal Representative of the Estate of	)	
Helen B. Gunnells,	)	
Respondent.	)	
	)	

Trial Dates:	**March 1st – 3rd, 2016**
Presiding Judge:	**Irvin G. Condon**
Petitioner:	**Cathy G. Harkness**
Petitioner's Attorneys:	**Donald H. Howe, Esq., Julie C. Jackson-Bailey, Esq., and Michelle J. Weil, Esq.**
Respondent:	**Glenn A. Gunnells**
Respondent's Attorneys:	**Alexis M. Wimberly, Esq. and Robert B. Varnado, Esq.**
Court Reporters:	**Trisha Rarick and Judy W. Galuppo Magna Legal Services**

THIS MATTER came before the Court on Petition filed by Petitioner, Cathy G. Harkness, alleging that Respondent, Glenn A. Gunnells, exercised undue influence over his mother, Helen B. Gunnells (the "Testatrix"), when she executed a Last Will & Testament on July 3, 2013 that left her entire estate to the Respondent. The July 3, 2013 Will revoked a former Last Will and Testament dated November 7, 2006, by which the Testatrix devised her estate to her husband if he survived her, and then to her three (3) children in equal shares.

Present at the trial was Petitioner, along with her attorneys, Donald H. Howe, Esq., Julie C. Jackson-Bailey, Esq., and Michelle J. Weil, Esq. Respondent was also present, along with his

attorneys, Alexis M. Wimberly, Esq. and Robert B. Varnado, Esq. The Court heard opening and closing arguments and testimony from several witnesses. Based on the file, the exhibits entered into evidence during the trial, the testimony, and the arguments presented by counsel, the Court finds by clear and convincing evidence that the Testatrix was under undue influence when she made and executed the July 3, 2013 Will.

FACTS

The Testatrix, Helen B. Gunnells and her husband, Aiken Arden Gunnells, were married for many years. There were three (3) children born of their union, namely: Cathy G. Harkness, Belinda G. Davis, and Glenn A. Gunnells. In approximately April of 2012, Mr. Arden Gunnells was diagnosed with cancer. In approximately March of 2013, the Respondent moved in to Helen and Arden Gunnells' home to help care for them. Mr. Arden Gunnells died on June 8, 2013.

On July 3, 2013, the Testatrix executed the Will, which is the subject of this action. The lawyer who prepared the July 3, 2013 Will was Susanne Klok, Esq. Attorney Klok was Respondent's attorney, having served as his closing attorney in connection with the sale of his home on June 7, 2013 (only 22 days prior to the execution of the Will in dispute). The testimony revealed that the Testatrix only met with Attorney Klok on the one (1) occasion on July 3, 2013. The Respondent made the appointment with Attorney Klok, and he drove the Testatrix to and from the appointment. The Respondent left the building while Attorney Klok met with the Testatrix for approximately one and one-half (1½) to three (3) hours in total. The Testatrix also saw her primary care physician, Dr. Rhonda Chanson, on July 3, 2013, within a short time of her appointment with Attorney Klok.

The Respondent continued to live with his mother until she died on February 7, 2014.

SUMMARY OF THE DISPUTE

Petitioner contends that she had an active and loving relationship with her parents for many years, but this changed after Respondent moved in with them. Respondent began asserting more and more control over their parents, but most especially over the Testatrix after the death of her husband, Mr. Arden Gunnells. Petitioner alleges that Respondent told her not to call or visit her mother and that if she did, he would have her arrested for harassment. According to Petitioner, her mother remained isolated and controlled by Respondent thereafter, including her act of changing her will on July 3, 2013.

Respondent alleges that he cared for his mother, but did not exercise control over her. He contends that both parents became disenchanted with their daughters because they failed to help during their final illnesses and declines. He points out that Belinda Davis moved to Hawaii for a substantial period of time and returned to Charleston only a week before Mr. Arden Gunnells died. According to Respondent, the Testatrix resented the girls' lack of care and concern, so she changed/executed the July 3, 2013 Will of her own free will.

THE EVIDENCE PRESENTED

Petitioner's first witness was the Testatrix's brother, Jack Brantley. Mr. Brantley is a retired Lieutenant Colonel who served as City Administrator for Waynesboro, Georgia for 23 years. He is now 83 years old and continues to serve on the Board of Elections in Waynesboro, Georgia. (Tr. Vol. I, p. 12, lines 11-21).

Mr. Brantley testified that he and his sister had a very close relationship throughout their lives. They visited several times each year and talked often/several times weekly. Mr. Brantley said he experienced a noticeable change in the openness and substance of communication he had

with his sister after her husband died and while Respondent was caring for her. (Tr. Vol. I, p. 18, lines 2-11; p. 41, lines 8-21; p. 45, lines 12-13). Because of his concern, he made himself available to be contacted by the Department of Social Services ("DSS") when Petitioner expressed to him she was consulting DSS about her concerns for her mother. This assertion was confirmed by his email dated July 22, 2013 (Petitioner's Exhibit 2).

Mr. Brantley confirmed that from his perspective, Petitioner and Ms. Davis both had good relationships with their parents, especially Cathy. (Tr. Vol. I, p. 24, lines 4-23). He identified Petitioner as being particularly active in the care of her parents over the years. He also testified about the following factors that were relevant to the Court's analysis of the overall dispute:

1) After Arden Gunnells died, Mr. Brantley noticed that his sister "...was very hesitant to talk to me", which was a dramatic change in the way that they had formerly communicated. (Tr. Vol. I, p. 18, lines 8-9).

2) Testatrix Helen Gunnells told Mr. Brantley "...that Glenn did not like for her to talk to Cathy." (Tr. Vol. I, p. 33, lines 18-19).

3) That he (Mr. Brantley) spoke to Respondent Glenn Gunnells about Cathy and Belinda visiting and helping Testatrix and that Respondent made it clear (on more than one occasion), "he didn't want them there." (Tr. Vol. I, p. 38, line 17).

4) Sometime after Mr. Arden Gunnells' death, he spoke to the Testatrix by phone and suggested she call Petitioner about a surgery that the Petitioner had on her leg to remove a cancerous growth. The Testatrix's response was, "I'll ask Glenn." (Tr. Vol. I, p. 41, lines 5-7).

5) Shortly after Mr. Arden Gunnells' cancer diagnosis, Mr. Brantley spoke with Respondent about the demands of caring for his parents. Mr. Brantley pointed out to the

Respondent that he would have the help of his sisters. Respondent's response was "that will never happen." (Tr. Vol. I, p. 27, lines 18-19).

6) Mr. Brantley directly contradicted Respondent's assertion that Mr. Brantley heard the Testatrix discuss changing her Will because of her disappointment with the care and affection shown by the girls. (Tr. Vol. I, p. 46, lines 18-22).

7) Mr. Brantley was familiar with the contents of Testatrix's earlier Will which divided the estate equally among the 3 children but was never aware of the July 3, 2013 Will until after his sister died. (Tr. Vol. I, p. 23, lines 1-4; p. 47, lines 18-22).

Petitioner's second witness Helen Carroll appeared by way of video deposition. Helen Carroll was one of the Testatrix's best friends and knew her for over forty (40) years. They spent lots of time together over the years, communicated often, and had a very close relationship. The nature of this relationship was confirmed by the Respondent.

Ms. Carroll confirmed that Petitioner had an active and close relationship with her mother for many years. Most importantly, Ms. Carroll's testimony concerned a visit she had with the Testatrix sometime after Mr. Arden Gunnells passed away. According to Ms. Carroll, she dropped by unannounced to visit the Testatrix, and the Respondent was not home. Ms. Carroll testified that during this visit without the Respondent's presence, the Testatrix confirmed that she had changed her Will, but that she had not wanted to do so. The Testatrix confided in Ms. Carroll that the Respondent made her change her Will. Helen said to Ms. Carroll, "I had no choice." (D. p. 18, lines 8-25). Ms. Carroll also testified that when Respondent returned home, the Testatrix "clammed up." (D. p. 20, lines 1-2).

Contrary to Respondent's testimony, Ms. Carroll testified that she was never left alone with the Testatrix to visit except for the one unannounced visit when the Respondent was not

home. She also related that she stopped visiting because she felt that her reception had become "cold" and unwelcoming, which contradicted Respondent's assertion that Ms. Carroll stopped visiting the Testatrix because of her own health concerns and inability to drive. (Tr. Vol. III, p. 20, lines 1-11). It also contradicted his testimony on direct examination about what good terms he and Ms. Carroll were on. (Tr. Vol. II, p. 119, lines 7-11).

Lastly, Ms. Carroll testified that she knew Glenn to have an alcohol problem because she noticed that he would "slur his words" when talking. (D. p. 30, lines 17-23).

Petitioner next offered excerpts from the deposition of the Respondent, Glenn A. Gunnells. The excerpts confirmed that he had a "confidential relationship" with the Testatrix; that he agreed that Helen Carroll was a very close, personal friend of the Testatrix; and that he had been living on social security disability payments since the year 2000.

Petitioner's third witness was the Testatrix's oldest child, Belinda G. Davis. Ms. Davis is a high school graduate. She has worked in her former husband's construction business, at the Medical University of South Carolina for the head of neurosurgery department, and as an assistant to the North Charleston Mayors, Bobby Kinard and Keith Summey for 13 years. (Tr. Vol. I, p. 55, lines 1-3; p. 57, lines 1-17).

Ms. Davis testified that all of the siblings had generally good relationships with their parents throughout the years. Once her father was diagnosed with cancer in the spring of 2012, all three children worked as a "team" to help with various needs of the parents. (Tr. Vol. I, p. 59, lines 6-16). She stated that the Petitioner was living in Myrtle Beach at the time of the cancer diagnosis, but that Petitioner quickly moved back to Charleston to help with her parents. (Tr. Vol. I, p. 60, lines 4-21). Petitioner also sold her car, a Corvette, and purchased another vehicle that was easier for her mother to get in and out of.

Ms. Davis described her brother, the Respondent, as a "control freak," an alcoholic, substance abuser, and a "user of people." She produced an email from Respondent authored in May of 2012, which was introduced as Petitioner's Exhibit 4 which stated: "Let it be known nothing will be signed or initialized till I look at it, exclamation point three times. Let it be written so let it be done, two exclamation points. All has been done and notified, several exclamation points." According to Ms. Davis, this email originated when she tried to add her name and Petitioner's name to a visitation and information access list at the hospital where her father was receiving chemotherapy. (Tr. Vol. I, p. 66, lines 1-17; p. 67, lines 1-17).

(Respondent later testified the email was for both Petitioner and Ms. Davis to advise them to stay out of the parents' financial affairs and not to do anything without his input because he had power of attorney. Of note, and contrary to his assertion, is that the email is addressed solely to Belinda.)

Ms. Davis testified that of the three children, the Petitioner had generally been the most active in terms of helping their parents over the years. For example, she stated that Petitioner had painted the house, often took their mother to the doctor, cooked, cleaned, bought groceries, etc. (Tr. Vol. I, p. 62, lines 3-17).

Ms. Davis herself had not been as active in her parents' lives and, indeed, left Charleston in October of 2012 to live with her son and daughter-in-law in Hawaii upon the birth of their first child. Ms. Davis provided day care to the newborn so her daughter-in-law could continue working as a schoolteacher. She returned to Charleston approximately one week before the children's father passed away. Ms. Davis related that while at the airport in Hawaii about to return to Charleston, she got a call from Petitioner saying she thought "something was going on" because she could not reach the Respondent or her parents. Ms. Davis called "Uncle Jack"

Brantley and discovered the children's father, Mr. Arden Gunnells, was in the hospital. (Tr. Vol. I, p. 64, lines 1-18; p. 65, lines 1-6). Respondent later testified that their father was in the hospital for approximately two (2) weeks prior to his death. (Tr. Vol. II, p. 165, lines 21-23). As such, Mr. Arden Gunnells was in the hospital for approximately one (1) week without either of his daughters being notified.

On June 26, 2013, Belinda Davis went by her mother's home to pick up her father's death certificate. The Respondent had told her it would be taped on the front of the house, which it was. Ms. Davis nevertheless knocked and rang the doorbell in an attempt to see her mother. At first, a home health nurse answered saying she could not come in. She attempted to push past the home health nurse, but Respondent intervened and she was denied entry. There is some dispute about how physical Respondent's intervention was, but all involved heard him threaten to call the police. (Tr. Vol. I, p. 68, lines 1-16; p. 69, lines 1-22).

Soon thereafter Petitioner and Ms. Davis sought guidance from the Charleston County Probate Court, DSS, and a local attorney regarding their mother's care. (Tr. Vol. I, p. 70, lines 8-17; p. 71, lines 4-17). Petitioner also sought help from Legal Aid. No legal actions were filed, however, primarily because of cost. (Tr. Vol. I, p. 71, lines 21-25).

Petitioner, Cathy G. Harkness, testified that she had a long and loving relationship with both her parents until this was thwarted by her brother, Glenn. She confirmed Ms. Davis' testimony that she quickly moved back to Charleston from Myrtle Beach, South Carolina when she heard that Mr. Arden Gunnells had been diagnosed with cancer, and that she sold her Corvette to better accommodate her mother when she took her to various doctors. (Tr. Vol. I, p. 102, lines 7-22).

Petitioner detailed a variety of projects she had performed for her parents over the years. She was clearly familiar with her mother's physicians. She also detailed several trips she took her mother and Helen Carroll on. (Tr. Vol. I, p. 97, lines 1-14; p. 98, lines 1-15; p. 101, lines 1-6).

Like Ms. Davis, the Petitioner asserted that she and Ms. Davis focused more on the care of their mother while Respondent helped transport Mr. Arden Gunnells to his chemotherapy appointments. However, things took a dramatic turn on June 11, 2013 when Respondent told the Petitioner not to call or visit their mother anymore and that he would have her arrested for "harassment" if she attempted contact. (Tr. Vol. I, p. 107, lines 9-12).

Petitioner confirmed Ms. Davis' testimony regarding the incident at the Gunnells' home on June 26, 2013. She was present for the incident, but she was in the car and was not an active participant. After the confrontation, she and Ms. Davis accompanied each other to the Probate Court, DSS, and a local attorney's office to discuss what could be done to gain access to their mother. As stated previously, Petitioner also sought help from Legal Aid. (Tr. Vol. I, p. 108, lines 9-24).

In June 2013, Petitioner made several attempts to have returned to her a variety of personal items that had been at her mother's home. Apparently unsuccessful, she wrote a letter on June 27, 2013 threatening legal action. In July 2013, Jack Brantley tried to mediate a peaceful exchange with the Petitioner and the Respondent. However, this attempt failed, and Petitioner was forced to file a claim and delivery action in Small Claims Court. She ultimately prevailed on this action. (Tr. Vol. I, p. 114).

On cross-examination, Respondent's attorneys introduced two (2) letters written by the Petitioner. The first was a letter dated 2010 to her father. The second was a birthday card

(undated, but written approximately on or about October 8, 2013) to her mother. (Tr. Vol. I, p. 133, lines 4-5).

The letter to her father evidences a rift about an incident in which their father called the Petitioner a "disgrace." Petitioner responded with a long list of accusations about Respondent. While the evidence shows there was certainly a rift of sorts between the Petitioner and her father, there is nothing to suggest that it was anything but a temporary blow up. The letter was written in 2010, approximately two and one-half (2½) years before the death of Mr. Arden Gunnells. There is no other evidence of bad blood between Petitioner and Mr. Arden Gunnells until his death. Significantly, Mr. Arden Gunnells never changed his Last Will & Testament to exclude the Petitioner, and there was no evidence offered that he ever even considered doing so over the next two and one-half to three (2½-3) years before his death.

Read as a whole, Petitioner's letter to her mother reflects her desire to reach out and renew contact with her mother. This letter, coupled with the contacts made to the Probate Court, DSS, and the local attorney, pointedly contradict Respondent's assertion that the Petitioner essentially abandoned her mother.

With the testimony of Cathy Harkness, the Petitioner rests her case.

Although the Respondent testified last on rebuttal, the Court will begin with evaluating his testimony. Respondent went through the eighth grade, but dropped out in the ninth. He later obtained his GED and attended some courses at Trident Technical College. He has worked as a heavy equipment operator and also as a car salesman, but he began receiving social security disability benefits in approximately the year 2000. He testified that he receives approximately $1,350-$1,500 per month on disability, depending on whether or not prescription insurance is deducted. (Tr. Vol. II, p. 97, line 5; p. 99, lines 1-22).

Respondent's position is that the Petitioner and Ms. Davis essentially deserted their parents and refused to provide aid despite Respondent's request for help. (Tr. Vol. II, p. 133, lines 20-24; p. 153, lines 16-25). According to Respondent, this status was well-known within the family and openly discussed as a motive for their mother wanting to change her Will. He identified Jack Brantley as one of the people present for such discussion. Mr. Brantley would certainly seem to be a natural choice because of his close relationship with his sister, Helen Gunnells. Mr. Brantley, however, did not testify that any such discussion ever took place. Respondent identified other potential witnesses to that or similar discussions, but no one testified to that fact. On cross-examination, Respondent admitted he had no emails, notes, etc., in which he requested help from either sister.

Respondent acknowledged that Susanne Klok had been his closing attorney on June 6, 2013, and that Attorney Klok had no relationship with Helen Gunnells prior to the Testatrix changing her Will. Notably, at his deposition Respondent testified that the Testatrix met with Attorney Klok two (2) or three (3) times for thirty to forty (30-40) minutes each time prior to executing the new Will. Yet at trial, after Attorney Klok testified that she only met with Helen Gunnells one (1) time, Respondent changed his testimony to be in accordance with Attorney Klok. He confirmed that he made the appointment for his mother and drove her to and from the appointment. He waited outside the building while discussions about the new Will took place.

Respondent denied limiting access to his mother, and to the contrary, stated he asked other family members to encourage his sisters to step up and help. Although identified by Respondent, Mr. Brantley denied any such conversation. The only conversation along similar lines, according to Mr. Brantley, was when Mr. Brantley suggested the girls would be resources for help and Glenn responded, "that will never happen."

On the whole, it is undeniable that on those facts subject to corroboration or verification, Respondent's assertions fall short. The following examples are illustrative:

1) Respondent testified at his deposition that he took his mother to Susanne Klok two (2) or three (3) times for thirty to forty (30-40) minutes each time prior to the Testatrix executing the new Will. However, Attorney Klok testified there was only one (1) visit for two to three (2-3) hours. At trial, Respondent changed his testimony in accordance with Attorney Klok's testimony.

2) Respondent specifically testified that he asked Jack Brantley to ask the Petitioner and Ms. Davis for help with their mother. Mr. Brantley denied that conversation. Petitioner's Exhibit 2 generated on July 22, 2013 (well before this dispute) by Mr. Brantley contradicts Respondent's assertion as well.

3) Although currently still pending before this Court is a ruling on the Petition for Removal of the Respondent as Personal Representative. Petitioner has shown that the Respondent has breached his fiduciary duty as Personal Representative in as much as the Inventory and Appraisement was not adequately prepared; proceeds from estate "yard sales" were pocketed by the Respondent, and as such, are unaccounted for; Respondent sold the Gunnells' home and used the proceeds for his own benefit after this action to void the Will was filed; and he did not pay the creditors' claims in a timely manner as required by the statute. (Tr. Vol. II, p. 165, lines 1-12). In short, he has not administered the estate in an honest and forthright manner.

4) Respondent apparently told Dr. Rhonda Chanson he was having a hard time getting his mother in for appointments because of his "ongoing work schedule" when he was, in fact, out of work on full disability and had been since 2000. (Tr. Vol. II, p. 99, lines 10-25).

5) Additionally troubling is Respondent's failure to provide prescribed medications as directed to his mother, particularly Remeron, which was to improve Helen Gunnells' dementia. It appears this medication was not properly administered for the last several months of Mrs. Gunnells life. If the Testatrix was "weak minded", her ability to change or alter the Will, had she so desired, would have been hampered.

Although Respondent brought forward a number of witnesses to theoretically support his version of the facts, all of these witnesses knew the Testatrix only on a professional basis for a limited amount of time. Most notably, two (2) of the witnesses, Susanne Klok and her paralegal, Annmarie Voytko, only had contact with the Testatrix for a couple of hours. Respondent called two (2) home healthcare workers. One of the healthcare workers did not meet the Testatrix until five (5) months after the Will was changed. The healthcare workers confirmed that from their perspective, Glenn was an engaged and effective caregiver. They also confirmed that the Testatrix expressed resentment towards her daughters for failing to be available or help during her husband's final days. Jill Susan Costa testified about the confrontation with Ms. Davis in June 2013 when she tried to visit and Sharon Lee Wechter testified that the Testatrix expressed resentment in December 2013 about the Petitioner suing her. Lastly, the deposition of Dr. Rhonda Chanson was introduced without objection. Dr. Chanson became Helen Gunnells primary care physician in July 2012. Ms. Davis accompanied her to that first visit. Dr. Chanson saw the Testatrix on July 3, 2013, the same day she executed the disputed Will. While Dr. Chanson opined that the Testatrix was competent, she also described her as "visibly upset," "crying," and "distraught." (D. p. 35, lines 12-24). This visit would have been within hours of the execution of the Will. She had no opinion as to whether the Testatrix was emotionally stable enough to consummate the Will on July 3, 2013. (D. p. 25, lines 21: "...I have no knowledge of

that"; p. 38, lines 1-4). Under cross-examination, she confirmed that a prescription for potassium was never filled (D. p. 57, line 14 - p. 59, line 3) and that there was a long delay between the first time she prescribed Remeron, a drug for dementia, and when it was ultimately filled (D. p. 48, lines 9-12; p. 50, line 14 – p.54, line 2; p. 61, lines 6-10).

DISCUSSION

Generally, when the formal execution of a Will is admitted or proved a *prima facie* case in favor of the Will is made out. Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982). The burden is on the contestant to prove undue influence by clear and convincing evidence. Havird v. Schissell, 166 S.E.2d 801, 804 (S.C. 1969). To prove undue influence, the contestant must show that the person's influence over the testatrix must have been so great that it prevented the testatrix's free judgment and choice. In re Estate of Anderson, 674 S.E.2d 176, 179 (S.C. Ct. App. 1976).

Courts often look to see if any of the following circumstances apply when deciding whether a testatrix was unduly influenced at the time her Will was executed: (1) an unjust distribution made to a beneficiary; (2) motive and opportunity by the beneficiary to influence the testatrix; (3) a confidential or fiduciary relationship between the testatrix and the beneficiary; and (4) the susceptibility of the testatrix to be unduly influenced. See e.g., Dixon v. Dixon, 608 S.E.2d 849 (S.C. 2005); Russell v. Wachovia Bank, N.A., 578 S.E.2d 329 (S.C. 2003); Hairston v. McMillan, 692 S.E.2d 549 (S.C. Ct. App. 2010); Howard v. Nasser, 613 S.E.2d 64 (S.C. Ct. App. 2005). However, when determining whether the testatrix was unduly influenced, all circumstantial evidence, meaning all circumstances surrounding the execution of the Will that indicate it is as though the Will was the product of another person rather than the product of the testatrix, is the critical component of evaluation. Howard, 613 S.E.2d at 67. In cases where

allegations of undue influence have been successful, there has been evidence of threats, force, restricted visitation, or an existing fiduciary relationship at the time or before the Will's execution. See Moorer v. Bull, 212 S.C. 146, 46 S.E.2d 681 (1948); Byrd v. Byrd, 279 S.C. 425, 308 S.E.2d 788 (1983). The existence of a fiduciary relationship between a testatrix and beneficiary raises a presumption of undue influence. Howard, 613 S.E.2d at 68-69.

The Petitioner asserts that the Respondent unduly influenced the Testatrix to leave her estate to him. She bases this allegation on the facts set out above. The circumstantial evidence in this case shows that the Respondent unduly influenced the Testatrix in the execution of the July 3, 2013 Will. It is undisputed that an unjust distribution was made to the Respondent, which is evidenced by Respondent receiving the entire estate in contrast to Testatrix's previous Will leaving her estate to her three (3) children in equal shares. There was ample motive and opportunity for the Respondent to unduly influence his mother. Respondent has a very limited income and money undoubtedly provides a motive. Further, the evidence shows that Respondent was living with Testatrix and made himself the sole caretaker of the Testatrix, which provided him ample opportunity to unduly influence his mother. Various instances were identified where the other children and friends of the Testatrix were not permitted to speak to her on the telephone or to be alone with her in the home. Similar to Byrd, the Testatrix's conversations were monitored by the Respondent and he prevented her from seeing family members and friends; the Respondent controlled the Testatrix's finances; and instrumented the making of the new Will. Id. The evidence further shows there was both a confidential and fiduciary relationship between the Respondent and the Testatrix, which raises the presumption of undue influence. Respondent was not only his mother's Power of Attorney, he also had a fiduciary relationship with his mother, as evidenced by his living in the home, handling her affairs, and having his name added

to his mother's bank account. Finally, the Testatrix was susceptible to influence as she was isolated and completely reliant on Respondent based upon his refusal to allow her other children to assist in her care or her finances. Further, Respondent took her to change her Will days after her husband died and the evidence shows that the Testatrix was physically and mentally distraught immediately prior to the execution of the new Will.

Although the evidence shows the Respondent was not physically present in the room with the Testatrix and Attorney Klok during the execution of the new Will, the circumstances surrounding the execution clearly indicate the Will was the product of the Respondent and that the Testatrix felt that she "had no choice" but to execute a new Will. The new Will was not sealed when the Testatrix left the attorney's office and the Respondent had unfettered access to this Will after its execution. Further, the Testatrix was not provided with an opportunity to change the July 3, 2013 Will after its execution. The undisputed evidence shows that she was reliant on the Respondent for everything, including her transportation.

CONCLUSION

Based on the file, the exhibits entered into evidence during the trial, the testimony, and the arguments presented by counsel, the Court finds by clear and convincing evidence that the Testatrix was under undue influence when she made and executed the July 3, 2013 Will, and it is therefore invalid.

Based upon the foregoing, it is now, hereby:

ORDERED, ADJUDGED, AND DECREED that the evidence in this case is sufficient to prove that Helen B. Gunnells' Last Will & Testament dated July 3, 2013 was the product of

undue influence exerted upon the Testatrix by the Respondent, Glenn A. Gunnells; and it is further

ORDERED, ADJUDGED, AND DECREED that the Last Will & Testament dated July 3, 2013 is null and void; and it is further

ORDERED, ADJUDGED, AND DECREED that Helen B. Gunnells' Last Will & Testament dated November 7, 2006 is of full force and effect; and it is further

ORDERED, ADJUDGED, AND DECREED that Glenn A. Gunnells has ten (10) days from his receipt of this Order to contest this Order by notifying the Court in writing, with proper filings, indicating his intent to appeal.

AND IT IS SO ORDERED!

_____

IRVIN G. CONDON
Judge of Probate
County of Charleston

This ____ day of _____, 2016
Charleston, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2014-ES-10-202-2
	)	
IN THE MATTER OF: HELEN B. GUNNELLS	)	
	)	
CATHY G. HARKNESS, Petitioner,	)	**CERTIFICATE OF SERVICE**
	)	
vs.	)	
	)	
GLENN A. GUNNELLS, individually and as Personal Representative of the Estate of Helen B. Gunnells, Respondent.	)	

I, the undersigned, do hereby certify that on the 19 day of April 2016, I served a copy of the Petitioner's Proposed Order to Respondent by United States mail with the appropriate postage affixed thereto and addressed to the following:

Rob Varnado, Esquire
Alexis Wimberly, Esquire
Brown & Varnado, LLC
P. O. Box 1127
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By: Donald H. Howe
Donald H. Howe

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	Case No.: 2014-ES-10-202-2
COUNTY OF CHARLESTON	)	
	)	
IN RE: ESTATE OF HELEN B. GUNNELLS	)	
	)	
	)	ORDER VOIDING THE LAST WILL
Cathy G. Harkness,	)	& TESTAMENT DATED JULY 3, 2013
Petitioner,	)	AND ADMITTING THE LAST WILL
v.	)	& TESTAMENT DATED
Glenn A. Gunnells, individually and as	)	NOVEMBER 7, 2006 TO PROBATE
Personal Representative of the Estate of	)	
Helen B. Gunnells,	)	
Respondent.	)	
	)	

Trial Dates:	**March 1st – 3rd, 2016**
Presiding Judge:	**Irvin G. Condon**
Petitioner:	**Cathy G. Harkness**
Petitioner's Attorneys:	**Donald H. Howe, Esq., Julie C. Jackson-Bailey, Esq., and Michelle J. Weil, Esq.**
Respondent:	**Glenn A. Gunnells**
Respondent's Attorneys:	**Alexis M. Wimberly, Esq. and Robert B. Varnado, Esq.**
Court Reporters:	**Trisha Rarick and Judy W. Galuppo Magna Legal Services**

THIS MATTER came before the Court on Petition filed by Petitioner, Cathy G. Harkness, alleging that Respondent, Glenn A. Gunnells, exercised undue influence over his mother, Helen B. Gunnells (the "Testatrix"), when she executed a Last Will & Testament on July 3, 2013 that left her entire estate to the Respondent. The July 3, 2013 Will revoked a former Last Will and Testament dated November 7, 2006, by which the Testatrix devised her estate to her husband if he survived her, and then to her three (3) children in equal shares.

Present at the trial was Petitioner, along with her attorneys, Donald H. Howe, Esq., Julie C. Jackson-Bailey, Esq., and Michelle J. Weil, Esq. Respondent was also present, along with his

000034

attorneys, Alexis M. Wimberly, Esq. and Robert B. Varnado, Esq. The Court heard opening and closing arguments and testimony from several witnesses. Based on the file, the exhibits entered into evidence during the trial, the testimony, and the arguments presented by counsel, the Court finds by clear and convincing evidence that the Testatrix was under undue influence when she made and executed the July 3, 2013 Will.

FACTS

The Testatrix, Helen B. Gunnells and her husband, Aiken Arden Gunnells, were married for many years. There were three (3) children born of their union, namely: Cathy G. Harkness, Belinda G. Davis, and Glenn A. Gunnells. In approximately April of 2012, Mr. Arden Gunnells was diagnosed with cancer. In approximately March of 2013, the Respondent moved in to Helen and Arden Gunnells' home to help care for them. Mr. Arden Gunnells died on June 8, 2013.

On July 3, 2013, the Testatrix executed the Will, which is the subject of this action. The lawyer who prepared the July 3, 2013 Will was Susanne Klok, Esq. Attorney Klok was Respondent's attorney, having served as his closing attorney in connection with the sale of his home on June 7, 2013 (only 22 days prior to the execution of the Will in dispute). The testimony revealed that the Testatrix only met with Attorney Klok on the one (1) occasion on July 3, 2013. The Respondent made the appointment with Attorney Klok, and he drove the Testatrix to and from the appointment. The Respondent left the building while Attorney Klok met with the Testatrix for approximately one and one-half (1½) to three (3) hours in total. The Testatrix also saw her primary care physician, Dr. Rhonda Chanson, on July 3, 2013, within a short time of her appointment with Attorney Klok.

The Respondent continued to live with his mother until she died on February 7, 2014.

SUMMARY OF THE DISPUTE

Petitioner contends that she had an active and loving relationship with her parents for many years, but this changed after Respondent moved in with them. Respondent began asserting more and more control over their parents, but most especially over the Testatrix after the death of her husband, Mr. Arden Gunnells. Petitioner alleges that Respondent told her not to call or visit her mother and that if she did, he would have her arrested for harassment. According to Petitioner, her mother remained isolated and controlled by Respondent thereafter, including her act of changing her will on July 3, 2013.

Respondent alleges that he cared for his mother, but did not exercise control over her. He contends that both parents became disenchanted with their daughters because they failed to help during their final illnesses and declines. He points out that Belinda Davis moved to Hawaii for a substantial period of time and returned to Charleston only a week before Mr. Arden Gunnells died. According to Respondent, the Testatrix resented the girls' lack of care and concern, so she changed/executed the July 3, 2013 Will of her own free will.

THE EVIDENCE PRESENTED

Petitioner's first witness was the Testatrix's brother, Jack Brantley. Mr. Brantley is a retired Lieutenant Colonel who served as City Administrator for Waynesboro, Georgia for 23 years. He is now 83 years old and continues to serve on the Board of Elections in Waynesboro, Georgia. (Tr. Vol. I, p. 12, lines 11-21).

Mr. Brantley testified that he and his sister had a very close relationship throughout their lives. They visited several times each year and talked often/several times weekly. Mr. Brantley said he experienced a noticeable change in the openness and substance of communication he had

with his sister after her husband died and while Respondent was caring for her. (Tr. Vol. I, p. 18, lines 2-11; p. 41, lines 8-21; p. 45, lines 12-13). Because of his concern, he made himself available to be contacted by the Department of Social Services ("DSS") when Petitioner expressed to him she was consulting DSS about her concerns for her mother. This assertion was confirmed by his email dated July 22, 2013 (Petitioner's Exhibit 2).

Mr. Brantley confirmed that from his perspective, Petitioner and Ms. Davis both had good relationships with their parents, especially Cathy. (Tr. Vol. I, p. 24, lines 4-23). He identified Petitioner as being particularly active in the care of her parents over the years. He also testified about the following factors that were relevant to the Court's analysis of the overall dispute:

1) After Arden Gunnells died, Mr. Brantley noticed that his sister "...was very hesitant to talk to me", which was a dramatic change in the way that they had formerly communicated. (Tr. Vol. I, p. 18, lines 8-9).

2) Testatrix Helen Gunnells told Mr. Brantley "...that Glenn did not like for her to talk to Cathy." (Tr. Vol. I, p. 33, lines 18-19).

3) That he (Mr. Brantley) spoke to Respondent Glenn Gunnells about Cathy and Belinda visiting and helping Testatrix and that Respondent made it clear (on more than one occasion), "he didn't want them there." (Tr. Vol. I, p. 38, line 17).

4) Sometime after Mr. Arden Gunnells' death, he spoke to the Testatrix by phone and suggested she call Petitioner about a surgery that the Petitioner had on her leg to remove a cancerous growth. The Testatrix's response was, "I'll ask Glenn." (Tr. Vol. I, p. 41, lines 5-7).

5) Shortly after Mr. Arden Gunnells' cancer diagnosis, Mr. Brantley spoke with Respondent about the demands of caring for his parents. Mr. Brantley pointed out to the

Respondent that he would have the help of his sisters. Respondent's response was "that will never happen." (Tr. Vol. I, p. 27, lines 18-19).

6) Mr. Brantley directly contradicted Respondent's assertion that Mr. Brantley heard the Testatrix discuss changing her Will because of her disappointment with the care and affection shown by the girls. (Tr. Vol. I, p. 46, lines 18-22).

7) Mr. Brantley was familiar with the contents of Testatrix's earlier Will which divided the estate equally among the 3 children but was never aware of the July 3, 2013 Will until after his sister died. (Tr. Vol. I, p. 23, lines 1-4; p. 47, lines 18-22).

Petitioner's second witness Helen Carroll appeared by way of video deposition. Helen Carroll was one of the Testatrix's best friends and knew her for over forty (40) years. They spent lots of time together over the years, communicated often, and had a very close relationship. The nature of this relationship was confirmed by the Respondent.

Ms. Carroll confirmed that Petitioner had an active and close relationship with her mother for many years. Most importantly, Ms. Carroll's testimony concerned a visit she had with the Testatrix sometime after Mr. Arden Gunnells passed away. According to Ms. Carroll, she dropped by unannounced to visit the Testatrix, and the Respondent was not home. Ms. Carroll testified that during this visit without the Respondent's presence, the Testatrix confirmed that she had changed her Will, but that she had not wanted to do so. The Testatrix confided in Ms. Carroll that the Respondent made her change her Will. Helen said to Ms. Carroll, "I had no choice." (D. p. 18, lines 8-25). Ms. Carroll also testified that when Respondent returned home, the Testatrix "clammed up." (D. p. 20, lines 1-2).

Contrary to Respondent's testimony, Ms. Carroll testified that she was never left alone with the Testatrix to visit except for the one unannounced visit when the Respondent was not

home. She also related that she stopped visiting because she felt that her reception had become "cold" and unwelcoming, which contradicted Respondent's assertion that Ms. Carroll stopped visiting the Testatrix because of her own health concerns and inability to drive. (Tr. Vol. III, p. 20, lines 1-11). It also contradicted his testimony on direct examination about what good terms he and Ms. Carroll were on. (Tr. Vol. II, p. 119, lines 7-11).

Lastly, Ms. Carroll testified that she knew Glenn to have an alcohol problem because she noticed that he would "slur his words" when talking. (D. p. 30, lines 17-23).

Petitioner next offered excerpts from the deposition of the Respondent, Glenn A. Gunnells. The excerpts confirmed that he had a "confidential relationship" with the Testatrix; that he agreed that Helen Carroll was a very close, personal friend of the Testatrix; and that he had been living on social security disability payments since the year 2000.

Petitioner's third witness was the Testatrix's oldest child, Belinda G. Davis. Ms. Davis is a high school graduate. She has worked in her former husband's construction business, at the Medical University of South Carolina for the head of neurosurgery department, and as an assistant to the North Charleston Mayors, Bobby Kinard and Keith Summey for 13 years. (Tr. Vol. I, p. 55, lines 1-3; p. 57, lines 1-17).

Ms. Davis testified that all of the siblings had generally good relationships with their parents throughout the years. Once her father was diagnosed with cancer in the spring of 2012, all three children worked as a "team" to help with various needs of the parents. (Tr. Vol. I, p. 59, lines 6-16). She stated that the Petitioner was living in Myrtle Beach at the time of the cancer diagnosis, but that Petitioner quickly moved back to Charleston to help with her parents. (Tr. Vol. I, p. 60, lines 4-21). Petitioner also sold her car, a Corvette, and purchased another vehicle that was easier for her mother to get in and out of.

Ms. Davis described her brother, the Respondent, as a "control freak," an alcoholic, substance abuser, and a "user of people." She produced an email from Respondent authored in May of 2012, which was introduced as Petitioner's Exhibit 4 which stated: "Let it be known nothing will be signed or initialized till I look at it, exclamation point three times. Let it be written so let it be done, two exclamation points. All has been done and notified, several exclamation points." According to Ms. Davis, this email originated when she tried to add her name and Petitioner's name to a visitation and information access list at the hospital where her father was receiving chemotherapy. (Tr. Vol. I, p. 66, lines 1-17; p. 67, lines 1-17).

(Respondent later testified the email was for both Petitioner and Ms. Davis to advise them to stay out of the parents' financial affairs and not to do anything without his input because he had power of attorney. Of note, and contrary to his assertion, is that the email is addressed solely to Belinda.)

Ms. Davis testified that of the three children, the Petitioner had generally been the most active in terms of helping their parents over the years. For example, she stated that Petitioner had painted the house, often took their mother to the doctor, cooked, cleaned, bought groceries, etc. (Tr. Vol. I, p. 62, lines 3-17).

Ms. Davis herself had not been as active in her parents' lives and, indeed, left Charleston in October of 2012 to live with her son and daughter-in-law in Hawaii upon the birth of their first child. Ms. Davis provided day care to the newborn so her daughter-in-law could continue working as a schoolteacher. She returned to Charleston approximately one week before the children's father passed away. Ms. Davis related that while at the airport in Hawaii about to return to Charleston, she got a call from Petitioner saying she thought "something was going on" because she could not reach the Respondent or her parents. Ms. Davis called "Uncle Jack"

Brantley and discovered the children's father, Mr. Arden Gunnells, was in the hospital. (Tr. Vol. I, p. 64, lines 1-18; p. 65, lines 1-6). Respondent later testified that their father was in the hospital for approximately two (2) weeks prior to his death. (Tr. Vol. II, p. 165, lines 21-23). As such, Mr. Arden Gunnells was in the hospital for approximately one (1) week without either of his daughters being notified.

On June 26, 2013, Belinda Davis went by her mother's home to pick up her father's death certificate. The Respondent had told her it would be taped on the front of the house, which it was. Ms. Davis nevertheless knocked and rang the doorbell in an attempt to see her mother. At first, a home health nurse answered saying she could not come in. She attempted to push past the home health nurse, but Respondent intervened and she was denied entry. There is some dispute about how physical Respondent's intervention was, but all involved heard him threaten to call the police. (Tr. Vol. I, p. 68, lines 1-16; p. 69, lines 1-22).

Soon thereafter Petitioner and Ms. Davis sought guidance from the Charleston County Probate Court, DSS, and a local attorney regarding their mother's care. (Tr. Vol. I, p. 70, lines 8-17; p. 71, lines 4-17). Petitioner also sought help from Legal Aid. No legal actions were filed, however, primarily because of cost. (Tr. Vol. I, p. 71, lines 21-25).

Petitioner, Cathy G. Harkness, testified that she had a long and loving relationship with both her parents until this was thwarted by her brother, Glenn. She confirmed Ms. Davis' testimony that she quickly moved back to Charleston from Myrtle Beach, South Carolina when she heard that Mr. Arden Gunnells had been diagnosed with cancer, and that she sold her Corvette to better accommodate her mother when she took her to various doctors. (Tr. Vol. I, p. 102, lines 7-22).

Petitioner detailed a variety of projects she had performed for her parents over the years. She was clearly familiar with her mother's physicians. She also detailed several trips she took her mother and Helen Carroll on. (Tr. Vol. I, p. 97, lines 1-14; p. 98, lines 1-15; p. 101, lines 1-6).

Like Ms. Davis, the Petitioner asserted that she and Ms. Davis focused more on the care of their mother while Respondent helped transport Mr. Arden Gunnells to his chemotherapy appointments. However, things took a dramatic turn on June 11, 2013 when Respondent told the Petitioner not to call or visit their mother anymore and that he would have her arrested for "harassment" if she attempted contact. (Tr. Vol. I, p. 107, lines 9-12).

Petitioner confirmed Ms. Davis' testimony regarding the incident at the Gunnells' home on June 26, 2013. She was present for the incident, but she was in the car and was not an active participant. After the confrontation, she and Ms. Davis accompanied each other to the Probate Court, DSS, and a local attorney's office to discuss what could be done to gain access to their mother. As stated previously, Petitioner also sought help from Legal Aid. (Tr. Vol. I, p. 108, lines 9-24).

In June 2013, Petitioner made several attempts to have returned to her a variety of personal items that had been at her mother's home. Apparently unsuccessful, she wrote a letter on June 27, 2013 threatening legal action. In July 2013, Jack Brantley tried to mediate a peaceful exchange with the Petitioner and the Respondent. However, this attempt failed, and Petitioner was forced to file a claim and delivery action in Small Claims Court. She ultimately prevailed on this action. (Tr. Vol. I, p. 114).

On cross-examination, Respondent's attorneys introduced two (2) letters written by the Petitioner. The first was a letter dated 2010 to her father. The second was a birthday card

(undated, but written approximately on or about October 8, 2013) to her mother. (Tr. Vol. I, p. 133, lines 4-5).

The letter to her father evidences a rift about an incident in which their father called the Petitioner a "disgrace." Petitioner responded with a long list of accusations about Respondent. While the evidence shows there was certainly a rift of sorts between the Petitioner and her father, there is nothing to suggest that it was anything but a temporary blow up. The letter was written in 2010, approximately two and one-half (2½) years before the death of Mr. Arden Gunnells. There is no other evidence of bad blood between Petitioner and Mr. Arden Gunnells until his death. Significantly, Mr. Arden Gunnells never changed his Last Will & Testament to exclude the Petitioner, and there was no evidence offered that he ever even considered doing so over the next two and one-half to three (2½-3) years before his death.

Read as a whole, Petitioner's letter to her mother reflects her desire to reach out and renew contact with her mother. This letter, coupled with the contacts made to the Probate Court, DSS, and the local attorney, pointedly contradict Respondent's assertion that the Petitioner essentially abandoned her mother.

With the testimony of Cathy Harkness, the Petitioner rests her case.

Although the Respondent testified last on rebuttal, the Court will begin with evaluating his testimony. Respondent went through the eighth grade, but dropped out in the ninth. He later obtained his GED and attended some courses at Trident Technical College. He has worked as a heavy equipment operator and also as a car salesman, but he began receiving social security disability benefits in approximately the year 2000. He testified that he receives approximately $1,350-$1,500 per month on disability, depending on whether or not prescription insurance is deducted. (Tr. Vol. II, p. 97, line 5; p. 99, lines 1-22).

Respondent's position is that the Petitioner and Ms. Davis essentially deserted their parents and refused to provide aid despite Respondent's request for help. (Tr. Vol. II, p. 133, lines 20-24; p. 153, lines 16-25). According to Respondent, this status was well-known within the family and openly discussed as a motive for their mother wanting to change her Will. He identified Jack Brantley as one of the people present for such discussion. Mr. Brantley would certainly seem to be a natural choice because of his close relationship with his sister, Helen Gunnells. Mr. Brantley, however, did not testify that any such discussion ever took place. Respondent identified other potential witnesses to that or similar discussions, but no one testified to that fact. On cross-examination, Respondent admitted he had no emails, notes, etc., in which he requested help from either sister.

Respondent acknowledged that Susanne Klok had been his closing attorney on June 6, 2013, and that Attorney Klok had no relationship with Helen Gunnells prior to the Testatrix changing her Will. Notably, at his deposition Respondent testified that the Testatrix met with Attorney Klok two (2) or three (3) times for thirty to forty (30-40) minutes each time prior to executing the new Will. Yet at trial, after Attorney Klok testified that she only met with Helen Gunnells one (1) time, Respondent changed his testimony to be in accordance with Attorney Klok. He confirmed that he made the appointment for his mother and drove her to and from the appointment. He waited outside the building while discussions about the new Will took place.

Respondent denied limiting access to his mother, and to the contrary, stated he asked other family members to encourage his sisters to step up and help. Although identified by Respondent, Mr. Brantley denied any such conversation. The only conversation along similar lines, according to Mr. Brantley, was when Mr. Brantley suggested the girls would be resources for help and Glenn responded, "that will never happen."

On the whole, it is undeniable that on those facts subject to corroboration or verification, Respondent's assertions fall short. The following examples are illustrative:

1) Respondent testified at his deposition that he took his mother to Susanne Klok two (2) or three (3) times for thirty to forty (30-40) minutes each time prior to the Testatrix executing the new Will. However, Attorney Klok testified there was only one (1) visit for two to three (2-3) hours. At trial, Respondent changed his testimony in accordance with Attorney Klok's testimony.

2) Respondent specifically testified that he asked Jack Brantley to ask the Petitioner and Ms. Davis for help with their mother. Mr. Brantley denied that conversation. Petitioner's Exhibit 2 generated on July 22, 2013 (well before this dispute) by Mr. Brantley contradicts Respondent's assertion as well.

3) Although currently still pending before this Court is a ruling on the Petition for Removal of the Respondent as Personal Representative. Petitioner has shown that the Respondent has breached his fiduciary duty as Personal Representative in as much as the Inventory and Appraisement was not adequately prepared; proceeds from estate "yard sales" were pocketed by the Respondent, and as such, are unaccounted for; Respondent sold the Gunnells' home and used the proceeds for his own benefit after this action to void the Will was filed; and he did not pay the creditors' claims in a timely manner as required by the statute. (Tr. Vol. II, p. 165, lines 1-12). In short, he has not administered the estate in an honest and forthright manner.

4) Respondent apparently told Dr. Rhonda Chanson he was having a hard time getting his mother in for appointments because of his "ongoing work schedule" when he was, in fact, out of work on full disability and had been since 2000. (Tr. Vol. II, p. 99, lines 10-25).

5) Additionally troubling is Respondent's failure to provide prescribed medications as directed to his mother, particularly Remeron, which was to improve Helen Gunnells' dementia. It appears this medication was not properly administered for the last several months of Mrs. Gunnells life. If the Testatrix was "weak minded", her ability to change or alter the Will, had she so desired, would have been hampered.

Although Respondent brought forward a number of witnesses to theoretically support his version of the facts, all of these witnesses knew the Testatrix only on a professional basis for a limited amount of time. Most notably, two (2) of the witnesses, Susanne Klok and her paralegal, Annmarie Voytko, only had contact with the Testatrix for a couple of hours. Respondent called two (2) home healthcare workers. One of the healthcare workers did not meet the Testatrix until five (5) months after the Will was changed. The healthcare workers confirmed that from their perspective, Glenn was an engaged and effective caregiver. They also confirmed that the Testatrix expressed resentment towards her daughters for failing to be available or help during her husband's final days. Jill Susan Costa testified about the confrontation with Ms. Davis in June 2013 when she tried to visit and Sharon Lee Wechter testified that the Testatrix expressed resentment in December 2013 about the Petitioner suing her. Lastly, the deposition of Dr. Rhonda Chanson was introduced without objection. Dr. Chanson became Helen Gunnells primary care physician in July 2012. Ms. Davis accompanied her to that first visit. Dr. Chanson saw the Testatrix on July 3, 2013, the same day she executed the disputed Will. While Dr. Chanson opined that the Testatrix was competent, she also described her as "visibly upset," "crying," and "distraught." (D. p. 35, lines 12-24). This visit would have been within hours of the execution of the Will. She had no opinion as to whether the Testatrix was emotionally stable enough to consummate the Will on July 3, 2013. (D. p. 25, lines 21: "...I have no knowledge of

that"; p. 38, lines 1-4). Under cross-examination, she confirmed that a prescription for potassium was never filled (D. p. 57, line 14 - p. 59, line 3) and that there was a long delay between the first time she prescribed Remeron, a drug for dementia, and when it was ultimately filled (D. p. 48, lines 9-12; p. 50, line 14 – p.54, line 2; p. 61, lines 6-10).

DISCUSSION

Generally, when the formal execution of a Will is admitted or proved a *prima facie* case in favor of the Will is made out. Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982). The burden is on the contestant to prove undue influence by clear and convincing evidence. Havird v. Schissell, 166 S.E.2d 801, 804 (S.C. 1969). To prove undue influence, the contestant must show that the person's influence over the testatrix must have been so great that it prevented the testatrix's free judgment and choice. In re Estate of Anderson, 674 S.E.2d 176, 179 (S.C. Ct. App. 1976).

Courts often look to see if any of the following circumstances apply when deciding whether a testatrix was unduly influenced at the time her Will was executed: (1) an unjust distribution made to a beneficiary; (2) motive and opportunity by the beneficiary to influence the testatrix; (3) a confidential or fiduciary relationship between the testatrix and the beneficiary; and (4) the susceptibility of the testatrix to be unduly influenced. See e.g., Dixon v. Dixon, 608 S.E.2d 849 (S.C. 2005); Russell v. Wachovia Bank, N.A., 578 S.E.2d 329 (S.C. 2003); Hairston v. McMillan, 692 S.E.2d 549 (S.C. Ct. App. 2010); Howard v. Nasser, 613 S.E.2d 64 (S.C. Ct. App. 2005). However, when determining whether the testatrix was unduly influenced, all circumstantial evidence, meaning all circumstances surrounding the execution of the Will that indicate it is as though the Will was the product of another person rather than the product of the testatrix, is the critical component of evaluation. Howard, 613 S.E.2d at 67. In cases where

allegations of undue influence have been successful, there has been evidence of threats, force, restricted visitation, or an existing fiduciary relationship at the time or before the Will's execution. See Moorer v. Bull, 212 S.C. 146, 46 S.E.2d 681 (1948); Byrd v. Byrd, 279 S.C. 425, 308 S.E.2d 788 (1983). The existence of a fiduciary relationship between a testatrix and beneficiary raises a presumption of undue influence. Howard, 613 S.E.2d at 68-69.

The Petitioner asserts that the Respondent unduly influenced the Testatrix to leave her estate to him. She bases this allegation on the facts set out above. The circumstantial evidence in this case shows that the Respondent unduly influenced the Testatrix in the execution of the July 3, 2013 Will. It is undisputed that an unjust distribution was made to the Respondent, which is evidenced by Respondent receiving the entire estate in contrast to Testatrix's previous Will leaving her estate to her three (3) children in equal shares. There was ample motive and opportunity for the Respondent to unduly influence his mother. Respondent has a very limited income and money undoubtedly provides a motive. Further, the evidence shows that Respondent was living with Testatrix and made himself the sole caretaker of the Testatrix, which provided him ample opportunity to unduly influence his mother. Various instances were identified where the other children and friends of the Testatrix were not permitted to speak to her on the telephone or to be alone with her in the home. Similar to Byrd, the Testatrix's conversations were monitored by the Respondent and he prevented her from seeing family members and friends; the Respondent controlled the Testatrix's finances; and instrumented the making of the new Will. Id. The evidence further shows there was both a confidential and fiduciary relationship between the Respondent and the Testatrix, which raises the presumption of undue influence. Respondent was not only his mother's Power of Attorney, he also had a fiduciary relationship with his mother, as evidenced by his living in the home, handling her affairs, and having his name added

to his mother's bank account. Finally, the Testatrix was susceptible to influence as she was isolated and completely reliant on Respondent based upon his refusal to allow her other children to assist in her care or her finances. Further, Respondent took her to change her Will days after her husband died and the evidence shows that the Testatrix was physically and mentally distraught immediately prior to the execution of the new Will.

Although the evidence shows the Respondent was not physically present in the room with the Testatrix and Attorney Klok during the execution of the new Will, the circumstances surrounding the execution clearly indicate the Will was the product of the Respondent and that the Testatrix felt that she "had no choice" but to execute a new Will. The new Will was not sealed when the Testatrix left the attorney's office and the Respondent had unfettered access to this Will after its execution. Further, the Testatrix was not provided with an opportunity to change the July 3, 2013 Will after its execution. The undisputed evidence shows that she was reliant on the Respondent for everything, including her transportation.

CONCLUSION

Based on the file, the exhibits entered into evidence during the trial, the testimony, and the arguments presented by counsel, the Court finds by clear and convincing evidence that the Testatrix was under undue influence when she made and executed the July 3, 2013 Will, and it is therefore invalid.

Based upon the foregoing, it is now, hereby:

ORDERED, ADJUDGED, AND DECREED that the evidence in this case is sufficient to prove that Helen B. Gunnells' Last Will & Testament dated July 3, 2013 was the product of undue influence exerted upon the Testatrix by the Respondent, Glenn A. Gunnells; and it is further

ORDERED, ADJUDGED, AND DECREED that the Last Will & Testament dated July 3, 2013 is null and void; and it is further

ORDERED, ADJUDGED, AND DECREED that Helen B. Gunnells' Last Will & Testament dated November 7, 2006 is of full force and effect; and it is further

ORDERED, ADJUDGED, AND DECREED that Glenn A. Gunnells has ten (10) days from his receipt of this Order to contest this Order by notifying the Court in writing, with proper filings, indicating his intent to appeal.

AND IT IS SO ORDERED!

IRVIN G. CONDON
Judge of Probate
County of Charleston

Attest: A True Copy

Clerk Probate Court
Charleston County, South Carolina

This 12th day of May, 2016
Charleston, South Carolina.

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF CHARLESTON	)	**CASE NUMBER 2014-ES-10-2022**
	)	
IN THE MATTER OF:	)	
THE ESTATE OF HELEN B. GUNNELLS	)	**ORDER DENYING MOTION TO ALTER, AMEND, and/or RECONSIDER**
Cathy G. Harkness,	)	
Petitioner,	)	
-vs.-	)	
Glenn A. Gunnells, Individually and as Personal Representative of the Estate of Helen B. Gunnells,	)	
Respondent.	)	

THIS MATTER comes before the Court by way of a Motion to Alter, Amend and/or Reconsider filed by Respondent Glenn A. Gunnells, by and through his counsel, Alexis M. Wimberly, Esq. The Motion was filed on June 2, 2016, in response to this Court's Order dated May 12, 2016, voiding the Last Will and Testament of Decedent and Testatrix Helen B. Gunnells dated July 3, 2013. Upon consideration of the pleadings, the file, and the record, Respondent's Motion to Alter, Amend and/or Reconsider is respectfully **denied**.

Respondent's Motion contends that this Court made reversible error by improperly applying South Carolina law. In particular, Respondent alleges that the Court inadequately expresses controlling authority and improperly adopts and applies a "four circumstances test." Respondent further alleges that the Court committed reversible error by "ignoring" testimony supporting his position, accepting other evidence favorable to Petitioner, and otherwise making improper or unsupported findings of fact. The Court now considers these arguments.

In the first instance, Respondent argues that the Court failed to consider the full body of South Carolina jurisprudence and improperly adopts what Respondent deems a "four circumstances test." The Court does not dispute Respondent's recitation of the elements of undue influence (however, those passages of Respondent's Motion that examine testamentary capacity are largely irrelevant, as this was not the basis for the Court's ruling). Resp't's Mot. 1–5. However, Respondent's assessment of the "four circumstances test" mischaracterizes the Court's evaluation of certain factors long considered relevant in establishing the existence of undue influence. Id. at 5–8.

At the outset, Respondent faults the Court for applying a "test" not recognized by South Carolina case law. More particularly, Respondent alleges that by considering the dispositions made under the contested Will, Respondent's motive and opportunity to exert undue influence, the existence of a confidential or fiduciary relationship, and the testator's susceptibility to such influence, the Court adopted a "four circumstances test" not previously contemplated by South Carolina courts. The Order, however, does not have the intent or effect of adopting an exclusive, formulaic four-pronged "test" that can be rigidly and systematically applied to establish the existence or non-existence of undue influence. To the contrary, the Court recites a handful of the conditions often considered relevant in determining, in light of the facts and circumstances of each case, whether a testamentary instrument may be the product of unlawful coercion. Indeed, contrary to Respondent's assertion, the Order explicitly affirms that the Court is evaluating "all circumstantial evidence" rather than producing an exclusive list of determinative factors. Order 14. This Court's Order merely identifies four circumstances that may be pertinent to such an inquiry; it does not adopt a "four circumstances test."

Respondent then seeks to establish that none of the factors or circumstances referenced by the Court in its so-called "test" has any basis in South Carolina jurisprudence. Resp't's Mot. 6–8. This contention is without merit. First, Respondent asserts that the distribution of property under the

contested testamentary instrument has no bearing on an inquiry as to undue influence, and that such a consideration directly conflicts with established law. Id. at 6. Admittedly, the Respondent is correct in affirming a testator's right to dispose of her property in her own discretion. Id. South Carolina law has long upheld the principle that a testator's will may direct her property "according to the testator's pleasure and in [her] absolute discretion, whether judiciously or capriciously, justly or unjustly, subject only to the restrains upon the power of disposition that the law has imposed." Wilson v. Dallas, 403 S.C. 411, 445, 743 S.E.2d 746, 765 (2013). This is not to say, however, that the dispositions made by an allegedly invalid Will are wholly irrelevant in considering whether the testator may have been unlawfully forced or coerced into disinheriting certain persons, for whom she expressed fondness and affection, in favor of the influencer. See In re Last Will and Testament of Smoak, 286 S.C. 419, 422, 334 S.E.2d 806, 808 (1985) (noting that "the one who is alleged to have exerted undue influence normally gains if the Will is sustained"); Howard v. Nasser, 364 S.C. 279, 289–90, 613 S.E.2d 64, 69 (Ct. App. 2005) (referencing the existence of an "unnatural disposition making the person charged with the undue influence chief beneficiary" and considering significant changes in disposition as relevant in supporting a claim of undue influence); In re Estate of Cumbee, 333 S.C. 664, 673, 511 S.E.2d 390, 395 (Ct. App. 1999) (considering that the contested instrument made dispositions drastically different from those in prior wills and contrary to the testator's expressed intentions); Hembree v. Estate of Hembree, 311 S.C. 192, 196, 428 S.E.2d 3, 5 (Ct. App. 1993) (noting that the consistency between the dispositions made in a contested instrument and a will executed nearly ten years earlier tended to indicate that the testator "recognized who his loved ones were and to whom he wished the majority of his estate to go"). In its May 12, 2016 Order, this Court noted that the contested Will dated July 3, 2013, deviates considerably from the Decedent's earlier Will by devising her entire estate to the alleged influencer rather than equally among her three children, and took testimony that the Decedent had maintained a

generally positive relationship with Petitioner prior to Respondent's interference. The Court agrees that these findings, taken alone, would fall well short of sufficient to support a finding of undue influence. However, Respondent contends that considering the history and context of the Decedent's testamentary scheme is at odds with settled law, even as one of many elements or circumstances tending to establish undue influence. This contention is rejected.

Second, Respondent argues that "[t]he second circumstance ['motive and opportunity'] is simply non-dispositive in and of itself." Resp't's Mot. 6. The Court agrees. However, the existence or non-existence of a particular fact or circumstance need not be singularly dispositive of an entire legal issue in order to be properly considered.

Respondent then charges that this Court made an error of law by considering the Testator's susceptibility to influence, claiming that South Carolina courts have not recognized this factor in undue influence cases for some seventy years. Id. To the contrary, our Courts frequently consider whether a testator's mental health or disposition may have rendered her more or less vulnerable to such influence. See Byrd v. Byrd, 279 S.C. 425, 427, 308 S.E.2d 788, 789 (1983) ("[T]he evidence establishes the testator was infirm . . . and, consequently, particularly susceptible to influence"); Smith v. Whetstone, 209 S.C. 78, 90, 39 S.E.2d 127, 132 (1946) ("The testator was a man of strongly marked characteristics, of sound mind and determined will, abundantly able to protect himself, which should not be overlooked in a case of this kind."); In re Estate of Anderson, 381 S.C. 568, 575, 674 S.E.2d 176, 180 (Ct. App. 2009) (upholding will and noting testimony that Mrs. Anderson was "the one giving orders and not likely to be influenced by anyone else"); Smoak, 286 S.C. at 426; 334 S.E.2d at 810 (affirming the validity of will and recognizing that "the testator was an intelligent, strong-willed man"); see also Bullard v. Crawley, 294 S.C. 276, 280, 363 S.E.2d 897, 899 (1987) (noting that the grantor was known to be an "independent, strong-willed . . . outspoken person" in declining to set aside a deed for undue

influence); Resp't's Mot. 16 (noting testimony that the Testatrix in this action was "strong willed, independent, intelligent and opinionated"). This inquiry is entirely independent of an examination of the testator's testamentary capacity, and does not require the same analysis or findings of fact. This Court's Order of May 12, 2016, finds that Mrs. Gunnells was isolated, dependent, and emotionally distraught when she executed the July 3, 2013 Will, and concludes that these circumstances rendered her particularly susceptible to unlawful coercion and manipulation. Our cases instruct that undue influence exists when the will of the testator is overcome by another. Russell v. Wachovia Bank, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003). The relative strength or malleability of the testator's will is necessarily relevant to that analysis.

Finally, Respondent admits that the existence of a confidential or fiduciary relationship has direct bearing under South Carolina law, but nevertheless protests that the Court did not specifically state or apply the appropriate burden of proof. Resp't's Mot. 8. Once again, Respondent's position is directly undermined by the language of the Order itself, which expressly notes that the Petitioner bears the burden of establishing undue influence by clear and convincing evidence and ultimately concludes that she has. Order 14, 16. The contestant of a will bears the burden of proving the existence of undue influence by clear, unmistaken and convincing evidence. Dallas, 403 S.C. at 437, 743 S.E.2d at 760. "Although there is a presumption of undue influence in the making of a will involving fiduciaries, the ultimate burden always remains with the proponent." Id. (citing Gordon v. Busbee, 397 S.C. 119, 723 S.E.2d 822 (Ct. App. 2012). This Court concluded that a confidential, fiduciary relationship existed between the Testatrix and the Respondent, a conclusion amply supported by the record. Respondent failed to rebut the presumption created by this relationship, and this Court found clear and convincing evidence that the Testatrix's July 3, 2013 Will was the product of undue influence. This does not constitute improper allocation of the burden of proof.

Additional contentions raised by Respondent's Motion mischaracterize this Court's Order and underlying reasoning. The Motion faults the Court for considering evidence of events taking place after the testamentary act, and in the same breath concedes that such events are probative as to whether the Testatrix had an opportunity to later revoke or change her Will. Resp't's Mot. 14–15. "[E]ven if a contestant does establish an inference of undue influence, the unhampered opportunity of the testator to change the will after the operation of undue influence destroys this conclusion." Hembree v. Estate of Hembree, 311 S.C. 192, 197, 428 S.E.2d 3, 5 (Ct. App. 1993). Certainly, circumstances and events affecting the Testatrix following the execution of the 2013 Will until her death in February of 2014 are pertinent to that analysis. Respondent further complains that the Court erred by failing to find that the Testatrix was competent to execute a Will. Resp't's Mot. 18–20. In fact, the Court made no finding of incompetence or lack of capacity; Respondent's objections are misplaced.

Respondent's other objections primarily relate to the Court's evaluation of various testimony and evidence presented in the case. Respondent contends, for example, that the Court "fail[ed] to consider" the testimony of attorney Suzanne Klok and her paralegal. Resp't's Mot. 8–9. To the contrary, this Court's Order expressly acknowledges and contemplates the testimony of Attorney Klok and Ms. Voytko. Order 13. In addition, Respondent not only concludes that the Court erred by failing to consider evidence that he was not in the room when the instrument was executed, but also that the Court erred again by considering all other circumstances surrounding the visit. Resp't's Mot. 12–14. Respondent asks the Court to isolate as "conclusive" a single detail regarding execution of the Will, to the exclusion of all other circumstances leading up to and immediately following the visit to Attorney Klok's office. The Court can identify no controlling law indicating that an examination of the events surrounding the drawing and execution of a contested document must be limited solely to whether the alleged influencer was physically present when the testatrix put pen to paper and signed her name.

Respondent's remaining objections allege, in sum, that the Court gave inadequate weight to evidence favorable to him and erroneously accepted testimony offered by Petitioner. For instance, Respondent purports that there is "no evidence" that anyone was prohibited or restricted from visiting the Testatrix, or that her medication was not properly administered. Resp't's Mot. 15–18, 22–23. Here, the record speaks for itself; Respondent simply objects to the Court's evaluation of the testimony received. See Pet'r's Mem. In Opp'n to Mot. to Recons. 2–4. Other purported grounds for reconsideration fault the Court for "accepting" or "being persuaded" by testimony and inferences unfavorable to Respondent. To this, the Court can only restate that in view and upon consideration of all evidence and testimony properly presented, it nevertheless concluded that the July 3, 2013 Will was the product of undue influence.

Based upon the foregoing, it is hereby

ORDERED, ADJUDGED AND DECREED that Respondent Glenn A. Gunnells' Motion to Alter, Amend and/or Reconsider filed June 2, 2016, is respectfully **denied**.

IT IS SO ORDERED.

Irvin G. Condon
Judge of Probate, Charleston County

This the 25th day of August, 2016.
Charleston, South Carolina

Attest: A True Copy
Clerk Probate Court
Charleston County, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	2016-CP-10-4566
Glenn Gunnells, Individually and as the Personal Representative of The Estate of Helen B. Gunnells,	)	
Appellant,	)	**ORDER AFFIRMING PROBATE COURT ORDERS OF MAY 12, 2016 AND AUGUST 25, 2016**
v.	)	**2014-ES-10-00202-2**
Cathy G. Harkness,	)	
Respondent.	)	

FILED
2017 APR 11 PM 3:08
JULIE J. ARMSTRONG
CLERK OF COURT

FACTUAL / PROCEDURAL BACKGROUND

This matter came before this Court on March 3, 2017 on Appellant Glenn Gunnells' appeal from the Orders of the Honorable Irvin G. Condon, dated May 12, 2016 and August 25, 2016 in the probate action 2014-ES-10-00202-2. The May 12, 2016 probate court order held that the July 3, 2013 will was a product of undue influence and therefore null and void. R. at 49-50. The May order also held that the November 7, 2006 will is of full force and effect. R. at 50. The probate court's August 25, 2016 Order denied Appellant Glenn Gunnells' Motion to Alter, Amend, and/or Reconsider the May 12, 2016 order. R. at 57.

The Testatrix, Helen B. Gunnells, and her husband, Aiken Arden Gunnells, were married for many years and had three children: Cathy G. Harkness (Respondent), Belinda G. Davis, and Glenn A. Gunnells (Appellant). R. at 35. In April 2012, Mr. Aiken Gunnells was diagnosed with cancer and in approximately March 2013, Mr. Glenn Gunnells moved into his parents' home to help care for them. Id. On June 8, 2013, Mr. Arden Gunnells died. On July 3, 2013, the Testatrix executed a Will that revoked an earlier Will that was executed on November 7, 2006. R. at 34. The 2006 Will devised the Testatrix's entire estate to her husband if he survived her, and then to

her three children in equal shares. Id. The 2013 Will devised the entire estate to Mr. Glenn Gunnells. R. at 48.

STANDARD OF REVIEW

Appeals from the probate court are governed by the South Carolina Probate Code which provides that "a final order, sentence, or decree of a probate court" may be appealed to the circuit court. S.C. Code Ann. § 62-1-308 (Supp. 2016). The circuit court siting as an appellate court "shall hear and determine the appeal according to the rules of law[,]" and "[t]he hearing must be strictly on appeal and no new evidence may be presented." Id. § 62-1-308(i). "As used in this statute, the phrase 'according to the rules of law' means according to the rules governing appeals." *In re* Howard, 315 S.C. 356, 360; 434 S.E.2d 254, 256 (1993). Absent a statute or court rule, "expressly prescribing a different standard of review, the circuit court must apply the same standard that this Court or the Court of Appeals would apply were the appeal taken directly to either of them." Id. at 361; 434 S.E.2d at 257. "If the proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." Id. "The standard of review at law is the same whether the facts are found by a jury or the judge sitting without a jury." Id. An appeal "in a contest as to the validity of a will is in the nature of a case at law rather than in equity . . . ." Harris v. Berry, 231 S.C. 201, 205; 98 S.E.2d 251, 253 (1957).

Furthermore, Rule 61 of the South Carolina Rules of Civil Procedure provides that:

> No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 61, SCRCP. The Supreme Court of South Carolina has explained that "[t]he admission or exclusion of evidence is within the sound discretion of the trial court and the trial court's decision will not be disturbed on appeal absent an abuse of discretion." Conner v. City of Forest Acres, 363 S.C. 460, 467; 611 S.E.2d 905, 908 (2005). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." Id. "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence." Id.

Finally, our appellate courts have held that in reviewing a verdict "the jury does not have to believe uncontradicted testimony" because "[t]he fact that testimony is not contradicted directly does not render it undisputed." Vinson v. Hartley, 324 S.C. 389, 409-410; 477 S.E.2d 715, 725-26 (Ct. App. 1996). It remains in the jury's province to determine "the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation." Id. at 410. Furthermore, "[i]f there is any evidence to sustain the factual findings implicit in the jury's verdict, this court must affirm." Id. (quoting Hobgood v. Pennington, 300 S.C. 309, 313; 387 S.E.2d 690, 692 (Ct. App. 1989)).

DISCUSSION

I. Undue Influence

South Carolina Probate Code provides that "[p]roponents of a will have the burden of establishing prima facie proof of due execution in all cases" and "[c]ontestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity." S.C. Code Ann. § 62-3-407 (Supp. 2016). Additionally, "[p]arties have the



ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof." Id.

"[I]n order to void a will on the ground of undue influence, the undue influence must destroy free agency and prevent the maker's exercise of judgment and free choice." Wilson v. Dallas, 403 S.C. 411, 437; 743 S.E.2d 746, 760 (2013) (quoting *In re* Est. of Cumbee, 333 S.C. 664, 671; 511 S.E.2d 390, 394 (Ct. App. 1999) (internal quotations omitted)). "The influence necessary to void a will must amount to force and coercion." Id. "A mere showing of opportunity or motive does not create an issue of fact regarding undue influence." Id. "In cases where allegations of undue influence have been successful, there has been evidence of threats, force, restricted visitation, or an existing fiduciary relationship at the time of or before the will's execution." Id. "Although there is a presumption of undue influence in the making of a will involving fiduciaries, the ultimate burden always remains with the proponent." Id. Furthermore, South Carolina's Supreme Court has recognized

> that by the very nature of the case, the evidence of undue influence will be mainly circumstantial. It is not usually exercised openly so that it can be directly proved. However, the circumstances must point unmistakably and convincingly to the fact that the mind of the testator was subjected to that of some other person so that the will is that of the latter and not of the former.

Calhoun v. Calhoun, 277 S.C. 527, 530; 290 S.E.2d 415, 417 (1982) (citing Havird v. Schissell, 252 S.C. 404; 166 S.E.2d 801 (1969)).

II. Issues On Appeal[1]

(1) Whether the trial court by errors of law in its analysis of controlling authority erred in determining whether Testatrix's Will was the product of undue influence?

No. This Court finds that the probate court correctly stated, analyzed, and applied the controlling law of the State of South Carolina.

(2) Whether the trial court erred in finding that Testatrix's Will was the product of undue influence under the application of a "circumstances test" where such findings do not require Petitioner to meet her high burden of proof?

No. As discussed above, "by the very nature of the case, the evidence of undue influence will be mainly circumstantial." Calhoun at 530; 290 S.E.2d at 417. While the probate court's May 12, 2016 Order does enumerate four circumstances that have been considered in determining whether a will was a product of undue influence, the probate court specifically states that "when determining whether the testatrix was unduly influenced, all circumstantial evidence, meaning all circumstances surrounding the execution of the Will that indicate it is as though the Will was the product of another person rather than the product of the testatrix, is the critical component of evaluation." R. at 47 (citing Howard v. Nasser, 364 S.C. 279; 613 S.E.2d 64 (Ct. App. 2005)). Additionally, the order indicates that circumstances involving threats, force, and restricted visitation have been found to evince undue influence. R. at 48. Furthermore, the probate court stated that its May 12, 2016 Order "does not have the intent or effect of adopting an exclusive, formulaic four-pronged 'test'" but rather "recites a handful of the conditions often considered relevant in determining . . . whether a testamentary instrument may be the product of unlawful coercion." R. at 52. Applying the facts to the law, the probate court found, among other circumstances, that a fiduciary relationship existed between the appellant and testatrix; that on some occasions appellant prevented testatrix from talking on the phone or having friends visit; that appellant was living with

[1] Appellant's Statement of the Issues on Appeal (filed Oct. 11, 2016).

the testatrix, was the sole caretaker, controlled testatrix's finances, and was testatrix's power of attorney. R. at 48. Therefore, this Court finds that the probate court did not apply a "circumstances test," nor did its analysis alter the contestant's burden of proof.

(3) Whether the trial court erred in finding that Testatrix's Will was the product of undue influence in the face of uncontroverted evidence and testimony from Testatrix's attorney and her paralegal to the contrary, who were the only witnesses to the testamentary act itself?

No. The probate judge, sitting without a jury as fact-finder, is not required to believe uncontroverted testimony because it remains in the fact-finder's province to weigh the credibility and interests of a witness. Furthermore, the circuit court cannot disturb the probate court's findings of fact unless there is no evidence to support them. As discussed supra Part II. (2), this Court finds there is evidence supporting the probate court's findings of fact.

(4) Whether the trial court erred in considering facts and testimony of events that occurred in time after the testamentary act as probative of a finding that Testatrix's Will was the product of undue influence?

No. See supra Part II. (2). However, the probate court is correct in acknowledging that "circumstances and events affecting the Testatrix following the execution of the 2013 Will until her death in February 2014" are probative of whether the testatrix had an "unhampered opportunity . . . to change the will after the operation of undue influence" which would rebut the presumption of undue influence in the making of a will involving fiduciaries. R. at 56.

(5) Whether the trial court relied on irrelevant facts and/or made factual findings not reasonably supported in the record in making its determination that Testatrix's Will was the product of undue influence?

No. This Court finds that the probate court's orders are supported by the evidence and testimony admitted during trial and therefore this Court cannot disturb the probate court's findings of fact.

(6) Whether the trial court erred in finding the Testatrix's Will was the product of undue influence when there was no showing of threats, force, or restricted visitation?

No. See supra Part II. (2).

(7) Whether the trial court erred by giving great weight to the Petitioner's misstated and misrepresented testimony of Testatrix's physician Dr. Rhonda Chanson, when the medical conclusions found by the probate court are not reasonably supported in the record?

No. See supra Part II. (3).

(8) Whether the trial court erred in admitting and giving great weight to unsubstantiated, unsupported, and unauthenticated medical records from one of Testatrix's pharmacies?

No. See supra Part II. (3).

(9) Whether the trial court erred in accepting the testimony of Ms. Helen Carroll regarding Testatrix's statement "I had no choice" when Ms. Carroll testified several times she did not remember ever having a conversation with Testatrix about a will, nor knew the circumstances of the statement from which she read?

No. See supra Part II. (3).

(10) Whether the trial court erred in disregarding the testimony of two (2) independent home health physical therapists who provided treatment to Testatrix at the end of her life and whom Testatrix confided her thoughts regarding her daughters?

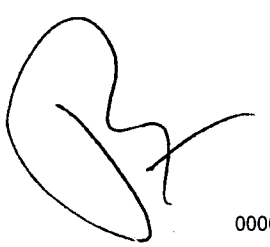
No. See supra Part II. (3).

(11) Whether the trial court erred in giving great weight to Petitioner's testimony that she sought DSS, Probate Court and/or Legal Aid with no evidence, independent witness or supporting testimony to prove the same?

No. See supra Part II. (3).

(12) Whether the trial court's order denying the Motion to Reconsider addressed any of the legal and factual errors of the probate court's original order?

This Court does not find any legal or factual errors contained in the Probate Court's May 12, 2016 Order.



CONCLUSION

IT IS THEREFORE ORDERED that the Probate Court Orders of May 12, 2016 and August 25, 2016 are hereby AFFIRMED.

IT IS SO ORDERED!

April 7, 2017
Charleston, South Carolina

Roger M. Young Sr.
Presiding Judge

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

FILE

PROOF OF DELIVERY

IN THE MATTER OF: 2014 JUL 28 PM 2:54 CASE NUMBER: 2014-ES10-00202-2
Helen B Gunnells)
(Decedent)

PROBATE COURT
CHARLESTON COUNTY

On the 28 day of July, 20 14, I mailed or delivered the following document(s):

Opposing the will to Judge, Mothers Will dated 7-3-2013, ~~Written~~ Statements of Helen B Gunnells; Aiken A Gunnells copy of original will SC General Durable Power of Attorney of Helen B Gunnells, Mothers death cert., dad's insurance information

☑ A copy of which is attached hereto and incorporated herein, or Probate Court inventory + appraisement + Application for Informal Appointment
☑ The original of which is on file with the Court.

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

☐ personal delivery	☐ ordinary first-class mail
☒ certified mail	☐ registered mail
☐ commercial delivery	☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
Glenn A. Gunnells	1931 Capri Dr, Charleston, SC 29407

SWORN to before me this 28th day of July, 20 14

Notary Public for South Carolina
My Commission Expires: 12/7/19

Signature:
Print Name: Cathy G Harkness
Address: 2255 Lamb St
Charleston SC 29407
Telephone (Work):
(Home):
(Cell): 843-830-5018
E-mail: cghark@yahoo.com
Relationship to Decedent/Estate: daughter

FORM #120PC (1/2014)
62-1-401, 62-3-706, 62-3-1001, SCRCP 4(d)(9)

FILE

2014 JUL 28 PM 2:54

PROBATE COURT
CHARLESTON COUNTY

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF Charleston)

Cathy G. Harkness)
Petitioner,)
) SUMMONS
vs.) CASE NO: 2014-ES-10-00202-2
)
Glenn A Gunnells)
Respondent(s).)

TO THE RESPONDENT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the petitioner, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

Charleston, South Carolina

Dated: July 28, 2014

Cathy G Harkness
Petitioner/Attorney for Petitioner

Address: 2255 Lamb St
Charleston, SC
29414

SCCA 401PC (9/11)

STATE OF SOUTH CAROLINA	)	July 28th, 2014
	)	
COUNTY OF CHARLESTON	)	
	)	IN THE PROBATE COURT
IN THE MATTER OF	)	OPPOSING THE WILL
	)	DATED JULY 3rd, 2013
HELEN B. GUNNELLS	)	
(Decedent) Case # 2014-ES-10-202-2	)	

2014 JUL 28 PM 2:54
PROBATE COURT
CHARLESTON COUNTY
2014ES1000202-2

Dear Honorable Judge,

I am opposing the probate of the will of my mothers Helen B. Gunnells dated July 3rd, 2013. My brother, Glenn A. Gunnells, the Personal Representative has submitted the will.

The reason I challenge this will, I have evidence it was "Coerced" by my brother and "was not" of my mother's free will.

I am asking the Court to declare the entire will of my mother, Helen B. Gunnells, to be invalid based on evidence listed below and to grant me a court date. Also, I have attached statements from my family and friends that I will present in effort to disprove the validity of the current will.

Following are points for your consideration that I intend to use as proof that my mother signed the most recent will under duress and while in a state of emotional instability.

1. UNDUE INFLUENCE

a) That my brother, Glenn A. Gunnells, exercised psychological and

mental control over my mother for his own profit.

b) That Glenn would be placing her in a nursing home if she refused to sign a new will he had drawn up earlier and was signed 7-3-2013 less than a month after her husband's, my father's death.

c) That Glenn pressured and exerted his own desires on my mother who was extremely vulnerable since my father had died only months earlier on 6-8-2013.

d) Glenn controlled mothers conversations, who she could talk too, who she could have over and forbidden my sister & I to visit with threats of calling the police.

2. DURESS

a) That my brother, Glenn A. Gunnells, overpowered my mother in more ways than one.

b) Mother expressed to her lifelong friend that she had no choices.

c) That Glenn refused to take mother to her own sister's funeral.

d) Both my sister and I have heard Glenn tell mother to "shut up" on numerous occasions.

3. FRAUD, DECEIT and PERSUASION

a) That my brother, Glenn A. Gunnells, deliberately intended to mislead close family members.

b) That Glenn gave false information to my mother concerning my sister and I who were named in the original wills.

4. PHYSICAL and NUTRITIONAL NEGLECT

a) That my brother, Glenn A. Gunnells, stated that his mother had chest pains for a couple of weeks before being taken to her doctor. That Glenn told her to put two (2) aspirins under her tongue and lie down.

b) Mother was skin and bones on her deathbed.

5. EMBELLISHED

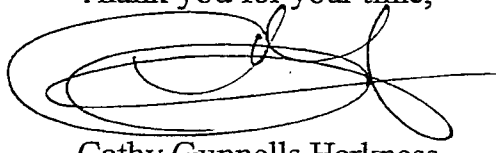
a) For his own benefit.

If my father wanted their wills changed, they would have done so at the same time and while he was still living. My father insisted their will stand and the estate be divided equally among us siblings.

Glenn had an estate sale of my father's personal possessions two (2) weeks after he died. Then 1½ weeks after my mother died, Glenn sold most of mother's expensive items, china, jewelry, silver, furniture and vehicle. The home was placed up for sale 2 weeks after mother died for $498,000.00 but was pulled from MLS shortly but now on the market again. Glenn is moving this week-end, August 1st, 2014.

I am "Pleading" with the court to expedite me a court date to have this entire will declared invalid and changed back to the original wills.

Thank you for your time,



Cathy Gunnells Harkness
2255 Lamb St.
Charleston, SC 29414
(H) 509-3038 (C) 843-830-5018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE MATTER OF

HELEN B. GUNNELLS
(Decedent)

IN THE PROBATE COURT

FILED
2014 SEP 15 PM 4:37
PROBATE COURT
CHARLESTON COUNTY

ANSWER TO OPPOSITION TO WILL

CASE NO.: 2014-ES-10-202-2

Respondent, Glenn A. Gunnells, Individually and as Personal Representative of the Estate of Helen B. Gunnells, in answer to the Opposition of the Petition and as a Counterclaim, alleges and states as follows:

FOR A FIRST DEFENSE

1. Each and every allegation which is not hereinafter specifically admitted, modified or explained is hereby denied.

2. Respondent admits that Glenn A. Gunnells is the Personal Representative and has submitted the will to probate.

3. Respondent denies that the will of Helen B. Gunnells is invalid.

4. Respondent denies the allegations that Glenn A. Gunnells "coerced" Helen B. Gunnells and that her will "was not" of her free will.

5. Respondent denies the will is invalid based on the "evidence" listed in the opposition to the will filed by Petitioner, Cathy Gunnells Harkness.

6. Respondent denies the Petitioner attached any statements from family and friends that she purports to have in order to disprove the validity of the will, no such documents were attached to the papers served upon Respondent. Respondent denies these allegations and demands strict proof thereof.

7. Respondent denies the allegations that Helen B. Gunnells signed her most current will under duress and while in a state of emotional instability, and demands strict proof thereof.

8. Respondent affirmatively alleges that Helen B. Gunnells had the requisite legal capacity to instruct her attorney as to whom she wanted to inherit the assets of her estate, whom she wanted to serve as Personal Representative of her estate and to properly execute his Last Will and Testament after reviewing the document to make certain it complied with her instructions to her attorney.

FOR A DEFENSE TO PETITIONER'S FIRST CAUSE OF ACTION (Undue Influence)

9. In response to Paragraph 1 of the Opposition to the will, Respondent realleges and incorporates his responses to the allegations of the preceding paragraphs as if again set forth verbatim herein.

10. Respondent denies the allegations of Paragraphs 1(a), 1(b), 1(c), and 1(d) of the Opposition to the will and demands strict proof thereof.

11. In response to Paragraphs 1(a), 1(b), 1(c), and 1(d), Respondent admits that the Decedent Helen B. Gunnels, who was his mother, trusted Respondent to carry out the duties of Personal Representative of her Estate, which is why she appointed Respondent Personal Representative in her Last Will and Testament and not the Petitioner.

12. Respondent denies the allegations contained in Paragraphs 1(a), 1(b), 1(c), and 1(d) of the Opposition to the will as he did not induce Helen B. Gunnells to execute any documents and had no discussions with Helen B. Gunnells prior to, or at the time of the execution of her Last Will and Testament, regarding changing her will other than requesting Respondent to drive her to her attorney's office.

13. Respondent affirmatively alleges that his mother informed him that she wanted to change her will and informed him of the contents of her Last Will and Testament and her decision to name him as personal representative after the document had been prepared by an attorney of her choice and Helen B. Gunnells had signed the document.

14. Respondent affirmatively alleges that his mother controlled who she spoke to, who she would have over to visit, not Respondent.

15. Respondent affirmatively alleges that he had no intention of placing his mother in nursing home and they did not have any conversations where they ever discussed placing his mother in a nursing home.

16. Respondent affirmatively alleges that his mother informed him that she did not want to have any contact with Petitioner due to Petitioner's behavior before and after the death of her husband.

17. Respondent affirmatively alleges that Petitioner sued their mother two weeks after their father died on June 8, 2013.

18. Respondent denies that the Petitioner is entitled to the relief requested, i.e. an expedited court date to have the entire will declared invalid and changed back to the previous will.

FOR A DEFENSE TO PETITIONER'S SECOND CAUSE OF ACTION (Duress)

19. In response to Paragraph 2 of the Opposition to the will, Respondent realleges and incorporates his responses to the allegations of the preceding paragraphs as if again set forth verbatim herein.

20. Respondent denies the allegations of Paragraphs 2(a), 2(b), 2(c), and 2(d) of the Opposition to the will and demands strict proof thereof.

21. Respondent affirmatively alleges that his mother informed him that she did not want to have any contact with Petitioner due to Petitioner's behavior before and after the death of her husband.

22. Respondent affirmatively alleges that Petitioner sued their mother two weeks after their father died on June 8, 2013.

23. Respondent denies that the Petitioner is entitled to the relief requested, i.e. an expedited court date to have the entire will declared invalid and changed back to the previous will.

FOR A DEFENSE TO PETITIONER'S THIRD CAUSE OF ACTION (Fraud, Deceit and Persuasion)

24. In response to Paragraph 3 of the Opposition to the will, Respondent realleges and incorporates his responses to the allegations of the preceding paragraphs as if again set forth verbatim herein.

25. Respondent denies the allegations of Paragraphs 3(a) and 3(b) of the Opposition to the will and demands strict proof thereof.

26. Respondent affirmatively alleges that his mother decided independently to cut out his sisters from her will due to their behavior and actions.

FOR A DEFENSE TO PETITIONER'S FOURTH CAUSE OF ACTION (Physical and Nutritional Neglect)

27. In response to Paragraph 4 of the Opposition to the will, Respondent realleges and incorporates his responses to the allegations of the preceding paragraphs as if again set forth verbatim herein.

28. Respondent denies the allegations of Paragraphs 4(a) and 4(b) of the Opposition to the will and demands strict proof thereof.

29. Respondent affirmatively alleges that Helen B. Gunnells never complained of chest pains and was regularly under her doctor's care as well as home health professionals.

30. Respondent affirmatively alleges that on or about December, 2013, he called 911 the same day his mother fell in the kitchen and bruised her side. Respondent affirmatively alleges the 911 operator told him to have his mother put two (2) aspirins under her tongue while waiting for the EMT professionals to arrive, which he did.

31. Respondent affirmatively alleges that Helen B. Gunnells was losing weight before she died so her doctor prescribed medication to stimulate her appetite but did not believe she was malnourished. Respondent affirmatively alleges that his mother was not "skin and bones on her deathbed."

FOR DEFENSE TO PETITIONER'S FIFTH CAUSE OF ACTION (Embellished)

32. In response to Paragraph 5 of the Opposition to the will, Respondent realleges and incorporates his responses to the allegations of the preceding paragraphs as if again set forth verbatim herein.

33. Respondent denies the allegations of Paragraph 5(a) of the Opposition to the will and demands strict proof thereof. Respondent is unable to respond further to Paragraph 5(a) to the extent the paragraph is incomplete and his unable to formulate a further response.

34. Respondent denies allegations that his father insisted their wills stand and the estate be divided equally among the siblings and demands strict proof thereof.

35. Respondent affirmatively alleges that he never had an estate sale of his father's possessions. At his mother's direction, Respondent gave away to family members or donated certain possessions of his father after his father died.

36. Respondent affirmatively alleges that he did not have an estate of his mother's items but had a yard sale of household items approximately two months after the death of his mother.

37. Respondent affirmatively alleges that he put his mother's house up for sale on August 30, 2014 for $524,888.00 for the first time.

FOR A SECOND DEFENSE
(Failure to State a Claim)

38. Respondent realleges and incorporates his responses to the allegations of the preceding paragraphs as if again set forth verbatim herein.

39. Respondent moves for an Order dismissing Petitioner's Opposition to the will on the grounds that the Opposition has failed to allege facts sufficient to constitute any cause of action against the Respondent.

WHEREFORE, Respondent prays that this Honorable Court issue an Order:

(a) Dismissing Petitioner's claims;

(b) Retaining its proper jurisdiction over this matter;

(c) Declaring that Helen B. Gunnells had the requisite legal capacity to execute her Last Will and Testament, that it was properly executed and is legally valid and binding;

(d) Declaring that Respondent's appointment as Personal Representative of the Estate of Helen B. Gunnells is valid, that her actions as Personal Representative are valid; and

(e) For such other and further relief as this Court deems just and proper.

Dated: September 15, 2014
Mount Pleasant, South Carolina

RESPECTFULLY SUBMITTED

BY: _____

Suzanne Lafleur Klok (SC Bar #69875)
Rhett D. Klok (69876)
Klok Law Firm, LLC
Attorney for Personal Representative of the
Estate of Helen B. Gunnells
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sklok@kloklaw.com

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE MATTER OF

HELEN B. GUNNELLS
(Decedent)

FILED
2014 SEP 15 PM 4:37
PROBATE COURT
CHARLESTON COUNTY

IN THE PROBATE COURT

CERTIFICATE OF SERVICE

CASE NO.: 2014-ES-10-202-2

The undersigned hereby certifies that she served this **ANSWER TO OPPOSITION TO WILL** filed in the above captioned case, by United States Mail, postage pre-paid, on this 15th day of September, 2014, on the Petitioner in the above captioned matter:

Cathy G. Harkness
2255 Lamb Street
Charleston, SC 29407

KLOK LAW FIRM, LLC
Annmarie Voytko
Paralegal to Attorneys
Rhett D. Klok (SC Bar # 69876)
Suzanne Lafleur Klok (SC Bar #69875)
1002 Anna Knapp Blvd., Ste. 103
Mt. Pleasant, SC 29464
(843) 216 8860 (Office)
(843) 375 9028 (Fax)

Dated September 15, 2014
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2014-ES-10-202-2
	)	
IN THE MATTER OF: HELEN B. GUNNELLS	)	
	)	
CATHY G. HARKNESS, Petitioner,	)	**AMENDED PETITION OPPOSING THE WILL DATED JULY 3, 2013**
	)	
vs.	)	
	)	
GLENN A. GUNNELLS, individually and as Personal Representative of the Estate of Helen B. Gunnells, Respondent.	)	

FILED
15 APR 16 PM 1:08
PROBATE COURT
CHARLESTON COUNTY

The Petitioner above named, complaining of the Respondent above named, hereby amends her Petition Opposing the Will Dated July 3, 2013, filed on July 28, 2014, and alleges and shows as follows:

1. Petitioner is an interested person in the Estate of Helen B. Gunnells as the daughter and potential devisee of the Decedent, Helen B. Gunnells, pursuant to S.C. Code Ann. Section 62-1-201(23).

2. Petitioner was a devisee of the Estate of Helen B. Gunnells by virtue of a Will dated November 7, 2006 executed by Helen B. Gunnells.

3. Petitioner was allegedly disinherited by virtue of a later Will dated July 3, 2013 executed by Helen B. Gunnells.

4. Petitioner believes and alleges that the Will of Helen B. Gunnells dated July 3, 2013 was the product of undue influence and not truly desired by Helen B. Gunnells, her decisions therein having been made at the direction of Glenn A. Gunnells in that:

a) Helen B. Gunnells made an unjust distribution to Glenn A. Gunnells in the Will dated July 3, 2013;

b) Glenn A. Gunnells had motive and opportunity to influence Helen B. Gunnells;

c) by virtue of a previously executed Power of Attorney, a confidential or fiduciary relationship existed between Helen B. Gunnells and Glenn A. Gunnells at the time of the execution of Will dated July 3, 2013 and at relevant times before and after July 3, 2013; and

d) Helen B. Gunnells had the susceptibility to be unduly influenced by Glenn A. Gunnells.

5. Petitioner further believes and alleges that the Will of Helen B. Gunnells dated July 3, 2013 was the product of duress and not truly desired by Helen B. Gunnells.

6. Petitioner is informed and alleges that after the execution of the July 3, 2013 document Glenn A. Gunnells continued to exercise control and undue influence on the decisions of Helen B. Gunnells, including her desire to change or revoke the Will dated July 3, 2013.

7. Petitioner is informed and alleges that by virtue of the coercion and undue influence that Glenn A. Gunnells exercised over Helen B. Gunnells, and as a direct result thereof, the Will dated July 3, 2013 should be null and void and the Estate of Helen B. Gunnells should be governed by the Will dated November 7, 2006 that was previously in effect.

WHEREFORE, having fully set forth her Petition, the Petitioner prays that this Honorable Court inquire into the matters set forth herein as follows:

A. That this Court finds that the Will dated July 3, 2013 is a product of undue influence and therefore null and void;

B. That this Court finds, in the alternative, that the Will dated July 3, 2013 is a product of duress and therefore null and void;

C. That this Court finds that the Will dated November 7, 2006 is valid and of full force and effect;

D. For such other and further relief as this Court may deem just and proper.

Donald H. Howe

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ATTORNEYS FOR PETITIONER

Charleston, SC
April ___, 2015.

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Email: info@baileyweil.com
ATTORNEYS FOR PETITIONER

Charleston, SC
April 16, 2015.

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF CHARLESTON	)	Case No. 2014-ES-10-202-2
	)	
Cathy G. Harkness,	)	
	)	
Petitioner,	)	
	)	
v.	)	**ANSWER TO AMENDED PETITION**
	)	
Glenn A. Gunnells, Individually and as Personal Representative of the **Estate of Helen B. Gunnells.**	)	
	)	
Respondents.	)	
	)	
In the Matter of: Estate of Helen B. Gunnells	)	

15 MAY 22 APP. 03
CHARLESTON COUNTY

Respondent, Glenn A. Gunnells, individually and as Personal Representative of the Estate of Helen B. Gunnells ("Respondent"), responding to the Amended Petition of the Petitioner above-named, alleges and states as follows:

FOR A FIRST DEFENSE

1. Respondent denies each and every allegation of the Petition which is not hereinafter specifically admitted, modified or explained.

2. Paragraph 1 of the Amended Petition states conclusions of law to which no response is required. To the extent a response is required, denied.

3. Answering Paragraph 2 of the Amended Petition, Respondent craves reference to the terms of the enumerated Will dated November 7, 2006, and denies any allegations which are inconsistent therewith.

4. Answering Paragraph 3 of the Amended Petition, Respondent craves reference to the terms of the enumerated Will dated July 3, 2013, and denies any allegations which are inconsistent therewith.

5. Respondent denies all of the allegations in Paragraph 4 of the Petition and denies all allegations contained in subparts (a) through (d) of Paragraph 4 and demands strict proof thereof.

6. Respondent denies the allegations in Paragraphs 5-7 of the Petition and demands strict proof thereof.

7. The WHEREFORE paragraph of Petition is denied.

8. Paragraphs A, B, C and D of the Amended Petition states conclusions of law and prayers for relief to which no response is required. To the extent a response is required, denied.

FOR AN ADDITIONAL DEFENSE
(Failure to State a Claim)

9. Respondent realleges and incorporates his responses to the allegations of the preceding paragraphs as if fully repeated verbatim.

10. The Amended Petition fails to state facts sufficient to constitute a cause of action and the Petition should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FOR AN ADDITIONAL DEFENSE
(S.C. Code Ann. § 15-36-10)

11. Respondent realleges and incorporates his responses to the allegations of the preceding paragraphs as if fully repeated verbatim.

12. Respondent pleads the possible application of the South Carolina Frivolous Proceedings Act, S.C. Code Ann. § 15-36-10.

FOR AN ADDITIONAL DEFENSE
(Reservation/Non-Waiver)

13. Respondent realleges and incorporates his responses to the allegations of the preceding paragraphs as if fully repeated verbatim.

14. Respondent specifically reserves any additional defenses including affirmative defenses, as may be available or revealed to it during the course of its investigation and/or discovery in the case, and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Petition for Removal, this Respondent prays that the Petition be dismissed against him and for such other relief as the Court may deem just and proper.

Respectfully Submitted,

BROWN & VARNADO, LLC

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Robert B. Varnado
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Attorneys for Respondents

May 21, 2015
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	IN THE PROBATE COURT
COUNTY OF CHARLESTON	CASE NO.: 2014-ES-10-202-2
IN THE MATTER OF: HELEN B. GUNNELLS	
CATHY G. HARKNESS, Petitioner,	**PETITION FOR REMOVAL OF PERSONAL REPRESENTATIVE AND APPOINTMENT OF A SPECIAL ADMINISTRATOR**
vs.	
GLENN A. GUNNELLS, individually and as Personal Representative of the Estate of Helen B. Gunnells, Respondent.	

15 APR 16 PM 1:06
PROBATE COURT
CHARLESTON COUNTY

The Petitioner above named, complaining of the Respondent above named, alleges and shows as follows:

1. Petitioner is an interested person in the Estate of Helen B. Gunnells as the daughter and an heir of the Decedent, Helen B. Gunnells, pursuant to S.C. Code Ann. Section 62-1-201(23).

2. Petitioner seeks removal of Glenn A. Gunnells as the Personal Representative of the Estate of Helen B. Gunnells, pursuant to S.C. Code Ann. Section 62-3-611.

3. Petitioner is informed and alleges that cause for removal exits because it would be in the best interests of the Estate.

4. Petitioner is informed and believes that the Estate of Helen B. Gunnells may have claims against Glenn A. Gunnells, individually, for causes of action including but not limited to the following:

a) failure to provide and administer medications as prescribed after having undertaken the care of the Decedent, Helen B. Gunnells; and

b) breach of the fiduciary duty that Glenn A. Gunnells owed to Helen B. Gunnells by virtue of a Power of Attorney which she had given to him.

5. Petitioner is informed and believes that Glenn A. Gunnells as Personal Representative cannot effectively represent the Estate of Helen B. Gunnells in an investigation of and potential action against himself.

6. Due to the potential action against the Respondent, the Petitioner is informed and believes that there exists a cause for concern that the Estate will not be properly or effectively preserved by the Respondent, and Petitioner requests an Order for the removal of Glenn A. Gunnells as Personal Representative of the Estate.

7. Petitioner further seeks the appointment of a Special Administrator pursuant to S.C. Code Ann. Section 62-3-614 to ensure proper preservation of the Estate and to secure the Estate's proper administration.

WHEREFORE, having fully set forth her Petition, the Petitioner prays that this Honorable Court inquire into the matters set forth herein as follows:

A. That this Court finds that the Respondent, Glenn A. Gunnells, should be removed as the Personal Representative of the Estate of Helen B. Gunnells;

B. That this Court finds that a Special Administrator be appointed to administer the Estate;

C. For such other and further relief as this Court may deem just and proper.

Donald H. Howe

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Email: info@baileyweil.com
ATTORNEYS FOR PETITIONER

Charleston, SC
April 16, 2015.

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF CHARLESTON	)	Case No. 2014-ES-10-202-2
	)	
Cathy G. Harkness,	)	
	)	
Petitioner,	)	
	)	
v.	)	**ANSWER TO PETITION FOR REMOVAL OF PERSONAL REPRESENTATIVE AND APPOINTMENT OF SPECIAL ADMINISTRATOR**
	)	
Glenn A. Gunnells, Individually and as Personal Representative of the **Estate of Helen B. Gunnells.**	)	
	)	
Respondents.	)	
	)	
In the Matter of: Estate of Helen B. Gunnells	)	

15 MAY 22 AM 11:00

PROBATE COURT
CHARLESTON COUNTY

Respondent, Glenn A. Gunnells, individually and as Personal Representative of the Estate of Helen B. Gunnells ("Respondent"), responding to the Petitioner's Answer to Petition for Removal of Personal Representative and Appointment of Special Administrator, alleges and states as follows:

FOR A FIRST DEFENSE

1. Respondent denies each and every allegation of the Petition which is not hereinafter specifically admitted, modified or explained.

2. Paragraph 1 of the Petition for Removal states conclusions of law to which no response is required. To the extent a response is required, denied.

3. Paragraph 2 of the Petition for Removal states conclusions of law and prayer for relief to which no response is required. To the extent a response is required, denied.

4. Respondent denies Paragraph 3 of the Petition for Removal and demands strict proof thereof.

5. Respondent denies all of the allegations in Paragraph 4 of the Petition and denies all allegations contained in subparts (a) and (b) of Paragraph 4 and demands strict proof thereof.

6. Respondent denies Paragraph 5 of the Petition for Removal and demands strict proof thereof.

7. Paragraph 6 of the Petition for Removal states conclusions of law and prayers for relief to which no response is required. To the extent a response is required, denied.

8. Paragraph 7 of the Petition for Removal states conclusions of law and prayers for relief to which no response is required. To the extent a response is required, denied.

9. The WHEREFORE paragraph of Petition for Removal is denied.

10. Paragraphs A, B, and C of the Petition for Removal states conclusions of law and prayers for relief to which no response is required. To the extent a response is required, denied.

FOR AN ADDITIONAL DEFENSE
(Failure to State a Claim)

11. Respondent realleges and incorporates his responses to the allegations of the preceding paragraphs as if fully repeated verbatim.

12. The Petition for Removal fails to state facts sufficient to constitute a cause of action and the Petition should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FOR AN ADDITIONAL DEFENSE
(S.C. Code Ann. § 15-36-10)

13. Respondent realleges and incorporates his responses to the allegations of the preceding paragraphs as if fully repeated verbatim.

14. Respondent pleads the possible application of the South Carolina Frivolous Proceedings Act, S.C. Code Ann. § 15-36-10.

FOR AN ADDITIONAL DEFENSE
(Reservation/Non-Waiver)

15. Respondent realleges and incorporates his responses to the allegations of the preceding paragraphs as if fully repeated verbatim.

16. Respondent specifically reserves any additional defenses including affirmative defenses, as may be available or revealed to it during the course of its investigation and/or discovery in the case, and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Petition for Removal, this Respondent prays that the Petition be dismissed against him and for such other relief as the Court may deem just and proper.

Respectfully Submitted,

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Attorneys for Respondents

May 21, 2015
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	Case No. 2016-CP-10-
)	
Glenn A. Gunnells, Individually and as Personal Representative of the Estate of Helen B. Gunnells.)	
)	**NOTICE OF INTENT TO APPEAL TO THE CIRCUIT COURT**
Appellant,)	
)	
v.)	
)	
Cathy G. Harkness,)	
)	
Respondent.)	

YOU WILL PLEASE TAKE NOTICE that the Appellant, Glenn A. Gunnells, individually and as Personal Representative of the Estate of Helen B. Gunnells, by and through his undersigned counse, pursuant to S.C. Code Ann. § 62-1-308, intends to appeal to the Charleston County Court of Common Pleas the Orders of the Honorable Judge Irvin G. Condon, dated May 12, 2016 and August 25, 2016. Copies of the Orders are attached hereto, and incorporated by reference, as if fully restated herein.

Respectfully Submitted,

BROWN & VARNADO, LLC

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awimberly@brown-varnado.com
rvarnado@brown-varnado.com
Attorneys for Appellant

August 26, 2016
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within ***Notice of Intent to Appeal to Circuit Court*** upon all parties in this matter by electronic mail and by depositing a true copy of the same in the U.S. mail, proper postage prepaid, addressed as follows:

Donald H. Howe, Esquire
Law Offices of Donald H. Howe, LLC
P.O. Box 31324
Charleston, South Carolina 29417

Julie Jackson Bailey, Esquire
Michelle Weil, Esquire
Bailey & Weil, LLC
1 Carriage Lane, Bldg H, 2nd Floor
Charleston, South Carolina 29407

Alexis M. Wimberly

August 26, 2016
Mount Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr.
Circuit Court Judge

RECEIVED
MAY 11 2017
SC Court of Appeals

CASE NO. 2016-CP-10-4566

Glenn Gunnells, Individually and as the Personal Representative of the Estate of Helen B. Gunnells.....Appellant.

v.

Cathy G. Harkness .....Respondent.

NOTICE OF APPEAL

Glenn Gunnells appeals: (I) the *Order Affirming Probate Court Orders of May 12, 2016 and August 25, 2016* of the Honorable Roger M. Young, Sr. dated April 7, 2017 [filed April 11, 2017, of which written notice was received by Appellant on April 17, 2017] attached herewith as Exhibit "A"; (II) the *Order Denying Motion to Alter, Amend, and/or Reconsider* of August 25, 2016 attached herewith as Exhibit "B"; and (III) the *Order Voiding the Last Will & Testament Dated July 3, 2013 and Admitting the Last Will & Testament Dated November 7, 2006* of May 12, 2016 attached as Exhibit "C".

Robert B. Varnado SC Bar #0007085
Alexis M. Wimberly SC Bar #101611
BROWN & VARNADO LLC
P.O. Box 1127
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(843) 737-7300
Attorneys for Appellant

May 10, 2017
Mt. Pleasant, South Carolina

Other Counsel of Record:

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Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
MAY 11 2017
SC Court of Appeals

The Honorable Roger M. Young, Sr.
Circuit Court Judge

CASE NO. 2016-CP-10-4566

Glenn Gunnells, Individually and as the Personal Representative of the Estate of Helen B. Gunnells.....Appellant.

v.

Cathy G. Harkness .....Respondent

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellant's ***Notice of Appeal*** in the above referenced case has been served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on this date to the following:

Donald H. Howe, Esquire
Law Offices of Donald H. Howe, LLC
P.O. Box 31324
Charleston, South Carolina 29417

Julie Jackson Bailey, Esquire
Michelle Weil, Esquire
Bailey & Weil, LLC
1 Carriage Lane, Bldg H, 2nd Floor
Charleston, South Carolina 29407

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2014-ES-10-2022
	)	
Cathy G. Harkness,	)	
	)	
Petitioner,	)	
	)	**NOTICE OF MOTION AND MOTION**
Glenn A. Gunnells, Individually and as Personal Representative of the Estate of Helen B. Gunnells.	)	**TO ALTER, AMEND and/or RECONSIDER**
	)	
Respondent.	)	
	)	
In the Matter of: Estate of Helen B. Gunnells	)	

TO: THE HON. IRVIN G. CONDON, CHARLESTON COUNTY PROBATE JUDGE and DONALD H. HOWE, ESQ., JULIA C. JACKSON-BAILEY, ESQ. and MICHELLE J. WEIL, ESQ., ATTORNEYS FOR PETITIONER:

PLEASE TAKE NOTICE that the Respondent Glenn A. Gunnells ("Respondent"), by and through his undersigned attorneys and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, will move before the Honorable Irvin G. Condon, Charleston County Probate Judge on the tenth day of service hereof, at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina 29401 or at such other time, date and place as counsel may be heard, seeking to Alter, Amend and/or Reconsider the Order of May 12, 2016 ("Order") [mailed May 16, 2016 and received by the undersigned May 19, 2016], based on the following grounds.

1. Incomplete Inclusion and Analysis of Governing Law

The Order inadequately states and applies controlling authority on the exercise of undue influence. [Order p. 14]. While none of the case law contained in the Order is invalid [see Section 2 below], however, taken as a whole – it is incomplete and improperly applied to the facts of this case. [Id.]. The Court should adopt and apply the more complete exemplification of the applicable authority set forth in the Petitioner's Proposed Order [Pet. Prop. Or. pp. 4-6]. When the full body

of South Carolina statutory and case authority is examined along with the evidence presented at trial, it becomes clear that the Petitioner did not meet her high burden of proof.

The right to make a will directing the ultimate disposition of one's property is one of the basic rights known to our civilization; it encompasses the right to make it according to the testator's pleasure and in her absolute discretion, whether judiciously or capriciously, justly or unjustly, subject only to the restraints upon the power of disposition that the law has imposed. *Wilson v. Dallas*, 403 S.C. 411, 445, 743 S.E.2d 746, 765 (2013); *In re Last Will and Testament of Smoak*, 286 S.C. 419, 427, 334 S.E.2d 806, 811 (1985) (citation omitted). "It is elementary that the statutory right of a competent person to dispose of her property as she wishes may not be thwarted by disappointed relatives or by one who thinks the Testatrix used bad judgment or was misled." *Mock v. Dowling*, 266 S.C. 274, 278, 222 S.E.2d 773, 775 (1976). When the formal execution of a will is admitted or proved, a *prima facie* case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation. *Calhoun v. Calhoun*, 277 S.C. 527, 530, 290 S.E.2d 415, 417 (1982).

If a party alleges incompetence by a Testatrix, the party asserting it bears the burden of proving incapacity at the time of the transaction by a preponderance of the evidence. The test of whether a testator had the capacity to make a will is whether he knew (1) his estate, (2) the objects of his affections, and (3) to whom he wished to give his property. The legal test for determining whether or not a person has sufficient mental capacity to dispose of his property by will does not include the proviso that he must have a reasonable basis on which to found his like or dislike of the natural objects of his bounty. Further, the capacity to know or understand, rather than the actual knowledge or understanding, is sufficient. *Hairston v. McMillan*, 387 S.C. 439, 445, 692 S.E.2d 549, 552 (Ct. App. 2010) (internal citations and punctuation omitted). A person may execute a

valid will, even if he or she is not competent to transact ordinary, everyday affairs; ability to transact important business, or even ordinary business, is not the legal standard of testamentary capacity, though it seems to be quite generally but mistakenly supposed, outside the ranks of the legal profession, that a capacity to transact important business is the criterion of fitness to make a valid will. *Id.*, 387 S.C. at 446, 692 S.E.2d at 552.

In will contest litigation that alleges undue influence, the South Carolina Probate Code states that: "[the Petitioner] will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity." *See* S.C. Code Ann. § 62-3-407. ("Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof."); *Calhoun,* supra, 277 S.C. at 530, 290 S.E.2d at 417. ("The contestants continue to bear the burden of proof throughout the will contest"); *Smith v. Whetstone,* 209 S.C. 78, 84, 39 S.E.2d 127, 129 (1946) (stating in case where a will is formally executed, the burden of proof is on the contestant to prove undue influence "and this burden remains on him to the end").

For a will to be invalidated for undue influence, the influence must be the kind of mental coercion which destroys the free agency of the creator and constrains her to do things which are against her free will, and that she would not have done if she had been left to her own judgment and volition. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003); *Last Will and Testament of Smoak v. Smoak,* 286 S.C. 419, 424, 334 S.E.2d 806, 809 (1985). A contestant must show that the influence was brought directly to bear upon the testamentary act. *Hairston v. McMillian,* 387 S.C. 439, 446, 692 S.E.2d 549, 553 (Ct. App. 2010).

Undue influence must amount to force and coercion, destroying free agency; it must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes

of another, for that would be a very strong ground in support of a testamentary act; by importunity which could not be resisted; that it was done merely for the sake of peace; so that the motive was tantamount to force and fear. *Calhoun v. Calhoun*, 277 S.C. 527, 532, 290 S.E.2d 415, 418 (1982); *see also Wilson,* supra, 403 S.C. 411, 437, 743 S.E.2d 746, 760 (2013) (holding "[t]he influence necessary to void a will must amount to force and coercion."). The mere existence of influence is not enough to void a will as all influences are not unlawful. *Hembree v. Estate of Hembree*, 311 S.C. 192, 196, 428 S.E.2d 3, 5 (Ct. App. 1993); *Smith v. Whetstone,* 209 S.C. 78, 39 S.E.2d 127 (1946).

A mere showing of opportunity and even a showing of motive to exercise undue influence does not justify a submission of that issue to a jury, unless there is additional evidence that such influence was actually utilized." *Smoak,* supra, 286 S.C. at 424, 334 S.E.2d at 809; *Russell,* supra, 353 S.C. at 217, 578 S.E.2d at 333. Undue influence must be shown by unmistakable and convincing evidence. *Id.* The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf. *Id.* Undue influence is demonstrated where the will of the influencer is substituted for the will of the maker. *Id.*

Undue influence may be proven by circumstantial evidence. However, that evidence must be of a substantial nature. *Mock v. Dowling,* 266 S.C. 274, 278, 222 S.E.2d 773, 775 (1976). Even if a contestant does establish an inference of undue influence, the unhampered opportunity of the testator to change the will after the operation of undue influence destroys this conclusion. *Hembree v. Estate of Hembree*, 311 S.C. 192, 196-97, 428 S.E.2d 3, 5 (Ct. App. 1993).

Where the testator has an unhampered opportunity to revoke a will or codicil subsequent to the operation of undue influence upon him, but does not change it, the court as a general rule considers the effect of undue influence destroyed. *Smith v. Whetstone,* 209 S.C. 78, 39 S.E.2d 127

(1946), as quoted in *Estate of Cumbee,* 333 S.C. 664, 511 S.E.2d 390 (Ct. App. 1999); *Russell,* supra, 353 S.C. at 217, 578 S.E.2d at 333-34.

Respondent asserts that if the full body of controlling authority was applied – as outlined above – then the Court would never have been able to find for the Petitioner, as more fully described below. For this reason, the Court should alter, amend or reconsider its Order in a manner consistent with the prevailing case law.

2. Adoption and Application of "Four Circumstances Test" Is an Error of Law Where It Does Not Require Petitioner Meet Her Burden of Proof.

The Petitioner urged the Court to adopt a "four circumstances test" to apply to the instant case, which the Court did in its Order.

> "Courts often look to see if any of the following circumstances apply when deciding whether a testatrix was unduly influenced at the time her Will was executed: (1) an unjust distribution made to a beneficiary; (2) a motive and opportunity by the beneficiary to influence the testatrix; (3) a confidential or fiduciary relationship between the testatrix and beneficiary and (4) the susceptibility of the testatrix to be unduly influenced."

[Order p. 14].

However, none of the cases cited by Petitioner actually establish this "four circumstances test": *Dixon v. Dixon,* 362 S.C. 388, 398-399, 608 S.E.2d 849, 854 (2005); *Russell v. Wachovia Bank, N.A.,* 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003); *Hairston v. McMillian,* 387 S.C. 439, 446, 692 S.E.2d 549, 553 (Ct. App. 2010); Howard *v. Nasser,* 364 S.C. 279, 288, 613 S.E.2d 64, 68-69 (Ct. App. 2005). [Order p. 14]. This "test" cannot be found in any other recent, reported South Carolina cases. *E.g., Wilson v. Dallas,* 403 S.C. 411, 445, 743 S.E.2d 746, 765 (2013*); In re Estate of Anderson,* 381 S.C. 568, 574, 674 S.E.2d 176, 179-180 (Ct. App. 2009). In any event, such a "test" is erroneous because it directly conflicts with South Carolina statutory authority and current case law.

The first circumstance ["an unjust distribution"] cannot be found at all in a search of South Carolina jurisprudence; it actually conflicts with settled law. In *Wilson v. Dallas*, it was held that "[t]he right to make a will directing the ultimate disposition of one's property is one of the basic rights known to our civilization, and it encompasses the right to make it according to the testator's pleasure and in his absolute discretion, whether judiciously or capriciously, justly or unjustly, subject only to the restraints upon the power of disposition that the law has imposed." 403 S.C. at 445, 743 S.E.2d at 765. In *In re Last Will & Testament of Smoak*, the Supreme Court held that the fact a testator is more fond of certain children over others proves nothing – "[a] testator may make an unjust or unreasonable distribution of his estate if he wishes and may discriminate against and exclude members of his own family who normally might be objects of his affection." 286 S.C. at 425-26, 334 S.E.2d at 810; *see also Calhoun*, 277 S.C. at 531, 290 S.E.2d at 418 (1982) (citing a 1839 case for the proposition that "we have held that a disposition of property, though ever so capricious or unreasonable, will not be voided on that ground alone."); *see also Means v. Means*, 36 S.C.L. (5 Strob.) 167 (1850).

The second circumstance ["motive and opportunity"] is simply non-dispositive in and of itself. "A mere showing of opportunity and even a showing of motive to exercise undue influence does not justify a submission of that issue to a jury, unless there is additional evidence that such influence was actually utilized." *Smoak*, supra, at 424, 334 S.E.2d at 809; *Russell*, supra, 353 S.C. at 217, 578 S.E.2d at 333; *Mock v. Dowling*, supra, 266 S.C. at 277, 222 S.E.2d at 774 (1976).

The same holds true for the fourth circumstance ["susceptibility"] which has not been part of our undue influence jurisprudence since the 1946 opinion in *Page v. Lewis*, 209 S.C. 212, 238-239, 39 S.C. 787, 789 (1946) and is not mentioned in as a factor in reported South Carolina cases in the ensuing seventy years. *See e.g., Wilson v. Dallas*, 403 S.C. 411, 445, 743 S.E.2d 746, 765

(2013). Even if it were a factor (which it isn't), *Page* still requires proof that the testator's susceptibility was acted on. *Id.*

Only the third showing ["a confidential or fiduciary relationship"] has direct bearing under current South Carolina undue influence authority. *Bullard v. Crawley*, 294 S.C. 276, 280-281, 363 S.E.2d 897, 900 (1987). However, in *Howard v. Nasser,* 364 S.C. 279, 288, 613 S.E.2d 64, 68-69 (Ct. App. 2005), the Court of Appeals made it clear that the presence of a confidential or fiduciary relationship does not relieve the petitioner of the ultimate burden of proof – it simply requires the respondent to put up rebuttal evidence:

> "The existence of a fiduciary relationship between a testator and beneficiary raises a presumption of undue influence. If evidence of such a relationship is presented, the proponents of the will must offer rebuttal evidence. We emphasize that although the proponents of the will must present evidence in rebuttal, they do not have to affirmatively disprove the existence of undue influence. Instead, the contestants of the will still retain the ultimate burden of proof to invalidate the will."

See also, Hairston, supra, 387 S.C. at 446, 692 S.E.2d at 553 (Ct. App. 2010); *Bullard,* supra, 294 S.C.at 280-281, 363 S.E.2d at 900. In a similar vein, it has been held that "[a]lthough there is a presumption of undue influence in the making of a will involving fiduciaries, the ultimate burden always remains with the proponent." *Wilson v. Dallas*, supra, 403 S.C. at 445, 743 S.E.2d at 765; *Calhoun v. Calhoun*, 277 S.C. 527, 530, 290 S.E.2d 415, 417 (1982).

Rather than any test, the consistent theme throughout South Carolina undue influence jurisprudence is that the burden of proof is on the contestant to show undue influence – the kind of influence which destroys the testator's free agency and prevents the maker's exercise of judgment and free choice. *Wilson*, supra. Said another way: "[c]ircumstances must unmistakenly and convincingly point to the substitution of another's will for that of the testator." *Hembree*, supra, 311 S.C. at 196-97, 428 S.E.2d at 5. Or stated yet another way: "the party seeking to challenge

a will on the basis of undue influence must present evidence which 'unmistakenly and convincingly shows the party's will was overborne by the defendant or someone acting on his behalf.'" *Estate of Anderson*, supra, 381 S.C. at 574, 674 S.E.2d at 179-180.

Nowhere in the Order promulgated by Petitioner does the Court establish or discuss the high burden of proof required of the Petitioner. Nowhere in the Order does the Court find that Petitioner showed by clear, unmistakable and convincing evidence that there was "[t]he kind of mental coercion which destroys the free agency of the creator and constrains [her] to do things which are against [her] free will, and that [she] would not have done if [she] had been left to [her] own judgment and volition. *Russell*, supra, 353 S.C. at 217, 578 S.E.2d at 333. In fact, the Order fails to weigh the testimony of the witnesses at all, merely cherry-picking certain bits of evidence and certain snippets favorable to the Petitioner while ignoring and glossing over any contradictory evidence or testimony.

Having failed to state the correct burden of proof or to make findings and conclusions consistent therewith (including the finding that the Respondent met his obligation to provide rebuttal evidence), the Court has committed reversible error. Consequently, the Court's adoption and application of the "four circumstances test" – adopted on pages 15 and 16 of the Order – effectively relieves the Petitioner of meeting her high burden of proof under South Carolina law to show clear, unmistaken and convincing evidence that the Testratrix's free agency, free choice and free will was overcome by Respondent. The Court's adoption of this "test" which is not recognized by South Carolina law is grounds for the Court to alter, amend or reconsider its Order.

3. The Court Erred by Ignoring the Uncontroverted Testimony of the Attorney Who Drafted the New Will and her Paralegal.

The Court committed reversible error by failing to consider the substantive testimony of the only two witnesses who were present at the time the Testatrix performed the testamentary act:

attorney Suzanne Klok and her paralegal Annie Voytko (formerly Annie Walton). The Court neither expressly rejected their testimony nor found these witnesses to be lacking in credibility. The Court simply ignored their testimony. Testimony from drafting attorneys has consistently been found to be probative in all other recent, reported cases in South Carolina.

It is well-settled that in a will contest based on undue influence, the contestant must show that the influence was brought directly to bear upon the testamentary act. *Russell v. Wachovia Bank,* 353 S.C. 208, 219, 578 S.E.2d 329, 335 (2003); *Mock v. Dowling,* 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976); *Hairston v. McMillian*, 387 S.C. 439, 446, 692 S.E.2d 549, 553 (Ct. App. 2010); *see also Wilson v. Dallas*, 403 S.C. 411, 337, 743 S.E.2d 746, 760 (2013) (holding that in a will contest case, facts are irrelevant "if they have no bearing on the execution of [testator's] testamentary documents" and "shed no light on whether the [testator's] will was somehow overcome at the time he signed the documents finalizing his estate plan"). Accordingly, the Court should have given great weight to the testimony of Ms. Klok and Ms. Voytko, but simply chose to ignore them as if they had not testified. It is instructive to review their testimony.

Ms. Klok substantiated the original copy of the New Will for the Court. [Tr. Vol. II at 65]. The Testatrix met with Ms. Klok and her legal assistant Ms. Voytko on July 3, 2013 for about three (3) hours. [Id. at 58]. She was adamant about having the New Will done that day. [Id.]. She brought the Old Will to the meeting with Ms. Klok, knowing that she wanted to change her disposition. [Id. at 60]. Ms. Klok satisfied herself that Mrs. Gunnells was competent to make a new testamentary disposition. [Id.at 62]. "[T]hroughout our discussions, she was very frail physically but mentally she seemed to know what she wanted. She was pretty clear. Very adamant about it." [Id.]. While Respondent drove Testatrix to her appointment at the Klok Law Firm, he was not present in the conference room at any time during any discussion or drafting of the New

Will. [Id. pp. 59-60]. Ms. Klok's testified that her policy is not to allow anyone who comes with the client into the conference room during her interviews except her staff; in fact, she directed that the Respondent be outside the building throughout the meeting so that he could not possibly overhear the discussions – a decision the Respondent respectfully complied with. [Id. at 60-61].

On the day she met with Ms. Klok, the Testatrix was very upset with her two daughters, she did not wish to be around them and she was adamant about wanting to leave her estate to Respondent. [Id. at 61-62]. "She seemed very, very sure, and that's one thing that struck me that I still remember." [Id. at 70]. Ms. Klok said that had she ever felt the Testatrix was unsure, she would never have finished the Will that day. [Id.]. Ms. Klok remembered that Mrs. Gunnells glowed when she talked about Respondent – "It was very sweet. She was very, very loving about Glenn. It was really in contrast to how she spoke about her daughters, that for them they were more -- it was disappointment, I think, with the daughters. But she was very, very happy that Glenn was taking care of her. And you know, she said she couldn't get out and interact as much as she did if it wasn't for Glenn. And that he really was just, you know, wonderful of all the things he did. And took great care of her." [Id. at 63].

Ms. Klok explained to Mrs. Gunnells that changing her will was her decision and no one else's; Ms. Klok then asked the Testatrix if she felt any force or pressure from any of her children in any way to change her will, to which she replied no. [Id. at 68-69]. Mrs. Gunnells – while alone with Ms. Klok and Ms. Voytko – thoroughly explained her reasoning and rationale for executing a New Will. It was not because she necessarily wanted to give Respondent the entire estate, it was more so that she did NOT want to give anything to her daughters – "she told me her rationale for it wasn't related to how great Glenn was and she loved him, but it was more how she was disappointed with her daughters." [Id. at 72]. Ms. Klok remembered that the Testatrix was very

worried about her daughter, the Petitioner, causing problems for Respondent once she found out about the New Will. [Id. at 62].

Ms. Klok's paralegal, Annmarie "Annie" Voytko (formerly Annie Walton) corroborated Ms. Klok's testimony. [Tr. Vol. II at 86]. Respondent left the building when she and Ms. Klok met with the Testatrix for several hours. [Id. at 88-89]. As to the Testatrix's competency, Ms. Voytko testified that "her body was frail but her mind was fine" and that she "was with it." [Id. at 89-90]. She agreed that the Decedent was "disappointed with her daughters" but was very grateful to Respondent because "he was always there for her." [Id. at 90-91]. In her judgment, there were no "red flags" at all about her relationship with Respondent but the Decedent did say that her daughters "would be furious" about the New Will. [Id. at 91-92]. Ms. Voytko witnessed the New Will. [Id. at 93].

For decades, reported decisions in South Carolina have given great weight to the testimony of the attorney who drafted the challenged testamentary document. *See, e.g., Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 216, 578 S.E.2d 329, 333 (2003); *Calhoun v. Calhoun*, 277 S.C. 527, 531, 290 S.E.2d 415, 418 (1982); *Hairston v. McMillian*, 387 S.C. 439, 446, 692 S.E.2d 549, 553 (Ct. App. 2010); *In re Estate of Anderson*, 381 S.C. 568, 575, 674 S.E.2d 176, 180 (Ct. App. 2009); *Howard v. Nasser*, 364 S.C. 279, 284, 613 S.E.2d 64, 66 (Ct. App. 2005); *Hembree v. Estate of Hembree*, 311 S.C. 192, 195, 428 S.E.2d 3, 4 (Ct. App. 1993); *Cf. Estate of Cumbee*, 333 S.C. 664, 5673, 11 S.E.2d 390, 294 (Ct. App. 1999) (finding undue influence where, *inter alia*, Testatrix did not meet with lawyer nor did she read the will). In fact, in *Hairston*, the drafting attorney's testimony was considered so significant that it outweighed that of a testifying medical expert who had not examined the Decedent. 387 S.C. at 446, 692 S.E.2d at 553. By completely failing to

address Klok's testimony, the Court substantially deviates from what has been considered probative and compelling evidence by the Supreme Court and Court of Appeals of South Carolina.

By ignoring the legal testimony, the Court has turned undue influence jurisprudence on its head. It is uncontroverted that Ms. Klok is a licensed, reputable and competent attorney who has practiced law in the Charleston area for over twenty years – and in the field of wills and estate planning since 2009. The Petitioner offered no testimony that put into question Ms. Klok's qualifications or professionalism in any manner, nor any expert testimony that Ms. Klok failed: (1) to adequately discharge her duty to the Testatrix; (2) was governed by any conflict of interest; or (3) deviated from the acceptable standard of care for probate attorneys. Yet if the Court's Order becomes the new standard for undue influence litigation, all this formerly probative and compelling testimony is deemed irrelevant.

Why did the Court ignore Ms. Klok? Because in the Proposed Order submitted by Petitioner, Ms. Klok's testimony undermined their entire theory of her case and, therefore, was intentionally omitted. The Court should correct this error and, in doing so, alter, amend and reverse its Order by giving credit to a competent, professional and unchallenged attorney who practices within this very Probate Court.

4. ***The Court Erred by Not Finding Probative that Respondent Was Not Present During the Testamentary Act.***

For almost the same reason the Court erred by ignoring uncontroverted legal testimony, it also erred when it failed to find that Respondent's exclusion from the attorney conferences and signing of the New Will was conclusive evidence that Respondent did not exert undue influence on the testamentary act.

It is uncontroverted that Respondent was not inside Ms. Klok's office when Testatrix signed the New Will on July 3, 2013. The Court makes this finding twice. [Order at 2, 16]. This

sort of evidence has always been deemed probative, if not conclusive, in our Courts. *See e.g. Estate of Anderson*, supra, 381 S.C. at 575, 674 S.E.2d at 180; *Calhoun*, supra, 277 S.C. at 533, 290 S.E.2d at 419 (1982); *Russell*, supra, 353 S.C. at 216, 578 S.E.2d at 333 (2003), *but compare Estate of Cumbee*, 333 S.C. 664, 673, 11 S.E.2d 390, 294 (Ct. App. 1999) (finding undue influence where, *inter alia*, Testatrix did not meet with lawyer).

Respondent submits that under these facts the Testatrix – meeting alone with a licensed, competent and experienced attorney (who took the care to have her paralegal be present for the substantive meeting with the Testatrix) – could not exert undue influence on the testamentary act when he was not present when that act took place. *Mock v. Dowling*, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976). The Court commits reversible error when it does not give this uncontroverted fact the weight and probative value it demands. Accordingly, the Court should alter, amend and reverse its Order on this ground.

5. *The Court Erred by Being Swayed by Irrelevant Factors Connected with the Visit to Ms. Klok's Office.*

Not only did the Court ignore the probative testimony of Ms. Klok and Ms. Voytko when it signed Petitioner's Proposed Order, or the fact that Respondent was not present during the testamentary act, it focused on irrelevant factors instead.

For example, the Court seemed to find probative that Respondent drove the Testatrix to Ms. Klok's office. [Order at 2]. However, in *Calhoun v. Calhoun*, our Supreme Court did not find the fact the beneficiary drove the testator to the lawyer's office probative (as in the case at bar). 277 S.C. at 532, 290 S.E.2d at 419 (1982). Neither, apparently, did the Court of Appeals in *Hembree*, supra, 311 S.C. at 195, 428 S.E.2d at 4 (Ct. App. 1993).

The Order also suggests that there was some improper, prior attorney-client relationship between Respondent and Ms. Klok. It should be pointed out that Ms. Klok was the closing attorney

for the property Respondent was selling (Tr. Vol. II p. 83) and in conformity with South Carolina practice, she would have been selected by the Buyer's attorney. Even if the Court discounts the Respondent's testimony that the Testatrix wanted a female attorney rather than return to the firm where she had the Powers of Attorney drawn (Id. at 132), in *Smoak*, supra, the Supreme Court found nothing untoward that the beneficiary took the testatrix to his personal attorney. 286 S.C. at 422, 334 S.E.2d at 808.

Respondent submits that the lack of a prior relationship between the Testatrix and Ms. Klok [Order p. 11] is irrelevant as is the length of time Ms. Klok and the Testatrix met [Order pp. 2, 11] – in light of the Testatrix's unquestioned competency. Following *Hembree, supra*, 311 S.C. at 195, 428 S.E.2d at 4, the fact that the Will was "unsealed" when Testatrix left Ms. Klok's office, and the Respondent had access to it [Order p. 16], is likewise irrelevant.

Bluntly, the Court is simply wrong when it adopts Petitioner's proposed language that the "circumstances surrounding the execution clearly indicate the Will was the product of the Respondent and that the Testatrix 'felt she had no choice' but to execute a New Will." Nothing could be further from the truth, nor does this statement reflect a finding that Petitioner has met her high burden of proof.

6. The Court Erred by Finding Undue Influence Based on Events After the Testamentary Act.

The Order clearly establishes that the Testatrix went to change her will on July 3, 2013 – less than a month after the death of her late husband on June 8, 2013. [Order p. 2, 16]. Findings of fact for alleged acts of undue influence after July 3, 2013 should not be permitted to serve as a basis for finding influence at the time of the testamentary act. At best, such evidence could only go to whether the Testatrix had unfettered opportunity to change her Will later. *Hembree*, supra, 311 S.C. at 196-97, 428 S.E.2d at 5 (Ct. App. 1993). To the extent the Court relies on the testimony

of Mr. Brantley, Ms. Carroll or Dr. Chanson for events which occurred after July 3, 2013 to support a finding of undue influence, this is erroneous and the Court should reverse itself accordingly.

7. The Petitioner Failed to Make Any Showing of Threats, Force or Restricted Visitation.

It has been held repeatedly that "[g]enerally, in cases where a will has been set aside for undue influence, there has been evidence either of threats, force, and/or restricted visitation, or of an existing fiduciary relationship. *Russell*, supra, 353 S.C. at 217, 578 S.E.2d at 333; *Hembree*, supra, 311 S.C. at 196, 428 S.E.2d at 5. While the Petitioner and her sister claimed that Respondent "threatened" them with "calling the police" – there was absolutely no testimony or evidence that Respondent used threats or force on the Testatrix – which is the person to whom the threat/force would have to be made on in order for it to be probative. *See Hairston*, supra, 387 S.C. at 447, 692 S.E.2d at 549 ("[f]urthermore, Hairston presented no evidence of threats or force wielded against Decedent.").

The Order states that on the date of the execution of the New Will, Mrs. Gunnells was "visibly upset," "crying," and "distraught." [Order at 13]. However, the deposition of Dr. Chanson paints a different picture. Dr. Chanson makes it clear that these emotions were experienced over a period of time and were result of Testatrix's husband's recent death – not anything to do with Respondent. [Chanson Depo. pp. 25, 26, 35]. It should be noted that during the two years that Dr. Chanson treated Testatrix, Respondent was never in the room for any of her examinations – which lasted anywhere from 30 to 50 minutes. [Chanson Depo. pp. 13, 18]. Dr. Chanson opined that Mrs. Gunnells' behavior was appropriate and she did not seem fearful. [Id. at 18]. Dr. Chanson did not see anything in Testatrix's demeanor that was concerning or that would lead her to believe Respondent was exercising any negative influence over Testatrix. [Chanson Depo. at 17-20].

Likewise, there was no testimony or evidence of restricted visitation. The Testatrix's brother, Mr. Brantley, testified that Tesatrix did not speak as freely when Respondent was around, however, Brantley did in fact speak to her outside Respondent's presence. [Tr. Vol. I at 40-41, 45]. Moreover, he visited his sister in Charleston after her husband's death and while Respondent was living with his mother: "I probably visited at least three or four times a year, sometimes more often, according to what was going on, and we talked on the telephone at least two, three, four times a week. And if I didn't call her, she would call me." [Id. at 14, 13-17, 19]. Respondent would also bring her to visit Mr. Brantley in Waynesboro, Georgia. [Id. 15]. Thus, his testimony failed to reveal that her free will was destroyed. It further shows Respondent was not isolating Decedent from her brother.

Mr. Brantley felt his sister was strong willed, independent, intelligent and opinioned – a Southern lady – and remained that way even after her husband's death. [Id. at 45-46]. This is consistent with the testimony of daughter Belinda Davis, who agreed that her mother was intelligent, opinionated and a Southern lady. [Id. at 83]. Mr. Brantley testified Testatrix never wanted to be in a nursing home [Id. at 27] – which, in light of her health and her advanced age, required a live-in healthcare provider. He testified he was bothered by his niece's threat to file a lawsuit and that it probably bothered Testatrix too. [Id. at 44-45]. The fact she never discussed her New Will with her brother is not dispositive. [Id. at 46].

On direct examination, Testatrix's "friend," Ms. Carroll, testified that after her husband's death, Testatrix lost interest in talking on the telephone but that Ms. Carroll would often visit with Testatrix in her home. [Carroll Depo. at 10-11]. She recounted several visits and telephone calls, yet she had very little recollection of the conversations. [See, generally Carroll Depo.]. She confirmed daughter Belinda Davis was never really around. [Id. at 30]. Testatrix even told her

attorney, Ms. Klok, that she wouldn't be able get out and interact as much as she did if it wasn't for Respondent. [Tr. Vol. II at 63].

Ms. Carroll further testified that in the last few months of her husband's life, Testatrix changed; however, she admitted that may have been because her husband was dying. [Carroll Depo. at 33]. Ms. Carroll saw her friend the week prior to her passing at her home. [Id. at 34]. Ms. Carroll never voiced her concerns to Testatrix about Respondent and Testatrix never spoke to Ms. Carroll about any mistreatment, threats, force or any concerns she had about Respondent. [Id. at 35]. Even though their telephone contact fell off, Ms. Carroll continued to visit Testatrix after her husband's death – including when Respondent was not there. [Id. at. 10, 12-13, 35]. Respondent never kept Ms. Carroll away from his mother nor did he ever instruct her to leave when she visited Testatrix. [Id. at 35]. Ms. Carroll left on her own accord when she visited one time and Testatrix didn't wish to talk anymore. [Id. at. 20].

The daughters' testimony fails to show any restriction of visitation. Ms. Belinda Davis was self-admittedly absent – moving to Hawaii right after her father was diagnosed with cancer. [Tr. Vol I at 78-79]. She conceded that she had the opportunity to talk to her mother after her father's death – but she understood her mother did not wish to speak to her and chose not to visit either. [Id. at 68, 83, 87]. It was clear from all of the testimony that Ms. Davis did not talk to her mother much at all, including during the month of July when the New Will was executed. [Id. at 82, 85].

Petitioners' own testimony is indicative that she made a choice to stay away. Only 19 days after her father's death, Petitioner admits that she wrote a letter to her mother threatening legal action to recover personal property. [Respondent's Ex. 4]. In October 2013, Petitioner wrote her mother yet another letter. [Respondent's Ex. 5]. In this letter, Petitioner commends her mother for being happy, content and being able to sleep at night. [Id.] "[I]t seems you are happy and satisfied

with your choices you have made." [Id.]. Furthermore, Petitioner states that she has no desire to visit her mother at her Residence. [Id.]. Petitioner offered no compelling testimony she was excluded from visiting her mother prior to the date of the New Will.

Accordingly, the most the Petitioner proved was that leading up to and after her husband's death, Testatrix was sad and sometimes did not want to speak on the phone or have long visits with friends. An emotion that Dr. Chanson said was completely expected and normal – "most marked thing would have occurred after her husband died and appropriately so. She was very depressed about that. That is one of the most significant losses a person can undergo, secondary to the loss of a child. And it is not uncommon that people will have a difficult time with that. And she was no different." [Chanson Depo. at 15].

There is no evidence or testimony to support the finding in the Order that states "other children and friends of the Testatrix were not permitted to speak to her on the phone or to be alone with her in the home." [Order, p. 15]. Based on the foregoing, the Court should reverse its Order. *See Hairston*, supra, 387 S.C. at 447, 692 S.E.2d at 549 (no restriction of visitation on the whole).

8. The Court Erred by Not Finding the Testatrix Was Competent to Execute a Will and Petitioner Misstated the Testimony of Dr. Chanson.

The reasonable good health of a testator is considered probative in an undue influence case. *First Citizens Bank v. Inman,* 296 S.C. 8, 370 S.E.2d 99 (1988). Moreover, in case after case, the South Carolina appellate courts have found probative the testimony of the treating physician that the decedent was competent. *See, e.g., Calhoun*, supra, at 431; Smoak, supra, at 426. Thus, the Court should have included the uncontroverted findings of Dr. Chanson.

It is uncontroverted that Dr. Chanson is a licensed, reputable and competent physician who has practiced medicine in Charleston since 2000 in the area of internal medicine. [Chanson Depo. pp. 6-7]. She is a graduate of Furman University, obtained a Ph.D. from the University of South

Carolina and received her medical training at the Medical University of South Carolina, the Bethesda (Md.) Naval Hospital (internship) and the Portsmouth (Va.) Naval Hospital (residency in internal medicine). [Id.]. The Petitioner offered no testimony that questioned Dr. Chanson's qualifications in any manner, nor any counter medical expert. It should be noted that Belinda Davis testified it was on her suggestion that Testatrix began to see Dr. Chanson [Tr. Vol. I at 61], which Dr. Chanson corroborated. [Chanson Depo. at 11-12, 16].

The Order relied heavily on Dr. Chanson's assertion that she cannot say whether or not Testatrix was "unduly influenced." [Order, pp. 13-14]. However, Dr. Chanson clearly stated in her deposition that she could not come to opine on that issue because she had no idea what the term meant, and therefore can have no opinion either way. [Id. at 18, 38]. Notwithstanding the foregoing, Dr. Chanson noted that Testatrix routinely carried on intelligent conversations during her office visits. [Id. at 19]. Dr. Chanson further explained that that Testatrix always knew exactly who she was and who her family and children were, she had a firm understanding of her surroundings and nothing seemed to suggest that she could not make her own decisions. [Id. at 19, 22].

The Testatrix never missed an appointment with Dr. Chanson. [Id. at 17]. Office visits would usually last between 30 and 50 minutes. [Id. at 13]. Furthermore, Respondent was never in the room when Dr. Chanson was examining/treating Testatrix – he would wait in the lobby until she needed to speak to him. [Id. at 18, 27-29]. Dr. Chanson opined that Respondent seemed very attentive towards his mother; after the examinations, he asked appropriate questions about Decedent's health and he would often call the office to ask questions about medications. [Id. at 17]. "He seemed to be giving appropriate care to his mother," she said [Id.].

Dr. Chanson also noted that Testatrix was distraught and very depressed after her husband's passing; however, she added, it is not uncommon for people to have a difficult time after the loss of a spouse, and Testatrix was no different. [Id. at 15, 20, 25]. Significantly, Dr. Chanson saw Testatrix for an appointment on the same day as Testatrix executed the New Will. and had no testimony that Testatrix was not of sound mind, albeit depressed at the recent loss of her husband. [Id. at 24-25, 3-38]. Dr. Chanson also corroborated a letter she wrote August 6, 2013 – a month after execution of the New Will – that the Decedent "seems competent to make her own decisions." [Id. at 22].

Dr. Chanson did not see anything in Testatrix's demeanor that was concerning to her or that would lead her to believe Respondent was exercising any negative influence over Testatrix. [Chanson Depo. at 17-20]. "Her behavior seemed appropriate in our offices. She didn't seem to be fearful. I always examined her, and he was not in the room, so I didn't see anything that would be concerning," she testified. [Id. at 18]. Dr. Chanson also said that Testatrix "knew who she was – and who her – who here family, children were. She carried on intelligent conversations at our office visits." [Id. at 19]. She testified there was nothing "out of the context" concerning whether Respondent exercised influence over Decedent. [Id. at 20]. She said that the Testatrix followed her directions. [Id.].

Dr. Chanson testified to all these opinions to a reasonable degree of medical certainty and most probably. [Id. at 25-26]. She is an unbiased witness with no reason to favor or discredit one party or the other. She always spent time alone with the Decedent, yet reported no findings of abuse, neglect, force, coercion or domination of Decedent by Respondent.

9. *The Court Erred by Accepting the Testimony of Ms. Carroll that Testatrix "Had No Choice."*

In singing Petitioner's Proposed Order, the Court accepted the testimony of Ms. Carroll that the Testatrix had said she had "no choice" in signing the New Will. [Order at 16]. This testimony provides no context for why the Testatrix allegedly had "no choice" – what if it was because her daughters' conduct left her no choice? In any event, this testimony should never have been admitted.

The "no choice" testimony came about from Petitioner's counsel asking Ms. Carroll to testify regarding a letter she had allegedly signed, but which she had no knowledge regarding how it was drafted, who drafted it, when she signed it or under what circumstances she signed it other than Petitioner was there at the time. [Carroll Depo. at 24-28]. It was thus excluded from evidence by the court because of the same, and for hearsay, lack of personal knowledge and lack of authentication. Rules 802, 602 and 901 SCRE.

Reading from the letter in her deposition, Ms. Carroll said that the Testatrix told her that she did not want to change her will but Respondent told her she had to. [Carroll Depo. at 18]. However, before she read from the letter, Ms. Carroll testified on direct examination she did not remember any conversation with the Testatrix concerning a will ("Q: Okay. Did [Testatrix] ever talk to you about signing a will or something like that? A: No. Q: Never came – A: No.") [Carroll Depo. at 15]. Similarly, on cross-examination after she read the letter, Ms. Carroll did not remember discussing the will with the Testatrix, either. ("Q: So earlier, Mr. Howe had to remind you about . . . a conversation you had about the will with Mrs. Gunnells. Do you remember that conversation? A: No. I don't.") [Carroll Depo at 35-36]. She could not remember what the Testatrix told her about Respondent. [Id. at 35]. Likewise, it was only after Mrs. Carroll read from the letter that she testified specifically that Respondent kept Testatrix from speaking to her brother

and sister – which she had not testified to previously on direct examination. [Tr. 19, 22]. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. SCRE 602.

It should be noted that Ms. Carroll, a 92-year-old ailing woman, admitted to an extremely close, personal relationship to the Petitioner. She testified that the Petitioner "was like a daughter to her" and she would do anything the Petitioner asked her to do; she even talked to the Petitioner every day. [Carroll Depo. at 28-29, 37]. Yet, curiously, Petitioner did not talk to Ms. Carroll at all between the time Arden Gunnells died and Testatrix died [Id. at 37-38] – which could suggest that Petitioner was cultivating a lonely, elderly woman more for her anticipated testimony than deep friendship.

Ms. Carroll's testimony should not have been given weight and, in fact, should have been excluded for lack of personal knowledge.

10. The Court Erred by Including Unsupported Findings that Respondent Abused His Mother's Prescription Medication.

In Petitioner's Proposed Order, the Court makes an incredible finding of fact that Respondent withheld medication from his late mother. [Order p. 14]. In fact, this exact theory was discounted by Testatrix's primary care physician, Dr. Chanson. ("Q: So were you aware of . . . mismanagement of care of mismanagement of medication? A: I was not . . . I did not see anything that would have been concerning."). [Chanson Depo. at 18]. Furthermore, Testatrix, during her 30-50-minute visits with Dr. Chanson never mentioned anything of the sort to her or anything else that would have been concerning to Dr. Chanson. [Id.]

In fact, Petitioner failed to illicit any testimony from any witness that any medication was ever withheld. Petitioner failed to call in an independent medical professional, including Testatrix's pharmacist, to support this outrageous contention. This is pure conjecture and

speculation on behalf of the Petitioner. To the extent Petitioner points out to prescription dates, etc., it is circumstantial evidence not of a substantial nature. *Mock*, 266 S.C. at 278, 222 S.E.2d at 775 (1976).

Testatrix's physical therapist, Ms. Leigh Wechter recounted: "[Respondent] appeared genuinely concerned about Mrs. Gunnells, and would take care to prepare her meals, fix her medications and make recommended safety changes to her home to protect her from falls. [Respondent] worked to ensure Mrs. Gunnells had caregivers in the home to assist her with her personal care, as well as provided (sic) her with transportation and assistance with all of her medical appointments." [Respondent's Ex. 6]. "[Respondent] made sure that she took her medications." [Tr. Vol. II at 16]. Testatrix's other physical therapist, Ms. Jill Costa, recounted: "Every visit, I got to see how devoted he was to his mother, in which he made sure she had the best possible care." [Respondent's Ex. 7].

Petitioner has failed to present any evidence, let alone unmistakable and convincing evidence, that Respondent withheld medication from his mother. If there were any true merit to this contention, then Petitioner would have been able to adduce medical testimony to support it. Having failed to do so, the Court should not credence such baseless speculation.

11. The Court Erred by Being Persuaded by Inconsistencies in Respondent's Testimony.

Any inconsistencies in the Respondent's testimony, detailed at some length by the Petitioner's Proposed Order signed by the Court [Order at 12-13] are not substantive and do not prove the Petitioner's case in any way.

12. Repeated Allusions to Petitioner Seeking DSS, Probate Court, Legal Aid Help Should Be Excluded.

The repeated references to Petitioner seeking assistance from DSS, Probate Court and/or Legal Aid were never proven, when they easily could have been, and do not prove the Petitioner's case in any way.

13. The Court Erred by Discounting the Therapist Testimony.

Two home health physical therapists were called to testify. Both recounted how devoted Respondent was to his mother and her care. Furthermore, both therapists recounted conversations Testatrix had with them regarding her disappointed feelings towards her daughters. [Tr. Vol. II at 11, 29-30]. The fact the Court did not find this testimony as probative, along with the testimony of Ms. Klok and Ms. Voytko (confirming Testatrix's feelings about her daughters) is reversible error.

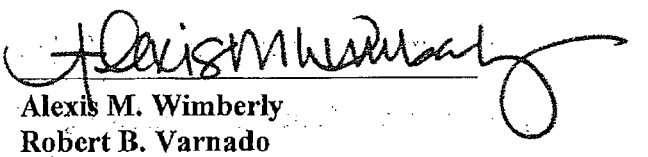
CONCLUSION

In this matter, the Testatrix was very clear and adamant about what she wanted in her New Will. [Tr. Vol. II at 62]. Notably, Testatrix met with her attorney for several hours where she made it absolutely clear what she wanted to do and why she wanted to do it. [Id.]. She was quick, rational and precise when answering questions about her family, her property and its disposition. [Id.]. The record is devoid of any evidence that Respondent interfered prior to or at the time of the testamentary act. Respondent did not dictate the will; he was not present when its proposed contents were discussed; nor was he present when the will was executed. The circumstances surrounding the drafting and execution of this document fall far short of a showing of undue influence. On the contrary, they indicate that the New Will was the product of the free and unfettered act of the Testatrix – who all the witnesses conceded was competent, independent, free-willed and knew her own mind.

The Petitioner failed to meet her high burden of proof – unmistaken and convincing evidence of undue influence. Even if the Court is persuaded there was *some* evidence of influence, it never rose to the kind of mental coercion which destroys the free agency of the creator and constrains her to do things which are against her free will, and that she would not have done if she had been left to her own judgment and volition. There is simply no clear, convincing and unmistakable evidence that Respondent took over the free will of the Testatrix. There is no evidence of threat, force, coercion, fear or restricted visitation. There is simply no evidence to support the conclusion in this Court's Order.

Unfortunately, the Order – prepared by Petitioner – is guided by multiple errors of law and fact. Accordingly, the Court should reverse itself and find that the July 3, 2013 Will is valid and in full force and effect as it was not the product of undue influence.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within ***Notice of Motion and Motion to Reconsider*** upon all parties in this matter by depositing a true copy of the same in the U.S. mail, proper postage prepaid, addressed as follows:

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STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2014-ES-10-2022
	)	
IN THE MATTER OF: ESTATE OF HELEN B. GUNNELLS	)	
	)	
CATHY G. HARKNESS,	)	**MEMORANDUM IN OPPOSITION TO MOTION TO RECONSIDER**
Petitioner,	)	
	)	
vs.	)	
	)	
GLENN A. GUNNELLS, individually and as Personal Representative of the Estate of Helen B. Gunnells,	)	
Respondent.	)	

TO: THE HONORABLE IRVIN G. CONDON, CHARLESTON COUNTY PROBATE JUDGE and ROBERT B. VARNADO and ALEXIS M. WIMBERLY, Attorneys for Petitioner

Respondent seeks reconsideration of this Court's Order of May 12, 2016 based on alleged errors of law and factual conclusions. Petitioner submits the following in response to Respondent's Motion to Reconsider.

I. The Court Did Not Adopt a "Four Circumstances Test" as Alleged by Respondent.

Respondent states that "The Petitioner urged the Court to adopt a "four circumstances test" to apply to the instant case, which the Court did in its Order" (Respondent's Motion, page 5). This is simply incorrect. The Court never embraced a "four-circumstances test." The Court clearly followed a totality of circumstances approach. Four aspects of this totality of circumstances approach were noted by the Probate Judge because they espoused valid judicial precedent in South Carolina courts. It was certainly proper to consider, among other things,

factors that are logical and previously identified as valid by higher courts. Thus, the four circumstances specifically identified were properly considered. To suggest that these factors were a rigid and exclusive approach, however, is a mischaracterization.

A review of the Order itself supports this. The Court's Order states "Courts often look..." (emphasis added) at certain circumstances. In the very next sentence, the Order states further than "all circumstances surrounding the execution of the Will..." should be considered by the Court. (Order, p.14). To transform the words "often look" into a narrow, exclusive and definitive legal test is extremely tortured and inconsistent with both the letter and spirit of the Order.

Respondent therefore believes the Court applied a proper legal analysis with due regard to established legal precedent and no error of law was committed.

II. Respondent Attaches As Errors of Law Various Factual Conclusions of the Court.

Having mischaracterized the Court's legal analysis, Respondent goes down a laundry list of assertions that "there was no evidence that..." when, indeed there was ample evidence in each instance. Petitioner will not attempt to dissect each assertion as the Court generally cites page and line of the transcript in most instances. A couple of poignant examples worth noting are, however, as follows:

(a) "The daughter's testimony fails to show restriction of visitation." (Motion, p.17).

Cathy Harkness testified that Glenn threatened to call the police if she contacted her mother. (Tr. Vol. I, p.107, lines 9-12). Belinda Davis, Cathy Harkness, Glenn Gunnells and one of the home health nurses all testified about Glenn pushing Belinda out of the house when she tried to visit Helen Gunnells and threatened to call the police if she did not leave. (Tr. Vol. I,

p.68, lines 1-22). The birthday card sent by Harkness to her mother evidenced an attempt by Harkness to reconnect with her mother because of restricted visitation. (Tr. Vol. II, p. 168, lines 11-16). The consult with the probate court, DSS and an attorney are also indicative of restricted access. (Tr. Vol. I, p.108, lines 9-24).

While Respondent may disagree with the weight of the evidence – a matter entirely in the purview of the Court – it is simply disingenuous to state there is "no evidence."

(b) "...the Court makes an incredible finding that Respondent abused his mother's prescription medications." (Motion, p.22).

First of all, the Court never made a finding that Glenn Gunnells "abused" any medication. The finding was that the medication was not "properly administered." (Order, p.13). Secondly, under the heading quoted above, Respondent also states "Petitioner failed to elicit any testimony from any witness that any medication was ever withheld." (Motion, p.22).

Consider, however, the following on Dr. Chanson's cross-examination:

1) "She never received the potassium prescription." (D. p.6, lines 9-10).

2) A prescription for Tiazac was last filled on July 23, 2013 and Mrs. Gunnells was supposed to take one per day. She received 90 pills on July 23, 2013 and it was 200 days before she died on February 7, 2014. There were 3 refills associated with the original prescription, none of which were filled, so she clearly never got enough to be compliant with medical advice (Tr. Vol. II, p.66-68).

3) The administration of the drug Remeron was thoroughly reviewed on cross-examination. Dr. Chanson's note of December 16th clearly reflected that Mrs. Gunnells was supposed to be taking Remeron but it was not clear that she was (D. p.48) and that Dr. Chanson "strongly recommend that she restart her Remeron" which obviously assumes it had

been discontinued. (D. p.49, lines 16-24). To justify why Mrs. Gunnells was not taking the Remeron, Glenn Gunnells told Dr. Chanson that the pharmacy wasn't filling the prescription as e-prescribed. To get around the e-prescription failure Glenn described, Dr. Chanson went to the trouble to hand-write the prescription. (D. p.53, line 14 – p.54, line 2). The pharmacy record demonstrated, however, that despite the fact that Glenn was stating the pharmacy would not fill the prescription as of January 2, 2014, he in fact got a prescription for Remeron filled on December 21, 2013 (D. p.55, lines 4-24 and Exhibit 1). Why he misled Dr. Chanson in this regard was never explained. Suffice it to say, all of the information about the Remeron not being administered properly came from Glenn Gunnells himself. Having documented the evidence himself, it is truly ironic his lawyers now take the position that no evidence exists.

All of the above directly supports the Court's finding that "medication was not properly administered." It is of note that Respondent again mischaracterizes the Order (by saying it found that Gunnells "abused" medications) then holds up the mischaracterization as an error of law.

Lastly, and perhaps most reflective of the lack of merit of Respondent's plea to reconsider, is Respondent's assertion that the inconsistencies in Glenn Gunnell's testimony "are not substantive and do not prove the Petitioner's case in any way." (Respondent's Motion, p. 23).

Glenn Gunnells was a party to the suit and was shown to have lied under oath about the number of times he took his mother to Attorney Klok to prepare the Will. In his deposition, he said he took her 2 or 3 times. (Vol. II, p.155, line 13 – p.157, line 16). At trial, Klok said there was only one visit. (Vol. II, p.75, lines 5-6). Also, Gunnells said he complained to Jack Brantley that Cathy and Belinda were not helping with their mother. Brantley, a retired Lt. Col., flatly denied Glenn's assertion. (Tr. Vol. I, p.38, line 17).

To characterize these contradictions as "not substantive" is disingenuous and indeed, undermines the credibility of Respondent's entire request to reconsider. What could be more substantive to the credibility of Glenn Gunnells in general and to the case in particular than his claim as to the number of times Helen Gunnells met with the lawyer to prepare the Will? Likewise, Glenn's theory as to why his mother disinherited Cathy and Belinda was that they deserted her. He attempted to support his "desertion theory" by testifying that he discussed this with Jack Brantley, his mother's youngest brother, to whom she was very close. It would have been natural and expected for Glenn to discuss Cathy's absence with "Uncle Jack" if it had been true and so Glenn testified he did discuss it with Brantley. Brantley appeared at trial and flatly denied any such conversation. Apparently, Respondent Gunnells just never planned on Brantley, who was 83 at the time of trial, to travel from Waynesboro, Georgia to testify at trial. Respondent cannot deny that Glenn Gunnells' testimony was totally contradicted by a person of impeccable honor and integrity. Instead, Respondent seeks to deflect the exposed misstatement by calling it "not substantive." Nothing could be further from the truth.

CONCLUSION

Petitioner believes that the Court applied the law correctly and that its conclusions were amply supported by the evidence in each and every instance. Petitioner therefore requests that the Motion to Reconsider be denied.

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Dated: Aug 12, 2016.

By: Julie C. Jackson-Bailey by DHH
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STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2014-ES-10-2022
	)	
IN THE MATTER OF: HELEN B. GUNNELLS	)	
	)	
CATHY G. HARKNESS, Petitioner,	)	**CERTIFICATE OF SERVICE**
	)	
vs.	)	
	)	
GLENN A. GUNNELLS, individually and as Personal Representative of the Estate of Helen B. Gunnells, Respondent.	)	

I, the undersigned, do hereby certify that on the 12 day of August 2016, I served a copy of the Petitioner's Memorandum in Opposition to Motion to Reconsider by electronic mail addressed to the following:

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THE STATE OF SOUTH CAROLINA

In the Court of Common Pleas
for the Ninth Judicial Circuit

APPEAL FROM CHARLESTON COUNTY PROBATE COURT

The Hon. Irvin G. Condon, Probate Court Judge

Case No. 2016-CP-10-4566

Glenn Gunnells, Individually and as the Personal Representative of The Estate of Helen B. Gunnells,

Appellant,

vs.

Cathy G. Harkness,

Respondent.

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY

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TABLE OF CONTENTS

Table of Contents i

Table of Authorities iii

Introduction 1

Statement of the Case 2

Standard of Review 4

Statement of Issues on Appeal 5

Summary of the Law of Undue Influence 6

Argument 9

I. The Probate Court erred in finding that Testatrix's will was the product of undue influence in the face of uncontroverted evidence and testimony from Testatrix's attorney and her paralegal to the contrary, - who were the only witnesses to the testamentary act – to the contrary 9

II. The Probate Court erred in considering facts and testimony of events that occurred in time after the testamentary act and after Testatrix's death as probative of a finding that Testatrix's Will was the product of undue influence 16

III. The Probate Court relied on irrelevant facts and/or made factual findings not reasonably supported in the record in making its determination that Testatrix's will was the product of undue influence 17

IV. The Probate Court erred in finding the Testatrix's will was the product of undue influence when there was no showing of threats, force or restricted visitation 20

V. The Probate Court erred by giving great weight to the respondent's misstated and misrepresented testimony of Testatrix's physician Dr. Rhonda chanson, when the medical conclusions found by the Probate Court are not reasonably supported in the record 24

VI. The Probate Court erred in admitting and giving great weight to unsubstantiated, unsupported and unauthenticated medical records from one of Testatrix's pharmacies 26

VII. The Probate Court erred in accepting the testimony of Ms. Helen Carroll regarding Testatrix's statement "I had no choice" when Ms. Carroll testified several times she did not remember ever having a conversation with Testatrix about a new will, nor knew the circumstances of the statement from which she read.....28

VIII. The Probate Court erred in disregarding the testimony of Testatrix's two (2) home health physical therapists, in whom she confided 29

IX. The Probate Court erred in giving great weight to respondent's testimony that she sought DSS, Probate Court and/or Legal Aid with no evidence, independent witness or supporting testimony to prove the same 32

X. The Probate Court's order denying the motion to reconsider addressed any of the legal and factual errors of the Probate Court's Original Order.....33

XI. The Probate Court erred in finding that Testatrix's will was the product of undue influence under the application of a "four circumstances test" where such findings do not require Respondent to meet her high burden of proof 34

XII. The Probate Court by errors of law in its analysis of controlling authority erred in determining whether Testatrix's will was the product of undue influence 34

Conclusion.....36

TABLE OF AUTHORITIES

Page(s)

CASES

Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982) ..... *passim*

Hairston v. McMillian, 387 S.C. 439, 692 S.E.2d 549 (Ct. App. 2010)..... *passim*

Hembree v. Estate of Hembree, 311 S.C. 192, 428 S.E.2d 3 (Ct. App. 1993) ..... *passim*

Howard v. Nasser, 364 S.C. 279, 613 S.E.2d 64 (Ct. App. 2005).....7, 12

In re Estate of Anderson, 381 S.C. 568, 674 S.E.2d 176 (Ct. App. 2009).....12

In re Estate of Cumbee, 333 S.C. 664, 511 S.E.2d 390 (Ct.App. 1999).....4, 8, 12

In re Last Will and Testament of Smoak, 286 S.C. 419, 334 S.E.2d 806 (1985)..... *passim*

Mock v. Dowling, 266 S.C. 274, 222 S.E.2d 773 (1976).....7, 13

Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003)..... *passim*

Smith v. Whetstone, 209 S.C. 78, 39 S.E.2d 127 (1946).....7, 8

Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013)..... *passim*

STATUTES

S.C. Code Ann. § 62–1–308 4

S.C. Code Ann. § 62-3-407.....7

INTRODUCTION

Should this Court affirm the Probate Court's decision in this matter, it will turn South Carolina undue influence jurisprudence on its head because it will be affirming a finding of undue influence where (1) there is no evidence of threats, force or restricted visitation prior to the testamentary act; (2) every witness testified that Testatrix was of sound mind, independent and opinionated until the day she died; (3) the testimony of the drafting attorney that the Testatrix wanted to change her Will for a very specific purpose – to punish her daughters – is simply overlooked; (4) there is unrefuted testimony of the drafting attorney and her paralegal that there was no undue influence, Testatrix knew exactly why she wanted a New Will and was adamant about the same; (5) there was testimony from four independent witnesses that Testatrix confided in – where she spoke freely and openly – outside the presence of Appellant – about her disappointment with her daughters; and (6) there was testimony from five independent witnesses confirming Appellant was an appropriate and dutiful caregiver; and (7) the Probate Court relied on evidence that occurred well-beyond the date of the testamentary act to retroactively make a finding of undue influence at the time of the New Will.

None of foregoing supports a finding of undue influence. When all the evidence is viewed, it becomes clear that the Probate Court was guided by errors of law and that the Respondent did not meet her high burden of showing undue influence at the time of the testamentary act.

STATEMENT OF THE CASE

Helen Beatrice Gunnells ("Decedent" or "Testatrix") died testate on February 7, 2014 in Charleston County, South Carolina. Decedent was the window of the late Aiken Arden Gunnells. They were married for many years and resided at 1931 Capri Drive, Charleston, South Carolina ("Residence"). They had three (3) adult children: Appellant, Glenn Gunnells ("Appellant"), Respondent, Cathy Harkness ("Respondent"), along with Ms. Belinda Davis ("Ms. Davis"), who was not a party to these proceedings but was present and testified at trial.

Testatrix executed a prior will on November 7, 2006 ("Old Will"), in which she left everything to her husband. [Tr. Vol. 2, p. 60]. However, in the event her husband pre-deceased Testatrix, everything would pass to her children in equal shares. [Old Will].

On January 21, 2011, Decedent and Arden Gunnells executed General Durable Power of Attorneys appointing Appellant as their attorney-in-fact. These documents were prepared by Weeks & Irvine of Charleston, South Carolina. [POAs].

In the Spring of 2012, Arden Gunnells was diagnosed with cancer. Soon thereafter, at his parent's request, Appellant moved into the Residence to care for his ailing parents. [Tr. Vol. II, p. 114-115]. In doing so, Appellant sold his own home. [Id.]. Arden Gunnells died June 8, 2013. [Tr. Vol. I at 64].

On June 27, 2013, shortly after her father's death, Respondent wrote her mother a letter threatening to sue her for personal property items at the Residence. [Ex. 3].

Less than a month after her husband's death, Decedent executed a new Last Will and Testament on July 3, 2013. ("New Will"). [New Will]. This document was prepared by Suzanne Klok, Esq. of The Klok Law Firm, Mt. Pleasant ("Attorney Klok" or "Ms.

Klok"). [Tr. Vol. II, p. 57]. The New Will appointed Appellant as the Decedent's Personal Representative and designated him as the sole beneficiary of the Decedent's Estate. [New Will]. Testatrix changed her Will because "she was really upset with her two daughters . . . she was unhappy with the way that they were – you know, she just didn't want to be around them. There were some fights, I believe, over her husband's property, and she was very unhappy with the two daughters." [Tr. Vol. II, p. 61].

Ultimately, Respondent followed through on her prior threat and filed an *Affidavit and Complaint in Claim and Delivery* against the Testatrix on July 19, 2013, in which Respondent claimed she was entitled to certain personal property items that remained at the Residence after her father's death. [Claim & Delivery]. The matter proceeded to a hearing on August 23, 2013 resulting in a judgment for Respondent as the Testatrix did not appear.

Testatrix died February 4, 2014. Appellant began administration of the Estate on February 25, 2014 as evidenced by the *Application for Informal Probate of Will of Helen B. Gunnells* and *Information to Heirs and Devisees*, both completed and filed with the Probate Court. [Probate Filings].

On July 28, 2014, Respondent filed a Petition seeking to set aside the New Will alleging causes of action for undue influence and duress against Appellant. [7.28.2014 Petition]. She filed an Amended Petition thereto on April 16, 2015. [4.16.2015 Amended Petition].

Respondent also filed a separate Petition against Appellant on April 16, 2015 seeking to remove him as Personal Representative of the Estate. [4.16.2015 Petition for

Removal]. A hearing on the removal Petition was conducted August 19, 2015. The Court has held that matter under abeyance pending final disposition of the instant Will Contest.

This matter came to a bench trial before the Honorable Irvin G. Condon of the Charleston County Probate Court on March 1-3, 2016. By Order dated May 12, 2016, Judge Condon found for the Respondent. [5.12.2016 Order]. Specifically, the Court found there was "clear and convincing" evidence that the Testatrix was "under undue influence when she made and executed the July 3, 2013 Will" and the New Will was found to be invalid. This Order was received by Appellant's counsel on May 19, 2013.

On May 31, 2016, Appellant's counsel filed and served his Motion to Alter, Amend and/or Reconsider upon opposing counsel and the Probate Court. [5.31.2016 MTR]. On August 25, 2016, Judge Condon denied Appellants Motion. [8.25.2016 Order]. The August 25, 2016 Order was electronically mailed to all counsel of record. On August 26, 2016, Appellant served the Notice of Appeal on Respondent. [NOA].

STANDARD OF REVIEW

An action to set aside a will is an action at law. *In re Estate of Cumbee,* 333 S.C. 664, 670, 511 S.E.2d 390, 393 (Ct.App.1999). "If the proceeding in the Probate Court is in the nature of an action at law, the circuit court and this Court may not disturb the probate judge's findings of fact unless a review of the record discloses there is no evidence to support them." *Id.* Under the Probate Code, a circuit court hearing an appeal from the probate court must apply the same rules of law as an appellate court would apply on appeal. S.C. Code Ann. § 62–1–308(d); *In re Estate of Cumbee*, 333 S.C. 664, 670–71, 511 S.E.2d 390, 393 (Ct. App. 1999).

STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE PROBATE COURT ERRED IN FINDING THAT TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE IN THE FACE OF UNCONTROVERTED EVIDENCE AND TESTIMONY FROM TESTATRIX'S ATTORNEY AND HER PARALEGAL TO THE CONTRARY, WHO WERE THE ONLY WITNESSES TO THE TESTAMENTARY ACT ITSELF?

II. WHETHER THE PROBATE COURT ERRED IN CONSIDERING FACTS AND TESTIMONY OF EVENTS THAT OCCURRED IN TIME AFTER THE TESTAMENTARY ACT AND AFTER THE DEATH OF THE TESTATRIX AS PROBATIVE OF A FINDING THAT TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE?

III. WHETHER THE PROBATE COURT RELIED ON IRRELEVANT FACTS AND/OR MADE FACTUAL FINDINGS NOT REASONABLY SUPPORTED IN THE RECORD IN MAKING ITS DETERMINATION THAT TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE?

IV. WHETHER THE PROBATE COURT ERRED IN FINDING THE TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE WHEN THERE WAS NO SHOWING OF THREATS, FORCE OR RESTRICTED VISITATION?

V. WHETHER PROBATE COURT ERRED BY GIVING GREAT WEIGHT TO THE RESPONDENT'S MISSTATED AND MISREPRESENTED TESTIMONY OF TESTATRIX'S PHYSICIAN DR. RHONDA CHANSON, WHEN THE MEDICAL CONCLUSIONS FOUND BY THE PROBATE COURT ARE NOT REASONABLY SUPPORTED IN THE RECORD?

VI. WHETHER THE PROBATE COURT ERRED IN ADMITTING AND GIVING GREAT WEIGHT TO UNSUBSTANTIATED, UNSUPPORTED AND UNAUTHENTICATED MEDICAL RECORDS FROM ONE OF TESTATRIX'S PHARMACIES?

VII. WHETHER THE PROBATE COURT ERRED IN ACCEPTING THE TESTIMONY OF MS. HELEN CARROLL REGARDING TESTATRIX'S STATEMENT "I HAD NO CHOICE" WHEN MS. CARROLL TESTIFIED SEVERAL TIMES SHE DID NOT REMEMBER EVER HAVING A CONVERSATION WITH TESTATRIX ABOUT A NEW WILL, NOR KNEW THE CIRCUMSTANCES OF THE STATEMENT FROM WHICH SHE READ?

VIII. WHETHER THE PROBATE COURT ERRED IN DISREGARDING THE TESTIMONY OF TESTATRIX'S TWO (2) HOME HEALTH PHYSICAL THERAPISTS, IN WHOM SHE CONFIDED?

IX. WHETHER THE PROBATE COURT ERRED IN GIVING GREAT WEIGHT TO RESPONDENT'S TESTIMONY THAT SHE SOUGHT DSS, PROBATE COURT AND/OR LEGAL AID WITH NO EVIDENCE, INDEPENDENT WITNESS OR SUPPORTING TESTIMONY TO PROVE THE SAME?

X. WHETHER THE PROBATE COURT'S ORDER DENYING THE MOTION TO RECONSIDER ADDRESSED ANY OF THE LEGAL AND FACTUAL ERRORS OF THE PROBATE COURT'S ORIGINAL ORDER? WHETHER THE PROBATE COURT BY ERRORS OF LAW IN ITS ANALYSIS OF CONTROLLING AUTHORITY ERRED IN DETERMINING WHETHER TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE?

XI. WHETHER THE PROBATE COURT BY ERRORS OF LAW IN ITS ANALYSIS OF CONTROLLING AUTHORITY ERRED IN DETERMINING WHETHER TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE?

XII. WHETHER THE PROBATE COURT ERRED IN FINDING THAT TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE UNDER THE APPLICATION OF A "FOUR CIRCUMSTANCES TEST" WHERE SUCH FINDINGS DO NOT REQUIRE RESPONDENT TO MEET HER HIGH BURDEN OF PROOF?

SUMMARY OF THE LAW OF UNDUE INFLUENCE

The right to make a will directing the ultimate disposition of one's property is one of the basic rights known to our civilization; it encompasses the right to make it to the testatrix's pleasure and in her absolute discretion, whether judiciously or capriciously, justly or unjustly, subject only to the restraints upon the power of disposition that the law has imposed. *Wilson v. Dallas*, 403 S.C. 411, 445, 743 S.E.2d 746, 765 (2013); *In re Last Will and Testament of Smoak*, 286 S.C. 419, 427, 334 S.E.2d 806, 811 (1985) (citation omitted).

"It is elementary that the statutory right of a competent person to dispose of her property as she wishes may not be thwarted by disappointed relatives or by one who thinks the Testatrix used bad judgment or was misled." *Mock v. Dowling,* 266 S.C. 274, 278, 222 S.E.2d 773, 775 (1976).

In will contest litigation that alleges undue influence, the South Carolina Probate Code states that: "[the Respondent] will have the burden of establishing undue influence." *See* S.C. Code Ann. § 62-3-407. ("Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof."); *Calhoun v. Calhoun,* 277 S.C. 527, 530, 290 S.E.2d 415, 417 (1982) ("The contestants continue to bear the burden of proof throughout the will contest"); *Smith v. Whetstone,* 209 S.C. 78, 84, 39 S.E.2d 127, 129 (1946) (stating in case where a will is formally executed, the burden of proof is on the contestant to prove undue influence "and this burden remains on him to the end").

Undue influence may be proved by circumstantial evidence, but the circumstances relied on to show it must be such as taken together point **un-mistakenly and convincingly** to the fact that the mind of the testator was subjected to that of some other person, so that the will is that of the latter and not of the former. *Howard v. Nasser,* 364 S.C. 279, 286, 613 S.E.2d 64, 67 (Ct. App. 2005) (emphasis added); *Mock v. Dowling,* 266 S.C. 274, 278, 222 S.E.2d 773, 775 (1976) ("Undue influence may be proven by circumstantial evidence. However, that evidence must be of a substantial nature.")

For a will to be invalidated for undue influence, the influence must be the kind of mental coercion which destroys the free agency of the creator and constrains her to do things which are against her free will, and that she would not have done if she had been

left to her own judgment and volition. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003); *Smoak*, 286 S.C. 419, 424, 334 S.E.2d 806, 809 (1985).

Undue influence must amount to force and coercion, destroying free agency; it must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act; by importunity which could not be resisted; that it was done merely for the sake of peace; so, that the motive was tantamount to force and fear. *Calhoun v. Calhoun*, 277 S.C. 527, 532, 290 S.E.2d 415, 418 (1982); *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003) ("The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf. Undue influence is demonstrated where the will of the influencer is substituted for the will of the maker.")

The mere existence of influence is not enough to void a will as all influences are not unlawful. *Hembree v. Estate of Hembree*, 311 S.C. 192, 196, 428 S.E.2d 3, 5 (Ct. App. 1993); *Smith v. Whetstone*, 209 S.C. 78, 39 S.E.2d 127 (1946). "A mere showing of opportunity and even a showing of motive to exercise undue influence does not justify a submission of that issue to a jury, unless there is additional evidence that such influence was actually utilized." *Smoak, supra*, at 424, 334 S.E.2d at 809; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003).

Where the testator has an unhampered opportunity to revoke a will or codicil after the operation of undue influence upon him, but does not change it, the court – as a general rule – considers the effect of undue influence destroyed. *Smith v. Whetstone*, 209 S.C. 78, 39 S.E.2d 127 (1946), as quoted in *Estate of Cumbee*, 333 S.C. 664, 511 S.E.2d 390

(Ct.App.1999); *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 333-34 (2003).

ARGUMENT

When the full body of South Carolina statutory and case authority is examined along with the evidence presented at trial, it becomes clear that the Respondent did not meet her high burden of proof. [5.12.2016 Order, p. 14; 8.25.16 Order, p. 5].

I. THE PROBATE COURT ERRED IN FINDING THAT TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE IN THE FACE OF UNCONTROVERTED EVIDENCE AND TESTIMONY FROM TESTATRIX'S ATTORNEY AND HER PARALEGAL – WHO WERE THE ONLY WITNESSES TO THE TESTAMENTARY ACT – TO THE CONTRARY.

The Probate Judge, in denying the motion to reconsider, affirmatively stated that he had examined "all circumstantial evidence" in this case. [8.25.16 Order, p. 2; 5.12.2016 Order, p. 14]. The Probate Judge also went on to say that he "expressly acknowledges and contemplates the testimony of Attorney Klok and [her paralegal] Ms. Voytko. [8.25.16 Order, p. 4; 5.12.2016 Order, p. 13].

But when one refers to the original Order, the only time the Probate Judge discusses the attorney and paralegal, he merely says "Attorney Klok testified there was only one (1) visit for two to three (2-3) hours" and that the attorney "only had contact with the Testatrix for a couple of hours" [5.12.2016 Order, p. 13]. That is the sum-total of the Probate Court's analysis regarding Klok and Voytko. In other words, the Probate Judge pulled and isolated one fact [the duration of the visit to the attorney's office] and then failed to analyze the

substance of the testimony of the only two witnesses who were present at the time the execution of the New Will.[1]

It should be noted the in both Orders, the Probate Court never rejected the testimony of Klok or Voytko. [8.25.16 Order, p. 4; 5.12.2016 Order, p. 13]. He never made a finding that their testimony lacked credibility. [Id.] He never ruled that Klok violated her obligations as an attorney or acted in any way inappropriately. [Id.] Respondent offered no rebuttal testimony or witnesses that showed Attorney Klok mishandled the execution of the New Will, or violated her professional duties. Contrary to his assertion that he fully acknowledged and contemplated the testimony of Klok and Voytko, the Probate Judge treats them as though they didn't testify at all – contrary to how other Courts have treated the testimony of the drafting attorney.

Since the testimony of the drafting attorney has consistently been found to be probative in all other recent, reported "undue influence" cases in South Carolina this should amount to reversible error.

It should be noted that these witnesses had direct evidence. Attorney Klok substantiated the original copy of the New Will for the Court. [Tr. Vol. II, p. 65]. She said Testatrix met with her and her legal assistant Ms. Voytko on July 3, 2013 for about three (3) hours. [Id. at 58]. Ms. Gunnells was adamant about having the New Will done that day. [Id.]. She brought the Old Will to the meeting with Attorney Klok, knowing that she wanted to change her disposition. [Id. at 60]. Attorney Klok satisfied herself that Mrs. Gunnells

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[1] In doing so, the Probate Court isolates as conclusive a single detail regarding the execution of the Will, "to the exclusion of all other circumstances leading up to and immediately following the visit to Attorney Klok's office" – which he chides the undersigned for doing (incorrectly) in the Motion to Reconsider. [8.25.16 Order, p. 6].

was competent to make a new testamentary disposition. [Id.at 62]. "[T]hroughout our discussions, she was very frail physically but mentally she seemed to know what she wanted. She was pretty clear. Very adamant about it." [Id.].

While Respondent drove Testatrix to her appointment at the Klok Law Firm, he was not present in the conference room at any time during any discussion or drafting of the New Will. [Id. pp. 59-60]. Klok testified that her policy is not to allow anyone who comes with the client into the conference room during her interviews and no one else enters except her staff; in fact, she directed that the Respondent be outside the building throughout the meeting so that he could not possibly overhear the discussions – a decision the Respondent respectfully complied with. [Id. at 60-61].

On the day she met with Klok, Testatrix was very upset with her two daughters, she did not wish to be around them and she was adamant about wanting to leave her Estate to Respondent. [Id. at 61-62]. "She seemed very, very sure, and that's one thing that struck me that I still remember." [Id. at 70]. Klok said that had she ever felt the Testatrix was unsure, she would never have finished the Will that day. [Id.]. Klok remembered that Mrs. Gunnells glowed when she talked about Respondent – "It was very sweet. She was very, very loving about Glenn. It was really in contrast to how she spoke about her daughters, that for them they were more -- it was disappointment, I think, with the daughters. But she was very, very happy that Glenn was taking care of her. And you know, she said she couldn't get out and interact as much as she did if it wasn't for Glenn. And that he really was just, you know, wonderful of all the things he did. And took great care of her." [Id. at 63]. Klok explained to the Testatrix that changing her will was her decision and no one

else's; Klok then asked the Testatrix if she felt any force or pressure from any of her children in any way to change her will, to which she replied "no." [Id. at 68-69].

Testatrix – while alone and confiding with Klok and Voytko – thoroughly explained her reasoning and rationale for executing the New Will. It was not because she necessarily wanted to give Respondent the entire estate, it was more so that she did not want to give anything to her daughters – "she told me her rationale for it wasn't related to how great Glenn was and she loved him, but it was more how she was disappointed with her daughters." [Id. at 72]. Klok remembered that the Testatrix was very worried about her daughter, the Respondent, causing problems once she found out about the New Will. [Id. at 62].

Voytko corroborated Klok's testimony: she testified that Testatrix (1) met alone with Klok and Voytko while Respondent waited outside; (2) was of sound mind; (3) was very disappointed with her daughters; and (4) was grateful for her son. [Id. at 86-91]. In her judgment, there were no "red flags". [Id. at 91-92]. Voytko witnessed the New Will. [Id. at 93].

For decades, reported decisions in South Carolina have given great weight to the testimony of the attorney who drafted the challenged testamentary document. *See, e.g., Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 216, 578 S.E.2d 329, 333 (2003); *Calhoun v. Calhoun*, 277 S.C. 527, 531, 290 S.E.2d 415, 418 (1982); *Hairston v. McMillian*, 387 S.C. 439, 446, 692 S.E.2d 549, 553 (Ct. App. 2010); *In re Estate of Anderson*, 381 S.C. 568, 575, 674 S.E.2d 176, 180 (Ct. App. 2009); *Howard v. Nasser*, 364 S.C. 279, 284, 613 S.E.2d 64, 66 (Ct. App. 2005); *Hembree v. Estate of Hembree*, 311 S.C. 192, 195, 428 S.E.2d 3, 4 (Ct. App. 1993); *Cf. Estate of Cumbee*, 333 S.C. 664, 673, 11 S.E.2d 390, 294

(Ct. App. 1999) (finding undue influence where, *inter alia*, Testatrix did not meet with lawyer nor did she read the will). In fact, in *Hairston*, the drafting attorney's testimony was considered so significant that it outweighed that of a testifying medical expert who had not examined the Decedent. 387 S.C. at 446, 692 S.E.2d at 553.

It is well-settled that in a will contest based on undue influence, the contestant must show that the influence was brought directly to bear upon the testamentary act. *Russell v. Wachovia Bank*, 353 S.C. 208, 219, 578 S.E.2d 329, 335 (2003); *Mock v. Dowling*, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976); *Hairston v. McMillian*, 387 S.C. 439, 446, 692 S.E.2d 549, 553 (Ct. App. 2010); *see also Wilson v. Dallas*, 403 S.C. 411, 337, 743 S.E.2d 746, 760 (2013) (holding that in a will contest case, facts are irrelevant "if they have no bearing on the execution of [testator's] testamentary documents" and "shed no light on whether the [testator's] will was somehow overcome at the time he signed the documents finalizing his estate plan"). In *Calhoun v. Calhoun*, the Supreme Court found probative the fact that "the record is devoid of any evidence the [Appellant] interfered with the making of the will." 277 S.C. 527, 533, 290 S.E.2d 415, 419 (1982).

Accordingly, the Probate Court committed reversible error when it adopted the Respondent's proposed order (identical to the 5.12.2016 Order) with absolutely no mention of the substance of Klok and Voytko's testimony, then later affirmed that the Court balanced all the evidence. That simply did not happen; it is the elephant in the room. By electing to ignore the drafting attorney's testimony – almost as if she didn't interview the Decedent at the time of the New Will nor testified at trial – the Probate Court has substantially deviated from what has been considered probative and compelling evidence by the higher courts in South Carolina.

By overlooking the testimony of the legal professionals, the Probate Court has essentially turned undue influence jurisprudence on its head. It is uncontroverted that Klok is a licensed, reputable and competent attorney who has practiced law in the Charleston area for over twenty years in the field of Wills and Estate Planning. Respondent offered no rebuttal testimony that put into question Klok's qualifications or professionalism in any manner, nor any expert testimony that Klok failed: (1) to adequately discharge her duty to the Testatrix; (2) was governed by some conflict of interest; or (3) deviated from the acceptable standard of care for probate attorneys. Yet if the Probate Court's Order becomes the new standard for undue influence litigation, all this formerly probative and compelling testimony is deemed irrelevant. Respondent offered no testimony that Klok in any way deviated from the standard of care for an attorney practicing in the area of Wills and Estates.

Additionally, the only factors the Court relied upon concerning "all other circumstances leading up to and immediately following the visit to Attorney Klok's office" were irrelevant and/or non-dispositive under current jurisprudence.

For example, the Court seemed to find probative that Appellant drove the Testatrix to Klok's office. [5.12.2016 Order, p. 2]. However, in *Calhoun v. Calhoun*, our Supreme Court did not find the fact the beneficiary drove the testator to the lawyer's office was at all probative. 277 S.C. at 532, 290 S.E.2d at 419 (1982). Neither, apparently, did the Court of Appeals in *Hembree, supra*, 311 S.C. at 195, 428 S.E.2d at 4 (Ct. App. 1993).

Next, the original Order found that "Respondent acknowledged that Susanne Klok had been his closing attorney on June 6, 2013 and that Attorney Klok had no relationship with Helen Gunnells prior to the Testatrix changing her Will" [5.12.2016 Order, p. 11] –

as if to suggest some improper collusion between Appellant and Klok. This suggestion is risible. Klok was the closing attorney for the property Appellant was selling (Tr. Vol. II, p. 83) and in conformity with South Carolina practice, she would have been selected by the buyer's attorney – i.e. not the Appellant. Even if this Court discounts the Appellant's testimony that the Testatrix wanted a female attorney rather than return to the firm where she had her Power of Attorney drawn (Id. at 132), in *Smoak, supra*, the Supreme Court found nothing untoward that the beneficiary took the testatrix to his personal attorney. 286 S.C. at 422, 334 S.E.2d at 808.

While seeming to suggests the one visit with a new lawyer for 2-3 hours is somehow dispositive [5.12.2016 Order pp. 2, 11], it is not. As Klok stated in her testimony, most times her elderly clients do not want to have multiple meetings. [Tr. Vol. II p. 58]. She schedules and tailors her meetings for each individual client. [Id.]. Furthermore, the meeting was a long one – about three hours. [Id.]. The facts in *Smoak*, for example, show only one meeting with the lawyer. The number of visits simply is not dispositive – it's what transpired during the attorney meeting that makes the difference.

Following *Hembree*, supra, the fact that the Will was "unsealed" when Testatrix left Klok's office, and the Respondent had access to it [5.12.2016 Order, p. 16], is likewise irrelevant.

Bluntly, the Probate Court is simply wrong when it states the "circumstances surrounding the execution clearly indicate the Will was the product of the Respondent and that the Testatrix 'felt she had no choice' but to execute a New Will." Respondent failed to present any relevant and compelling evidence to support the same. As such, the Probate Court should be reversed.

II. THE PROBATE COURT ERRED IN CONSIDERING FACTS AND TESTIMONY OF EVENTS THAT OCCURRED IN TIME AFTER THE TESTAMENTARY ACT AND AFTER TESTATRIX'S DEATH AS PROBATIVE OF A FINDING THAT TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE.

The 5.12.2016 Order clearly establishes that the Testatrix went to change her Will on July 3, 2013 – less than a month after the death of her late husband on June 8, 2013. [5.12.2016 Order p. 2, 16]. Findings of fact for alleged acts of undue influence after July 3, 2013 – including after Testatrix's death – should not be permitted to serve as a basis for finding influence *at the time of the testamentary act*. At best, such evidence could only go to whether the Testatrix had unfettered opportunity to change her will. *Hembree*, *supra*, 311 S.C. at 196-97, 428 S.E.2d at 5 (Ct. App. 1993).

The Probate Judge seems to acknowledge this in the second Order [8.25.16 Order, p. 6] but never goes back and corrects the erroneous finding of undue influence at the time of the testamentary event based on facts which occurred long thereafter.

With regards to whether Testatrix had the "unfettered opportunity" to change her will, there was no testimony or evidence presented that Testatrix, after executing the New Will (1) wanted to change her Will; (2) tried to change her Will (3) was denied access to an attorney to change her Will; likewise, the Probate Judge made zero finding in either Order to that effect – despite suggesting that such evidence might be pertinent in the second Order. [8.25.16 Order, p. 6]. In reality, what happened here is that the Probate Judge executed the Respondent's proposed order – which is silent on the opportunity to change the Will. None of the Probate Court's findings of post-Will events goes to this issue. It is a red herring to cover the original Order's clear use of post-testamentary events to improperly support a pre-testamentary finding of undue influence. In any event,

Respondent failed to show by unmistakable and convincing evidence that there was any undue influence exerted by Appellant – either before or after the testamentary act.

The Court also relied heavily on Appellant's alleged maladministration of the Estate in concluding the New Will was the product of undue influence. [5.12.2016 Order, p. 12] ("In short, he has not administered the Estate in an honest and forthright manner.") This, however, is completely irrelevant and improper for the same reason. Events that allegedly occurred after the Testatrix's death in the opening and administration of the Estate have no bearing on whether she was unduly influenced during her life.

III. THE PROBATE COURT RELIED ON IRRELEVANT FACTS AND/OR MADE FACTUAL FINDINGS NOT REASONABLY SUPPORTED IN THE RECORD IN MAKING ITS DETERMINATION THAT TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE.

The Probate Court states that the Testatrix changed her Will "but had not wanted to do so." [5.12.2016 Order, p. 5]. This is not supported by the record. The only possible evidence to support such a finding was that Testatrix allegedly told her friend, Mrs. Carroll, "I had no choice." [Carroll Depo. at 18].

First, Ms. Carroll could not remember the actual conversation with Testatrix ever taking place – showing she lacked the personal knowledge required of a witness. [Id. at 35-36]. ("Q: Okay. Did [Testatrix] ever talk to you about signing a will or something like that? A: No. Q: Never came – A: No.") [Carroll Depo. at 15]. Similarly, on cross-examination after she read the letter, Ms. Carroll did not remember discussing the will with the Testatrix, either. ("Q: So earlier, Mr. Howe had to remind you about . . . a conversation you had about the will with Mrs. Gunnells. Do you remember that conversation? A: No. I don't.") [Carroll Depo at 35-36].

Second, the meaning behind this statement could be many things – "no choice" because her daughters had abandoned her, "no choice" because her daughters could not be trusted, "no choice" because it was the right thing to do to remove them from the New Will? In *Smoak*, the Testator told one of his daughters, "[t]here's nothing you can do. It's just too late. There's no time." The *Smoak* Court found that even if it believed the testator was speaking about the Will, the conclusion that the Will was the product of undue influence was simply not warranted. *Smoak*, 286 S.C. at 425, 334 S.E.2d at 810 (1985). Here, similarly, Ms. Carroll testified that Testatrix told her, "I had no choice." Following *Smoak*, even if the Probate Court believed this statement was about the New Will, the conclusion that the New Will was the product of undue influence is simply not warranted. *Id.* The Probate Court failed to take any such questions into consideration, and as such, committed reversible error for relying on Ms. Carroll's testimony.

The Probate Court noted "Ms. Carroll testified that she knew Glenn to have an alcohol problem because she noticed he would 'slur his words' when talking." [5.12.2016 Order, p. 6]. This is a single sentence in the 5.12.2016 Order that is irrelevant and supports nothing in the Court's findings. It is wholly irrelevant to the matter at hand. Further, Ms. Carroll testified that she never saw Appellant drinking and it was Respondent who voiced these concerns to her. [Carroll Depo. at 31-32]. As such, by considering rumors over the testimony of unbiased witnesses, the Probate Court committed reversible error.

The Probate Court weight to Respondent's assertion that she visited with DSS, the Probate Court, independent legal counsel and Legal Aid – with the only evidence of such being a business card to DSS and Respondent's testimony. Respondent presented no independent witnesses or testimony to support the same. The Probate Court failed to

consider that nothing came from these visits. No legal action was ever taken. No one from DSS ever intervened. Nothing ever happened after these alleged meetings.

The Probate Court gives weight to Respondent selling her Corvette to better accommodate her mother when taking her to doctors' visits. [5.12.2016 Order, pp. 6, 8]. Yet, in the same breath, the Probate Court seems to punish Appellant for selling his house to be a live-in care-taker for his parents. It should be noted that Respondent traded in her Corvette for a Lexus SUV – not an unsightly conversion van or wheelchair accessible shuttle. [Tr. Vol. I, p. 102].

Furthermore, the Probate Court gives weight to the testimony that Mr. Brantley knew about the contents of the Old Will, but not the New Will. [5.12.2016 Order, p. 5]. The Probate Court does not explain how this is relevant or probative in its ultimate finding of undue influence. It, along with the other irrelevant and immaterial evidence scattered throughout the 5.12.2016 Order do not support the Probate Court's finding that the New Will was the product of undue influence.

The Probate Court mentions a time when Ms. Davis attempted to enter the house when Ms. Costa and Testatrix were in the middle of a physical therapy session. [5.12.2016 Order, p. 8]. The Probate Court gives weight to Ms. Davis' and Respondent's testimony but does not take into consideration the testimony of Ms. Costa (an independent and unbiased witness) – who was there caring for Testatrix. Ms. Costa testified "Ms. Gunnells did not want to see [Ms. Davis], she was upset." [Tr. Vol. II, p. 23]. But when Ms. Costa attempted to tell Ms. Davis the same, "she pushed into the door and pushed me out of the way." [Id.] The Court gives great weight to Respondent's testimony on the matter. However, Respondent was in the car during this entire encounter.

Finally, and most importantly, the Probate Court ignored another elephant in the room – the fact that Respondent sued her mother almost immediately after her father's death and that her other daughter, Ms. Davis, was largely absent during the latter part of her life. Respondent sued her mother for personal items in the Residence she believed rightfully belonged to her – including two candlesticks from Tuesday Morning. [Tr. Vol. 1, p. 113]. The Probate Court failed to take these very probative uncontroverted facts and circumstances into consideration at all in its finding that the New Will was the product of undue influence.

The Probate Court committed reversible error when it found the following unsubstantiated evidence probative: (1) rumors about Appellant's drinking; (2) Respondent's selling her Corvette in exchange for a Lexus SUV; (3) Ms. Carroll's testimony regarding a conversation she cannot remember, and; (4) DSS and Probate Court visits over uncontroverted testimony and evidence showing: (a) Respondent sued her mother almost immediately after her father's death; (b) Ms. Davis was an absent child; (c) No follow up was ever done by DSS or other legal services; (d) Appellant had met Attorney Klok on one other previous occasion; (e) An independent witness confirmed Testatrix did not want to interact with her daughters.

IV. THE PROBATE COURT ERRED IN FINDING THE TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE WHEN THERE WAS NO SHOWING OF THREATS, FORCE OR RESTRICTED VISITATION

It has been held repeatedly that "[g]enerally, in cases where a will has been set aside for undue influence, there has been evidence either of threats, force, and/or restricted visitation, or of an existing fiduciary relationship." *Russell, supra,* 353 S.C. at 217, 578 S.E.2d at 333; *Hembree, supra*, 311 S.C. at 196, 428 S.E.2d at 5. Even when a fiduciary

relationship exists, the Courts still analyze whether there were threats, force and/or restricted visitation. *See. e.g.*, Hairston, 387 S.C. at 447-448, 692 S.E.2d at 553.

While the Respondent and her sister claimed that Appellant "threatened" ***them*** with "calling the police" (which is rebutted by independent witness testimony from Ms. Costa) – there was absolutely no testimony or evidence that Appellant used threats or force on the Testatrix – which is the person to whom the threat/force would have to be made on in order for it to be probative. *See Hairston, supra,* 387 S.C. at 447, 692 S.E.2d at 549.

The 5.12.2016 Order states that after the execution of the New Will, Mrs. Gunnells was "visibly upset," "crying," and "distraught" in the doctor's office. [5.12.2016 Order at 13]. Dr. Chanson (her treating physician) never tied these emotions to the execution of her New Will. In fact, Dr. Chanson who testified to these emotions – makes it clear that these were experienced over a period of time and were result of Testatrix's husband's recent death – not anything to do her New Will. [Chanson Depo. pp. 25, 26, 35]. It should be noted that during the two years that Dr. Chanson treated Testatrix, Appellant was never in the room for any of her examinations – which lasted anywhere from 30 to 50 minutes. [Id. pp. 13, 18]. Dr. Chanson opined that Testatrix's behavior was appropriate and she did not seem fearful – she saw nothing in Testatrix's demeanor that was concerning or that would lead her to believe Appellant was exercising any influence over Testatrix. [Id. at 17-20].

Likewise, there was no testimony or evidence of restricted visitation. Quite the opposing. Attorney Klok testified that Testatrix told her that if it weren't for Appellant, she would not be able to get out and interact as much – visits to the senior center, doctor's appointments, visit family, etc. [Tr. Vo. II at 63]. Moreover, Testatrix's brother – Jack Brantley – visited his sister in Charleston after her husband's death and while Appellant

was living with his mother: "I probably visited at least three or four times a year, sometimes more often, according to what was going on, and we talked on the telephone at least two, three, four times a week. And if I didn't call her, she would call me." [Id. at 14, 13-17, 19]. He further testified that spoke to her outside Appellant's presence. [Tr. Vol. I at 40-41, 45]. Appellant would also bring his mother to visit Mr. Brantley in Waynesboro, Georgia. [Id. 15].

On direct examination, Testatrix's "friend," Helen Carroll, testified that after her husband's death, Testatrix lost interest in talking on the telephone but that they would visit at Testatrix's home. [Carroll Depo. at 10-11]. She recounted several visits and telephone calls, yet she had very little recollection of the conversations. [*See, generally* Carroll Depo.]. She confirmed daughter Belinda Davis was an absent child. [Id. at 30].

Ms. Carroll further testified that in the last few months of her husband's life, Testatrix changed but that was probably because her husband was dying. [Carroll Depo. at 33]. Testatrix never spoke about any mistreatment, threats, force or any concerns she had about Appellant. [Id. at 35]. Ms. Carroll continued to visit Testatrix after her husband's death – including when Appellant was not there. [Id. at. 10, 12-13, 35]. In fact, Ms. Carroll visited Testatrix at her home up until the last week of her life. [Id. at 34]. Appellant never kept Ms. Carroll away from his mother nor did he ever instruct her to leave when she visited Testatrix. [Id. at 35].

The Testatrix's daughters' testimony fails to show any restriction of visitation. Ms. Belinda Davis was self-admittedly absent – moving to Hawaii right after her father was diagnosed with cancer. [Tr. Vol I at 78-79]. She conceded that she had the opportunity to talk to her mother after her father's death – but she chose not to. [Id. at 68, 83, 87]. It was

that Ms. Davis did not talk to her mother much at all, including during the month of July when the New Will was executed. [Id. at 82, 85].

Respondent's own testimony is indicative that she made a choice to stay away. Only 19 days after her father's death, Respondent admits that she wrote a letter to her mother threatening legal action to recover personal property. [Ex. 4]. In October 2013, she wrote her mother yet another letter. [Ex. 5]. In this letter, Respondent sarcastically commends her mother for being happy, content and being able to sleep at night. [Id.] "[I]t seems you are happy and satisfied with your choices you have made." [Id.]. She also states that she has no desire to visit her mother at her Residence. [Id.].

Accordingly, the most Respondent proved was that leading up to and after her husband's death, Testatrix was sad and sometimes did not want to speak on the phone or have long visits with friends. An emotion that Dr. Chanson said, and common sense would dictate, was completely expected and normal – "most marked thing would have occurred after her husband died and appropriately so. She was very depressed about that. That is one of the most significant losses a person can undergo, secondary to the loss of a child. And it is not uncommon that people will have a difficult time with that. And she was no different." [Chanson Depo. at 15].

Short of cherry-picking snippets of testimony while ignoring admissions and concessions from **the same witnesses**, there is simply no real evidence or testimony to support the finding in the Probate Court's 5.12.2016 Order that states "other children and friends of the Testatrix were not permitted to speak to her on the phone or to be alone with her in the home." [5.12.2016 Order, p. 15]. Again – **these are the Respondent's own witnesses** who can provide no evidence of physical force, neglect or restricted visitation as

to the Testatrix at the time of the testamentary act. It would set South Carolina authority on its head to find undue influence in the absence of these critical factors.

As such, the Probate Court committed reversible error when it made this finding and finding that there was evidence of treats, force and restricted visitation when no evidence was submitted to support the same.

V. THE PROBATE COURT ERRED BY GIVING GREAT WEIGHT TO THE RESPONDENT'S MISSTATED AND MISREPRESENTED TESTIMONY OF TESTATRIX'S PHYSICIAN DR. RHONDA CHANSON, WHEN THE MEDICAL CONCLUSIONS FOUND BY THE PROBATE COURT ARE NOT REASONABLY SUPPORTED IN THE RECORD.

The reasonable good health of a testator is considered probative in an undue influence case. *First Citizens Bank v. Inman*, 296 S.C. 8, 370 S.E.2d 99 (1988). Moreover, in case after case, the South Carolina appellate courts have found probative the testimony of the treating physician that the decedent was competent. *See, e.g., Calhoun*, supra, at 431; *Smoak*, supra, at 426. Thus, the Probate Court committed reversible error when it failed to consider all the testimony of Dr. Chanson – which constitutes her full opinion – rather than allowing the Respondent to cherry-pick a statement here or there.

It is uncontroverted that Dr. Chanson is a licensed, reputable and competent physician who has practiced internal medicine in Charleston since 2000. [Chanson Depo. pp. 6-7]. The Respondent offered no testimony that questioned Dr. Chanson's qualifications in any manner, nor any counter medical expert. It should be noted that Belinda Davis testified it was on her suggestion that Testatrix began to see Dr. Chanson [Tr. Vol. I at 61], which Dr. Chanson corroborated. [Chanson Depo. at 11-12, 16].

The Probate Court relied heavily on Dr. Chanson's assertion that she cannot say whether Testatrix was "unduly influenced." [5.12.2016 Order, pp. 13-14]. What the

Probate Court failed to consider, however, is Dr. Chanson's own testimony that the reason she was unable to opine on that issue because she had no idea what the term "undue influence" meant. [Id. at 18, 38]. Notwithstanding the foregoing, Dr. Chanson noted that Testatrix routinely carried on intelligent conversations during her office visits, she knew exactly who she was and who her family and children were, she had a firm understanding of her surroundings and she made her own decisions. [Id. at 19, 22].

The Testatrix never missed an appointment with Dr. Chanson. [Id. at 17]. Office visits would usually last between 30 and 50 minutes. [Id. at 13]. Furthermore, Appellant was never in the room when Dr. Chanson was examining/treating Testatrix – he would wait in the lobby until she needed to speak to him. [Id. at 18, 27-29]. Dr. Chanson opined that Appellant seemed very attentive towards his mother; he asked appropriate questions about Decedent's health and he would often call the office to ask questions about medications. [Id. at 17]. "He seemed to be giving appropriate care to his mother." [Id.].

Significantly, Dr. Chanson saw Testatrix for an appointment on the same day as Testatrix executed the New Will and believed she was of mind, albeit depressed at the recent loss of her husband. [Id. at 24-25, 3-38]. Dr. Chanson believed that Testatrix was competent to make her own decisions. [Id. at 22].

Dr. Chanson did not see anything in Testatrix's demeanor that was concerning or that would lead her to believe Appellant was influencing Testatrix. [Chanson Depo. at 17-20]. "Her behavior seemed appropriate in our offices. She didn't seem to be fearful. I always examined her, and he was not in the room, so I didn't see anything that would be concerning," she testified. [Id. at 18].

Dr. Chanson testified to all these opinions to a reasonable degree of medical certainty most probably. [Id. at 25-26]. She is an unbiased witness with no reason to favor or discredit one party or the other. She always spent time alone with the Decedent, yet reported no findings of abuse, neglect, force, coercion or domination of Decedent by Appellant. Concerning the medical findings, the Probate Judge said the record speaks for itself. [8.25.16 Order, p. 7]. That would be true if the Probate Judge considered her whole testimony. He did not. Rather, while gleaning one statement, the Probate Court ignored Dr. Chanson's full testimony without weighing her complete opinion or discerning the context around the statements – including snippets of testimony about Testatrix's medication, discussed more fully in Section VIII below.

VI. THE PROBATE COURT ERRED IN ADMITTING AND GIVING GREAT WEIGHT TO UNSUBSTANTIATED, UNSUPPORTED AND UNAUTHENTICATED MEDICAL RECORDS FROM ONE OF TESTATRIX'S PHARMACIES.

The Probate Court makes an incredible finding of fact that Appellant withheld medication from Testatrix. [5.12.2016 Order, p. 14]. In fact, this exact theory was discounted by Dr. Chanson. ("Q: So were you aware of . . . mismanagement of care of mismanagement of medication? A: I was not . . . I did not see anything that would have been concerning."). [Chanson Depo. at 18]. Furthermore, Testatrix, during her long visits with Dr. Chanson, never mentioned anything of the sort to her or anything else that would have been concerning to Dr. Chanson. [Id.]. Once again, it should be noted that the Probate Judge says the record speaks for itself. [8.25.16 Order, p. 7] – which is only true when all Dr. Chanson's testimony is considered.

Respondent failed to illicit *any testimony* from *any witness* that any medication was ever withheld. She failed to call in an independent medical professional, including Testatrix's pharmacist(s), to support this outrageous contention. This is pure conjecture and speculation on behalf of the Respondent and should never have been considered by the Probate Court.

Ms. Leigh Wechter – Testatrix's physical therapist – recounted: "[Appellant] appeared genuinely concerned about Mrs. Gunnells, and would take care to prepare her meals, fix her medications and make recommended safety changes to her home to protect her from falls. [Appellant] worked to ensure Mrs. Gunnells had caregivers in the home to assist her with her personal care, as well as provided (sic) her with transportation and assistance with all of her medical appointments." [Ex. 6]. "[Appellant] made sure that she took her medications." [Tr. Vol. II at 16]. Testatrix's other physical therapist, Ms. Jill Costa, recounted: "Every visit, I got to see how devoted he was to his mother, in which he made sure she had the best possible care." [Ex. 7].

Respondent has failed to present any evidence, let alone unmistakable and convincing evidence, that Appellant withheld medication from his mother. If there were any true merit to this contention, then Respondent would have been able to elicit the same from Dr. Chanson or another medical professional to support it. As such, the court committed reversible error when it considered this unsupported conjecture in finding the New Will was the product of undue influence.

VII. THE PROBATE COURT ERRED IN ACCEPTING THE TESTIMONY OF MS. HELEN CARROLL REGARDING TESTATRIX'S STATEMENT "I HAD NO CHOICE" WHEN MS. CARROLL TESTIFIED SEVERAL TIMES SHE DID NOT REMEMBER EVER HAVING A CONVERSATION WITH TESTATRIX ABOUT A NEW WILL, NOR KNEW THE CIRCUMSTANCES OF THE STATEMENT FROM WHICH SHE READ.

The Probate Court accepted the testimony of Ms. Carroll that the Testatrix said she had "no choice" in signing the New Will. [5.12.2016 Order at 16]. This testimony provides no context for why the Testatrix allegedly had "no choice" – what if it was because her daughters' conduct left her no choice? In any event, this testimony should never have been admitted or considered by the Probate Court.

The "no choice" testimony came about from Respondent's counsel asking Ms. Carroll to testify regarding a letter she had allegedly signed, but which she had no knowledge regarding how it was drafted, who drafted it, when it was drafted, when she signed it, or the circumstances under which she signed it. [Carroll Depo. at 24-28]. The Probate Court correctly excluded this letter from evidence because of the same, yet still considered the testimony elicited from it.

Reading from the letter in her deposition, Ms. Carroll said that the Testatrix told her that she did not want to change her will but Appellant told her she had to. [Carroll Depo. at 18]. However, before she read from the letter, Ms. Carroll testified on direct examination she did not remember any conversation with the Testatrix concerning a will ("Q: Okay. Did [Testatrix] ever talk to you about signing a will or something like that? A: No. Q: Never came – A: No.") [Carroll Depo. at 15]. Similarly, on cross-examination after she read the letter, Ms. Carroll did not remember discussing the will with the Testatrix, either. ("Q: So earlier, Mr. Howe had to remind you about . . . a conversation you had about

the will with Mrs. Gunnells. Do you remember that conversation? A: No. I don't.") [Carroll Depo at 35-36].

It was only after Ms. Carroll read from the letter that she testified specifically that Appellant kept Testatrix from speaking to her brother and sister – which she had not testified to previously on direct examination. [Tr. 19, 22]. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. SCRE 602.

It should be noted that Ms. Carroll, a 92-year-old ailing woman, admitted to an extremely close, personal relationship to the Respondent. She testified that the Respondent "was like a daughter to her" and she would do anything the Respondent asked her to do; she even talked to the Respondent every day. [Carroll Depo. at 28-29, 37]. Yet, curiously, Respondent did not talk to Ms. Carroll at all between the time Arden Gunnells died and Testatrix died [Id. at 37-38] – which could suggest that Respondent was cultivating a lonely, elderly woman more for her anticipated testimony than deep friendship.

Despite all of this, the Court admits the testimony of Ms. Carroll. Which should have been excluded for lack of personal knowledge. SCRE 602. As such, the Probate Court committed reversible error when it gave great weight to the same.

VIII. THE PROBATE COURT ERRED IN DISREGARDING THE TESTIMONY OF TESTATRIX'S TWO (2) HOME HEALTH PHYSICAL THERAPISTS, IN WHOM SHE CONFIDED.

Testatrix had several home healthcare nurses and physical therapists that were prescribed by Dr. Chanson. [Id. at 22]. Two of the physical therapists who were closest to Testatrix – Leigh Wechter and Jill Costa – testified at trial.

Ms. Wechter performed physical therapy for Testatrix through Roper St. Francis Home Healthcare. [Tr. Vol. II, p. 9]. She practiced as a physical therapist for almost thirty (30) years. [Id. at 8]. Ms. Wechter treated Testatrix for roughly two (2) months – from December 2013 to January 2014 – two (2) to three (3) times per week. Each session would last roughly 45 minutes. [Id. at 9]. It is uncontroverted that Ms. Wechter is a reputable and competent physical therapist.

Throughout her visits to the home, Ms. Wechter became close with Testatrix – often talking about her family life while they walked outside. [Id.]. Testatrix would tell her about Appellant being a good son and how she was upset with her daughters – "she would become emotional and would say that she only trusted Glenn when it came to her children." [Id. and Appellant's Exhibit 6]. She testified that Appellant was "very accommodating" and would usually talk to Ms. Wechter about the sessions to see how his mom was doing. [Id. at 10].

Ms. Costa performed physical therapy for Testatrix also through Roper St. Francis Home Healthcare. [03.02.2016 Tr. at 9]. Ms. Costa first treated Testatrix in 2009 then again in 2013. [Id. at 19]. Ms. Costa would also see Testatrix two (2) to three (3) times per week. [Id. at 21-22]. It is uncontroverted that Ms. Costa is a reputable and competent physical therapist.

Ms. Costa had many opportunities to be around Appellant and Testatrix and at no time did she ever believe that Appellant was controlling Testatrix. [Id. at 25]. Testatrix confided in Ms. Costa that she was very upset with her daughters because of their absence and their attitude. [Id. at 29-30].

Ms. Costa happened to be at the Residence on time when Ms. Davis stopped by – "Ms. Gunnells did not want to see her, she was upset," she testified. [Id. at 23]. However, Ms. Davis did not take no for an answer and pushed her way through the door. [Id.].

Like Dr. Chanson, both Ms. Wechter and Ms. Costa are independent witnesses with no discernible biases and no reason to favor one party over the other. They spent time alone with the Testatrix outside the Appellant's presence. They noticed that the Testatrix was upset and dissatisfied with her daughters. She never exhibited signs that she was deprived of her free will. Their testimony was extremely probative as it showed there was no ongoing mental coercion by Appellant which destroyed the Decedent's free agency and/or constrained her to do things which were against her free will. *Last Will and Testament of Smoak v. Smoak*, 286 S.C. 419, 334 S.E.2d 806 (1985). Rather, their testimony substantiated Appellant's position that Testatrix was upset with her daughters. Their testimony offered a reasonable explanation as to why she Testatrix executed the New Will.

It is clear from the uncontroverted testimony of physical therapists that the reason Testatrix executed a New Will was not because of undue influence, but rather the Testatrix's disappointment in the dramatic and unpredictable behavior of her daughters. However, the Probate Court does not address the testimony of these witnesses nor its reasons for not considering it. As such, the Probate Court committed reversible error when it failed to take this independent unbiased testimony into account when finding the New Will was the product of undue influence.

IX. THE PROBATE COURT ERRED IN GIVING GREAT WEIGHT TO RESPONDENT'S TESTIMONY THAT SHE SOUGHT DSS, PROBATE COURT AND/OR LEGAL AID WITH NO EVIDENCE, INDEPENDENT WITNESS OR SUPPORTING TESTIMONY TO PROVE THE SAME

The Probate Court gave great weight to the Respondent's testimony that she sought assistance from DSS, Charleston County Probate Court, independent legal counsel and Legal Aid. [5.12.2016 Order, pp. 4, 8, 9, 10].

First, the only proof of these "visits" is one single DSS business card. There is no other proof of visits to the Probate Court, visits to legal counsel or legal aid. Respondent could have easily called a representative from any of these places to trial to testify regarding the same.

Second, a visit to legal counsel, legal aid, the Probate Court and DSS with no further follow up or, most notably, no further legal action should have been more probative to the Probate Court than the visits themselves. Had some independent third party found there to be actual evidence of abuse and/or neglect, surely there would have been follow-up and/or legal action to remedy the same. However, there was none.

Third, the Probate Court found that "No legal actions were filed, however, primarily because of cost." [5.12.2016 Order at 8]. This is unfounded as the Probate Court is well aware there are cost-efficient and zero-cost methods of obtaining legal aid, especially for purported abuse and neglect matters. Furthermore, Respondent testified she sought the advice of one attorney – Robert Polk – but he was "too expensive" and that she tried for "probably a week" to obtain counsel. [Tr. Vol. 1, p. 70]. Surely, if she thought her mother was in as dire straits as she described at trial, one would assume she may have elicited the expertise of one of the 2,000 plus members of the Charleston County Bar Association.

Fourth, if the abuse and neglect was to such an extent that Respondent and her friends testified to at trial, arguably, no amount of money would have been too much to "save" her mother. Ms. Davis testified that the reasoning for not following up with legal counsel was because of "the expense, and I had to go back to Hawaii." [Tr. Vol. 1, p. 71-72]. Essentially, the daughters were heated after the interaction where Ms. Costa told Ms. Davis Testatrix didn't want to see her, but after a week or so, they calmed down and decided they needed to move on with their lives.

Fifth, it should be noted that none of Testatrix's medical professionals – the people who saw her on a regular basis and had independent one-on-one access to her – ever felt the need or even the inkling to report abuse and/or neglect that Respondent alleges against Appellant.

The pieces don't add up to the court's finding that visits to counsel, DSS, etc. are probative in its finding that the New Will was the product of undue influence. As such, the Probate Court committed reversible error in finding the same.

X. THE PROBATE COURT'S ORDER DENYING THE MOTION TO RECONSIDER DID NOT ADDRESS ANY OF THE LEGAL AND FACTUAL ERRORS OF THE PROBATE COURT'S ORIGINAL ORDER

On May 31, 2016, Appellant submitted his Motion to Alter, Amend and/or Reconsider the Probate Court's 5.12.2016 Order. [5.31.2016 MTR]. Despite Appellant's request for a hearing, the Court issued its decision in an Order on August 26, 2016. [8.26.2016 Order]. The Motion was denied.

The bulk of the 8.26.206 Order discusses the correct application of the law in South Carolina with regards to undue influence and agrees with Appellant's recitation in his Motion to Reconsider. However, the Order does not address the legal and factual errors of

the Probate Court's 5.12.2016 Order. Particularly, the Order is silent on much of the above-argued witness testimony – in particular, the weight and credibility of the witnesses presented and the lack of evidence and testimony to support the Respondent's allegations.

The legal and factual conclusions the Probate Court arrived at are simply not supported by the evidence and testimony. The Court simply states that "the record speaks for itself" but gives no legal or factual basis for its conclusions. [8.26.2016 Order, p. 7]. This is simply not sufficient in a case where so much testimony and evidence presented rebutted any presumption of undue influence.

XI. THE PROBATE COURT ERRED IN FINDING THAT TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE UNDER THE APPLICATION OF A "FOUR CIRCUMSTANCES TEST" WHERE SUCH FINDINGS DO NOT REQUIRE RESPONDENT TO MEET HER HIGH BURDEN OF PROOF.

In the original Order, the Probate Court looked at four circumstances in finding the New Will was the product of undue influence, which it explained in the Second Order was not meant to be exhaustive of formulaic. To the extent the Court still relies on the first and second prongs, Appellant believes they do not accurately reflect South Carolina law as cited by the Probate Court. [5.31.2016 MTR]. As to susceptibility, the Probate Court did point out recent authority where it came up, but the overwhelming weight of all the testimony (including from the Testatrix's brother and daughter) was that the Testatrix was a formidable woman who knew her own mind and was not susceptible to undue influence.

XII. THE PROBATE COURT BY ERRORS OF LAW IN ITS ANALYSIS OF CONTROLLING AUTHORITY ERRED IN DETERMINING WHETHER TESTATRIX'S WILL WAS THE PRODUCT OF UNDUE INFLUENCE.

In previous cases, the Supreme Court of South Carolina found undue influence claims did not exist even though the evidence was more egregious and pervasive than in the present action. In *Russell v. Wachovia Bank, N.A.*, Testator's son and daughter brought

an action to set aside testator's will for undue influence and the court entered summary judgment in favor of the will's proponents. The contestants presented the following evidence: (1) at times, the testator did not know what state he was in and "doubled up" on his medication; (2) the other beneficiaries in the will were disrespectful and frequently yelled at the testator about money; (3) the proponents monitored his telephone, told him how to dress, and would not let the testator adjust his thermostat; (4) the other beneficiaries spent large sums of the testator's money, had unfettered access to his office, and lived in his house; (5) the proponents had frequent contact with the testator's attorney; and (6) testimony from two doctors indicated that the testator may have been susceptible to undue influence. *Id.* 353 S.C. at 215, 578 S.E.2d at 333. While unattractive, such conduct and demeanor did not amount to undue influence nor did it rise to the level of unmistakable and convincing evidence that they utilized their relationship to substitute their will for his. *Id.* In affirming the grant of summary judgment, the court found the testator remained the ultimate decision maker.

In this matter, the Testatrix, while physically infirm, was not mentally infirm – she was very clear and adamant about what she wanted in her New Will. [Tr. Vol II, p. 62]. Notably, Testatrix met with her attorney for several hours where she made it absolutely clear what she wanted to do and why she wanted to do it. [Id.]. Attorney Klok testified that she was quick, rational and precise when answering questions about her family, her property and its disposition. [Id.]

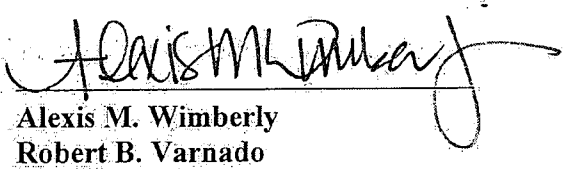
The record is devoid of any evidence that Appellant interfered with the making of the New Will. Appellant did not dictate the will; he was not present when its proposed contents were discussed; nor was he present when the Will was executed. The

circumstances surrounding the drafting and execution of the New Will indicate that it was the product of the free and unfettered act of the Testatrix – who all the witnesses conceded was competent, independent and was of sound mind. *See Mock v. Dowling*, 266 S.C. 274, 278, 222 S.E.2d 773, 774 (1976).

CONCLUSION

Appellant respectfully requests that this Honorable Court find that the Probate Court's 5.12.2016 Order is guided by multiple errors of law and fact. Accordingly, this Honorable Court should reverse the Probate Court's holding and find that the July 3, 2013 Will ("New Will") was not the product of undue influence, is valid and is in full force and effect.

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December 5, 2016
Mount Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA

In the Court of Common Pleas
for the Ninth Judicial Circuit

APPEAL FROM CHARLESTON COUNTY PROBATE COURT

The Hon. Irvin G. Condon, Probate Court Judge

Case No. 2016-CP-10-4566

FILED
2016 DEC -5 PM 3:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Glenn Gunnells, Individually and as the Personal Representative of The Estate of Helen B. Gunnells,

Appellant,

vs.

Cathy G. Harkness,

Respondent.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the ***Appellant's Initial Brief*** in the above referenced case has been served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on this date to the following:

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Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
) Court of Common Pleas
COUNTY OF CHARLESTON) Case No. 2016-CP-10-04566
)
GLENN A. GUNNELLS, et al,)
)
Plaintiff,)
)
vs.) Transcript of Record
)
CATHY G. HARKNESS,)
)
Defendant.) DATE: March 3, 2017

B E F O R E:

THE HONORABLE ROGER M. YOUNG, SR.

A P P E A R A N C E:

ALEXIS MILLS WIMBERLY
Attorney for the Plaintiff

DONALD HIGGINS HOWE
Attorney for the Defendant

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

THE COURT: Appeal from the probate court, huh?

MS. WIMBERLY: Yes, Your Honor.

THE COURT: I just didn't think this day would get any better.

Okay. Who is the appellant?

MS. WIMBERLY: I am here on behalf of the appellant, Your Honor. My name is Alexis Wimberly. And I'm an associate of Brown & Varnado in Mount Pleasant.

THE COURT: Okay.

MS. WIMBERLY: Your Honor, this is an appeal from the probate court regarding a will contest. As a bit of backstory, the testatrix was married to her husband for over 50 years. They executed -- and they have three children, Belinda Davis being the oldest. She's not a party to this lawsuit, but she was a witness at trial in this matter.

Ms. Harkness is the middle child. She's the respondent in this matter.

And my client is Mr. Glenn Gunnells. He's the youngest child and he's the appellant in this matter.

The testatrix and her husband executed "I love you" wills in 2006, which left everything to each other. In 2011, they appointed my client, Mr. Glenn Gunnells, as their power of attorney; both of them did.

In 2013, I believe it's June 8th, 2013, the husband passed away. About 25 days later, Mrs. Gunnells, the elder,

she executed a will leaving all of her estate to my client, the appellant, Mr. Gunnells.

And that's kind of what brought us -- and then a suit was filed for undue influence. And that's what brought us to trial in May of last year in front of Judge Condon.

Judge Condon found against my client, seeing that there was evidence of undue influence. And we have appealed that order.

With regards to that, she drew an affirming order. We believe that it would turn South Carolina jurisprudence on undue influence on its head for many reasons, which I have outlined in our brief. There's about 12 reasons in there. But I will try to be brief today and point out three reasons we believe that that decision should be reversed.

The first and foremost reason is that Judge Condon failed to take into consideration the testimony of the drafting attorney and her paralegal, who were present at the time of the execution of the will. The appellant wasn't in the room. The respondent wasn't in the room. It was just the attorney and her paralegal. They met for three hours on one day. And their testimony consisted of why the testatrix wanted to change her will. It consisted of that she had the capacity to change her will, that she knew exactly what she was doing, and why she wanted to do that. And that's outlined in our brief.

But, basically, the reason was that it wasn't that she wanted to give her estate to my client; it was because she didn't want to give her estate to the respondent or to the eldest sister, because my client was the caretaker at the end of her life. And it doesn't take a rocket scientist to know that if somebody is taking care of you at the end of your life and everybody else is absent, you want to give them a reward.

And the order is silent on anything that happened in the office on that day. And under *Russell v. Wilson*, that's one of the biggest portions of what a court looks at when it determines if somebody was unduly influenced. The execution is one of the biggest things. The attorney is in the best position to know the capacity of the testatrix, as well as why she wanted to change her will.

And it should be noted that the original will actually gave everything to her husband. It didn't give anything to the children. So she wasn't changing it in terms of leaving it to -- it was basically the same will. It was just giving everything to another person.

So in saying that, that's the biggest thing that the court ignored in the testimony, without finding any kind of credibility findings about the attorney or the paralegal.

THE COURT: Who was the lawyer?

MS. WIMBERLY: It was Susan Klok out of Mount

Pleasant.

THE COURT: Okay.

MS. WIMBERLY: The court actually found that she was a credible witness. It didn't make any findings saying that she didn't do her job right or she didn't ask the right questions. The court even had asked her questions about what was asked that day.

That testimony is actually backed up by her physician, which is my second point, that the court mischaracterized the testimony of the treating physician. She was deposed de bene esse. So her testimony came in without the court being able to see her. But it's very clear when you read the entire deposition that the doctor -- this is her primary care physician who she saw on a monthly basis, the testatrix, that my client, Mr. Gunnells, was her primary caretaker, would bring her to every appointment. She would meet with the testatrix by herself in Dr. Chanson's office. That's the doctor's name. She thought she was a very independent, strong woman, strong-willed, knew what she wanted to do. While she was ailing physically, she was mentally sharp.

Her husband did die, like I said, 25 days before the new will was executed. And there is evidence in the record that shows that she was distraught at that time. But Dr. Chanson opined that when you lose a spouse that you have

for 50 years, of course, you are going to be distraught. And respondent relies heavily on that in their proposed order, which the judge basically signed. So it was their order.

But with regards to that, there's also some evidence -- or not evidence. There was no evidence, actually, of misadministration of prescription drugs. This is a strong accusation that required serious proof. And we brought the attorney, her paralegal, the doctor, as well as two physical therapists that all said, you know what, she was of sound mind, she knew what she was doing, full capacity to execute a will. And she was upset with her daughters. We had many independent witnesses that said that.

There's no prescription drug, there was no records entered into evidence, there was no independent doctor that came in and said, you know what, he could have done things better. Even Dr. Chanson, her primary care physician, said he did a great job, he was a wonderful caretaker, I never saw anything that was out of the ordinary.

So to come to that conclusion just -- we just don't understand it. Doesn't make any sense with regard to the facts that are put up in this case, especially the testimony of Dr. Chanson that says the complete opposite.

And then finally, Your Honor, we submit to you that the court used the wrong burden of proof. There was the 25 days from the death of the husband to the execution of the

new will. And that is really where the trial kind of turned. That was it. And that's where the judge found that there was undue influence in that time period.

There's seven months after that time period that the testatrix lived, had an unhampered opportunity to change her will. She was by herself with the primary care physician. She was by herself with the home healthcare nurses. She was by herself with her brother. She was by herself with her best friend. She could have asked for help or to cry for help during that time.

And the courts have found, I believe it's in Hairston v. McMillan, that if you have the unhampered opportunity to change your will, especially if you are alone with a family member or friend, then the court cannot find undue influence.

And what the Court did in this instance was use some testimony from that time period after the will was executed in order to find undue influence on the date of the execution, which we feel is completely wrong.

And the court actually never stated the burden of proof, which is in every single piece of law in this state, which is unmistakable and convincing evidence that rises to the level of undue influence. The court was silent on that burden. And we ask you reverse the probate court's decision.

Thank you, Your Honor.

THE COURT: Mr. Howe.

MR. HOWE: May it please the Court. Donald Howe.

First of all, in reviewing a probate matter at this point, the standard is, basically, was there any evidence to support the probate judge's decisions. And I've got the cases just to hand up quickly. You probably are familiar with them.

And first one is case of Cumbee, second page standard of review: An action to contest a will is an action at law. And the court may not disturb the probate judge's findings of fact unless a review of the record discloses there is no evidence to support them.

That same standard is echoed in the next case, which is *Townes Associates v. City of Greenville*. At the top of page 2, it's exact same language, basically.

The next case, which I think is important, is *Graham v. Whitaker*, which is 321 S.E. 2nd 40, 282 S.C. 393, a 1984 case, in which on page 2, sort of, I guess, firming up the perspective I am submitting for the Court. The case notes: We are not at liberty to pass upon the veracity of the witnesses and determine this case according to what we think is the weight of the evidence.

And what they've really argued all along is, they've disagreed with the weight of the evidence that the probate judge gave to certain evidence. And I will go over some of

that with you in a minute. But that is the standard of review perspective the Court has to take.

As an aside, just total aside, *Graham v. Whitaker* states *Gibbs v. Atlantic Coast Rail Line*, which is my dad's case in 1952, I heard about all my life. He's still bailing me out.

In this case there were, as in any probate case, this was a hard disputed case. There were witnesses on both sides. There was testimony for two days. And while they had some on their side, we had plenty on our side. And I will go over a couple of pieces with you in just a second.

The order itself, the initial order, is 17 pages long. It dissects and weighs all of the evidence in this case very -- I don't want to say succinctly, very exhaustively. And, in fact, in that order -- hang on a second. The court specifically -- this is page 11, the order on page 44 of the transcript of record, specifically goes into what this attorney said and what she knew. And talks all about the things she said the court ignored. And, in fact -- well, let me give you some background.

This attorney, Ms. Klok, was her client's lawyer. The husband dies in June. And on July 3rd, 25 days later, he takes his mom to his lawyer. First time she's ever met him; no contact. The original lawyer was Brady Hair. He's done the will. Met with both people. Done everything. The will

was fine for years.

The husband dies after a long and close relationship. And 25 days later, she's in her son's lawyer's office. And this lady has never met the client before in her life, but she walks out a couple hours later with a new will, leaving everything to the son.

And the court talks about the fact that this lawyer did the best she could under those circumstances, but that's not the only thing that is relevant in the case. And, in fact, that same point was brought up in a motion to amend. And if I can find it, the probate court specifically addressed the same issues she just raised to you.

Respondent's other objections -- this is page 56 of the record -- respondent's other objections primarily relate to the court's evaluation of various testimony and evidence presented in the case. Respondent contends, for example, that the court failed to consider the testimony of attorney Susan Klok and her paralegal. To the contrary, this court's order expressly acknowledges and contemplates the testimony of Attorney Klok.

And at the bottom -- and I will skip down sort of. The court addresses that point: This court can identify no controlling law indicating that an examination of the events surrounding the drawing and execution of a contested document must be limited solely to whether the undue influencer was

physically present when the testatrix put pen on paper and signed her name.

So what happened at the attorney's office was evidence. It was relevant evidence. But it's looked at in the whole context of all of the evidence. And if any of that evidence supports my client at this point, we are supposed to win on appeal.

So let me go through a couple of highlights. As I said, this is a two-day trial. But there are a couple of highlights I think that will be instructive for Your Honor.

The first highlight -- and if you don't mind, I will pass these up, because I know that it's a huge record and I'm trying to move through as best as I can. Page 660 from the transcript of record, this is the testimony of a lady named Helen Carroll. Helen Carroll was the decedent's -- one of her best friends. They were bosom buddies. They had met in church. They had known each other for 40 years. Ms. Carroll testified that her relationship had changed after Mr. Gunnells, the appellant, moved in with his parents.

And specifically on page 18, started at line H, she's looking at his earlier statement:

Does that, meaning the statement, help refresh your memory about whether she, talking about Ms. Gunnells, talked to you about a will?

Yeah.

Okay. What did she tell you about a will?

She said that -- she didn't say too much, but she said Glenn told her she had to.

Had to do what now?

Sign a new will.

Okay. And how did she seem to feel about it?

She didn't want to.

QUESTION: Okay. And your statement says Helen had no choice. Is that her talking to you?

Yeah. Uh-huh.

So I guess if I'm looking for a keystone of evidence, here's this lady's best friend, who describes -- a little bit of background. She said after Glenn moved in to take care of his mom, that he would never leave her home and she never really saw Ms. Gunnells without Glenn there.

So her attitude was different. She talked different. Didn't seem like she wanted to say much with him around. She happened to come by one day and Glenn was not there. And at that point, that's when she gave this statement. So it was very convincing evidence.

And this was a video deposition. This was a much older lady. And in this instance, the judge had great opportunity to see the witness, evaluate her testimony, and give it the weight that he thought was appropriate. And I think, in terms of sort of being a smoking gun, this was

probably it.

The next thing that I will hand you, Judge, and Ms. Wimberly went over, that's just sort of a timeline that helps you go through stuff. And the main point of that is, is that the regular wills had been in place for quite some time. And when the husband died, that was June 8th. And the new will with the new lawyer was on July the 3rd.

It was undisputed that Ms. Klok only saw her this one time. It was strictly a professional visit. It was limited for the purpose of the will, that Glenn drove her there and that Glenn drove her home.

Glenn Gunnells, the appellant, his basic position was that -- well, before I get to there, one of the other things, credibility being a big factor in these kinds of cases, it was apparent at trial -- I will hand up the next page, which is pages 433 and 4. This is Mr. Glenn Gunnells's testimony at trial.

And he had contended in his deposition very clearly, when I asked him under oath, I said:

How did your mom -- how many times did your mom go see this lawyer before she signed the will?

And he said: Oh, you know, two or three times. I drove her there two or three times.

How long did she meet?

Oh, 30 to 45 minutes each time.

And lawyer looked at him and said, I met with her once on that one day. He just got caught lying. And it's a big lie.

Talking to my clerk, I said, on a 1 to 10 scale, that's a 9.8, if not higher. This guy just didn't have any credibility, Judge. This is one of those cases that went back and forth and back and forth. And I know you've seen them. I used to have them in the public defender's office. The case is going very good until your client takes the stand. And then all of a sudden, everything sort of collapses.

And this was not the only thing that he got caught being just totally false about. And in the judge's original order, he goes down a number of things where Mr. Gunnells was not candid with the court and got caught.

In response to a couple of the other pieces, the primary care physician, Dr. Rhonda Chanson, on this same day, July the 3rd, when the will was signed with the lawyer, she went to see her doctor. I will hand you now pages 596 and 7, 8 and 9. And although the lawyer described this lady, who she didn't know from Adam, as being fine and communicative and all that stuff, on the same day, she goes to her primary care physician. And her primary care physician describes her as crying, upset, distraught, visibly upset I think were the words, and distraught.

So you have somebody that didn't know her from Adam giving one impression. And somebody who knows her well and said, the only thing I talked to her that day was the passing of her husband, she was falling apart.

So there was very good evidence of the fact that this lady had some frailness going on and some highly -- this was a highly emotional time for her.

Mr. Gunnells's position, his story in this, was that the reason his mom was so mad at Kathy and her sister was that they had virtually abandoned her. I asked him at page 431:

Your position is that Kathy and Linda just didn't show any love to your mom or daddy, did they?

That's right.

And that was for, like, a seven-year period, basically, before they died?

That's right.

And you begged people for help, trying to get them to help you?

ANSWER: I wouldn't say begged, but I pleaded.

Over to 432: Okay. So you pleaded, and one of those people was Jack Brantley?

ANSWER: I mentioned it to Jack. That was what the situation was, and I could use their help.

I will just hand that, just so you've got in front

of you.

Jack Brantley was Ms. Gunnells's brother for whom she was extremely close. He testified that he talked to -- they visit several times a year. He talked to her three times or four times a week. He also testified that his relationship with the sister had changed dramatically after Glenn moved in. And in response to that sort of cry for help from Glenn, he specifically testified:

Did you ever talk to Glenn -- this is on page 158 -- about trying to get help from the girls?

I think I did a couple of times.

QUESTION: All right. What was his position on that?

He just didn't want them over there.

Okay. Did he ever approach you saying, I want help from them; I need some help?

ANSWER: No, he didn't want them there.

QUESTION: Was he equivocal about it or was he pretty definite?

He was definite.

Mr. Brantley was a particularly impressive fellow. He was in his 80s. He was retired lieutenant colonel in the Army. He had been in the county -- city administrator for Waynesboro, Georgia for 23 years. And although he was in his 80s, he was still on the election committee. And that was

just one. There were numerous times that he not just disagreed, but just completely contradicted what Glenn said.

Ms. Harkness herself testified that after the father died, this is on page 227, she said she would try to call her mother, and Glenn would answer the phone and hang up the phone. And this is a quote:

On June 11th, he called me up after my father was buried and told me I am no longer able to call mother, I am not allowed to go over and see my mother or he would have me arrested for harassment.

The same person that he alleged had abandoned the mother and not helped the mother presented evidence and testimony that she was so concerned about her lack of evidence that she went to the probate court and spoke to someone there, that she followed up with DSS and legal aid, and then went to an attorney, Robert Poke, because they each said it wasn't quite their area. And he had just charged her so much money that she couldn't afford to do anything about it.

One of the pieces of evidence, this is an e-mail, this was Petitioner's No. 2 at trial, this is Uncle Jack, Mr. Brantley, writing Kathy in the middle of this time that she's supposedly abandoned her mom at the end of the seven-year period, saying:

I'm available for DSS. Here's my number.

And I don't know why it says basically at the bottom, they are not taking your help.

Almost done, Judge.

Belinda, the sister, talked about the fact that when the father got cancer about a year before then, year and a half, that Ms. Harkness was actually living in Myrtle Beach. She moved back to Charleston, got an apartment not far from her parents' house so that she could help care for them. And she had a sports car. She had a Corvette. That was before she had the cane, Judge. She had a Corvette. She sold the Corvette and got a different vehicle so she could take them back and forth to the doctor. Yet, Mr. Glenn Gunnells's position was that she didn't care about her parents and she basically deserted her.

Another piece of evidence, last two, was a birthday card that Kathy wrote to her mom in the middle of this saying, basically: I would like to get back together with you. I miss the mom I used to have. I don't want to bother you and Glenn.

And then last, but maybe not least, this was a little bit different issue, but it did show a lot about Mr. Gunnells. When the daddy had been in cancer treatment, Mr. Gunnells, according to his sister Belinda, was a control freak and an alcoholic. And he wrote them:

Nothing can be done without my signature based on

what I say, because I'm basically the power of attorney.

Those are just some of the highlights, Judge. If you look through the judge's order, the judge goes through these pieces of evidence thoroughly on both sides. They were raised on the motion to reconsider -- let me look quickly through my notes. The issue about the prescriptions was a fairly minor issue. It did go to show that she was taking Alzheimer's medicine during the time. It was undisputed at trial that this lady was completely dependent on Glenn. Even Glenn admitted that.

He had moved into the house. He's a very strange guy. Had cameras all over the yard. His bed was in the living room. He had some reason, because he had a dog that had seizures. But he basically took over the house. Had cameras all around it. And wouldn't let anybody come and hardly see this lady.

Her prescriptions, the doctor did say seemed like he was keeping pretty good care of her from that standpoint. But when I went through the prescription records and some of her notes, it became clear that a couple of the medicines, one I remember was just some potassium, but she had in her notes that the potassium was never given out, never filled.

And there was a particular drug called Remeron. And if you look at the doctor's deposition, there was several months at which this very important Alzheimer's medicine

didn't seem to be able to be picked up from the drug store and given to this lady.

One small other fact, this is just Glenn at his best, the doctor had in her notes that Glenn said he was sorry he hadn't been able to get his mom there quite as much, but his work obligations has kept him from doing that. This is a guy who is on total disability for 20 years. Okay? And that was, of course, his motive. He couldn't make a living; hadn't made a living in 40 years. He needed the money.

And he sold -- again, every time you turn around, there's another factor. Even when he puts in the first will, he runs, sells the parents' house. My client is then pro se. She files an action saying there's going to be a dispute about the will. And he goes and takes all the money and buys a house in his own name.

And one of the judge's reasons for not believing him is his mismanagement of the estate.

So if we go back to the very basis from where we started, I've got to show that there's some evidence. The pieces and parts that I've shown you, particularly basically the eyewitness account or the account of her best friend, I think is enough by itself. But if you go back and look at the order itself, it goes through all those things.

This idea that somehow the wrong burden of proof was applied, I don't think that's true. The judge was very

specific with clear and convincing evidence. It's the same idea that the judge -- this particular issue that they applied the wrong burden of proof was not raised in the motion to reconsider.

If you look at the motion to reconsider, the issue that they raised in the motion to reconsider was the judge pointed out precedent in four different areas, the fact that there was a fiduciary relationship -- won't remember them all. But there was lack of access. There was some weak mindedness and things. And they said, oh, you used a four-prong test. And there is no four-prong test in South Carolina.

And the judge in the motion to reconsideration said, I didn't use a four-prong test. I noted that there were four substantial precedents among all of the other evidence that I looked at, but I certainly did look at those four things, but there was never any challenge about the burden of proof. And the burden of proof is clear and convincing. And that is what the judge says in the judge's order.

So, again, a hard-fought case. The weight of the evidence went our way. Judge Condon has been the probate judge for a number of years. He's more than mindful of the burden of proof that I had from Ms. Harkness. He took that in mind when he wrote 17 pages worth of evidence review and the final order.

And based on that, we think that we should win this appeal. Thank you very much.

THE COURT: All right. Do you want to respond to anything?

MS. WIMBERLY: Yes, please, Your Honor. Mr. Howe has a way of saying, because B happened after A, A must have caused B. And that sounds great. And, honestly, if I was listening to the facts as he just described them, I would be like, wow, she's in a pickle, I can't believe she brought this appeal.

That's not what happened at all. And that's not the evidence that was presented.

What he has done is said, just because Glenn moved in and he was a weird dude, sure, we will give him that, and kept his bed downstairs, therefore, there's undue influence. That's just not the case. I will go through a couple of things that he says.

He says the order dissects exhaustively what the attorney and her paralegal testified to. It absolutely does not. There's not one word about what was said to the attorney or the paralegal. All that is said about that meeting that day is that Glenn drove his mother to that appointment.

With regards to whether or not that was his attorney, as we all know in real estate transactions, the

buyer picks the attorney. It was the buyer's attorney. And Mr. Gunnells was the seller of the house. So it was not his attorney. He gave his mother the choice of going to the previous attorney that had drafted the previous will or this new attorney. And she said, you know what, I want to go to this new attorney because she's a woman and I feel like I can talk to her.

Let's see. With regards to the 25 days in between the death of the husband and the new will, respondent actually sued her mother. She sued her mother in magistrate court to get belongings at the house that she claimed that belonged to her. They were miscellaneous nicknacks that were at the home. And, honestly, that's more probative of why she changed her will.

Also, there was another incident during that time where the older sister barged into the house uninvited, and the mother asked her to leave. So that goes more to why she might have wanted to change her will rather than the other evidence that was put up.

So this is all in my brief. I didn't know we were going to rehash all the facts. So I apologize.

With regards to Helen Carroll, we did her deposition via video. And I actually did the direct examination of her. And she never remembered a conversation regarding the will; never remembered talking to her best friend about the

contents of the will; couldn't tell me a single conversation that she had with her about the will. But when Mr. Howe started talking to her about the will, she had to have her memory refreshed.

Now, this letter was actually kept out. This piece of paper that refreshed her memory was actually kept out of trial because it was so questionable. Ms. Carroll never remembers writing it, signing it, who was there, who witnessed it. She doesn't remember any of that. And when I asked again on my redirect about the conversation to understand more of what happened, she had forgotten again about that conversation.

She also testified that she was best friends with the respondent and she would do anything for her and she trusted her more than anything in the world. So I will just leave it at that.

Also, something else, we are going to go into credibility of my witness. Ms. Harkness is very litigious, has sued people over 12 times just in Charleston County and couldn't remember on the stand how many times she's been married or divorced.

We just believe this was a dysfunctional family, extremely dysfunctional. And it equates to the facts in *Russell v. Wilson* pretty spot on, where the court found this family is extremely dysfunctional. We are going to look at

the professionals and see what they said about this. And while it might be unattractive what the kids did to the father and mother, we are going to trust the professionals on this one, particularly the attorney drafting the will. And that's what we think should have happened here.

There's a lot of bickering back and forth between the brothers and sisters, had been their whole lives. And what we really need to look at is the professionals' testimony that said that, you know what, she wanted to change her will because there was too much drama, to be quite honest. And she was fed up and she was done. And when she was sued by one daughter and assaulted by another, she was done.

And with regards to Jack Brantley, the brother who lives in Georgia, once again, he lives in Georgia. He wasn't around for any of this. He was the one that, unfortunately, was fielding phone calls from everybody about this bickering. He did little to help their case, honestly. And my client did have a discussion with him. And it is in the record about him wanting help from his sisters. He actually wrote a letter to his sisters asking for help with his parents.

And with regards to Ms. Harkness selling her Corvette, while we might feel sorry for her, she got a Lexus SUV instead. So I don't think anybody is at a loss there. Birthday card actually says that she didn't want to come to

the house anymore.

And the eldest daughter actually lived in Hawaii. And she just wasn't present. And she admitted at trial that she just didn't get along with her parents and she just didn't really want to be around. And there's actually evidence in Ms. Harkness's letter that says, I don't want to be around either anymore, mom; sounds like you made up your mind.

With regard to the prescription drugs, they are highly questionable. The record, they actually weren't admitted at trial and weren't even submitted at trial.

And once again, we rely on Dr. Chanson's deposition, her professional testimony was that she did not see anything wrong with the care that was given. She thought it was actually very adequate care.

My client did say that he was on disability, but he testified also that he has odd jobs every so often. Taking care of somebody and doing odd jobs is a full-time job. But he never missed an appointment. Dr. Chanson did testify to that.

Let's see. With regard to any kind of -- there was actually a hearing. There's a separate petition for the misadministration of the estate. And that hearing was actually held in August, two years ago. We find that that should never have been considered by the court. And that's

also in our appeal.

We find undue influence on the day of July 3rd, 2013, because this all happened after the death of the testatrix. And so it could not relate back to that date. And, furthermore, there's been no ruling on that petition. It has been held in abeyance until this is figured out.

So I appreciate it and just ask that you consider all of the evidence. I understand it is a very large record, about 1,000 pages, including our brief, and look at all of it as the probate court should have and find that there was no evidence to support undue influence in this circumstance. Thank you.

THE COURT: Okay. Well, I will read through the lower court's order and the record and the briefs and let you know what I decide.

MR. HOWE: Thank you, Your Honor.

MS. WIMBERLY: Thank you, Your Honor.

(Whereupon, proceedings are adjourned.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

V O L U M E I
IN THE PROBATE COURT
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE MATTER OF:
HELEN B. GUNNELLS

CATHY G. HARKNESS,

Petitioner,

vs. CASE NO. 2014-ES-10-0202

GLENN A. GUNNELLS, Individually and as Personal Representative of the Estate of HELEN B. GUNNELLS,

Respondent.

BEFORE: THE HONORABLE IRVIN G. CONDON
DATE: March 1, 2016
TIME: 9:15 A.M.
LOCATION: CHARLESTON COUNTY PROBATE COURT
100 Broad Street
Room 3D
Charleston, South Carolina

REPORTED BY: TRISHA RARICK
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I N D E X

EXAMINATION OF MR. BRANTLEY	Page
By MR. HOWE	11
By MR. VARNADO	43
EXAMINATION OF MS. DAVIS	
By MR. HOWE	53
By MR. VARNADO	74
By THE COURT	86
EXAMINATION OF MS. HARKNESS	
By MR. HOWE	95
By MR. VARNADO	118
Certificate of Reporter	140

E X H I B I T S

		Page
	PETITIONER'S EXHIBITS	
1	E-MAIL	36
2	E-MAIL	38
3	STATEMENT	42
4	LETTER	75
5	TIMELINE	81
6	DEPOSITION TRANSCRIPT	90
7	BUSINESS CARDS	111
	RESPONDENT'S EXHIBITS	
1	WILL	5
2	LETTER	128
3	LETTER	128
4	COMPLAINT	130
5	BIRTHDAY LETTER	132

THE COURT: Good morning. My name is Irvin Condon, your probate judge of Charleston County, along with our law clerk, Kevin Cale. We're here on the Estate of Helen B. Gunnells, Charleston County probate case number 2014-ES-10-2002 on a Will contest.

And I guess before we get started, we did get the original Will from the records center, if the parties want to mark that as an exhibit or how do you want to handle that? Normally, we just keep a copy in the file, but we could keep the original up at our records center. But we have got that here, and then I met with counsel in chambers, and I think both -- the plan is to invoke the dead-man statute, but, basically, indicates that the person can't testify about what a deceased person said, if they have an interest in the estate. So my understanding is both sides are invoking that rule.

MR. HOWE: That's correct.

THE COURT: All right. Thank you. Generally, in a Will contest, as I mentioned to counsel, is that the respondent actually goes first and puts the Will into play. The Will is

I know itself a proven Will. So that would put the Will into evidence, and then the burden would shift to the petitioner or the contestants of the Will. All right. I don't know if there's any opening statement or anything else.

MS. WIMBERLY: I'd like to move the Will into evidence.

MR. HOWE: No objection.

THE COURT: Okay. And I'm not sure what -- I guess that would be Respondent's Number 1.

(Respondent's Deposition Exhibit No. 1 was marked for identification.)

MS. WIMBERLY: Do you want her to mark it?

THE COURT: Yeah. That would be nice. I guess -- I don't know if there's any opening statement, or if you want to just proceed right to the --

MR. HOWE: I have a very brief, just to tell you who the players are, more than anything else. In particularly, I think I told you in the back, one of our witnesses is a little out of order, and so I think if I just sort of name some of the names and pieces and

parts, it'll go a little easier.

May it please the Court, as you know, this is a Will dispute involving the deceased Helen Gunnells. Ms. Gunnells' husband was named Arden Gunnells, and they had three children, Belinda, who's the oldest, Cathy, next, and then Glenn. I have a timeline -- do you have any problem with him having that so he can look at that -- that I'll hand up hopefully in a minute? But basically, in the relevant -- most relevant parts of the dispute that will be before you, Arden is diagnosed with cancer in -- let me get my dates straight, around April of 2012. He and Helen together, been together forever basically, and then, Arden dies -- well, let me back up.

I think the evidence will show that all the kids were sort of chipping in for a time. There might be some dispute about that, but different people were doing different things at that point.

In around March -- April, maybe March of 2013, Glenn, who is the respondent, moves in to help take care of his parents. He moves into their house. Arden passes away on June the

8th, 2013, and then on July 3, 2013, which is 25 days later, Helen changes her Will and executes the Will that's been put into evidence. She does that with a lawyer named Susan Klok, K-L-O-K, who she was introduced to through her son, Glenn. Ms. Gunnells passes away on February the 7th, 2014.

So I think those are the players, and those are I guess a skeleton outline of some of the dates that have involved that will hopefully make some of this make sense. It's a case of undue influence. We're aware it's a high burden. We do believe that we have compelling evidence in that regard.

I think you'll see that Ms. Gunnells lost a lot of contact with a lot of people close to her in her life, that that was a result of influence by her son, and we believe that at the end of this case, you'll rule for us, sir.

And so I think that just those basic facts will help you understand the testimony.

THE COURT: All right. Thank you, Mr. Howe. Counsel?

MS. WIMBERLY: Good morning, Your Honor. My name is Alexis Wimberly. We've met before,

and this is Rob Varnado. And this is my client, Mr. Glenn Gunnells.

THE COURT: Good morning.

MS. WIMBERLY: Obviously, Rob and I are here on behalf of Mr. Gunnells this morning on this undue influence and duress case that has been alleged against him with regards to his mother, Ms. Helen Gunnells. We do not contest this timeline that Mr. Howe has given to us, if you would like a copy. We only ask that at the end of trial, if any of this is not proven, it be redacted for your review.

MR. HOWE: That's fine.

THE COURT: Okay. Thank you.

MS. WIMBERLY: With regards to the witnesses that are being called today, we have been told by Mr. Howe that Mr. Brantley will be called first. There will be a video deposition of Ms. Helen Carroll, who was a friend of Ms. Gunnells. I'm sorry, Mr. Brantley I believe is the uncle of Ms. Cathy Harkness and Mr. Glenn Gunnells.

Along with them, there will be testimony tendered from a Ms. Belinda Davis, who is also a child of Ms. Helen Gunnells. We would

contest that all of these witnesses are emotionally involved. They are related to the decedent, as well as to both the petitioner and respondent.

We will present evidence from professionals, two home healthcare nurses who treated Mrs. Gunnells around the time of her passing, as well as leading up to her passing, from about 2010 to about 2013. We will also present the attorney who drafted the Will, the Will that is in contest today that has been marked as Respondent's Exhibit 1. She will testify that Mrs. Gunnells was of sound mind. She knew exactly what she was doing on the date that she executed the Will. There were meetings leading up to the execution of the Will where she knew exactly what she wanted to do with her estate.

Her paralegal will also be present. She was also present in the room at the time of the execution of the Will. She will back up the attorney's testimony, Ms. Klok, and Ms. Boytko, B-O-Y-T-K-O, is the paralegal.

Furthermore, we have the deposition de bene esse of Dr. Rhonda Chanson. She was Ms.

Helen Gunnells' primary care physician for about two years leading up to her death. She will testify that every time she saw Ms. Gunnells, she was of sound mind, including the day that the Will was executed. She saw her that morning, including the day before her death. She saw her that day as well.

So in conclusion, Your Honor, we believe that our testimony will show that everyone surrounding Ms. Gunnells, including her son, including these professionals, saw Ms. Gunnells, saw that she was of sound mind, saw that she knew exactly what she wanted to do with her estate, and that was to leave it to Mr. Gunnells, because of the treatment or otherwise lack of treatment, lack of visitation, lack of care that was showed by her other two daughters, and we ask that at the end of the trial, you find in favor of my client, Mr. Glenn Gunnells.

THE COURT: All right. Thank you, counsel. Mr. Howe?

MR. HOWE: Yes, sir. We call Mr. Frank Brantley.

THE COURT: Good morning.

THE WITNESS: Good morning.

THE COURT: Take your time.

THOMAS JACKSON BRANTLEY,

having been first duly sworn, was examined and testified as follows:

THE WITNESS: I do.

THE COURT: Thank you. Please be seated, and if you could, please state your full name for the record.

THE WITNESS: It's Thomas Jackson Brantley.

THE COURT: Brantley, okay. Mr. Brantley, good morning. If you could answer questions of counsel, Mr. Howe.

EXAMINATION

BY MR. HOWE:

Q Good morning, Mr. Brantley. I'll stand right here, and that way, if you could project your voice so that I could hear it. The judge should be able to hear it, but he'll give you a waive or a nod or something if you go a little too low. Fair enough?

A Good.

Q Okay. You just gave us your full name. How old are you, Mr. Brantley?

A Eighty-three.
Q And are you married?
A Yes.
Q Where do you live?
A Waynesboro, Georgia.
Q How long have you lived in Waynesboro?
A About 33 years.
Q And you're retired, I assume, mostly retired?
A I am.
Q Okay. And what did you do? Tell me about your work background history.
A I retired from the Army. I was a financing and accounting officer in the Army. I retired as a lieutenant colonel, retired and went to Waynesboro. I got a job there. I was the City Administrator for 23 years there also before I retired.
Q Okay. And I understand you're still on the board of elections over there?
A Yes. We're holding an election today.
Q Right, right. We're going to try to get you out of here so that you can close the poles effectively.
A Yeah.

Q Okay. When did you retire as the City Administrator?

A Oh, goodness.

Q Approximately.

A '85, something like that.

Q Okay. All right. How were you related to Ms. Helen Gunnells?

A That was my sister.

Q And tell me a little about the family structure, who was older, who was younger, where you were and what the pecking order was.

A There was six of us. There were three boys -- three men and three ladies. As we were often referred to, I was the baby boy and she was the baby girl.

Q Okay.

A That's sort of hard to say when you're 83 years old, but --

Q But it will follow -- I'm the baby in my family, and I can assure you it followed me forever. How did you get along -- how was the relationship with Helen growing up and of the rest of your siblings, but especially Helen?

A We had a good time together. We always did. It was a very close family. We had family

gatherings and Thanksgiving and Christmas and other times too. It was a big family, so --

Q Okay. And did you keep up with each other through the years?

A Oh, yes, yes.

Q And did you keep up with each other, let's say, generally, through the -- as she and Arden were older and becoming infirmed and all that kind of stuff?

A Oh, yes.

Q How often would you talk to her or see her? What kind of contact did you have?

A I probably visited at least three or four times a year, sometimes more often, according to what was going on, and we talked on the telephone at least two, three, four times a week. And if I didn't call her, she would call me. We were very close together, so --

Q And did she visit you?

A Oh, yes.

Q How would she get over to Waynesboro?

A She would be brought over by someone, you know, usually.

Q And who would that be? Would that include Glenn?

A Glenn would, yes, would bring her sometimes, or meet us halfway. Cathy had done the same thing.

Q Okay.

A When Arden was in better health, used to come and spend the night.

Q And were you close to Arden as well?

A Oh, yes. Yeah.

Q Tell me a little bit about your sister, Helen. What was she like, and what made her a good sister?

A Well, she was -- we just -- we had a good time together. We were always -- it was a fun time when we were together. All of the family was -- there was no -- no bickering between the family. It was always just a great time. We tried to get together as many times as possible, and people often commented about how close our family was in comparison to other -- of the others.

Q Okay. And do you remember when Arden discovered that he had cancer?

A Yes. I do.

Q And in fact, I think you were actually with him pretty close to that?

A Yes. As a matter of fact, when he went to

talk about the cancer and the meditation (sic), or I guess the type of procedure they would use to cure that, we went to the doctor with him, Glenn and I, and I think Belinda was there that time, when the doctor explained that this was a -- it was a -- a really test drug. They had used it in Germany and in France. You know, it had been used -- it was just being used in the United States as a matter of fact.

And when we went there, they explained -- he explained -- the doctor explained all of that to us and explained, you know -- well, you know, he had to sign a certificate that he was willing to take that type of treatment. And at that time, it sounded -- I mean it -- it was a quite a shock to the family that this, you know, that -- I think it was called squamous, a small cell squamous cancer, lung cancer, and I went -- we finished discussing this, and I think Glenn and Belinda stayed in the office there.

And I asked the doctor if I could see him in the hall, and I went out in the hall with him. And I asked him, well, how -- just what timeframe are we talking about, you know, that -- for this thing to end? And he said, well, probably

a year. It could be more, according to how well the procedures and the medicine worked on him so --

Q Okay. I believe he ended up dying a little after -- about a year after?

A He did, yes. That's right.

Q All right. Did you continue to keep up with Helen and Arden all through that time?

A Oh, yes.

Q Did you visit?

A Oh, yes.

Q All right. And do you remember that there was a point at which Glenn moved in with his parents?

A Yes.

Q Okay. And that was I think March, April 2013, somewhere in there. Does that seem about right to you?

A I believe that's about right.

Q Okay. Now, Arden died on June the 8th of 2013?

A Uh-huh.

Q Did you come over for the funeral?

A Yes.

Q Okay. How was Helen doing?

A She was very upset, of course, you know,

very distressed, you know.

Q And tell me how your relationship with Helen progressed after Arden died.

A As I said, we talked quite frequently during the time that he was alive, and then after he died, I would call, and she would call me, not -- she didn't call as often. And I would call, and she was very hesitant to talk to me when Glenn was around. As a matter of fact, I was asking about her health and how things were going, and she would always say, let me let you talk to Glenn.

MS. WIMBERLY: Objection, hearsay.

THE WITNESS: Wait a minute. What did I say wrong?

THE COURT: No. You're fine. Just wait for the next question. Sustain the objection.

MR. HOWE: Okay. All right.

BY MR. HOWE:

Q Well, let's go back to a little bit more general. Okay? And that is that just how did your relationship and your ability to communicate with her progress after that time?

A We still talked.

Q Okay.

A I think she did not -- my feeling was that

she did not talk as freely to me as she did in -- in the previous days. She -- I don't think she was trying to hide anything necessarily, but she just wasn't as open and didn't want to -- it seemed like she didn't want to talk about too much that was going on down there.

I would question her, and she would -- she would sort of, well, let's go back to the weather or let's talk about something else, you know. I didn't understand that because we had always been very open with each other, and that was a sort of a strange feeling, you know. It wasn't as a -- I guess the conversations weren't as close and as frequently as we had had before.

Q Okay. Were you able to visit her at all after that?

A Yes. A few times. And even with my sister, my other sister, my oldest sister, Evelyn, and we would go down. And we -- it was still a good time together as a family, you know.

Q Okay.

A But we -- that came to be further and further apart, because my sister, Evelyn, was the oldest sister and was having some medical problems of her own, some physical problems, and we weren't

able to visit.

Q How did the house change, configuration of the house change when you came and did these later visits? Just -- let me get it straight. After Arden's death, Glenn's still there and you're visiting at some point. What was the setup like to live there?

A Well, Glenn had moved in, and Glenn had made the living room into his bedroom downstairs. There were two bedrooms upstairs, and that's the bedrooms we'd use -- the visitors used when they came there. But when we came back before, he had set up his bedroom downstairs where the living room was, and the rest of house was as it was before, so --

Q And did you notice that he had added any equipment or any changes there in the house?

A Yes. As a matter of fact, one of the things he showed me, and I was very interested in this, that he had set up a video system where he could observe different parts of the property, you know, the front yard, the back yard, the side yards and all of that. I was very interested in that because I was in the process of all -- about doing the same thing at my house, and he told me the name

of it and even the company that I could order it from. The rest of the thing, you know, televisions were all in place and nothing else had changed much.

Q Okay. Were you also -- did you keep in contact with Cathy and Belinda at that time?

A Yes.

Q What was your understanding during that time of, I guess, Cathy's situation in terms of her mother?

A Oh, I can't remember the date of when it was that we had visited down there, and Arden -- we had just finished dinner. And he had gone back to the -- he could hear us. He was in the den, and we were talking about things, and the Will came up as a matter of fact. And Helen had already told me about the Will, that, you know, how it was being divided, and I asked her then, I said, well, how is -- what about the Will --

MS. WIMBERLY: Objection hearsay.

THE COURT: Sustain. Just wait for the --

A Okay. May I just say I saw the Will. The Will was given to me, and I saw the Will because I said, well, okay. She said, well, let me just show it to you.

MS. WIMBERLY: Objection. Hearsay.

MR. HOWE: Showing it to him is not hearsay.

THE COURT: Okay. Your objection is?

MS. WIMBERLY: Your Honor, my objection is hearsay. Anything that was said by Ms. Gunnells is hearsay, and then anything that was said actually by this witness is also hearsay. So the conversation in general is hearsay.

THE WITNESS: The fact that I saw the Will?

THE COURT: Wait a minute.

THE WITNESS: I'm sorry.

THE COURT: Just testify to what you saw.

THE WITNESS: I'm sorry.

MS. WIMBERLY: Also -- never mind.

THE COURT: Does that help?

MS. WIMBERLY: I'm confused about which Will also.

THE COURT: Okay.

BY MR. HOWE:

Q This is Arden still alive?

A This is the only Will I knew. It was Arden's Will.

Q Okay. And --

A And that was shown to me, and it was said

it was being split three ways.

Q All right. And was that also Helen's Will as well?

A Yes.

Q Okay. And did you have any conversations -- well, let me back up a little bit. Tell me a little bit -- let's talk about the girls for a minute. What was Cathy's relationship with her mother like?

A Well --

MS. WIMBERLY: Objection, Your Honor, speculation.

THE COURT: Okay. Well, let's see what he can testify to. Okay?

MR. HOWE: Okay.

THE COURT: I think I'm going to allow the question. Go ahead.

BY MR. HOWE:

Q Well, let's just back up, and let me make sure I lay the foundation as we say. All right. You stayed in close touch with your sisters you've testified?

A Yes.

Q Did you also stay in touch with Cathy at times?

A Yes.
Q Okay. And you would see your sister?
A Yes.
Q And over the years, would Cathy be there?
A At one time, I think she -- Cathy was there, and this had been way back. She was there about seven years taking care of her mother, and, actually, Arden too. Arden was in much better health at that time, but she was there all the time. She would take her to her hair dresser, to appointments to get groceries or anything else.
Q Okay.
A She was there taking care of her.
Q All right. And when you were in their presence, did they seem to get along?
A Oh, sure, yeah.
Q Okay. And had a good time together?
A Yes.
Q Okay. And how about Belinda?
A I didn't see Belinda that much. She -- I think -- I don't remember what all she was doing, whether she was working or babysitting or what, but she was in and out, but not as much as Cathy was.
Q Okay. Well, before Arden died, did you talk with Glenn about, I guess, the aspects of

caring for his mother in some extent?

A Yes. As a matter of fact, it was the first time that I visited Arden when he was taking a treatment. I think I was down there for two treatments, the initial consultation with the doctor and then a treatment later on. And after that first consultation with the doctor, and we had gone home, I went back -- I was in the back yard with Glenn, and was talking to him about the timeframe of Arden's life. And I asked -- I told him, I said, well, what --

MS. WIMBERLY: Objection, hearsay.

THE COURT: Okay.

MR. HOWE: He's a party.

MS. WIMBERLY: Your Honor, the witness is testifying to something that he said.

THE WITNESS: Something that who said?

MS. WIMBERLY: That is hearsay.

THE COURT: Sustain the objection.

MR. HOWE: Glenn's a party.

MS. WIMBERLY: Your Honor --

THE COURT: Okay. Go ahead. Let me hear you.

MS. WIMBERLY: Your Honor, the witness is testifying to something the witness said. That

is hearsay.

MR. HOWE: That's never hearsay.

MS. WIMBERLY: It is, Your Honor.

THE COURT: Mr. Howe, you're saying it's not hearsay.

MR. HOWE: If I said something, that's not hearsay.

MS. WIMBERLY: Your Honor, there's no exception for a witness saying something that is hearsay. He is using it to prove a truth of the matter asserted that he said that to Mr. Gunnells. If he wants to elicit testimony about what Mr. Gunnells said, that's not hearsay, because it's admission by party opponent. There's no exception. It is hearsay.

THE COURT: Okay.

MR. HOWE: With that theory, there would never be a conversation in court.

THE COURT: Okay. Overrule it. I'll allow the question.

BY MR. HOWE:

Q All right. Tell me about your conversation.

A We were in the back yard, and we were

talking about the situation with Arden, what would happen when Arden left, and Glenn says that would be a problem. And he says, as far as I'm concerned, the thing that I would have to do because I would not be able to take care of her, I'd have to put her in a nursing home.

And I explained to him that in my discussion with my sister, that is one thing she never wanted to do. She never wanted to be in a nursing home, and that was our conversation at that point at that time, so --

Q What, if anything, did he say about Cathy and Belinda's participation or --

A Oh, yeah. And I said, there would be no problem with this because there's two sisters that can help with this and can be over here with them and with her and take care of her. And I think the situation -- the comment was, well, that will never happen, so --

Q Okay. So we're going to fast forward again. So, now, it's Arden has passed away. Glenn is living with his mom. You had some visits; is that correct?

A Uh-huh, yes. Not as many.

Q Did you ever see Cathy or Belinda over

there?

A I think Cathy one time over there, you know.

Q And did you discuss with Glenn their availability to help him?

A Well, I think I discussed that more with Helen, but I hadn't mentioned that. And he said that before that that would never work with them, and when I would -- I said, Helen, you know, you need to talk to Cathy specifically, because Cathy I think was more available. And she says, that will not work, because Cathy and Glenn don't get along, so --

Q You had one specific conversation that we have talked about where Cathy had had a little bit of surgery on her leg for --

A Oh, yeah.

Q -- cancer?

A Yes.

Q Tell us about that.

A Yeah. Cathy had a serious problem with her leg at the time and it had gotten worse and worse, and at the time that I had come down to visit, I had told Helen, I said, let me call -- let me call Cathy and come over. I said, you need to

see her anyhow, because she's got a very bad leg that is causing some serious problems. And she says, that won't work. She says, that still won't work because she and Glenn don't get along. And I said, that's no problem. I'll just call on my way out then.

Q And did you talk to her about the possibility of her even just calling Cathy?

A Yes.

Q And what was her response?

A She would not call her.

Q Why did she say she -- what was her answer about that?

MS. WIMBERLY: Objection, Your Honor. Hearsay.

THE COURT: Mr. Howe?

MR. HOWE: Yeah. She's a deceased. He doesn't have any interest in the case, and it goes to her intent and her mental state, which is the crux of this case.

MS. WIMBERLY: Your Honor, that's not a hearsay exception. It's blatant hearsay, exactly what the decedent said to Mr. Brantley.

THE COURT: All right. Well, I'm going to -- anything else, Mr. Howe?

MR. HOWE: Well, I mean, it's -- I mean the thing about the statement is I don't know that it proves a certain fact other than state of mind, and if it's state of mind, then it's an exception to the hearsay rule.

THE WITNESS: Well --

THE COURT: Wait a minute. Ms. Wimberly, anything else?

MS. WIMBERLY: No, Your Honor. I just renew my objection. It's being used to prove the truth of the matter asserted, and it is hearsay.

THE COURT: Okay. He's indicating it's state of mind.

MS. WIMBERLY: What exception is that? It's not an exception.

MR. HOWE: Mode of state of mind, reason for reasonable belief. I don't remember which number.

THE COURT: I'll try to -- I'm sure this is going to come up again. What else are we going to have, probably a number of rulings like this? It's going to go back and forth. Okay. I don't know if you-all have got any information -- any briefs on this or anything

on these different -- you've got a number of family members that are wanting to testify. I think it's how close can they get, whether it's a dead-man statute --

MR. HOWE: He'll be the only family member I think that testifies about -- well, Ms. Carroll, obviously, testifies about her discussions with the deceased. She also has no interest in the case.

THE COURT: All right. Well, why don't we get back to the specific question you were asking, and then --

MR. HOWE: Okay. I have to think about it.

BY MR. HOWE:

Q You talked to your sister about Cathy's problem with her leg?

A Yes.

Q Correct? This topic came up about having Cathy over. She said that wouldn't work. Did you then ask her, why don't you just give her a call --

A Uh-huh.

Q -- then --

A Yes.

Q -- or suggest some other way; is that

correct?

A Yes.

Q Okay. And what did she tell you?

A She said, she -- Glenn did not like --

MS. WIMBERLY: Your Honor.

THE COURT: Okay. This is Cathy testifying or this is Helen testifying?

MS. WIMBERLY: This is Helen, the decedent.

THE COURT: Okay. Well, earlier, you didn't object when there was a conversation I guess concerning going into a nursing home.

MS. WIMBERLY: I'm just trying to move the case along, but, you know, I have to preserve my objections, especially when it goes to something where there is no exception.

THE COURT: Okay. Well, I guess what I'm saying is he testified earlier about his conversation with his sister, Helen, about going into a nursing home and what her comment was to him.

MS. WIMBERLY: Correct, Your Honor.

THE COURT: Okay. And there was no objection at that time.

MS. WIMBERLY: I didn't think it was

relevant, or --

THE COURT: Okay.

MS. WIMBERLY: -- I didn't think it really mattered, but I object now because there's absolutely no exception to this hearsay that's being offered. And I do anticipate we will elicit hearsay from our witnesses as well, but I have planned either exceptions to the rule or that it's not hearsay. It's going to prove something else.

THE COURT: Okay.

MS. WIMBERLY: I'll respect any ruling just to move this along.

THE COURT: Okay. I'm going to allow the question.

BY MR. HOWE:

Q Okay. So what did she tell you?

A She said -- she said that Glenn did not like for her to talk to Cathy.

Q You got in -- there was, apparently, a controversy about Cathy getting some furniture back. Do you remember that?

A Yes -- yeah.

Q And did you kind of mediate that or try to mediate that a little bit?

A Yeah. I just said, let's get it settled. You know, if it belongs to Cathy and you agree to this, let's get it over with.

Q Okay. And you talked to Glenn about that?

A I think so, yeah.

Q Okay. And --

A That was on the telephone I believe it was, yeah.

Q All right.

A But that was because Glenn had -- I believe that was when Glenn had called me about something else, about some silver that he had that he was trying to sell.

Q Okay.

A And then when he asked me about -- well, he was asking me if I wanted to buy the silver that he had that he was going to sell it, and then he told me about the garage sale he was going to have. And I had just said, let's get that over as quickly as possible.

Q Okay. I want to hand you a document. Do you recognize that?

A I have lost one eye from macular degeneration. So I have to change glasses.

THE COURT: Take your time.

A Yes. I think this is an e-mail I sent to Cathy.

BY MR. HOWE:

Q Okay. And why don't you just read it for us.

A Okay. I said, hi, Cathy. Hope all is going well with you today. It was good to hear from you but sorry that you are having trouble getting some of your property back. I talked to Helen and Glenn this past Monday. That was July the 12th. Helen gave the phone to Glenn to explain to me what was going on with the property, and after some discussion, he told me that he would have the property ready for you to pick up on Friday, July the 12th, 2013.

And I encouraged Glenn to do just that and get this over with, because it seems so simple to do and would prevent any more controversy with him and Helen. Hopefully, this can all be resolved with no disturbances or embarrassment to Helen and in the community, thinking about neighbors. Take care, and hope you can get this taken care of quickly and amicably.

Q Okay. And to I guess put this in chronology, this is July of 2013, correct?

A Yes.
Q And so this would be shortly after Arden died?
A Yes.
Q Okay. Glenn's still living with his mom?
A Yes.
Q And she's still living?
A Yes.
MR. HOWE: Okay. Your Honor, I'd like to move that into evidence.
THE COURT: Ms. Wimberly, any objection?
MS. WIMBERLY: No objection.
THE COURT: Okay. Petitioner Exhibit Number 1 admitted into evidence without objection.
(Petitioner Deposition Exhibit No. 1 was marked for identification.)
BY MR. HOWE:
Q I'm going to hand you another one. It's a little harder to read.
A Good grief. Okay.
Q Do you recognize that?
A Oh, yes. That was another e-mail.
Q Okay. And who wrote the e-mail?
A I did.

Q And who did you write it to?
A To Cathy.
Q Okay. What is the date on this?
A Monday, July the 22nd, 2013.
Q All right. Would you read that for us?
A Cathy, I sent you an e-mail last night, but it would not go from my iPad. I guess you do not have an iPhone, or something else was wrong. It is perfectly okay for you to give my phone number to DSS. It is 706-554-7866. I was surprised, again, yesterday. I received another call from Helen. This was a second one on two consecutive days. She still does not talk to me about things like she did when Arden was living, but only nondescript things, for example, the weather and how are you doing health wise, et cetera.

I am still concerned that you and Linda are not going over and providing some oversight on her health situation and lending some help. Glenn should be thankful for you both to help out and so should Helen. Hope things go well and will talk to you later, Jack.

MR. HOWE: Okay. Your Honor, we'd like to move this into evidence as Exhibit 2.

THE COURT: Ms. Wimberly, any objection?

MS. WIMBERLY: No. Your Honor, it's cumulative, and its also hearsay but --

THE COURT: Petitioner's Exhibit Number 2 admitted into evidence without objection.

(Petitioner's Deposition Exhibit No. 2 was marked for identification.)

BY MR. HOWE:

Q One of the things that comes up in here is that, I'm concerned that Linda -- that you and Linda are not going over and providing some oversight on the health situation.

A Uh-huh.

Q Did you talk to Glenn about that?

A I think I did a couple of times.

Q All right. And what was his position on that?

A He just didn't want them over there.

Q Okay. Did he ever approach you saying I want help from them? I need help from them?

A No. He didn't want them there.

Q Was there any -- was he equivocal about that, or was he pretty definite?

A Definite.

Q I'm going to hand you another document and ask you who wrote that.

A This is mine. I sent it to Cathy.
Q Okay. And what's the date on this? I can point to it and help you find it right in here.
A Oh, here it is, February the 26th, 2014.
Q So this would have been shortly after your sister passed away?
A That's right.
Q Okay. And who is it addressed to?
A I addressed it to, To Whom it May Concern.
Q Okay. And have you reviewed this again prior to court?
A Oh, yes.
Q And did we find a couple of small --
A Something --
Q -- mistakes in it that you would like to fix?
A Yeah.
Q What were the -- I guess the things you needed to fix in it in terms of what you felt comfortable?
A The date Arden died I think might be wrong.
Q Okay. It said July 2013. It should be June?
A Yeah.

Q Okay. And what else about maybe Glenn's time moving in?

A Yeah. I think that was. I don't see it right now. I'll have to find it.

Q Okay. Why don't we read through it, and if we come to it, you can tell us what you want.

A Okay. I just said, to Whom It May Concern, my sister, Helen, was independent and opinionated but loving person. She was intelligent, and at one time, owned and managed her own business. Soon after the diagnosis of her husband's, Arden's, illness, it was necessary for them to depend somewhat on the assistance of their children. At one time, Cathy was their main helper with household chores and personal requirements.

Shortly after Arden died in July 2013, I think that's the wrong date, their son, Glenn, moved into their home. And after his death, I began to notice a change in Helen's communication with me. We always call each other at least once a week, but after Arden's death, I called more often, two or three times a week.

If she didn't hear from me, she would call me. When she called, it was when Glenn was either outside or doing errands. Some of the

conversations troubled me. For instance, during the time Cathy had surgery on her leg to remove a cancer, I often suggested that she should call her daughter and ask how she was doing. Helen's response was always, I'll ask Glenn. And after I insisted, she would say, I'll ask Glenn and again think about it.

Other concerned conversations were any time I'd ask about how things were going, she would give the phone to Glenn to answer any questions or any comments. For some reason, she seemed reluctant to respond to my comments or questions if Glenn were present.

When she called me, always when Glenn was not there, she would conclude the conversation when he came into the room. I commented about this to my wife and told her I thought something was not right. Helen won't talk to me as freely and warmly as she had in the past. Helen, a formerly loving and caring sister has suddenly become quite distant to her baby brother.

Q You okay? You want a little water?

A I beg your pardon?

Q Would you like some water?

A Oh, I have it here. Thank you.

MR. HOWE: Okay. Hang on for a second. Your Honor, that's all the questions I have, and Ms. Harkness just needs to run to the restroom. We can keep going. Okay?

THE COURT: Okay. Or we can take a break, whatever you'd like to do.

MR. HOWE: Well, can we take a two-minute break then?

THE COURT: Yeah.

(Off-the-record discussion.)

THE COURT: I just meant to move that last statement into evidence and I didn't do that, as Number 3.

MS. WIMBERLY: I'd like to note my objection that it's cumulative. It's self-serving and it's hearsay.

THE COURT: Your objection is noted. It's allowed into evidence as Petitioner's Exhibit Number 3.

(Petitioner's Deposition Exhibit No. 3 was marked for identification.)

MR. HOWE: That's all I have at this time.

THE COURT: Okay. Mr. Brantley, you okay?

THE WITNESS: Yes, sir.

MR. VARNADO: Your Honor, may it please

the Court.

THE COURT: Yes.

EXAMINATION

BY MR. VARNADO:

Q Colonel Brantley, can you hear me?

A Yes.

Q I'm Rob Varnado, and I'm one of Glenn's attorneys.

A Okay.

Q And I do -- just want to ask you a few questions, sir.

A Sure.

Q So if for any reason you can't hear me, just please let me know.

A Okay.

Q I do have a cough drop in the mouth. I'm fighting a cold. So if it sounds a little funny or it doesn't come out right, just ask me to reask it. Colonel, you did speak with your sister after Arden's death, correct?

A Yes.

Q And you had multiple conversations with her, correct?

A Yes.

Q Were you aware that Cathy Harkness had

sued her mother in court here in Charleston County? Did you know anything about that?

A That was a suit about property, was it?

Q Yeah. A lawsuit.

A Just vaguely.

Q Did you know about it at the time, or was it something you learned about it since?

A At the time, I didn't know.

Q No one told you at the time?

A I was -- I may have known. It didn't seem that much of a problem, because it was just trying to exchange property. So it didn't seem much of an importance to me.

Q A lawsuit from a daughter against a mother?

A Well, that bothered me.

Q Okay. And I just want to make sure I understood you, sir. You're not sure if you knew it at the time, but if you know, that you've learned it since or you might have known it at the time?

A I might have known it at the time, but I think it was afterwards that I found that out.

Q And you would agree that would bother you, right?

A Yes.

Q And you would agree, it probably would bother your late sister, correct?

A Yes.

Q Okay. And you would agree that it would probably cause tension in the family, correct?

A I would think so.

Q And you said earlier -- when Mr. Howe began your examination, you talked about right after Arden died, the late Ms. Gunnells, she wasn't being hidden from you? She wasn't hiding? She would talk to you on the phone, correct?

A Yes. She would talk to me on the phone, but it wasn't as openly as it had been before.

Q Okay. This is immediately following the death of her husband?

A Yes.

Q And how many years were they married, sir, roughly?

A I don't know.

Q Okay.

A Long time.

Q Long time. Okay. From cancer, correct? You said that she was an independent woman?

A Absolutely.

Q And she was opinionated?

A Yes. As we all are.
Q And she was intelligent?
A Yes.
Q And she was a southern lady. I think we can all agree on that?
A Yes.
Q Correct?
A Yes.
Q And sometimes, southern ladies won't tell you things that they don't want you to hear, correct?
A Right. I think she talked to me more openly than she did to anybody else in the family.
Q Yes, sir. I appreciate that. And, Colonel, you weren't in Charleston at the time she did the new Will, correct?
A No.
Q Do you even know the date of the new Will?
A No. I didn't even know there was one.
Q Okay. So she didn't talk to you about that?
A No.
Q Okay. And at the time, even though she wasn't, in your opinion, as open with you, she was still intelligent. She was still lucid. She

knew -- she would speak to you, correct?

A Yes.

MR. VARNADO: Colonel, that's all the questions I have now. Thank you, sir.

THE WITNESS: All right.

THE COURT: Thank you, Counsel.

MR. HOWE: I have no further questions. Witness can be excused?

THE COURT: Can the witness be excused?

MR. VARNADO: Absolutely.

THE COURT: Thank you, Mr. Brantley, and safe travels back to Georgia, and, hopefully, it's not too late a night for you.

(Off-the-record discussion.)

MR. HOWE: So, Your Honor, at this time, I'm going to be, I guess, calling or using the video deposition we took of a lady named Helen Carroll, a friend of Ms. Gunnells, if I could get this working.

THE COURT: Okay. It's Carroll -- you spell her name, what --

MR. HOWE: It's C-A-R-R-O-L-L, two Rs and two Ls.

THE COURT: Okay. Counsel have some objections?

MS. WIMBERLY: Yes. I have a few objections. First of all, there is a letter that is used in this deposition testimony not necessarily to refresh her recollection, but it's -- the bulk of the testimony is based on this one letter. And in the deposition, I -- after Mr. Howe had an opportunity to depose the witness, he -- I had the opportunity to ask her about the contents of this letter and how this letter came to be, and the deponent said she did not know how this letter came to be. She did not know who wrote it. She does not remember when she signed it, who was present when she signed it, and it's signed by two people. It's signed by Ms. Helen Carroll, who is the deponent, as well as a Polly Davis. And Ms. Carroll said she had no clue who Ms. Polly Davis was. She doesn't know why she would sign it.

Furthermore, Your Honor, I know that you're probably sick of me saying this, there are hearsay statements throughout this document, and Ms. Carroll throughout her deposition, I understand that she's a little bit older, but a lot of things that are written

in this deposition, she did not testify to as her personal knowledge, but -- or in this letter. She did not testify as her personal knowledge, but testified to it after seeing the documents. So I have a lot of problems with document, A, with --

THE COURT: But it is a document signed by her?

MS. WIMBERLY: It is, Your Honor, but she said she doesn't remember who was present when she signed it, who brought her the document, how it was prepared. So this document is -- I would move to keep it out of evidence and away from Your Honor.

THE COURT: Okay.

MR. HOWE: Well, it's a statement that she looked at and signed. She affirms the truth of it, as I remember in the deposition, and uses it to refresh her recollection, and I think her concerns about it go to weight, not to the admissibility. You know, there are -- fair fight of our lawyers to say what about this, what about this, but I don't think it reaches to the point of making it inadmissible.

THE COURT: Okay.

MR. HOWE: And I guess you'll probably have to see it to get -- sort of know the context of it. I know you're at somewhat of a disadvantage, but she's an older lady. She affirms everything that's in it, as I recollect.

THE COURT: Okay. And I guess -- well, it's signed by her. My understanding, it's a statement. Somebody else may have prepared it and gave it to her is what you're saying?

MS. WIMBERLY: Yes. Your Honor, it was --

THE COURT: And I'm sure you asked your question on all of that?

MS. WIMBERLY: Yes, Your Honor. And I would ask that this document not be tendered into evidence, that you watch the deposition and --

THE COURT: Okay. Any issue on I guess the testimony surrounding her testifying to the document, or is it just the document that you're objecting to?

MS. WIMBERLY: Your Honor, it's a document I am objecting to. Also, I noted my objections on the record in the deposition to how Mr. Howe used the document in the deposition. Like I

said earlier, a lot of her testimony was not based on her personal knowledge, but it was based on looking at the document and saying, oh, that's what the document says.

THE COURT: Okay. And I'm not sure -- Mr. Howe is probably going to argue, it's refreshing her --

MR. HOWE: Correct. Because she -- you know, the other lady was a witness who was there that saw her sign it. That's all it was.

THE COURT: Okay. I guess we probably need to watch it and then go from there. Is that fair enough, or do you want to cut and splice but I --

MS. WIMBERLY: That's fine, Your Honor. We can watch it, but I just wanted to note my objection on the record.

THE COURT: Okay. If you want to push it against the wall. I can see it, just so everybody else can see it.

(Video deposition of Ms. Helen Carroll is being played)

(There was a pause in the proceeding)

THE COURT: So where do we stand? We have got your next witness.

MR. HOWE: We just want to talk about -- yeah. I've got a next witness and maybe a couple of deposition excerpts. That will probably take us through a little after 12. Maybe we'll break for lunch and then start with Ms. Harkness.

THE COURT: Does that sound good?

MR. HOWE: Our guess is that it will probably go long enough that he will want to start his cross in the morning. That's okay with me, and then we'll -- it sort of depended on how the time runs. I'm okay with that if that's how it works. That's our best guess.

MR. VARNADO: That's right, Your Honor. I was probably going to do our cross-examination, and Ms. Wimberly will do the directs tomorrow morning. So we'll need to make a matter on motion then at the end of this case.

THE COURT: Okay. All right.

MR. HOWE: Okay. So at this time, we call Ms. Belinda Davis.

THE COURT: Ms. Davis, good morning. How are you?

THE WITNESS: Good morning.

BELINDA DAVIS,

having been first duly sworn, was examined and testified as follows:

THE WITNESS: I swear.

THE COURT: Thank you. Please be seated.

THE WITNESS: Yes, sir.

THE COURT: And if you could please state your name for the record.

THE WITNESS: Belinda Davis.

THE COURT: Okay. Ms. Davis, you may answer questions of counsel, Mr. Howe.

THE WITNESS: Yes, sir.

EXAMINATION

BY MR. HOWE:

Q Yes, ma'am. How old are you?

A I'm 65.

Q And where do you live?

A Charleston.

Q And how long have you lived in Charleston?

A Forever.

Q Okay. And you are Glenn and Cathy's sister, correct?

A Correct.

Q And tell us a little how that sets up age-wise and stage-wise. What's the pecking order

there?

A I'm 65, Cathy is almost five years younger than I am, and Glenn is seven years younger.

Q Okay. And what area of Charleston did you grow up in?

A We started out in North Charleston.

Q Okay.

A And then moved to West Ashley.

Q All right. Where did you go to high school?

A Saint Andrews Parish.

Q Did you graduate?

A Graduated in 1968.

Q What did you do after that?

A I married a high school sweetheart.

Q Okay. And tell me a little bit about your work background. Well, do you have children?

A I have two children, a son that was born in '74, and a daughter that was born in '78.

Q Okay. And grandchildren?

A I have. By the daughter, three. By the son, one, and one on the way.

Q Okay. Full house?

A Yes.

Q Tell me a little bit about your work

career and some of the things you have done work wise.

A Basically, I helped my husband, helping him go through school and also working with his father's company.

Q And what was your husband's name?

A His name was Frank O. Davis, Jr.

Q And what the business he was in?

A Davis & Doscher Construction.

Q What kind of construction did they do?

A Sub-grading, paving, sub-paving.

Q How long did you do that?

A He was doing that for a long time. As far as me helping out financially, he was going to the college -- Baptist College and also working part time with his dad at the same time. I went to work for the Medical University in 1974. We were married in '69, so that timeframe.

Q Okay. So '69 to '74, you were doing family business?

A And little -- and some smaller businesses but --

Q Okay.

A Basically.

Q And then you went to MUSC?

A I went to MUSC.
Q What did you do there?
A I was the administrative assistant to the division chairman of neurological surgery.
Q And who was that?
A Phanor Perot.
Q That's P-E-R-O-T?
A P-E-R-O-T.
Q Okay. And how do you spell the first name for the court reporter?
A P-H-A-N-O-R, L, Perot, P-E-R-O-T, Jr.
Q Got it.
A M.D., Ph.D.
Q I guess you've typed that up a few times?
A Just a few, yes. Just a few.
Q How long did you do that?
A I -- about 10 years.
Q Okay.
A And then after that, I started Sandpiper Meetings & Conventions, and then that was a corporate meeting, planning, event management company. So I had some travel in and out, and also with the neurosurgery department too. After that --
Q That met a --
A I'm sorry?

Q That had sort of an interruption you were telling me about. What kind of messed that business up? You were telling me Hugo came through.

A Oh, Hugo kissed me. That's what happened. I moved my office down to the city of Charleston.

Q Right.

A And then Hugo came along and did a nice little number on everything.

Q Not a lot of conventions after that?

A No. In fact, my next chapter of employment, per se, was a friend of mine helped out of Chicago, where I was on the road working with Lexus on the east coast and managing their ride and drives. And then I got a full-time job with the City of North Charleston, and I worked under two mayors, Mayor Bobby Kinard and Major Summey. So I was there for 13 years.

Q Okay. So Arden and Helen, one marriage, right? They were married for a long time, right?

A Long time, yes.

Q Okay. And three children of you, right?

A Correct.

Q That you've gone over. How did Cathy and Glenn get along?

A They didn't.

Q Okay. And was that longstanding?
A Pretty much.
Q Okay. How did you and Glenn get along?
A We got along fine for the most part.
Q Okay. And what did Glenn do for a living?
A He was a used car salesman.
Q Okay. And did it come a time when he stopped working?
A Yes.
Q And do you remember about when that was?
A I suspect it was probably around 1999, when I -- he had a heart attack and went on disability.
Q And has he worked anywhere since then that you're aware of?
A I don't know.
Q Okay.
A I couldn't tell you.
Q All right. Do you remember when your father was diagnosed with cancer back in the spring of 2012?
A Yes.
Q Okay. Where were you living at that time?
A Charleston.
Q And what do you remember I guess about

that time in terms of how he was doing and what participation you had in his care?

A In his care. Well, we all helped Dad and Mom. If I can kind of back it up a little bit.

Q Okay. Sure.

A We all really put our time -- if you want to say it that way, put our time in helping with Mom and Dad, taking them to appointments, doctors' appointments, grocery, nothing that a family wouldn't do for each other.

Q Okay.

A When Dad was diagnosed, he was ill before that, Glenn sort of took over the responsibility of taking him to the doctors, and then Cathy and I were working with Mom. And then that kind of all fell apart.

Q Okay. Did you ever make any trips down to the cancer place?

A Yes. I did.

Q All right.

A He was at Bon Secours West Ashley in the chemo section, in the cancer building.

Q Okay.

A And I visited several times there, because Mom really shouldn't have been left alone. So Cathy

would go and stay with Mom, and I was in a financial bind. So my closest spot was to go see him when he was under treatment.

Q Okay. Where was Cathy living at the time that the family discovered -- or your dad discovered he had cancer?

A She was in Myrtle Beach.

Q Okay. And what did she do when you-all found out about his diagnosis?

A She moved.

Q Okay.

A She came back to Charleston and rented a place close to Mom and Dad.

Q Okay. And what kind of car was she driving at that time?

A A Corvette.

Q And what did she do with that?

A She sold it.

Q Why was that?

A To help accommodate transporting Mother and Dad.

Q All right. One of the witnesses in this case is a lady named Dr. Chanson.

A Right.

Q You're familiar with her?

A Very familiar.

Q And tell us about how your mom -- and she ended up seeing your mom?

A Correct.

Q Okay. Tell us how that sort of evolved.

A Dr. Rieder suggested that we take her to be referred to Dr. Chanson, because Dr. Rieder's wife was also a patient. It was also closer to where they lived in Capri Isles. Prior to that, we went to Kim Davis Seagle in Mount Pleasant, and that was -- she saw my doctor and Dad did too.

Q Okay. So you and your dad and your mom all saw Kim Davis Seagle?

A Yeah. Basically, yes.

Q Okay.

A Buy we wanted somewhere closer since Dad was getting sicker, and so I moved, and Mom, to Dr. Chanson's office.

Q Okay. And did you help make all those arrangements?

A I initially took her to see Dr. Chanson, and when Dad asked -- when he was really getting unsettled -- he was unsettled in his health, I took her to Dr. Chanson to give an exam to find out what was wrong, what needed to be done. This is upon

Dad's request and Mom's, that the girls would take care of Mom, and Glenn would help with Dad.

Q Okay. So let's back up just a little bit. What was Cathy's relationship with your parents overall during that time?

A Constant.

Q Okay.

A She helped quite a bit, took up a lot of slack that I know I couldn't do, because I was raising my family and traveling out of town. And my job would -- could last till 2:00 in the morning or different varying hours.

Q Did she do certain things around the house that you remember?

A Whatever she could find. She painted. She cleaned. She cooked. She took Mom to the doctors' offices and helped there, groceries.

Q Okay. And so how would you describe -- I -- you kind of said it, but how would you describe the duties and how did that break down after your dad was sick? All three were --

A Well, what Dad wanted was for Cathy and I to take care of Mom, taking her to her doctor appointments, which was fine, and we had those all set up.

Q Okay.

A And Glenn would take Dad, and that's when I would go see Dad at the chemo, when he was having --

Q How long would he be there? I guess that's a fair question.

A A long time, hours.

Q Okay. So it wasn't just sneak in and sneak back out?

A No. Wouldn't just sneak in. In fact, I think Glenn, when I was there once, Glenn had dropped him off and was running errands and so -- and by the time he got back, hours may have been gone.

Q Okay. All right. So apparently, around October of 2012, you left the Charleston area, for a bit; is that correct?

A I did.

Q Okay. And why was that?

A My son was married. They had their first born, and I went over there to make sure that my daughter didn't lose her third grade teaching job to stay with the youngest grandchild, who was three months old when I went over there.

Q So you did the childcare?

A I did the childcare.
Q She went back to work?
A I went back to work.
Q Okay. And how long did you stay over in Hawaii?
A Initially, it was six months. I came back -- I was flying back -- I was on the tarmac -- it was that Sunday or that Monday before Dad died.
Q Okay. And I believe your father passed away June 8th?
A June 8th.
Q And about how long before his death did you get back?
A Like that Monday or Tuesday.
Q Okay. So how long before -- is that -- as I understand, is that about a week before he died or somewhere in there?
A Yes. About a week before he died.
Q Okay. Hold on one second. When you got home, where was your father?
A He was in the ICU at Bon Secours.
Q Okay. And had you been made aware of --
A Not by Glenn.
Q Okay. How did you find out?
A I was on the tarmac, and I received a

phone call from Cathy saying that something was not right. She couldn't get ahold of Mom or Glenn, and I called Uncle Jack, who was here earlier under deposition. And because he could -- he had the avenue with Glenn. He would talk to -- Glenn would talk to him.

So I said, please find out what's going on, because I'm on my way home now. And I told -- actually, part of that conversation with Uncle Jack was that I had already talked with Glenn the Wednesday before, and that I had heard that Daddy was -- Daddy's health was failing.

And I asked if he literally was on his death bed, and the next I hear is him in the background saying to Mother -- or saying in a loud voice, she wants to know if he's on -- if he's dead yet.

Q And when you got to Charleston, were you able to go see your father?

A I went immediately.

Q Okay. Let me hand you a document.

A Sure. Oh, yes.

Q Okay. Do you recognize what that is?

A Yes. I do.

Q And who wrote it?

A It came from Glenn.
Q Okay. And who was it addressed to?
A Me.
Q And did you receive it?
A I did.
Q And about when?
A May something, I think.
Q Of what year?
A Of -- before Dad died.
Q Okay. Well, this is -- was it when he was in cancer treatment or --
A Cancer, yes.
Q So that would be 2012?
A Yes, sir.
Q Okay. Well, why don't you go ahead and read the document.
A Okay. Let it be known nothing will be signed or initialized till I look at it, exclamation point three times. Let it be written so let it be done, two exclamation points. All has been done and notified, several exclamation points.
Q And so what was the context of that, and why did you get that from him?
A That -- when I went to see Dad in chemotherapy, I went up front to make sure that -- I

asked Dad, I said, who's on the list to come and visit, we get -- receive information and went up to. Daddy says, I don't know. I think Glenn -- you know, Momma and -- so I went up to the front, and I said, well, I'm going to see if Cathy and I can -- are on the list.

So I went up front, and I asked him about the Will also. Do you know if -- because when you --

Q Don't go into all of that right now.

A Okay. So I went up front and added our names.

Q Okay.

A And this was a response.

Q Okay. And what was he trying to get across to you?

A I guess that he had control.

Q And --

A He was -- he was telling me nothing was going to be passed or made on their behalf without going through him.

Q Okay. Was that directed then to just putting the names on the --

A That was. That came after putting the names on the -- having to receive information --

clearance to go see Mom -- to Dad, excuse me.

Q Okay. Switching times a little bit. So you go to Hawaii in October of 2012. You come back very beginning of June 2013?

A Right.

Q And then your father passes away?

A Correct.

Q Did you have any contact -- don't go into what anybody said, but did you have contact with your mother after that?

A The funeral.

Q Okay. And --

A She was distant.

Q Okay.

A Upset.

Q And did you make any attempts to have contact with her later?

A Yes.

Q Okay. All right.

A That was --

Q Tell me a little bit about that incident.

A That was to go get the death certificates for Dad, and I called Glenn. And actually, Cathy was with me, to go get the death certificates so I had filed Dad's will.

Q Right. You were the PR for your dad?
A Yes.
Q Okay.
A And I thought for Mom's.
Q Okay.
A So he said -- so he said, they would be hanging on the door in a plastic bag, and I thought that was rather funny. So I pulled up, went to the door and got the two or three death certificates, knocked on the door, rang the doorbell. Usually, the door -- you know, was trying to go in to see Mom. And then literally, the door just peaked open, and there was this woman I had never seen before.

And I said, I'm Belinda -- Linda or Belinda. I came to see Mom. She said, I'm sorry. You can't come see your mother. I'm giving her physical therapy. I said, what? I said, I can't come and see my mom? I can always come and see my mom. So I literally pushed my way in, and the next thing I know, Glenn is coming through the hall, and he's pushing me back, saying, call the police. So apparently, I wasn't welcome.

Q Okay. Where was Cathy?
A She was in the car.
Q Okay. I'm assuming you-all both talked

about -- without going into any detail, but you-all talked about the incident and what --

A Correct, yes.

Q Did you try to do anything to try to figure out how to fix that unwelcomeness?

A Yes.

Q Okay. Tell the Court what you did.

A We took -- I had to take the death certificate to probate, which we did, and then we went down to Susan Curran. She was guardian -- she's part of the probate system, because we felt like Mom needed some other care or some -- her care to be checked on. We also went to DSS, based on that advice.

Q Uh-huh.

A And then later on, we also went to an attorney, Robert Polk, but he was too expensive.

Q Okay. And about over how long a period were those three visits, do you remember?

A Well, it was probably a week, two weeks.

Q Okay.

A Maybe. A week for the funeral and then maybe two weeks at the most.

Q Okay. And --

A Because they had to be received. They

weren't ordered.

Q I'm sorry?

A The death certificates.

Q Right, right. Okay. But I'm talking about how long -- let's say how long after this incident did you go to see -- well, the probate, you were on your way there apparently, right?

A Yes. And then we immediately went downstairs to see Susan, Ms. Curran.

Q Right. And then later, you-all went to see some people at DSS?

A Correct.

Q And how long later was that?

A How many -- in the week.

Q Okay. And how about Mr. Polk?

A Probably about the same amount of time, there for a week later.

Q Okay.

A We tried to do it as soon as we could get the arrangements made.

Q All right. And I guess did you end up hiring Mr. Polk?

A No.

Q And why was that?

A One was the expense, and I had to go back

to Hawaii.

Q Okay. And why were you going back there?

A Because school was starting again.

Q Okay.

A And so my daughter-in-law would not get fired.

Q So you were going to do the childcare while she went back to work?

A Exactly, childcare.

Q When was the next time that you saw your mom?

A In the emergency room, the day she died.

Q Okay. And that was?

A February 7th.

Q And when did you move back to Charleston?

A Around the first or second week of December.

Q Okay. One second. Did Glenn ever ask you for any help in caring for your mother after your dad died?

A No.

Q Okay. And when did he -- you said a certain thing that you brought up with me before when she passed away and was in the hospital, what did he tell you?

MR. VARNADO: Your Honor, I'm going to object. I'm going to be doing the cross-examination. I'm going to object to relevancy. We're here on a Will context.

MR. HOWE: It's about the Will.

BY MR. HOWE:

Q What did Glenn tell you about the Will? What did he say? Did he say anything about the Will?

A That -- you're talking about when she was in the emergency room?

Q Yeah. Or later in the hospital room, I think as she was passing away.

A There -- I knew mom had DNR.

Q Okay. I'm not talking about that. Did he make any reference to her new Will?

A No.

Q Okay. What about -- what can you tell me about Glenn in terms of, I guess, character personality and that kind of stuff? What are the things you think the Courts need to know about?

A Controlling.

MR. VARNADO: Your Honor, I mean, now he's asking for character. I don't think that's in evidence, and I don't think -- that's

objectionable.

THE COURT: Overruled. I'm going to allow the question. I think character --

MR. VARNADO: I should have let her do that one.

BY MR. HOWE:

Q So what would be the things you think His Honor should know, I guess, about your brother?

A I think control freak, drug and alcohol abuser, a user of people, conniving.

MR. HOWE: That's all the questions I have. Thank you very much.

THE COURT: Thank you, Mr. Howell. Mr. Varnado?

MR. VARNADO: Thank you, Your Honor. May it please the Court.

EXAMINATION

BY MR. VARNADO:

Q Ms. Davis, I've got to ask you a little bit about the timeline, please, and a little bit about --

MR. VARNADO: Your Honor, Mr. Howe wants to move in this piece of evidence, which he should do, and I'm going to object to strenuously.

THE COURT: Okay. Which is the --

MR. HOWE: The e-mail she received from Glenn about the let nothing be done.

THE COURT: Okay. And your objection?

MR. VARNADO: Relevance, completely irrelevant, hearsay, out-of-court statement offered in court for the truth of matter.

THE COURT: Overruled.

(Petitioner's Deposition Exhibit No. 4 was marked for identification.)

BY MR. VARNADO:

Q I'm going to hand it to you, ma'am.

A Yes, sir.

MR. VARNADO: Okay. Now, Your Honor, do you have the timeline? Was that entered into evidence too, Your Honor?

MS. WIMBERLY: The timeline is not officially in.

MR. VARNADO: Okay.

BY MR. VARNADO:

Q Are your reading glasses on?

A Yes, sir. I do. Thank you.

Q All right. Ms. Davis --

A Yes, sir.

Q -- the Will that you were the personal

representative of, my understanding was that was in -- executed in 2006. Is that roughly your knowledge?

A Right.

Q Okay. And you were the personal representative, and you also have a one-third interest in the estate, should the Court deny the current Will. Is that your understanding?

A Correct.

Q Okay. And you would be the personal representative, or maybe you've disclaimed the PR part of it. Can you tell me what you --

A I had -- this is -- the Will was made -- can I go back to that?

Q Sure.

A Okay. The Will was -- that was my Christmas gift to Mom, Dad, Glenn and me.

Q And Cathy?

A No. Didn't do Cathy's.

Q I see. I got it. I understand. Who did that Will?

A Brady Hair.

Q Brady Hair. Okay. Who you knew from North Charleston?

A Correct.

Q All right. Now, you moved to Hawaii in, according to this timeline that Mr. Howe prepared, in October of '12, and you explained to the Court that was to provide assistance to your daughter and your grandchild?

A Yes.

Q Grandchildren?

A Correct.

Q Right. So what I don't understand is this e-mail that's been marked into evidence as Number 4, that's in May of '12. So can you explain to Judge Condon what you and Glenn are discoursing about or -- discoursing about, is that the right word? Having a conversation about in May of '12?

A I learned through others that he had power of attorney.

Q Okay. And that angered you?

A It -- well, it made me upset. Of course, it did.

Q You were angry that --

A No. I was upset.

Q Okay. I'm sorry. You were upset that Arden Gunnells and Helen Gunnells had given power of attorney to Glenn?

A Yes. We had a conversation about that.

Q Okay. And where are the other e-mails that you sent back to him? There's just this one e-mail from him to you. Do you have e-mails that you sent back to him?

A He sent me an e-mail, and you should have it regarding birthdate.

Q As far as I know, that's the only e-mail from --

A This, I did not -- yes. This, regarding the POA or whatever you want to call it, this is the only e-mail.

Q You didn't send an e-mail back to him?

A Not that I recollect or --

Q Okay.

A -- or remember.

Q So he was the power of attorney for your late parents in -- starting in sometime in 2012, and that upset you?

A Apparently, it happened in 2011.

Q Okay. And you -- I meant to say you found out in '12, and that upset you?

A Yes. I did.

Q Okay. When did you go back to Hawaii?

A October of 2012.

Q I'm sorry. I jumped ahead, and please

forgive me. Like I said, I'm fighting a cold, doing my best.

A Okay.

Q You come home. You're at home in time for --

A A week before.

Q -- to be there when your father passes, and you stay for the funeral, correct? You're there for the funeral?

A Yes.

Q And then you stay for how many more weeks before you return to Hawaii?

A About six weeks.

Q About six weeks? Where were you staying at the time?

A My house.

MR. VARNADO: Okay. May I have the Court's indulgence for one moment?

THE COURT: Yeah. Take your time.

BY MR. VARNADO:

Q All right. You returned to Hawaii. How long were you in Hawaii for that second time period, ma'am?

A I left on July the 26th, and I returned -- I don't remember the -- July 26th I remember because

that was when my ex-husband and I were married. So don't ask me why it was a trigger. I returned back the first week or second week of December of that year -- October of that year.

Q Okay. Just to make sure I understand, what year --

A 2013, I was back, December.

Q Okay.

A Right here.

Q All right.

A You want me to write that for you?

Q Yeah. That's probably a good idea.

THE WITNESS: Is that okay with you?

MR. HOWE: Sure.

A So I went back --

BY MR. VARNADO:

Q You can do it up here, either way.

A 7-26.

Q Returned to Hawaii?

THE COURT: Then, we haven't marked it as an exhibit. Do you want to mark it for identification at least, or do you want to mark it as an exhibit?

MR. HOWE: I'd like to go ahead and mark it as an exhibit.

MS. WIMBERLY: I would like for identification only, just because some of the things on the exhibit haven't been authenticated.

THE COURT: Okay. So it would be Number 5 for the petitioner?

MR. HOWE: Yes, sir.

THE COURT: We'll mark that as Petitioner --

(Petitioner's Deposition Exhibit No. 5 was marked for identification.)

A Early -- first week, second week. I'm not sure of the date of the return. Let's just put the first two weeks.

BY MR. VARNADO:

Q Can you just put your initials by that, ma'am? Thank you so much.

THE COURT: And then after she finishes that, we'll have the court reporter just mark it for identification, as Number 5 for identification.

THE WITNESS: Can you read it?

BY MR. VARNADO:

Q Yes, ma'am.

A Okay.

Q During that time you were in Charleston, you had the -- you did talk to your mother on the telephone?

A I talked to my mother while I was in Hawaii, and Dad.

Q Okay.

A Constantly.

Q Okay.

A When I came -- are you talking about when I came back home in December?

Q Right.

A I talked to Mom.

Q Your mother was understandably grieving after the death of your father? You would agree with me, correct?

A Of course, she was.

Q Okay. Have there been any other deaths in the family around that same time period?

A Aunt Evelyn.

Q Who is her sister?

A That was her oldest sister.

Q When did your Aunt Evelyn, her sister pass?

A Oh, I do not remember that, when she passed.

Q Was it around the same --

A I would have -- I'd have to look back. It was that year. I don't know. I don't remember.

Q You were in the room earlier when I asked your Uncle Jack, Colonel, your mother was a southern lady. She was very much a southern lady?

A Yeah. She was a lady.

Q Okay. And did you agree with him to say that she was intelligent? Would you agree with that?

A Yes.

Q That she had an opinions? She was opinionated in a good way?

A I think we all are, yes.

Q I think you-all are too. In that month after -- that time period following your father's death and between the time you returned to Hawaii, how many times did you talk to your mother roughly?

A I don't recollect talking to her that much at all.

Q All right.

A I was understood the under -- I was with the understanding that she didn't want to talk to me, see me or hear from me.

Q All right. Did you know that your sister,

Cathy, had brought a lawsuit against your mother?

A I was aware of that, to get her goods back.

Q Okay. And you agreed with that lawsuit?

A That was the way that was -- Cathy wanted her furniture and her goods back, so, yes.

Q So you agree that it was a good and proper thing for Cathy to file a lawsuit against your mother?

A That was the only way that it could be exercised, and it would not have been done any other way because Glenn -- all of my goods are still -- were still in the house, and those were all sold off and not given back, or thrown away or whatever. So to answer your question, if that was the way to -- for her to get her goods back, yes.

Q You testified about Glenn being an abuser of alcohol and a drug user.

A Yep.

Q Are you an abuser of alcohol?

A I was.

Q Are you a drug user or were you a --

A I was.

Q Did you allow your social life to keep you from seeing your mother and father before they

passed away?

A No.

Q So if Cathy had written a letter to your late father saying that you allowed your social life to keep you away, you would disagree with that?

A I guess I would. My social -- my social life was basically my business, if that's what she's talking about. You know --

Q Did she ever accuse you of stealing checks?

A No.

Q Okay. So you didn't talk to your mother during that month of July 2013 pretty much?

A Uh-huh.

Q But you would concede that she was still -- she had her whits about her? She knew who she was, right?

A I would not know. I know that she had changed in her demeanor and in her attitudes toward me and Cathy.

Q Okay.

A After Dad's death and before.

MR. VARNADO: That's all I have, Your Honor.

THE COURT: Thank you, Mr. Varnado. Mr.

Howe?

MR. HOWE: No more questions.

THE COURT: Okay. Can I ask one question just for the --

MR. HOWE: Sure.

EXAMINATION

BY THE COURT:

Q You came back from Hawaii I guess December of 2013?

A Yes, sir.

Q Okay. And then the next time you saw your mother was?

A February.

Q February?

A Yes, sir.

Q You didn't see her for Christmas 2013?

A No. I -- she was -- not that I didn't want to, and I did talk to her in December, because we always had Christmas and holidays together. My daughter went over with her grandchildren -- with my grandchildren, but it was going to be too upsetting for all of us.

Q Okay. But it's your understanding that the reason you didn't go over there was she didn't want to see you, or was it because of some other

reason?

A I think it was a combination.

Q Okay. A combination of what?

A Not -- everything. It was upsetting and just being over there and having -- upsetting would be knowing that Glenn's there and being in control. It would have -- I'm just not sure if I could have withheld. I hadn't seen Mom in a long time, and everything was still fresh for me, and I'm sure it was still fresh for her.

THE COURT: Okay. Let me ask counsel if they have got any follow-up questions with what the Court's asked.

MR. VARNADO: No, Your Honor.

THE COURT: Okay.

MR. HOWE: I don't think I have anything else.

THE COURT: Okay. Thank you. You may step down. Thank you. Would you-all like to break for lunch and come back in an hour?

(Off-the-record discussion.)

MR. HOWE: Before I forget, I'd like to move the deposition in evidence in case -- the transcript.

MS. WIMBERLY: Okay. And I believe the

exhibit's attached to that, and you'll have to let --

MR. HOWE: Right. Subject to all --

THE COURT: Okay. I understand. Any other argument on the attachment or the document?

MR. VARNADO: Your Honor, you wouldn't let that statement come in by itself, and she clearly had it in front of her. She used it to refresh her recollection. So she had it. You heard from her. I think that's all you need is the testimony -- is her testimony, not that statement.

MR. HOWE: My position is that the evidence is that she looked at the statement I believe it was in April, that she didn't have anything that she wanted changed. She looked at it before the deposition. She made a couple of small changes on some words that were misspelled, but didn't want to make any other changes.

I asked her if the statement was still true and correct on the record in the deposition, and she said, no. So she basically adopts and ratifies the statement, and they

have some room for cross-examination, but that -- those things all in a row get it in, because she ratified this and said, I adopt this as part of my -- in essence, said, I adopt this as part of my deposition today. It's true and correct. I've looked at it a number of times. There's nothing I want to change.

MR. VARNADO: Your Honor, if Mr. Howe had a raft of statements and we had a raft of statements and we were like, Your Honor, we want to -- and we object to each other's statements, they wouldn't come in. They're clearly hearsay. He took the time to depose her. He did a de bene esse deposition. He played the video. You heard the video. That's all the testimony that he needs. She testified to what she testified to. The statement is an out-of-court statement offered in court for the truth of the matter. So I would respectfully request that you --

THE COURT: Okay. I'll take them under advisement and let you know when we start back.

(There was a pause in the proceeding)

THE COURT: Just to remind you, I'll need to go at 2:30.

MR. HOWE: Right, right. I think we'll be fine. Just bookkeeping, I wanted to make sure that -- let's check with the court reporter that the transcript of Helen Carroll's deposition was at least part of the record. It doesn't need to be in evidence because we played the tape, but I want to make sure it's part of the record.

(Petitioner's Deposition Exhibit No. 6 was marked for identification.)

THE COURT: Counsel on the other side, any issues with that? I guess it's --

MS. WIMBERLY: No, Your Honor. Obviously, no objection to the deposition but I object to that exhibit.

MR. HOWE: Yeah.

THE COURT: I've got my experts working on that.

MR. HOWE: Okay. Then, at this time, what I would propose to do is I'm going to publish some excerpts from Glenn Gunnells' deposition, and I've provided copies. I have got another highlighted copy for you. But I'll read them to you. They're pretty brief. It should take about two minutes.

THE COURT: All right. That's fine.

MS. WIMBERLY: Your Honor, and I also have a couple of extra lines to add regarding completeness, just to make sure that we get the full picture. So I guess do you want me to consult with Mr. Howe?

MR. HOWE: Yeah. Just tell me what they are.

MS. WIMBERLY: Okay. Page 30, lines 4 through 25. It's not in yours. Here it is.

(Off-the-record discussion.)

THE COURT: I guess he's here if you want to call him.

MS. WIMBERLY: No. He's not here.

MR. VARNADO: I understand the confusion, Judge. They're actually talking about a different family number who's not here to testify.

THE COURT: Okay. Another Gunnells. Okay.

MR. HOWE: I think I can do it. They'll correct me if I'm wrong.

THE COURT: Okay.

MR. HOWE: I'm going to go ahead and say the pages and stuff as I go. So this is

excerpts from the deposition of Glenn Gunnells, and we're starting at page 5, line 21. Are you working anywhere? Answer, retired disability. Question, all right. And when did you retire and go on disability status? Answer, year 2000. Question, all right. What's the nature of your disability? Answer, congestive heart failure. It's on page 6.

And on page 12 beginning line 3, all right. The disability that you're out on, is that Social Security disability? Answer, that's true. What do you get a month on that now? That's line 6 and skipping down to 10, it answers $1,138. And then line 21, that's been since 2000? Answer, that's right.

Then 24, page 24, line 20, question, all right. So even before you moved in, you were at your parents' house all the time? Answer, that's right. Question, were they driving? Answer, they could drive. Well, no, not at that time when I moved in, no.

On to page 25, all right. So certainly when you moved in, they weren't? Answer, right. And so they relied on you to get them around? Answer, that's right.

Question, did you help them with the business affairs and help paying the bills and that kind of? Answer, I did. Question, they relied on you to help with that? Answer, that's right.

Now, if I get it right, 30 is what I have the objection. And then I'll skip to 32, line 5. It's mom's brother? Right. He's the one that lives in Waynesboro. Question, Waynesboro, Georgia? All right. Any bad blood between you two? No. No reason for him to tell me anything that's not true, it is? No.

Okay. Well, while we're on people, how about Helen Carroll? Who is she? That was one of Mom's friends. Okay. Good friend? Answer, yes. Question, best friend? Answer, I'd say so. Question, okay. Answer, one of them. Mom had a lot of best friend. Okay. Who else would have fallen in that category? As far as friends? Question, yes, sir. A regular would be my aunt. Who is that? Ms. DeHay. Question, sorry? How do you say that? DeHay. Dehay? DeHay, D-E-H-A-Y. Okay. Got it. What's her first name? That was Mildred. Where does she come from? North Charleston.

Is she still alive? Yes. All right. Answer, 95, 96 and still drives. Question, I hope for that. We all do.

Did she come and see your mom during the time you were there? Answer, yes. How about Ms. Carroll? She did, but she started slacking off because of her health. Okay. According to my mother.

Then, page 41, line 18, did you ever try to approach a family member during any of this time saying that you needed help, and you, with Cathy and Belinda, would be more help? Yeah. I approached all of them. Question, all right. Who did you talk to? I'm sorry, go ahead. Answer, Mom's Brother, Jack.

Question, so you talked to Jack, and you said, boy, I wish Cathy and Belinda would help me? Yes. Terry, I think that was -- and Terry was kind of meant, but all right. Then that's all. Anything else?

MS. WIMBERLY: Well, with that one, there's also 4 through 7 I believe need to be read in too.

MR. HOWE: Okay. Terry. Okay. Who else? My aunt. Which one? Aunt Mildred. Okay.

So those are the pieces of his deposition that I proffer at this time -- offer at this time, and now, we'd call Ms. Cathy Harkness.

THE COURT: Good afternoon. Watch your step there. Take your time.

CATHY HARKNESS,

having been first duly sworn, was examined and testified as follows:

THE WITNESS: I do.

THE COURT: Thank you. Please be seated. Ms. Harkness, would you state your full name for the record?

THE WITNESS: Cathy, with an C, G. Harkness, H-A-R-K-N-E-S-S.

THE COURT: Thank you. You can answer questions of counsel. Mr. Howe?

MR. HOWE: Thank you, Your Honor.

EXAMINATION

BY MR. HOWE:

Q Ms. Harkness, how old are you now?

A Sixty-one.

Q And you are the middle child in the family, correct?

A Yes.

Q And how much older are you than Glenn?

A Three -- three years.
Q Okay. Where do you live?
A West Ashley.
Q And tell me a little bit about your background, work wise and growing up in Charleston, what you did.
A Work wise, I'll go from '95, I was a private detective for 16 years for Family Court. Opened up a couple of sports bars in '95. In '93, I work for Albert Farah with Farah Beauty School as their administrator at both schools, for the one on Meeting Street and up in Goose Creek.
In 2014, I was working two jobs, Lowe's and BI-Lo, and in August, I became full time for Lowe's, until I got injured.
Q Okay. And briefly, the nature of your injury is?
A The back and neck and hip.
Q Back, neck and hip. And you're in the process of still trying to recover from all of that?
A That's correct.
Q Okay. Where -- I think Belinda said you-all started in North Charleston growing up and then moved over to West Ashley?
A In Sandhurst.

Q Okay.

A And then Mom and Dad built a home in Capri Island on the Stono River.

Q All right. Do you remember roughly when that was? Everybody's gone out of the house at that point or --

A It was like an empty nest, yes. Oh, goodness.

Q That's good.

A In their early 70s.

Q All right. And that's the house that they were still in when they passed away?

A That's correct.

Q All right. Tell me a little bit about your relationship with your parents and what kind of things you did with them over the years, and that kind of stuff.

A Well, actually, they became my best friends. Mother, when I was a private detective, I would take her and Ms. Helen Carroll on out-of-state jobs. Around town, we'd go shopping. We'd go out to eat. I have painted the inside of Mother and Daddy's home. I've wallpapered the inside of their home, tiled the kitchen back splash, wall papered the bathroom downstairs. The outside exterior, I

painted three times, except for the end gable was my son and my ex-husband at the time. I couldn't reach it.

I would take Mother and Ms. Helen and Dad to meet their vestibule in church functions. Any time they had family, I'd go clean their house, help prepare their food. I would serve. When they finished eating, I would clear the table. I for 13 years spent my time at my mother and daddy's house. I was there numerous times before they even got up. I would stay and help them. I would wash their clothes. Mother really wasn't that able. She really started getting disabled early with her back and her knees. And that's when I primarily devoted my time on spending with them.

Q Okay. Before she got disabled, apparently Helen Carroll was one of her friends?

A Yes.

Q And did you get to be friends with Ms. Carroll as well?

A Yes.

Q And did you-all -- I guess all three enjoyed each other's company?

A We were the Three Musketeers, as they called us.

Q Okay. And did you-all ever take any trips together?

A Yes. We did. We went to Biloxi.

Q Mississippi?

A Yes.

Q Okay.

A Havelock by Cherry Point, Clements.

Q Where is Clements?

A Clements is up past -- past Columbia by Clemson, up around there.

Q All right.

A A lot of areas just around town, Myrtle Beach. Anytime I had a case out of town, they were with me, and then at times, I would drop them off at eating places while I had to take care of my business.

Q Okay. So you would be doing your work, and they would be out playing. And then you-all would play when you had the time?

A That's right, yes.

Q Okay. And did you get to be close to Ms. Carroll as well over that time?

A I had Momma one and Momma two. It was Helen one and Helen two.

Q Okay. You mentioned that your mom's

health started getting a little worse. Did you ever go to any doctors with her?

A Numerous of doctors.

Q Which ones do you remember having taken your mom to?

A Dr. Hay.

Q What --

A Which is on Wesley Drive.

Q What kind of doctor was he?

A Orthopedic.

Q Okay.

A The ENT, I forgot his name, over here behind Lowe's West Ashley. I have taken her to Dr. Chanson a few times, numerous of times to the ER at Saint Francis Hospital. Dr. Ulmer at the time was her doctor. That's all I can remember.

Q Okay. How about for her back? Did you see somebody for --

A Oh, that was Dr. Rawl.

Q Okay.

A And then Dr. Poletti.

Q Okay. And before this -- all of this -- let's just call it the dispute that we have been talking about, how often would you see your parents? How often would you talk to your mom?

A I was there every day.
Q Okay.
A Every day. As far as phone calls, I know I was the first one to call. I would call them at lunchtime, and I also called them before I went to bed at night to make sure they were okay.
Q All right. Do you remember when your dad was diagnosed with cancer?
A Yes, sir.
Q Where were you living at the time?
A I had just moved to Myrtle beach. I was there maybe three weeks at that time.
Q Okay. And how did you happen to move up there?
A Going through a divorce and decided I needed a change.
Q All right. And what did you do when you found out your dad was sick?
A The next day, I turned around and came back.
Q Okay. And what did -- you moved back to Charleston?
A I was back and forth for three weeks -- excuse me, three times a week, to help do my part until I found a house.

Q Okay.
A For rent.
Q All right. And where was that house?
A Parkdale.
Q How far was that from your folks?
A Maybe five minutes.
Q All right. What kind of car were you driving at that time?
A A Corvette.
Q What did you do with the car?
A I had to sell it.
Q All right. Why did you sell it?
A Glenn refused for me to use my parents' van to take my mother to her doctor appointments. My mother could not get in and out of my Corvette. So I made sure that I bought a proper car.
Q Okay. And what did you get?
A A Lexus SUV.
Q All right.
A To put her wheel chair in the back.
Q And that seemed to work?
A Yes.
Q Okay. So sort of timeline wise, stick with me here if I do this right. So it's April of 2012. Your dad's diagnosed, and you move back to

Charleston. It's then, as we skip forward, it's around March of the next year when Glenn moves in?

A That was April.

Q Okay. April. And what was the purpose of him moving in at that time?

A He sold his house at the Ponderosa.

Q Okay. And what was your contact with your parents like from the time of your dad was found to be sick, and up until the time Glenn moved in?

A Oh, God. I was there every day. I was helping. I was there in the mornings before Dad and Mom actually got out of bed. I cooked. I cleaned. Actually, we all did our part at the beginning. Belinda did her part. Glenn did his part. I did mine. I was primarily the cleaner, the clean-up crew, the bed sheets, the soiled pants. I was the clean-up crew.

Q Okay.

A Until September came around.

Q Well, so let's go to -- so he moves in in April; is that correct?

A Yes.

Q All right. And how did -- once he moved in, did anything change much at that point?

A Yes. My mother -- well, Daddy was

primarily in the hospital during that time when Glenn moved in. Mother became very distant. She got -- she did not want to talk to me like she did before. I mean we laughed, we cut up, and all of a sudden, that was cut off.

When I would call, she wouldn't answer the phone. I would have to go over. She was reluctant on opening the door. I had to use my key. Next thing I know, Glenn changed the locks on the house. I did not have a key to the house any longer. I was instructed at that point I was no longer welcomed in that house unless he was there.

Q And by who?

A Glenn.

Q Okay. And where was this in terms of when your dad died?

A Right when he moved in.

Q Okay. And were you able to continue some contact then?

A With?

Q With your parents.

A I would go to the hospital and see my father. Glenn started changing different codes so that we could not -- Belinda and I could not call the hospital to talk to the nurse.

Q Okay.

MS. WIMBERLY: Your Honor, I'm going to object to that. Lack of personal knowledge, and that's speculation.

THE COURT: On which part?

MS. WIMBERLY: Whether or not she knew that Mr. Gunnells was changing codes to hospital codes, that's speculation.

THE COURT: Okay. Mr. Howe?

MR. HOWE: Yeah. I'll just refrain a little bit.

BY MR. HOWE:

Q When your dad was in the hospital, were their times when you could call and check?

A That's correct.

Q Okay. And how would you call and check? What was the procedure?

A You would call the local number, and you would press in a code, and then the nurses would get on the phone. And they could give you updates on their patients.

Q Okay. And that was based on the code?

A That's correct.

Q And then so what happened?

A After the code did not work, you could not

speak to any of the nurses --

Q. Okay.

A. -- in regards to dad. I would ask them why. I'm the daughter, and they said that Mr. Gunnells --

MS. WIMBERLY: Objection, hearsay.

BY MR. HOWE:

Q But it just changed?

A It changed. That's correct.

Q So as I understand it, your dad actually went in the hospital for about a week or so before he died. Does that sound about right?

A No. He was there longer than that.

Q Okay. How long was he there?

A Approximately three weeks.

Q Okay. How did you find out he was in the hospital?

A My Uncle Jack.

Q And once he passed away, did your mom stay with -- continue to stay with Glenn?

A Glenn continued to live with my mom.

Q Your mom. Okay. And that's at the same address on Capri Island?

A That's correct.

Q All right. And did you make any attempts

to continue contact with your mother?

A I tried. Glenn would get on the phone. He would laugh and hang up.

Q Okay.

A In return, I would call and ask to speak to mother. He could say, that's not happening, and he hung up the phone on me.

Q Okay.

A On June 11th, he called me up after my father was buried, told me that I am no longer to call Mother. I'm not allowed to go over to see my mother, or he would have me arrested for harassment.

Q Okay. And as we had heard, Belinda had come home around this time and had been there for the funeral; is that correct?

A Yes.

Q And were you present on the time that she went by to pick up the death certificate?

A Yes.

Q Okay. And tell me what you remember -- did you get out of the car? As I understand, you sort of stayed in the car?

A I wouldn't get out of that car. He followed through with everything that he ever threatened.

Q Okay. And what did you see from the car? What could you see?

A I saw Belinda finally go in. I heard a lot of yelling and screaming, and I did see Belinda use her right shoulder to enter the house. The next thing I knew, it was like a flash, Glenn had Belinda pinned up against where the storm door and the door was. He had her pinned against that wall.

Q Did you take any steps after all of this to try to figure out how to have better contact with your mom, or have some kind of access?

A The only access I had was through Uncle Jack and to the preacher in our family, Terry.

Q Okay.

A They're the only two that actually kept me informed, or if I would hear something, have Uncle Jack call to see what was going on with Mother. I went to Legal Aid. I went upstairs, talked with Susan. I met with her twice, and Belinda was with me. DSS --

Q And Susan in what area was that?

A It's up around the probate up here. She's right next to the marriage license. You walk down the hall, second room on the left.

Q All right.

A I went to Legal Aid downtown. They said that this case was --

MS. WIMBERLY: Objection, hearsay.

MR. HOWE: That's fine.

A I went to -- took Belinda, we sent to see Robert Polk.

BY MR. HOWE:

Q Okay. And did you make arrangements to hire Mr. Polk to do anything?

A I couldn't. He wanted 25,000 --

Q Okay.

A -- as a retainer.

Q Okay. And did you see any -- go any other places?

A Yes. I went to DSS and saw Mr. Blair and Ms. Gibbs.

Q Okay.

A And Belinda went with me with that as well.

Q I'm going to hand you a copy of this.

MS. WIMBERLY: Your Honor, this is extremely irrelevant. I'm going to object to this coming into evidence or being testified about. She said she went to DSS. I objected on hearsay with any conversation she had with

anybody. These are simply business cards from DSS. I don't understand the relevance of this.

MR. HOWE: Relevance is that a lot of people say -- might say, I had a hard time getting in contact. To go to DSS shows it's -- as my mom used to say, it's not what you say. It's what you do. And she went to DSS, and she talked to workers down there and they gave her cards as part of that. And that's all I'm saying is these are the people she talked to, and this is how they identified them.

THE WITNESS: We spoke with --

THE COURT: Okay. Wait a minute.

MS. WIMBERLY: It's cumulative. She's already testified that she went down to DSS and talked to people there. I don't understand how the business card would need to come in as evidence. It's cumulative. It's not relevant. She's already testified to it.

THE COURT: All right. Let's just -- we'll just mark it for identification as what Number 7?

BY MR. HOWE:

Q All right. Do you remember the names of the ladies that you saw?

A Yes. Ms. Blair and Ms. Gibbs.
Q Okay.
(Petitioner's Deposition Exhibit No. 7 was marked for identification.)
BY MR. HOWE:
Q When was the next time that you saw your mother?
A The last time I saw my mother?
Q From the time that Glenn said you're not welcome anymore, what was that date? Do you remember?
A That was January 11th, 2013, after my father died.
Q Right. When was the next time that you actually were able to see your mother?
A On February the 6th, when my mother was in the hospital on her death bed.
Q Okay. There's been a mention of a lawsuit that you filed.
A Yes, sir.
Q Tell me -- just tell us what the suit was and how it came about, and what the deal was.
A Over the many years -- over years, I, as all of us have, loaned our parents different items. I put my name on everything I loaned and the date it

was brought over there, and the reason being is because I did not trust Glenn. I would never know where my stuff went, because things from Mother and Daddy's house was always missing.

Q. Okay. And at some point, did you make a request to try to get some of your things back?

A. I went through Uncle Jack and Terry. They made about three -- I want to say three or four different attempts of arrangements through Mother and through Glenn confirming for me to go pick up my items. Each time that I went, Glenn would come out of the front door, stand with his hands crossed and start laughing and shaking his head. I made 14 attempts through Mother, Uncle Jack, and Terry, 14 attempts. I wanted to sue Glenn.

Q. Well, let's -- so those attempts -- and what happened? Did you ever get any of your stuff back from those attempts?

A. No, sir.

Q. All right. Would you actually go by the house and have a date set?

A. Yes. I'd go by the house when the dates were set and the time, and there wouldn't be a thing out in that driveway, nothing, except for Glenn out the front door laughing.

Q Okay. All right. So what did you do at that point?

A I went and talked to the magistrate, Judge Steinberg.

Q What was your intent?

A To sue Glenn.

Q Okay.

A For me to get in the house to get my things.

Q Okay. And what kind of things were they? I mean, what was --

A Living room, white couch, the white chair, an oak jewelry box, riding lawnmower, four stainless steel tables that were outside and on the dock. Pictures, candle sticks that I bought from Tuesday Morning, washer and dryer. Let me think what else. That's --

Q Okay.

A -- a good start.

Q And you mention that you had -- that had been marked -- each of these would have been marked and had your name on it?

A That is correct, yes.

Q And do you remember about when you went down to the magistrate's office?

A It was the latter part of July. I went to the magistrate's office to get some advice on how I could get my things back.

Q And what did you end up doing?

A Actually, I had to sue my mother. That was per the judge. She said since it was Mother's house, it was belongings that I had loaned my parents, that I would have to take my mother to court to get claim and delivery for my items.

Q Okay.

A In the process, while we were in court, which was September, I was awarded -- as long as everything was identifiable. When the -- as the judge instructed, to have police -- sheriffs there, as they were. They identified each item that came out of that house that had my name on it and the date.

Q Okay. And you picked and they made arrangements for that. So you didn't really have any contact with your mom, even at that visit or anything?

A No. But Glenn did come out the door yelling, your ex-husband said to tell you hello. Your ex-husband said to tell you hello. And that's when the two deputies went up there and talked to

Glenn.

Q Okay. What is it that you're asking Judge Condon to do in this case?

A Revoke the Will back to the original Will.

Q Okay.

A Can I go back to one of your statements that you asked me earlier?

Q Sure.

A Judge Condon, at first, I was there every day, just like Belinda. We all did our part. When September came along, I started not being over there every day. There was no sense. Glenn didn't want to -- to go there, there was no sense in both of us being there. I started going every other day.

My mother, I still bathed my mother three days a week. I still washed her belongings. I have cleaned her bottom, but there was no sense after September with me being there every day. I tried to work out with Glenn, you take a day off. I'll come. That way, you get a break. I get a break. He refused. You will not come to this house unless I am here, and I did address that to Mother and Dad.

Q Okay.

A And --

Q All right. And so let's go back to that -- the last question. Thank you. So your request to the Court in this case is for what?

A To revoke the Will back to the original Will.

MR. HOWE: Okay. Your Honor, that's all the questions I have at this time. So I think based on what we had talked about, we'll do the cross tomorrow, because it'll probably take a little time.

MR. VARNADO: Well, I mean, Your Honor, we'd like a short break, but I mean we're mindful that we've got a day tomorrow too, and that you have a short afternoon tomorrow. So can we have a short recess, and then see if we can get in as much as we can get in? I thought we'd be going an hour.

THE COURT: Okay. We can continue on right now, or do you need a little break?

MR. VARNADO: I do need a little break. I'm sorry.

THE COURT: Okay. All right.

MR. VARNADO: Maybe we can finish before 2:30.

THE COURT: Okay. All right. We'll take

a five-minute break and then -- is that enough time?

MR. VARNADO: That's perfect.

THE COURT: Okay. Five-minute break.

(There was a pause in the proceedings)

THE COURT: Counsel ready?

MR. VARNADO: Yes, sir.

EXAMINATION

BY MR. VARNADO:

Q Ms. Harkness, you don't like your brother, do you?

A Why would you ask something like that?

Q Do you like your brother?

A We're family.

Q You don't like your brother?

A I don't like what he has done.

Q Okay. You're jealous of him and his relationship with your parents before they passed away?

A I believe it's a reversal role in that, sir.

Q Glenn never kicked you out of the house. Your father kicked you out of the house?

A That is untrue.

Q There was a blow-up between you and your father. At the time, you were giving your dad a haircut and a workman came to the door seeking to be paid, and there was an altercation. And you were angry at Glenn. Isn't that true?

A He called me an M-F bitch.

Q Okay. So there was an altercation, and that was some time, what, in 2010, isn't that right, roughly, or 2011?

A That was his altercation, yes.

Q You actually were so angry at Glenn that you wanted to physically attack him; is that correct?

A I don't know where you're getting your information. No. It was not that way.

Q But there were curse words exchanged. Is that what your testimony is?

A Only on Glenn's part.

Q And your father called you a disgrace?

A When I was walking out of the house, I called Glenn --

Q You called Glenn what?

A An SOB.

Q So there were curse words exchanged between you and your brother, Mr. Gunnells?

A When I was walking out of the house, I called him an SOB.

Q And your father said that you were a disgrace; is that correct?

A That's what -- I was a disgrace, because I used a curse word in front of my mother.

MR. VARNADO: Your Honor, I'm going to mark for identification as Respondent's Number 2. I'm going to hand this to the witness with your permission.

THE COURT: Yes.

THE WITNESS: What happened to the rest of this?

BY MR. VARNADO:

Q Ms. Harkness, that's a relatively long letter, and that's a letter that I got from you in discovery.

A Okay. I see it. Yes, sir.

Q Okay. And will you identify that? Is that a letter that you wrote to your father?

A Oh, no. Wait a minute, yes. But there was another paper that goes with this that Glenn wrote me that I gave to you.

Q Sorry. I don't have a copy of that letter, but I was just going --

A Yes, sir. I hand delivered that to your office to you and Alex, sitting in your conference room. His letter to me was stapled to this. This is not all that document together.

Q This is a letter that you wrote, Ms. Harkness, correct? This is in your handwriting?

A This part is.

Q Okay. That's what I'm going to ask you about, Ms. Harkness.

A That's all right.

Q Okay. And can you look through this? Is this all your handwriting, this --

A Yes.

Q -- lengthy letter?

A Yes.

Q Okay. So you say, Dad and Mom, I still cannot believe, Dad, that you called me a disgrace to you and Mom, and to your household. Me, unlike your daughter and your son, I am not an alcoholic or a drug user. That's how it begins; is that correct?

A Yes.

Q And then it goes on page after page, in which you air some of your grievances against your brother and your sister, Belinda; is that correct?

A I don't know. I don't know what page

you're on.

Q Well, we can just go through page by page if you'd like.

A Would you like for me to read the whole thing out loud?

Q I don't know if the Court needs to hear that, but we can go --

A Well, I think he needs to hear all of this instead of bits and pieces.

Q This is a little argumentative. I'm just going to ask you questions, if that's okay, Ms. Harkness, and then you can -- your lawyer can ask you questions about it on a redirect.

A Okay.

Q Okay. So on the third page --

A Okay.

Q -- in this paragraph, where was the other two, one always laid up drunk, while the other was so wrapped --

A I'm not on that page. I'm not on it, sir. Look, this is one, two. This is the third page, and this is not the page that you have.

Q Okay.

A This is the third page, see?

MR. HOWE: I think it should be four.

A That's the fourth page.
BY MR. VARNADO:
Q I stand corrected, and I apologize for not doing it, because I didn't consider this page to be just the Dad read this all, but okay. So now we're on the fourth page of document. Where was the other two? So that's what you wrote. So one was laid up drunk, while the other was so wrapped up in her social life, and you never complained. So that's what believed your sister and your brother had not helped at all?
A That was 2010.
Q Okay. And then at the bottom of that page, I didn't understand that. What did you write that your father had said?
A You want me to read this part?
Q Sure.
A As you call me your Little Nigger. That's what my dad called me.
Q What was -- on the next page, what's going on here?
A I am not a lesbian, nor gay. Being queer, gay, and having sex with another man is just not right. Your standards, but I am your disgrace.
Q Who are you talking about there?

A Glenn, and, again, we're looking at year 2010.

Q Okay. And then if you can just flip through, I just want to -- for the next page, your -- the one that has a number sign and 2.

A Number 2?

Q Right.

A Okay.

Q And then you said, you allowed a drunk and a queer who didn't live in your house to file a police report because you couldn't. Is that -- you're talking about Glenn there too?

A Well, on number 2, it says, you allowed Glenn to sign a police report on me, Tracy and Chad, a drunk, someone who has always -- someone who has stolen from, and forged and stole checks from you. You allowed a drunk, a queer, who didn't live in your house, to file a police report because you couldn't.

Would you like for me to read line 3?

Q No, ma'am.

A Okay.

Q If you could flip forward, again, this is not numbered. So it's difficult for me to remember which page but --

A Okay.

Q If you could just flip forward a few pages, ma'am. I'll tell you when to stop. Okay. So you're on page -- the page that begins again.

A All right.

Q In that third paragraph, on that page, you say, you accused Glenn of dishonesty in that third paragraph, but Glenn moves in with you, and you allow him to disrespect others, and I don't understand.

A Actually, Glenn had I think teeth surgery, and he moved in with Mom and Dad for a few weeks back in 2010. But it says, but Glenn moves in with you-all, and you allow him to disrespect others. I don't understand.

Q And what was the paragraph before that, all of these years of Glenn and Belinda's sibling rivalry?

A Right. Well, it says, again, you believe Glenn. I was not wrong. You just believed what you wanted. All these years of Glenn and Belinda sibling rivalry, watching them and listening, I have never been out of line in your house.

Q Okay. Then the next page, please, ma'am?

A Next page? Okay.

Q If you would start at the top.
A Pardon?
Q If you would please start at the top.
A 12-24-10, Christmas Eve, I brought over your and Mother's Christmas gifts. You told me I was a disgrace to you and Mother and to your household. You looked me right in the eye and called me a disgrace. I asked you, did you call Glenn a disgrace? You held your head down, never said a word and walked away.

I have allowed you, Mother to continuous hurt me, accuse me of theft, but lied to, but put third in line, be addressed, oh, this is the other daughter and allow others to plot with you. The look in your eyes when you call me a disgrace, a look I will never forget. I do not believe you need to re-evaluate who is a disgrace. I am not a disgrace.

I stood my ground with Glenn in your home. I called it as it is. Your son started it, whether you wanted to believe it or not. It doesn't matter anymore.

Q Okay. That's --
A And another thing, the nerve of your son to send me a letter --

Q That's all we need at this point.

THE COURT: Ms. Harkness, stop. Wait for the next question. Your attorney can bring it back up.

THE WITNESS: I'm sorry.

BY MR. VARNADO:

Q You still believe all of that today?

A Believe?

Q What's in the letter.

A Why do you tell me I do? I believe it today.

Q Didn't you? You do, correct?

A That's not a question. That's a statement to me. I don't --

Q You still believe all these things even today. You're very passionate about it.

A My father is passed. So I don't believe this about my father.

MR. VARNADO: Your Honor, at this time, I'd like to move this into evidence as an exhibit.

THE COURT: Mr. Howe, any objections?

MR. HOWE: Objection. I'd have to look at it a little bit more, but I think it goes in the line of irrelevant stuff so he can

cross-examine, but I'll object.

MR. VARNADO: It's a written statement by a party opponent that goes directly into this whole --

MR. HOWE: About a fight with her father.

THE COURT: Okay.

MR. HOWE: When we're talking about her mother's Will.

THE WITNESS: Well, where was the attachment that went with this from Glenn?

THE COURT: Wait, wait, wait. I'm sorry, just wait a second.

MR. VARNADO: All I would say, Your Honor, is Mr. Howe wanted to bring in Glenn's reputation, and he asked Ms. Davis about that. So I think that this is an admission by a party opponent. It goes right at the heart of what's really going on here, and it's necessary to our case to prove that a lot of -- there's a lot more going on here than just a Will contest. I would respectfully request that you admit it, and we got it from her. She admits to giving it to me, so --

THE COURT: Mr. Howe, anything else?

MR. HOWE: No, sir.

THE COURT: Okay. The documented is admitted.

MR. VARNADO: Thank you, Your Honor.

THE COURT: Exhibit Number 2 I believe?

(Respondent's Deposition Exhibit No. 2 was marked for identification.)

MR. VARNADO: Yes, sir. And I'm going to mark for identification Respondent's 3.

(Respondent's Deposition Exhibit No. 3 was marked for identification.)

BY MR. VARNADO:

Q So this is the letter you sent to your mother on June 27, 2013; is that correct?

A Yes.

Q And is this the letter that you sent on that day?

A That's correct.

Q And it's signed by you, correct?

A Yes.

Q All right. I'm going to ask you to flip it over, and does it look correct? Is it what you wrote?

A Yes.

Q Okay. On the last page --

A Okay.

Q -- you say you will not accept a phone call from Glenn.

A That is correct.

Q Okay. And you're threatening -- you're saying on that last page, look what it has done to us, Mom. It's boiling down to legally. So you're threatening a lawsuit at this time, correct? Is that correct?

A Yes.

Q What day did your father pass away again?

A My father passed away on June 8th.

Q Okay. So 19 days later, you're threatening your mom with a lawsuit, correct?

A I wanted to -- under the supervision of the judge on how to get my items back. I wanted to sue Glenn. But since it was my mother's house, and I loaned the items to her, this was the only way for me to get them back so Glenn would not sell my items, as he did too in his estate sale.

MR. VARNADO: I'd like to move this into evidence, Your Honor. This is 3.

THE COURT: Respondent's Exhibit Number 3 admitted without objection.

MR. VARNADO: Mark this as -- for identification as 4.

(Respondent's Deposition Exhibit No. 4 was marked for identification.)

BY MR. VARNADO:

Q Do you mind if I look at it with you, ma'am? Is this the magistrate's court complaint that you filed?

A I can't see that far.

Q Sure.

A That's correct.

Q Is part of that document your handwriting, ma'am?

A That is correct.

Q So this is the lawsuit that you instituted against your mother, correct?

A That should have been my brother, yes.

Q But you wanted to sue your brother, but you sued your mother instead, correct?

A That's what the judge said how it had to be for me to get my items back, since she was the owner of the house --

Q Okay.

A -- and I loaned my items to her.

Q This is your contention, and -- when you filled out this affidavit and complaint and claim

and delivery, correct?

A That's correct.

Q And you had it served on your mother, correct?

A Glenn signed for it.

MR. VARNADO: Okay. I'd like to move this into evidence, Your Honor?

THE COURT: See no objection. Respondent Exhibit Number 4 admitted without objection.

BY MR. VARNADO:

Q And you testified earlier that you were staying away from the house at this point. You weren't going over to talk with your mom, right?

A I wasn't allowed to by Glenn calling me and telling me if I called or stepped foot on that property, he would have me arrested for harassment.

Q Okay. And you don't have any letter. That's just your testimony to that fact, correct? You don't have a letter from him? You don't have anything in writing that says that, right?

A He wouldn't put it in writing anyway.

Q And neither did you, correct? You didn't put it in writing either?

A No.

Q There's no letter that says that. It's

just your testimony here today, correct?

A Under oath as being the truth, that's correct.

Q Okay. But you did communicate with your mother, didn't you?

A Not after that date, no.

Q You didn't communicate with her at all after that day?

A I wasn't allowed. On June 11th --

Q Of what year?

A -- of 2013, right after my father died, when I received that phone call from Glenn.

MR. VARNADO: Can we mark this as Number 5, please?

(Respondent's Deposition Exhibit No. 5 was marked for identification.)

BY MR. VARNADO:

Q Isn't this a birthday letter you wrote your mom?

A I didn't have any communication. I sent her a letter. You asked me if I spoke to her. I mailed.

Q No, ma'am. I said, did you communicate with her at all, and you said no.

A I still haven't communicated. I sent her

a birthday letter.

Q You communicated to her with a birthday letter, correct?

A Yes. Well, yes. I sent her a birthday letter, yes.

Q All right. And you kept a copy of it, and you gave it to us in discovery, correct?

A I don't remember this letter.

Q You don't remember this letter? It came with the other pile.

A Well, you didn't remember the one that I gave you. I don't remember.

Q I have no idea what you're talking about another letter, but I didn't put it into evidence. That's for you and your lawyer to decide. But let me ask you this on the second page. You say, quote, I have no desire to go in your or Glenn's house. You wrote that?

A Okay.

Q Those are your words, correct? I have no desire to go in your or Glenn's house.

A That's what I said.

Q Okay.

A But I do have the desire to be with Mom I used to know. You left that part.

Q You stopped wanting to help out at the house. It's true, isn't it?

A Actually, that's incorrect. You got misinformed.

Q The locks never were changed on the house?

A I don't believe that you have a key to try to get into my mother's house during that time.

Q I don't believe that you have any evidence of that either.

A I'm sorry, sir.

Q But here's the thing, Ms. Harkness, you weren't at the lawyer's office when the new Will was signed, were you?

A No. I wasn't.

Q And you weren't at the doctor's appointment with Dr. Chanson that day, were you?

A No. I wasn't.

Q And you heard your own sister testify that she had been the one who recommended Dr. Chanson. So it's not Glenn, right?

A What, going to Dr. Chanson?

Q Yeah. You don't have a problem with Dr. Chanson?

A I don't have a problem with my mother going to any doctor --

Q Okay.
A -- that will help her.
Q And you have no problem with Dr. Chanson?
A Not the slightest bit. No, sir.
Q Okay. Because she's a medical professional, right?
A I understand that, yes.
Q She was your mother's primary care physician, correct?
A That's correct.
Q You would agree with me that she was in a better position to judge your mother's mental status at the time that she wrote the new Will than you. Wouldn't you agree with that?
A No. I do not.
Q How would that be? Because she saw your mother on the day of the Will and you didn't.
A No, sir. That is not why.
Q Okay.
A I've known my mother for 61 years. My --
Q Your mother --
MR. HOWE: She gets to finish her answer.
MR. VARNADO: You need to address it to the judge, not me.
MR. HOWE: Well, I'd like for my client to

be able to finish her answer.

THE COURT: I agree. Let her finish.

A Yes. I have known my mother for 61 years, sir. Dr. Chanson maybe once every three months gets to see my mother, stated in her reports maybe a 20-minute, 30-minute, at the most a 40-minute visit, and within 15 minutes, she met with Glenn. I know my mother. I know Glenn. You have probably had maybe a ten-hour visit with Glenn. My sister, we all cannot be wrong on how my mother changed. We can't be wrong.

Q She was grieving from the death of your father?

A There was a lot more than that, according to Ms. Helen's statement.

Q And do we have a physician who will come in to testify to that?

A I don't know, sir. I'm not the one that's calling the witnesses.

Q But your lawyer is.

A Okay.

Q Do we have Dr. Terry Graham, who is the family friend? Is he coming in?

A Who?

Q Dr. Terry Graham. You know who he is.

A No. I do not know who that man is.
Q I'm sorry. Dr. Terry Gunnells. I apologize.
A Thank you. Actually, he's my first cousin.
Q Okay.
A Okay?
Q He's not coming in to testify?
A It was in his -- for Glenn. I didn't -- so what are you asking me?
Q I'm asking you, you weren't there at the lawyer's office, and you weren't there at the doctor's office the day she signed the second Will. That's all I'm asking.
A Okay. Are you asking me that? You were not there. I was not there. None of us were there.
Q You don't like your brother. That's pretty clear.
A I don't understand why you keep saying that, sir. I keep telling you I don't like what he did with my mother and to my sister, and myself. He deprived us from helping with my mother. He deprived us for helping her go through her death and grieving spell. I resent him for depriving me for the help of my parents. That's what I resent. I

don't resent Glenn for being my brother. I resent him for taking away something that should have been a part of my life.

Q And this is how you're going to get him back, right? You're going to challenge the Will.

A Sir, I believe right is right and wrong is wrong.

Q This is what you're doing to get him back? You going to challenge the Will, correct?

A No, sir. I'm not doing this to get him back. I believe that's an improper statement that you're making toward me, because you don't know me well enough to say that I'm doing something and trying to get revenge on Glenn. I'm trying to do what's right for my sister and myself. We helped my mother and my father, if not more than Glenn.

Glenn stayed out for almost 20 years on a drunken stupor that put my sister and myself there taking care of my parents.

Q In that letter that I marked earlier, the one you wrote to your dad, you were angry at them both. They were both gone. It was only you that helped, only you were the one who helped?

A Again, sir, you did not put in the evidence so Judge Condon can see the letter that

Glenn wrote me that led to that letter. You left that part out, sir.

Q Then put it in, ma'am.

A I gave it to --

Q I don't have to.

MR. VARNADO: May I have a minute to confer with my --

THE COURT: Sure. Take your time.

MR. VARNADO: Your Honor, we're mindful that it's time. So if I could just have 20 more seconds to consult with the boss here.

THE COURT: Sure.

MR. VARNADO: That's all, Your Honor.

THE COURT: Okay. Thank you. Mr. Howe, you may have some redirect. You want to take it up in the morning?

MR. HOWE: Yeah. That would be great.

(Adjourned at 2:28 p.m.)

REPORTER'S CERTIFICATE

I, TRISHA G. RARICK, Court Reporter and Notary Public in and for the State of South Carolina at large, do hereby certify that I correctly reported the within-entitled matter and that the foregoing is a full, true and correct transcription of my shorthand notes of the testimony and/or other oral proceedings had in the said matter.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my seal this ____ day of _____, 2016, at Charleston, Charleston County, South Carolina.

TRISHA G. RARICK
Court Reporter
My Commission Expires
APRIL 9, 2019

STATE OF SOUTH CAROLINA)PROBATE COURT
COUNTY OF CHARLESTON)CASE NO.: 2014-ES-10-0202
IN RE: THE ESTATE OF
HELEN B. GUNNELLS

VOLUME II

BEFORE JUDGE IRVIN G. CONDON

Date Taken: Wednesday, March, 2nd, 2016
Time Taken: 9:20 A.M.
Location: Judicial Center
100 Broad Street, 3rd Floor,
Courtroom 3D
Charleston, South Carolina 29401

Reported By: Judy W. Galuppo, Court Reporter

Job No.: 234712

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INDEX TO EXAMINATION

Sharon Lee Wechter called to stand	07
Sharon Lee Wechter, sworn	08
Direct Examination by Ms. Wimberly	08
Cross-Examination by Mr. Howe	13
Redirect Examination by Ms. Wimberly	16
Sharon Lee Wechter excused from stand	17
Jill Costa called to witness stand	17
Jill Costa, sworn	17
Direct Examination by Ms. Wimberly	18
Cross-Examination by Mr. Howe	25
Redirect Examination by Ms. Wimberly	29
Recross Examination by Mr. Howe	30
Cathy Harkness recalled to stand	31
Redirect Examination by Mr. Howe	31
Recross Examination by Mr. Varnado	40
Cathy Harkness excused from stand	48
Motions	48
Suzanne Klok called to stand	55
Suzanne Klok, sworn	55
Direct Examination by Ms. Wimberly	56
Cross-Examination by Mr. Howe	72
Suzanne Klok excused from stand	86

INDEX TO EXAMINATIONS CONTINUED

Annmarie Voytko called to stand	86
Annmarie Voytko, sworn	86
Direct Examination by Ms. Wimberly	87
Cross-Examination by Mr. Howe	93
Annmarie Voytko excused from stand	95
Glenn Gunnells called to stand	96
Glenn Gunnells, sworn	96
Direct Examination by Mr. Varnado	96
Cross-Examination by Mr. Howe	147
Redirect Examination by Ms. Wimberly	169
Recross Examination by Mr. Howe	171
Reporter's Certificate	174

INDEX TO EXHIBITS

Petitioner(s)

No.	Description	Page
	No Exhibits Marked or Offered	

Respondent(s)

No.	Description	Page
06	Marked for Identification	12
06	Offered into Evidence	12
07	Marked for Identification	20
07	Offered into Evidence	25
08	Offered into Evidence	55
09	Marked for Identification	170

- - -

THE COURT: Good morning again. My name is Irvin Condon, the Probate Judge for Charleston County, along with my law clerk Kevin Cale. And we are here for the second date of our trial. Counsel, where have we left off?

MR. HOWE: It would be my intent at this time to put Ms. Harkness back on the stand for some redirect, however, since the respondent has scheduled the physical therapists, we're going to let them go out of order, if you're fine with that?

THE COURT: Counsel's fine with that?

MS. WIMBERLY: Yes, Your Honor.

(At this time there is an off-the-record conversation.)

THE COURT: Ms. Wimberly, your witness.

MS. WIMBERLY: Yes. Respondent calls Ms. Lee Wechter.

(At this time, the witness, Sharon Lee Wechter, is called to the witness stand.)

THE COURT: Before you sit down, please place your left hand on the bible and raise your right hand.

- - -

Whereupon, Sharon Lee Wechter, having been first duly sworn, testifies as follows:

- - -

THE COURT: Good morning again, can you please state your full name for the record.

A Sharon Lee Wechter. W-E-C-H-T-E-R.

THE COURT: Thank you. Answer questions of Counsel, Ms. Wimberly.

DIRECT EXAMINATION

BY MS. WIMBERLY

Q Hi, Ms. Wechter. Thank you for being here this morning. Can you please tell us a little bit out your professional history.

A I'm a registered physical therapist. I have a Bachelor of Science in physical therapy.

Q Where did you achieve that Bachelor's in physical therapy?

A Here at Charleston, MUSC.

Q How long have you been working there?

A I work at Roper St. Francis Healthcare.

Q Before working at Roper St. Francis, did you work anywhere else?

A I did. I've been a physical therapist since 1986, so almost 30 years.

Q You understand why we're here today?
A I do.
Q And you understand that Ms. Helen Gunnells passed and her will is being contested?
A Yes.
Q How do you know Ms. Gunnells?
A I did physical therapy in her home through Roper St. Francis Home Healthcare.
Q How long did you do that?
A I believe I treated her from December 2013 through January 2014, roughly two months, but I don't remember exactly.
Q And I'll represent that she passed in January 2014, so you treated her right at the end there; is that correct?
A That's correct.
Q And what type of things would you do to Ms. Gunnells, how often would you go to her home?
A I believe I saw her two to three times a week. Probably started off three times a week and tapered down to two. And we did gait training and therapeutic exercise for strengthening.
Q And how long were you there? You said two to three times a week. How long would each session last?

A I would usually be in the home around 45 minutes, roughly.

Q And when you were at the home, did you ever have the occasion to see my client, Glenn Gunnells?

A Yes, he was there when I was there.

Q Did you have interaction with Mr. Gunnells?

A Yes. Glenn was very accommodating and would usually open the door to let me in. He would usually talk with me at the end of the session to see how it went and how his mom was doing.

Q While you were there, was Ms. Gunnells always in the room with you, or was sometimes he absent from the room?

A Sometimes he was there or sometimes absent he was absent. He might have gone to run errands or be out in the yard, but sometimes he was there.

Q Did you ever have the occasion to talk to Ms. Gunnells about her family life?

A A lot of times, or sometimes when we were walking outside, usually, she would sometimes bring up family stuff, yes.

Q And did any of those conversations come

to mind today?

A Well, she always talked about what a good her caregiver Glenn was and what a good son he was, I should say. She wouldn't use the word "caregiver." But she always talked about Glenn and being a good son. And a couple of instances I remember her getting upset and tearful, overly emotional because of issues that were going on in the family with her daughters, and she didn't, you know, talk a lot about that. And I would usually try to redirect her to what we were doing, which was the therapy, but...

Q With regards to those conversations about her daughters, do you remember in particular anyone that stood out to you?

A Just really one that I remember, when we were walking through the kitchen and the dining room to go out towards the front door, she talked about the furniture. If I remember right, it was in the dining room area. She mentioned that her daughter wanted to take that furniture away. That's the one thing I can remember, and she was upset about that.

Q During your visits with Ms. Gunnells, did you have occasion to meet Ms. Cathy Harkness who is sitting here?

A No.
Q And did you ever have occasion to meet with Belinda Davis who is sitting in the back?
A No, I did not.
Q Do you remember Ms. Gunnells talking about them by name?
A She did sometimes talk about them by name, but I don't remember specifically who she was speaking about.
Q Ms. Wechter, do you remember writing a letter with regards to this case?
A I do. I do.
MS. WIMBERLY: Your Honor, at this time I'd like to mark for identification only Respondent's 6.
THE COURT: Yes. Thank you.
(Respondent's Exhibit No. 6 is marked for identification.)
BY MS. WIMBERLY
Q Ms. Wechter, I have handed you what is marked for identification purposes only as Respondent's 6. Do you recognize that?
A I do.
Q What do you recognize it as?
A The letter I wrote for Glenn when he

asked me to to help support his case.

Q And is everything in here truthful?

A Yes.

MS. WIMBERLY: At this time, Your Honor, I move Respondent's 6 into evidence?

MR. HOWE: No objection.

THE COURT: Move without objection, move in Respondent's No. 6.

(Respondent's Exhibit No. 6 is moved into evidence.)

MS. WIMBERLY: That's all the question I have right now. Thank you.

CROSS-EXAMINATION

BY MR. HOWE

Q Good morning. My name is Donald Howe. I just have a couple of questions for you.

A Okay.

Q So your entire connection was over about two months?

A Right.

Q And it was strictly professional?

A Yes.

Q Okay. And in fact, when family issues came up, I think you said you steered away from the details?

A Mostly because she would get upset and emotional, and you know, sure...

Q Right. And you were there to help her to learn to walk and to get exercise?

A Right.

Q You weren't there to sort out family issues?

A Yes.

Q But you steered away from it, because it, in fact, interfered with what you were trying to do?

A Possibly.

Q She's getting upset, she's --

A Possibly.

Q Is there any other reason?

A Say again.

Q But you did steer her away from it?

A Well, I would usually listen, you know, while we walked, because it took 20 minutes outside walking outside down the street and back, so I would listen.

Q But you never said, let's get into the details of your family issues?

A No, I didn't ask details.

Q Did she have -- what kind of problems

was she having? What were you helping her with? You said something about gait. What does that mean, as opposed to just saying walk?

A That's okay. She had an unsteady gait. She had a lot of falls in the past and she was weak and deconditioned from other medical issues, which I specifically don't remember the specific medical diagnoses. So we were there to get her balanced better, to help strengthen her with her walking and help her with her endurance, teach her home exercises to do to help keep her strong.

Q So if he she was to take a walk around the yard, would you actually be there with her?

A If I was there, absolutely.

Q Would she have her hands on her so she wouldn't fall, that kind of stuff?

A If she was in the yard. They had a grassy backyard. Definitely she would -- yeah.

Q She would need a little help there because it's not as easy as --

A No, in the home she was able to walk a bit, if I remember right.

Q All right. She certainly wasn't driving or anything like that?

A Oh, no.

MR. HOWE: That's all I have, Your Honor.

THE COURT: Thank you, Mr. Howe.

MS. WIMBERLY: Just briefly, Your Honor.

THE COURT: Sure.

REDIRECT EXAMINATION

BY MS. WIMBERLY

Q Ms. Wechter, with regards to Ms. Gunnells' condition when you were there, do you remember if she had her mental acuity about her, if she knew who she was?

A She did.

Q And earlier you testified that she was weak and ailing. Do you remember, was she taking any medications?

A She was definitely taking medicines; I don't remember what, but yes.

Q Did you help administer those medications?

A No, I did not.

Q Do you remember who did?

A Usually Glenn made sure that she took her medications.

MS. WIMBERLY: Thank you. No further questions, Your Honor.

MR. HOWE: Nothing further.

THE COURT: Thank you. Ms. Wechter, you can step down. Thank you.

(At this time, the witness, Sharon Lee Wechter, is excused from the witness stand.)

THE COURT: Counsel, you wish to continue?

MS. WIMBERLY: Yes, Your Honor. Respondent's call Ms. Jill Costa.

(At this time, the witness, Jill Susan Costa, is called to the witness stand.)

THE COURT: Good morning. How are you?

A Good morning.

- - -

Whereupon, Jill Susan Costa, having been first duly sworn, testifies as follows:

- - -

THE COURT: Thank you. Please be seated. And if you could state your full name for the record.

A Jill Susan Costa.

Q Can you spell that last name for us?

A C-O-S-T-A.

THE COURT: Thank you. Please answer questions of Counsel.

DIRECT EXAMINATION

BY MS. WIMBERLY

Q Ms. Costa, thank you for being here today. Would you give us the benefit of your educational history?

A I got my Master's of Science in Rehabilitative Science for Physical Therapy from the Medical University of South Carolina. And I got A Bachelor's degree from Hofstra University in Long Island, New York.

Q What is your occupation?

A I'm a physical therapist in home health with Roper St. Francis Home Health.

Q How long have you been working there?

A I started there in June of 2009.

Q Previous to working at Roper, did you work anywhere else?

A I did. I had about three other physical therapy jobs. Do you want me to name all of them? I worked at Trident Sports Medicine in outpatient clinic in North Charleston. And then before that I worked in two clinics up in New York.

Q And you understand that we are here today with regards to a Ms. Helen Gunnells?

A Yes.

Q So you know who that is?
A Yes, I do.
Q How do you know her?
A She actually was -- when I first started in home health in 2009, she was one of the first patients that I saw while I was being trained where you follow with another therapist. So she was one of the first people and one of the first families that I met. And then I worked with her on and off over the years.
Q So you, as well as Ms. Wechter, worked with her as a physical therapist over the years; is that correct?
A That's correct.
Q Do you remember about what time you started working with Ms. Gunnells, what year?
A 2009, because I started in June and I was trained -- the first three months you follow another therapist, and she was one of the patients I saw during those first three months. I don't know more specific than that.
Q When is the last time that you treated Ms. Gunnells?
A I believe it was in 2013. I referenced it in a letter, but I believe it was 2013.

Q Okay.

MS. WIMBERLY: So let's go ahead -- Your Honor, we'll mark Exhibit 7 for identification purposes only.

THE COURT: Okay. Go ahead.

(Respondent's Exhibit No. 7 is marked for identification.)

BY MS. WIMBERLY

Q Ms. Costa, do you recognize what I just handed to you?

A Yes, ma'am.

Q What do you recognize it as?

A It was a letter that I wrote back in November of 2014 on Glenn's behalf.

Q And does this refresh your recollection as to the last time that you saw Ms. Gunnells?

A Yes, it does.

Q When was that?

A Well, it was during 2013. This mentions a specific date in June of that year. So I'm -- the end of June, so probably June, July. I don't remember specifically, but that time of 2013, including that visit.

Q All right. And with regards to your treatment of Ms. Gunnells, what type of things would

you do with her?

A Well, I did see her for different episodes throughout -- from 2009 to 2013. And you know, it was gait training. I remember one of the first times I saw her possibly in 2009, I believe there was a hip or a pelvic fracture. I remember practicing walking, practicing going up and down the stairs, that was a big thing at that time, getting her strength to go back up to the stairs to her bedroom. Strengthening exercises, balance exercises. I remember standing at the kitchen doing exercises. And then each time I saw her on separate occasions it was going to involve usually gait training or what we call transfer training, sitting up from a chair and then exercises for strength and balance.

Q About how often would you see Ms. Gunnells a week?

A Without looking at my charts, usually we see somebody two or three times a week. Each instance might have been a little different, but we usually do two or three times a week.

Q And you wouldn't be there at the same time as somebody like Ms. Wechter, correct?

A Not another physical therapist. If

there was another, whether there was maybe a nurse or maybe an aid, we might have overlapped, but not another physical therapist.

Q Did you have the occasion to see anybody else in the home that was there for health reasons for Ms. Gunnells?

A I'm sorry. I don't understand the question.

Q It was kind of a weird question.

Was anybody else ever in the home with Ms. Gunnells when you were there treating her?

A I mean, like Glenn was present. And then like I said, there might have been an occasion where another -- like I remember once there was an occupational therapist that was present, but it was either -- and then initially it was Mr. Gunnells was always there, and Glenn was there, and that was probably -- oh, and then one other visit time there was -- one of the sisters was there.

Q Do you remember which sister that is?

A That's Miss Linda.

Q And do you mind explaining to us what happened on that occasion?

A It was -- it was June 24th, and I was doing a visit and I was in the living room with

Ms. Gunnells and Glenn and there was a knock on the door. And I guess they knew by looking at the car it was Linda. Ms. Gunnells did not want to see her, she was upset. So I went to the front door. I figured if I just explained we were in the middle of a treatment session and didn't want to be disturbed. And when I opened the door and I explained it, she pushed into the door and pushed me out of the way.

So I called Glenn to come and help me, and we just kind of tried to prevent her from coming in. And I believe Ms. Gunnells actually kind of walked around and Miss Linda left when we said we were going to call the cops, yeah.

Q Do you remember Glenn ever shoving Miss Linda up against the wall?

A No, I don't. I know that those stairs were to his left, so he was I think bracing himself with the stair trying to prevent her from coming passed. And I think at this point I got scared and was behind him and trying to help prevent her from getting further into the house, but I do not remember him pushing her against a wall at all.

Q Did you have ever have any other occasion to meet Ms. Belinda Davis?

A I don't believe so.

Q Did you have other occasion to meet Ms. Cathy Harkness who's sitting right here?

A I don't believe so.

Q All right. From your treatment from 2009 to 2013, did Ms. Gunnells -- did she know who she was? Did she know who her children were?

A Yes.

Q Did anything change with regards to her mental acuity?

A No. And the last time that I saw her, it was right after her husband had passed. And actually I believe I had to delay my evaluation because I believe that he had passed and there was a funeral. So the only change was, she was tearful. But she always knew who she was, and you know, that was -- that hadn't changed. Just sad.

Q What, if anything, do you remember about with your interactions with Glenn?

A Well, as I said before, she was one of my first patients, so initially when he wasn't living there, I always just remember he would always come over every day. He's cooking dinner for his parents. He would always come in and show us what he bought on sale at the grocery store. I just kind of remember that. And then as I kept seeing her on

and off through the years, and then when he moved in -- I mean, he was there, as Ms. Wechter had said, you know, he'd let us in. He'd sit there. Usually for my treatments he was present during the treatment. And then, you know, he always -- he would just -- anything that we made, any kind of recommendations he just followed through, made sure she got up, made sure she moved around, made sure she did her exercises.

Q Did you ever believe Mr. Gunnells to be controlling of Ms. Gunnells?

A No.

MS. WIMBERLY: And at this time, Your Honor, we move Respondent's Exhibit 7 into evidence.

MR. HOWE: No objection.

THE COURT: Move without objection Respondent's Exhibit No. 7.

(Respondent's Exhibit No. 7 is moved into evidence.)

CROSS-EXAMINATION

BY MR. HOWE

Q So your time here from 2009 to 2013, that would be various stints?

A Yes.

Q That was not a constant?

A No, no, it was very -- yes.
Q Would your schedule be a little like the other lady, you might be around 45 minutes a visit, something like that?
A Yes, usually it's anywhere between -- yeah, around 30, 45 is a good average. Anywhere from 30 minutes to an hour. It just depends on what we're doing that day.
Q Okay. So 30 to an hour would be the wide general?
A Yes.
Q Two to three times a week?
A Yes.
Q For how many weeks would you see her at a time?
A Oh, I honestly don't remember specifically.
Q You didn't bring any records with you?
A I didn't bring any records. Most cases it's about four weeks, six weeks, somewhere around there. But I really couldn't tell you specifically without my records.
Q So let's say, how many four to six week's times over that four years do you think?
A I don't know specifically. To the best

of my recollection, I would say at least three, because I remember the first, I remember the last, and I remember --

Q Seemed like there was another one?

A And I do know for certain there was another one because I actually had a student with me at one point, so I know at least three.

Q Okay. And as with the other young lady, your relationship was a professional relationship?

A Yes.

Q You were there for a specific purpose?

A Right.

Q Y'all didn't socialize? I mean as in you didn't have supper with her?

A Right, right. Oh, no, no.

Q You never went on trips with her?

A No, no.

Q Never spent any family time with her brother Jack with her?

A No.

Q Or her friend Helen Carroll, did you ever meet Ms. Carroll?

A No.

Q And while you were there, Glenn was there?

A Yes.
Q While you were there, you're kind of in charge, it's physical therapy time, right?
A Yes.
Q And you're the physical therapist?
A Yeah, uh-huh.
Q And this incident with Ms. Davis, I guess the core of it was that she wanted to see her mom?
A Uh-huh.
Q And even from the beginning, I guess even 2009, '10-ish she was having trouble with walking?
A Well, the first time I saw her I believe it was a result of a pelvic fracture or some kind of fracture, so there was an injury, an issue.
Q An acute problem?
A Yes.
Q Okay.
A And then she got better.
Q Right.
A So it wasn't continuous. It was -- they were separate incidents.
Q When you came back, was it continuing with -- what kind of problem was it?

A You know, I don't actually remember specifically what it was. It was most likely another diagnosis. I just, without my charts, I can't remember specifically.

Q Okay. And do you ever meeting Ms. Harkness sitting over there at the end of this table?

A I don't believe that we've ever met.

Q Are you sure one way or the other?

A I really don't remember.

Q Okay.

MR. HOWE: That's all the questions I have.

THE COURT: Okay. Ms. Wimberly?

MS. WIMBERLY: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. WIMBERLY

Q Mr. Howe asked you if you communicated with Ms. Gunnells often.

A Yes.

Q And with regards to that, I'll direct your attention back to your letter. You said, "Ms. Gunnells shared with me how upset she was with her daughters." Do you remember Ms. Gunnells ever mentioning that to you?

A Yes, it was -- again, this was right after her husband passed away, and she was very upset with they weren't there, they hadn't visited while he was sick. And that she said, and I had written, that they were being mean to Glenn.

Q So you did actually have the occasion to speak with her?

A Yeah. I believed he was asking if it was more social. And while it wasn't a social visit, but while we were treating, you do talk and you listen a lot. And like I had mentioned, she was sad, so she talked and I listened.

Q Just a moment.

MS. WIMBERLY: We're done.

THE COURT: All right. Thank you.

RECROSS EXAMINATION

BY MR. HOWE

Q Did she ever tell you how they were mean to Glenn, did she go into any detail with that?

A I don't recall at this point. I'm sorry.

Q That's what I figured. Thank you.

THE COURT: Ms. Costa, thank you. You may be excused.

(At this time, the witness, Jill Susan Costa,

is excused from the witness stand.)

MS. WIMBERLY: Your Honor, at this time I believe Mr. Howe would like to redirect Ms. Harkness.

MR. HOWE: Yes.

THE COURT: Ms. Harkness.

(At this time, the witness, Cathy Harkness, is recalled to the witness stand.)

THE COURT: Ms. Harkness, you are still under oath.

REDIRECT EXAMINATION

BY MR. HOWE

Q Ms. Gunnells, as the Judge reminded you, you're still under oath. It's just like you hadn't left the stand since yesterday, okay?

A Okay.

Q When did you first hear that your mom had somehow perhaps had changed her will?

A On my mother's death bed.

Q Okay. And tell me about that. What happened?

A It was February the 6th, they took us out of the room to take the ventilator out. When we got to come back into the room, Glenn, maybe four minutes while we were in there, as he started to

leave, he says, "You're going to be surprised what's in the new will. I have everything." And he left.

Q And what was your next, I guess, contact to find out anything about that?

A That's when I started going through all the resources, Robert Polk, Legal Aid.

Q And that was way before. I'm talking about -- I said, when did you next find out that the will had been changed?

A Oh, I went to Probate.

Q All right. There was a letter, a long letter that you had written to your dad in 2010.

A Yes.

Q I guess, what was the purpose of that letter?

A Glenn left a few words. I got upset. I said one bad word of a SOB, calling him. That's when my father was a little upset because I disrespected, using a curse word in front of my mother. And in return, I thought I needed to write a letter to justify. And I guess at that point, in my letter is when I brought out all the bad things that Glenn did and he would not forgive me for using one bad curse word as a SOB in front of my mother.

Q Okay. Did you ultimately get back

together with your father?

A Yes, mother and dad.

Q Okay. Tell me between let's say 2010, whenever that letter was, and 2012, when your dad found out he had cancer, what were some of the contacts that you had with him, things that you did?

A Well, Mother and Dad came to Rick and my wedding. They came to our house twice a week to eat, because we lived on the water as they did.

Q When you said "ours," is that you and your husband Rick?

A That's correct.

Q And that was your husband at the time?

A That's right.

Q Okay.

A We had the family -- Boeing -- let me see how to say this. Boeing had family day. Rick and I went in the motor home and picked up Father and we took him out to Boeing. We spent the whole day at Boeing.

Q And was Rick working at Boeing?

A Yes, he was on the flight line.

Q This was a Boeing family day?

A Yes.

Q And y'all included your dad in that?

A Yes. Mother didn't feel like she could sit that long in a wheelchair to go with us.

Q And then I think you said you had supper fairly regularly with them?

A Yes. In between that as well, I would pick mother up and take her to the mall just to get her out of the house.

Q What would y'all do at the mall?

A Just push her around. She'd go through Belk's, wanted to see what was new. She never really actually got to go out. So we had a girl day at the mall.

Q Okay. Now I'm going to hand you what we've marked and I think has been admitted as Petitioner's Exhibit No. 1. That's an email from who to who?

A That was to me from Uncle Jack.

Q And what's the date on that?

A I don't see a date.

Q Okay. What date does it reference? What is it about and what was the dates that it covered?

A For July 12th, 2013, that was a date that Uncle Jack and Glenn arranged for me to pick up my items.

Q And those items being the things that you had given your mom?
A That's correct.
Q Or given -- loaned your mom?
A Correct. I understand? Yes.
Q And sort of the deal was that you were going to be able to pick it up on what day?
A Here he has on Friday.
Q And the date of that is?
A July 12th, 2013.
Q And were you able to pick it up?
A No.
Q Okay. And then you filed this claim and delivery on what day?
A February the -- wait a minute. That's when it expired. July 15th, 2013.
Q So just a couple days later?
A That's correct.
Q Because that had fallen through?
A Yes.
Q Now I want to hand you what had been marked as Respondent's 5. Can you tell us what that is again?
A That was the birthday letter that I wrote to mother.

Q When was your mother's birthday?
A October 1st.
Q So that would have been in October of 2013?
A Correct.
Q And let me ask you to read -- I'm sorry. I should have brought another copy -- for the record, I guess that last paragraph before the closing.
A "Choices we make in our life, right or wrong, are ones we live with each day; some we can never fix and others are a phone call away."
Q Okay. And what were you telling her about that?
A My mother could call me at any time.
Q And did she have your number?
A Yes.
Q Okay. And I think the rest sort of speaks for itself, so...
Did you ever see or were you aware or did Glenn ever assert in front of you that he had power of attorney?
A On two occasions that I can remember, yes.
Q Okay. And tell us about those

occasions.

A The first occasion was at St. Francis Hospital when my dad was having his chemo treatment. I was sitting there, as I've done at sometime. Glenn comes in and tells me I'm not supposed to be there. He pulls out of his back pocket and waves a piece of paper and goes up to the nurse's desk and tells them that he's got power of attorney and I'm not supposed to be there.

Q Okay. What happened after that?

A I stayed with my father through the rest of his chemo.

Q Okay.

A The second one was the day when my father, we were at the funeral home. And Belinda and I were already there. We were sitting on the left. Glenn comes in and naturally was talking to the --

Q Let me back up. This is -- who's funeral?

A My father's.

Q So this would have been in June?

A Yes.

Q Go ahead.

A We were sitting there, Belinda and I,

and Glenn comes in, and he tells him that we're not supposed to be there. He brings out his piece of paper again and he starts with, "I have power of attorney."

At that point, I made a comment and I said, "Dad's passed. Power of attorney no longer is in effect." The funeral directors went with what Belinda and I wanted to put in exhibits, also of photos. And that was his second event when he started with his power of attorney papers.

Q Okay. There was a phrase in the big letter. Let me just let you read that last sentence on that page.

A "As you called me, Your Little Nigger."

Q Okay. What is that term and how did that come out? What was the deal on that?

A Daddy had, along with a bunch of his little church buddies, on Leeds Avenue by South Carolina Electric and Gas under the power lines and to the left -- I was always out there helping every one of them.

Q What did he have out there?

A I apologize. A vegetable garden.

Q A vegetable garden?

A Yes, an acre vegetable garden. Each one

of those little church members had an acre or smaller, and they would raise vegetables and give to the church for when they had their functions. And then each -- when they had their own little gardens, would take home and share with their families and friends. And I would help Dad.

Q How often did you do that?

A Ever since he had the garden, I would help him go out and use his tiller, plant, pick, replant, pick, and then he would loan me off to his other little church buddies.

Q And that's how that name came up?

A That and "The Little Migrant Worker."

Q And little migrant worker was the other one?

A That's correct.

Q Over how long of a period did you do that?

A For probably three years and during the summer when I could, which was primarily every day, and when he would do his fall garden.

Q Okay.

MR. HOWE: That's all the questions I have.

THE COURT: Thank you, Mr. Howe.

Ms. Wimberly?

MS. WIMBERLY: It's Rob's witness.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. VARNADO

Q Ms. Harkness, you're saying that Glenn at the funeral for your father told you to leave the funeral, that's your testimony?

A I did not say he told me to leave the funeral.

Q What did he tell you at the funeral? You said he pulled out the power of attorney. And what did he tell you?

A We're not supposed to say anything or we cannot provide pictures, he's got power of attorney.

Q So you're saying at the funeral you're sitting there and he --

A At the funeral home, yes.

Q At the funeral home, he came up with the power of attorney, and he told you you couldn't do anything?

A That's correct. And my sister was there as well.

Q But she didn't testify to that yesterday?

A I don't know if it was asked or not.
Q How many times have you been married?
A Probably four?
Q Probably? Or you're sure? Four or five?
A Four, and two annulments.
Q Four, but two were --
A Excuse me. Excuse me. Four.
Q Of which two were annulled? Or there were two additional --
A One annulment.
Q I'm sorry. You got to let me finish.
You said you were married four times, and you said there were two annulments?
A One annulment. I corrected myself. One annulment.
Q Okay. So there have been five marriages, four divorces and one annulment?
A Yes.
Q How many times have you been a plaintiff in a lawsuit, Ms. Harkness, in Charleston County?
A At this time, I don't remember.
Q Would it be more than 10?
A I would not think so.
Q Would it be more than five?

A I wouldn't -- I don't think so.
Q What would --
A I think there was -- even if one, that I can remember.
Q Okay. If I -- the Clerk of Court is in this building.
A I understand.
Q And if we were able to go and do a record search, I'm curious what names would you have used if you were the plaintiff in a lawsuit? What were your married names, just so I know?
A Jordan, Lanahan and Morris and Harkness.
Q Okay. And you think that you didn't file multiple lawsuits, you only remember one lawsuit?
A I don't recall, no I do not.
Q You don't recall?
A Except for this one. I do not recall, okay.
Q Okay.
A Oh, yes, at this time I do. K-Mart. I got injured at K-Mart. The doors, revolving doors, as I was going through, the doors malfunctioned. And that was back in 2008, I believe. Yes, there was that one, K-Mart.

MR. VARNADO: May I have one moment, Your Honor?

THE COURT: Sure. Take your time.

(At this time there is an off-the-record conversation between Respondent's counsel.)

BY MR. VARNADO

Q Ms. Harkness, Mr. Howe asked you about that letter you wrote to your father, and you went back into that a little just a moment ago. Do you recall that?

A Yes.

Q Okay. And you said that the relationship repaired with your father and your mother after that?

A Yes. We were a normal -- they came to my wedding. They come over and eat. We went to Boeing.

Q But you never came back to the house?

A Why wouldn't I come back to the house?

Q You never came back to visit the house?

A Who's saying that?

Q I'm asking you.

A I just said yes, I would go back to the house also.

Q And yet, when we look at Exhibit 5 --

A That was 2010.

MR. VARNADO: May I approach, Your Honor?

THE COURT: Yes.

MR. VARNADO: Thank you, sir.

BY MR. VARNADO

Q Exhibit 5, I believe Mr. Howe had gotten the witness to say this was written for a birthday in '13. Do you remember that, ma'am?

A Yes, I do. That's on June 11th is when Glenn told me I was no longer allowed at the house or to call or he would have me arrested.

Q And you said you were happy not to go back to the house in that letter?

A Let me read you one statement in here.

"I have no desire to go back in your house, or Glenn's house, but I do have the desire to be with the mom I used to know."

And that was 10/1/2013.

MS. WIMBERLY: Your honor, we're having technical difficulties.

BY MR. VARNADO

Q All right. Carefully. You said one of your married names was Lanahan; is that correct?

A That's correct.

Q L-A-N-A-H-A-N; is that right?
A Correct.
MR. VARNADO: Let me have one more second, Your Honor. Let me try this one more time.
THE COURT: Take your time.
(At this time there is an off-the-record conversation between Mr. Varnado and Ms. Wimberly.)
BY MR. VARNADO
Q Now, Ms. Harkness, I'm going to show you my phone, and I'm going to represent to you that I've looked up the name Cathy Lanahan. Did you have a middle name? Or what's your middle initial, please, ma'am?
A A.
Q Okay. Did you ever use the middle initial G?
A Yes, Cathy Gunnells.
Q Okay. And I see one, two, three, four, five, six times when you were a plaintiff.
A But actually that's wrong. There was '91. There was '94. That's two. '05 is three. And '06 is four.
Q So those are four times that you were a litigant in a lawsuit as Ms. Lanahan, right?
A I guess I don't remember what they were.

Q Okay. Then I'm going to navigate back on my phone.

A Okay.

Q Was Morris a name that you also used?

A That's what I told you, correct.

Q Forgive me. Again, there's Cathy Morris and Cathy G. Morris, would that have been you?

A That's right.

Q How many cases were there?

A Can you pull back the dates, pull back the date.

Q File dates right here?

A Well, I'd like to see the dates on how many.

Q Okay.

A And I do not remember what they were. There's one, two, three. I believe there are six, and I believe that was with the bar that I owned.

Q Oh, they were lawsuits about the bar?

A I took -- with the bar I owned, I sold my -- well, the bar, the Dog House Sports Bar to the lady down the street. In return, she took over possession. She canceled her check. I had to take her to court and return -- oh, then she took the ice maker which put the ice maker people taking me to

court to get their ice maker back. That's what that's about.

Q Okay. And the other five, do you remember those?

A The other five? Those were all related. It should be a continuous back and forth.

Q Well, they all have different numbers.

A Sir, I'm not sure. If you would like to pull them up so I can see what they are, I would be happy to...

Q Okay. Sitting here today, you just don't remember, you know, from -- there's ones from 2013, 2002, 2001, 2006, 2009?

A The one in 2013 should be this one.

Q I would hope not, because it says it's disposed. Could be disposed. I would be happy with that.

THE COURT: It may not be on that site being that this is Probate Court.

BY MR. VARNADO

Q Did you ever borrow money from your mom and dad?

A I borrowed in 2005, $6,000. I turned around and sold the business six months later and gave dad $6,500. We went to the bank, I gave him

cash money, he was with me, and there should be a deposit in his account of $6,500 that I borrowed for six months.

Q Did you ever borrow any other money?

A I didn't borrow it. My dad walked in and he accidentally hit my dog, my dachshund, fractured his back. He had to have surgery, I believe that was $1,900. I gave him 600, and then it took me almost six months to repay him the rest.

MR. VARNADO: May I have one more second, Judge?

THE COURT: Sure. Take your time.

MR. VARNADO: That's all.

THE COURT: All right. Thank you.

You may step down. Thank you.

(At this time, the witness, Cathy Harkness, is excused from the witness stand.)

THE COURT: Anything else?

MR. HOWE: Petitioner rests at this point with our part of the case.

MOTIONS

MS. WIMBERLY: Your Honor, at this point the Respondent's move to dismiss the case under Rule 41 V of the Rules of Civil Procedure. The burden is very high in this case. It's unmistaken and

convincing evidence to show undue influence. Here we've gotten testimony of two very emotional sisters who have a stake in the game as well as one uncle who was not around and said that he actually spoke to his sister more after the death of Mr. Gunnells.

All you have here is very emotional testimony regarding a disfavor for my client, Mr. Glenn Gunnells, but nothing that rises to unmistaking (sic) and convincing evidence that Ms. Gunnells was unduly influenced to change her will on July 3rd, 2013.

Neither of the two daughters saw Ms. Gunnells on that date around that time. There has been no testimony as to her sound mind -- or as to her unsound mind. There has been testimony that you've hard today that she was of sound mind, that she knew who she was, she knew who her children were. She was knew exactly what she was doing. She was upset with her daughters because they did not care for Mr. Gunnells prior to his death. And that is why she ultimately decided to change her will. Not because of anything my client did.

THE COURT: Mr. Howe?

MR. HOWE: If it please The Court, just a quick rundown. But for undue influence cases,

courts look at basically four things. They look at an unjust distribution made to the beneficiary. And obviously when we have three kids, and it's been for three kids, and then it goes to one, it probably falls in that category.

Motive and opportunity by the beneficiary to influence the testator, we have shown that Glenn Gunnells, that the -- excuse me, the lawyer involved was Glenn's lawyer from the closing, and that she was living with Glenn at the time.

Confidential or fiduciary relationship between the testator and beneficiary, that's clear. She couldn't drive. He was handling the bills, he was handling the money. She couldn't -- even the physical therapy people said, you know, she was relying on Glenn.

Susceptibility to be unduly influenced, that would fall into the fact that she was infirmed, that she relied on him totally. And I think that sort of handles that part.

To be successful, we need to show evidence of threats. Well, threatened Cathy that if she came by to see her own mother they'd have her arrested.

Evidence of force, pushed Belinda out

physically.

Evidence of restricted visitation, all over.

Evidence of a fiduciary relationship at the time or before, and even he in the excerpts we read went into that.

Having gone through all of that, the core, the one piece that, you know, at this point is her best friend, Helen Carroll said under oath, "She told me, 'I signed a will. I had no choice, I didn't want to, but I had to.'"

That sort of takes care of that as a practical matter. Others pretty much window dressing to show that that splash -- excuse me. Of that statement ripples with all the other holdings of the cases. But we have direct evidence out of the decedent's mouth saying, I did sign a will, I didn't want to, I had no choice. That should take care of it right there. Thanks.

MS. WIMBERLY: Your Honor, actually that was never said in Ms. Helen Carroll's deposition testimony. So that is -- has not been said. She never said she didn't have a choice.

Also, with regards to all of the testimony that you heard, it's all based --

basically, there's no independent witnesses. It's only what the two sisters have said, and it's what Glenn said to them. That they haven't called a single medical doctor, they haven't called a single independent witness that says, yes, I saw that. Ms. Davis never even testified to being shoved out the door. And that was actually testimony of Ms. Harkness. We've heard the home healthcare worker today said that that wasn't the case at all. She's independent, she has no stake in this game. She told you what happened like it was.

So therefore, Your Honor -- just one moment. And with regards to Ms. Carroll's testimony, that is -- you have the transcript. But as you saw when Mr. Howe asked her questions, she knew the answers, she could easily answer. But when I asked her questions, it was, "I don't remember, I don't remember, I don't remember." I actually asked her: Do you remember having the discussion about the will? And Ms. Carrolls said I don't remember.

Therefore, I don't think that that testimony should be very probative.

Your Honor, this is all based on innuendo and res ipso loquitur, they're saying just because she changed it was all because of my client.

It's a high burden, and they haven't met it.

THE COURT: Thank you.

MR. HOWE: I'm going to just read you from the transcript so we'll get this straight.

I handed her her statement.

"Okay, does that help refresh your memory about whether she talked to you about her will?"

Answer, "Yeah."

"Okay. And what did she tell you about her will?"

"She said that" -- and this is page 18, I'm sorry. "She said that -- she didn't say too much, but she said that Glenn told her she had to."

"Had to do what now?"

"Sign a new will."

Question, "Okay. And how did she seem to feel about it?"

Answer, "She didn't want to."

Question, "Okay. And your statement says, 'Helen, I have no choice.'" Is that her talking to you?

"Yeah, uh-huh."

So "I had no choice," I don't know how to be more clear than that.

MS. WIMBERLY: And then I asked her, page 35, at the bottom at line 24, "So earlier Mr. Howe had to remind you about what it looks like, a conversation you had about the will with Ms. Gunnells. Do you remember that conversation?"

Answer, "No, I don't."

THE COURT: Thank you. I'm going to deny the motion at this time. And tell me if you want to take a break or if you want to have other witnesses.

MS. WIMBERLY: Yes, Your Honor. We have witnesses coming at 10:30. So if we can break until then, that'll be great.

THE COURT: We'll break until then.

(At this time there is a brief break in the deposition.)

MS. WIMBERLY: We have deposition of Dr. Benton that was de bene esse. So I want to know if it would -- we were just talking about whether or not to read it in. If you just want to read it?

THE COURT: I'll just read it. You want the entire deposition in?

MS. WIMBERLY: Yes.

THE COURT: Yeah, I can just read that.

MS. WIMBERLY: Well, I guess I'll hand

that up now then.

THE COURT: Okay.

(Respondent's Exhibit No. 8 is moved into evidence.)

THE COURT: For the record, the full name of the doctor?

A Dr. Rhonda Chanson, R-H-O-N-D-A, C-H-A-N-S-O-N.

(At this time there is a brief break in the deposition.)

MS. WIMBERLY: We are ready to proceed?

THE COURT: Thank you. Is that your first witness?

MS. WIMBERLY: Yes, Your Honor, Ms. Suzanne Klok.

(At this time, the witness, Suzanne Klok, is called to the witness stand.)

- - -

THE COURT: Good morning. How are you doing?

- - -

Whereupon, Suzanne Klok, having been first duly sworn, testifies as follows:

- - -

THE COURT: Thank you. Please be

seated. And I'll have you state your full name for the record.

A Suzanne LaFleur Klok.

THE COURT: Okay. For the record, can you spell your middle and last name?

A My middle name is my maiden name, Lafleur, L-A-F-L-E-U-R. My last name is Klok, K-L-O-K.

THE COURT: If you'll answer questions of Counsel, Ms. Wimberly.

MS. WIMBERLY: Thank you.

DIRECT EXAMINATION

BY MS. WIMBERLY

Q All right. Ms. Klok, thank you for being here today. What is your occupation?

A I'm an attorney in Mount Pleasant.

Q How long have you been working as an attorney?

A For 20 years.

Q What is your main practice area?

A It's changed over time. You know, when I first started practicing I was briefly a tax attorney for about nine months. Then I went into plaintiff's work. I did that for probably over 10 years. But since 2009 my husband and I opened our

own law firm. We're a general practice. We do a lot of different things. But primarily I focus on -- I do some family law, I like to try to keep it non-contested because I'm not a big fan of the court room, so pardon me today. Just I did it for a lot of years and I was ready to move on to something different. I do real estate transaction work, I do wills, I do simple estates and estates up to a million dollars.

Q And prior to opening your own practice, what firm did you work with?

A I worked with Motley Rice, and before that it was Ness Motley.

Q And you understand why we are here today?

A Yes. It's my understanding there's a contest about the will for Helen Gunnells. I first started -- Glenn came to me, I think, and I helped him answer some pro se documents that were filed. But I did tell him at the time he needed to find another attorney because I felt there could be a conflict if there is some issue about the will since I drafted the will for Ms. Gunnells.

Q Okay. And let me direct your attention back to you drafting the will for Ms. Gunnells.

A Okay.

Q About how many times did you meet with Ms. Gunnells prior to drafting her will?

A I only met with her the day that we drafted. And for drafting wills and having somewhat elderly clients that I do, sometimes I go to their house, or wherever they're -- if they're in assisted living, or kind of those independent living centers, or they come to my office. And a lot of times because they are physically frail but not mentally frail, they don't want to have multiple meetings. So it really depends upon the individual client.

In this case with Ms. Gunnells, she came on July 3rd, I looked at my records before coming here today, because it was the day before the 4th in 2013, and we met, and it was a long meeting, though. She was there probably for about three hours.

Q Do you remember that meeting?

A Yes. Actually I remember it very well because it was a long meeting. Because as we started going through things I asked her when she wanted to execute. She wanted to do it that day, and I said okay. So we -- I ended up drafting the documents while she was there.

Q Who all was present at that meeting?

A My legal assistant, Annie Voytko.

Q Is she here today?

A Well, she did drop me off and she is coming. She's parking the car.

Q Other than yourself and Annie, was anybody present in the room while you were talking to Ms. Gunnells and drafting the will?

A No. Our policy is that if someone brings an elderly client or anyone with them, that we ask them -- we meet in the conference room. But we also ask them to leave the building, because we're on Anna Knapp, 202 Anna Knapp, and our conference room is in the front of the building. But if someone sits outside in the lobby part, they could theoretically hear, you know, if you were too loud. So I always ask anyone who comes with the person who is executing the will if they would leave the building. And we did ask Glenn to leave.

Q So Mr. Gunnells, my client, who is in the courtroom today, he was present with his mother, Ms. Gunnells, that day?

A Yes, he dropped her off. And then -- oh, he came in. He sat down at the table and I explained that he couldn't stay. Nothing against him. But this needed to be Helen's decision. And

we asked him to leave -- you know, not to stay in the room, just leave the building. And he did.

Q Was Mr. Gunnells okay with that?

A Yeah, he was fine. He said -- I don't know if he brought the dogs or not, but he said he'll just go out in the parking lot in the car with the dogs.

Q Did he remain outside the entire time?

A As far as I know. I mean, I was in the conference room so I couldn't come out. You know, I was going out, going to make changes, or you know, to the will, if I had a typo or something like that, or sending Annie out. So we were back and forth and we didn't see him.

Q Were you aware that there was a prior will prior to this will that you drafted that was executed in 2006?

A Yes, I was. I believe Helen brought that to the meeting. She took it, yes.

Q And you were drafting a new will for her. What changed between the will from 2006 to the will of 2013?

A Well, we talked about the will. And her husband had died and she said -- and they basically, I interpreted it as they had "I love you" wills

where they left everything to each other. And then if they weren't survived then by their children, that's my recollection, and -- but she wanted to change that.

Q What specifically did she want to change about that 2006 will?

A Well, she told me -- well, first, her husband had passed away. And I said, well, you don't have to do anything just because he passed away, the will still works. But she said she didn't want to keep it the same, that she wanted to give everything to Glenn.

Q Do you remember discussing with her the ramifications of leaving everything to one child?

A Yes, I did actually. And that's why I think our meeting took so long, is because she was really upset with her two daughters, Cathy and maybe Belinda. And that she was unhappy with the way that they were -- you know, she just didn't want to be around them. There were some fights, I believe, over her husband's property, and she was very unhappy with the two daughters.

Q In your opinion, was Ms. Gunnells of sound mind the day that she met with you to draft her will?

A In my opinion. Now, it's not a medical opinion. But we sit down and we chat. I asked her -- you know, she knew what the date was. I asked her who the president was, she said Obama. We talked about things in general. And also when -- and Annie talked to her, too. So like if I went in to go do something, I would just have either one of us there, and if there was anything that we think seems a little off, you know, either mentally or that person might not really know what they want to do, you know, then I would stop the meeting. But throughout our discussion she was very frail physically, but mentally, she seemed to know what she wanted. She was pretty clear, very adamant about it.

Actually I remember her saying that she was very worried about Cathy causing problems for Glenn after she died once she found out that the will had been changed. And I did tell her she didn't have to tell anybody what the will was, you know prior to her death. She didn't have to tell the girls if she didn't want to, or even Glenn. And she knew that.

Q With regards to Glenn, did she speak at all about her relationship with him?

A Yeah, she actually glowed when she talked about him. It was very sweet. She was very, very loving about Glenn. It was really in contrast to how she spoke about her daughters, that for them they were more -- it was disappointment, I think, with the daughters. But she was very, very happy that Glenn was taking care of her. And you know, she said she couldn't get out and interact as much as she did if it wasn't for Glenn. And that he really was just, you know, wonderful of all the things he did. And took great care of her.

Q So she said that Glenn actually took her out to interact with other people?

A Yes. I don't really remember the -- well, she said -- the specifics, she said something about like I think the senior center. And that, you know, Glenn would, you know, take her. And he brings her to her doctors' appointments and just brought her around, where she wouldn't be able to get out and do things if it wasn't for him.

Q Other than -- I think you said earlier that Cathy might be upset about the will. Did she express any other feelings about how her children would react to this new will?

A Well, she definitely thought they

would -- I think she said they would cause a lot of problems for Glenn. They thought they would cause him a lot of trouble.

Q Have you ever had the occasion to meet Ms. Cathy Harkness who is sitting right here in black?

A Yes, I did once only after Helen had passed, and I believe that Ms. Gunnells had filed the papers and served the papers. I think she was trying to see if we could come to some sort of -- you know, trying to figure out what was going on and what to do to some kind of settlement, or if there was a way to work things out. And then she came to the office and asked, and we met. I don't remember the date. And it was also dealing with some discovery that had been issued. But we didn't really get anywhere. We just spoke in general terms. I think she said what she wanted to settle on the estate and that was pretty much it.

Q Have you ever had the opportunity to meet Ms. Belinda Davis who's sitting in the back in the red?

A No. I don't think so, no. She does not look familiar.

Q I'm recalling from evidence, I believe

it is Respondent's 1 which is the will.

Ms. Klok, I've just handed you what has already been entered into evidence as Respondent's 1. Do you recognize that?

A Yes, I do.

Q What do you recognize that as?

A That this is the will that I drafted for Helen Gunnells.

Q Are all the pages correct and in order?

A Yes.

Q With regards to wills, as you draft wills on a regular basis, would you call this a fairly standard will?

A Absolutely. This is the most standard. It took very little time to actually draft this because we spent so much of our time talking about what she wanted and was she sure that's what she wanted, kind of going over those sort of things that it didn't take -- this is definitely the standard, very standard will.

Q Did you go over each page with Ms. Gunnells?

A Yes, I did. We went through every section. Because even though we talk about things generally, you know, about what she wants, we have

to explain how that translates to what is said on the paper. So we went through, and that also took time going through it since she was signing it that day and not taking it away to look at and come back.

Q All right. I'll take that from you.

And then -- so you said you went over each page. Is that indicated with these signatures on the bottom?

A Yes, those initials. One is mine, one is Annie and then one is Helen's. Now, I don't always initial the wills, but I think because she came in this day, that day to do it, and she had expressed concern, and actually I didn't remember that until I saw my initials. And I normally don't initial the wills. But I believe I did that because of her concerns about the will being -- you know, problems with maybe one of the girls contesting it.

Q Okay. Thanks.

MS. WIMBERLY: Putting it back in evidence, Your Honor. One moment, please.

THE COURT: Go ahead.

(At this time there is an off-the-record conversation between Ms. Wimberly and Mr. Varnado.)

BY MS. WIMBERLY:

Q Ms. Klok, just a few more questions.

What kind of protocols do you have? I know you spoke about it a little bit earlier with some of your elderly clients.

A Well, generally, I have them come in and have an initial meeting and we talk about the things that they want, what their goals are. And then, you know, talk about pricing and then set an appointment -- you know, and take information down and set up an appointment and come back later, for them to come back and execute the wills in about, you know, three weeks. But if they don't have a deadline, then we do that.

But when I'm sitting down there either the same day, or later, I really try to make sure for all of my elderly clients at least -- I'm not a doctor, but just to make sure that they're "with it," you know. You know, that kind of layman's test, if they know the year, the date, who the president is, kind of what things generally are. I don't go into specific politics, but just kind of what's going on. I ask them about their life, their kids, if they have any, their family. Kind of where they're living, what they're doing, you know, how their health is. You just kind of -- you just have a real conversation that doesn't come across as an

interrogation, just so I get a sense of who they are and what they want to accomplish.

And then if they come out and say what they want, then that makes it really easy. But even when they do that, I still talk to them if they say, you know, they want to cut out a particular person. Then I ask them why they want to do that. And you know, like I say, there can be problems.

Q Did you follow this protocol that you just spoke about in this case?

A Yes.

Q How did you follow those protocols?

A Well, when Helen came in it was that day she was -- Glenn made the appointment, he called. So we set up a block of time in the conference room, I believe it was most of the morning, but I can't really recall how long it was. So we came in, we met Helen, said hi to Glenn. We asked Glenn to leave because he couldn't stay. Sat down and told Helen that whatever she wanted to do was her decision and no one else's. And that just because someone was living with her or brought her there or any of her kids, she should not feel pressured. That no one needed to know what the will said until after she died, if she felt she'd be

pressured before she passed away. That was very standard, we talked about that. And I asked her if she felt any pressure from any of her kids in any way to change her will. And she said no. And we really just tried to make sure that's what she wanted.

We did discuss -- she wanted to get it done that day, and I made sure she -- that she wanted to get it done that day. And she said yes. Because, I think, you know, physical problems, she didn't want to mess with having to come back to her attorney's office to execute it. And I made sure that she said that that's what she wanted.

Q And with regards to some of these elderly clients, what kind of red flags are you looking for that would alert you maybe to their incompetency?

A Well, one thing I look for is if they don't really kind of know what's going on. Like if we're engaging in conversation, it's a two-way street. So if I say something and they respond in a way that makes me feel like they're understanding the conversation, and if they don't, or if they kind of gaze off or are not very engaged, then that's a flag to me that there's a problem. And I've had

clients who have had that. And I've not done their wills at that time because, you know, if they're drifting, I like to call it, I'm not really sure they know that's what they want. But we've had clients who -- and it really has less to do with age and more to do with capacity or the mental capacity. I've had clients who were very frail physically and in their 90s and I mean sharp as a tack. And then I've had others who are younger, you know, in their 70s in better health, and just kind of didn't know what was going on very well.

Q Did you get any feeling on the day that Ms. Gunnells came in that she was unsure about the disposition of her will?

A No. Actually she seemed very, very sure, and that's one thing that struck me that I still remember.

Q What would you have done if you had felt that she was unsure?

A Well, I would have told her, you know, in a nice way that I really couldn't finish it that day and that she should take some time to think about it, because you know, that was a big decision to cut someone out of the will.

I error on the side of safety, you know,

in the sense is, if it's more inclusive, that's great. But if it becomes less inclusive, then if I see any hint of a hesitation, I those people to take more time to think about it.

I do remember telling Helen, and I do tell everyone, I said, though she made that will that day, that day that we met, I said, you can always change it. I said, you don't have to wait. I mean, if you decide next week that that's not what you want to do, just call me and we can change it.

Q Did Ms. Gunnells ever call you to change the will?

A No, she did not.

MS. WIMBERLY: One moment, Your Honor.

(At this time there is an off-the-record conversation between Ms. Wimberly and Mr. Varnado.)

BY MS. WIMBERLY

Q Were there any red flags -- I know we spoke about competency earlier, but any red flags with regards to undue influence? Anything that you saw that maybe you remember in regards to that?

A Well, you know, I remember from -- I'm not there outside of our meeting, so I can't really speak to what happens outside of our meeting. But I do know when I asked her if she -- because she

really raved about Glenn a lot. And I said, you know, just because Glenn's so great doesn't mean that you need to give him everything. I said, just because he's helping you doesn't mean you have to feel like you have to give it all to him.

And she said actually that wasn't the reason, it was more she didn't want to give it to her daughters. And so that to me where, you know, I might have said, oh, maybe there was some undue influence of -- all she talked about was how great he was. You know, this is me just speculating in my mind at the time. But when she told me her rationale for it wasn't related to how great Glenn was and she loved him, but it was more how she was disappointed with her daughters.

MS. WIMBERLY: Your Honor, I have no further questions.

THE COURT: Thank you. Mr. Howe.

CROSS-EXAMINATION.

BY MR. HOWE

Q Ms. Klok, my name is Donald Howe. I just have a few things. Your initial contact with the Gunnells family was really through Glenn, correct?

A Yes, that's correct.

Q You had done a closing on his house?
A That is correct.
Q And that was not long before this?
A Yeah. It was the same year, within a couple of months. I'm not really sure of the date. I didn't look at that before coming.
Q And you didn't bring your file with you?
A No.
Q I think that's it. You tell me?
A Yeah. I mean this looks like one that I do, yes.
Q What was the date on it?
A This was June 7th, 2013.
Q So a little less than 30 days?
A Yes.
Q Okay. And Glenn called and made the meeting, set up the appointment?
A Yes. He called and he said that he wanted -- his mom wanted to redo her will and he knew through the closing that I also do wills. And I said okay.
Q And he drove her there?
A Yes.
Q And she was frail?
A Yes.

Q And frail enough physically to concern you?

A Not concern me, just that I remarked on it. She was physically frail.

Q It was noticeable?

A Right, it was noticeable.

Q You also helped Glenn with some of the probate process?

A Yes, after his mom passed away.

Q Right. And you were also aware of a lawsuit that was filed later that contested the will?

A Yes. It was confusing. I was -- yes. If I can say --

Q I'm just saying. You've got the suit -- that's when you said I may have a conflict?

A Right, exactly. I said, I may have a conflict because I wasn't quite sure what they were asking, but I knew it looked like there could be a problem.

Q Right. And so as long as -- and I'm sort of thinking it out with you -- as long as you're just helping with administerial things in the estate, no problem.

A Right.

Q When the petition comes up challenging the will, that's where you've got to step back a little?

A Exactly.

Q So you saw her one time?

A Yes.

Q Strictly professional?

A Yes.

Q Limited purposes for this will?

A Yes.

Q The meeting was at your office?

A Yes.

Q Glenn brought her?

A Yes.

Q Glenn took her home?

A Yes.

Q Did you give her a copy of the will?

A Yes. I mean, I gave her the original. We don't keep the -- I mean, we have a copy at our office, we don't keep the original.

Q Right. Did not follow your normal protocol of several weeks?

A No, that's not correct. I have different protocols. I have often sometimes clients also want to do it the same day, and I also do that,

but I have a different set of protocols when they want to do it the same day.

Q But you saw her one time?

A Yes.

Q Do you remember if it was morning or afternoon?

A I want to say it was midday. I know it would have had to be -- that's not true. I think it was in the morning, but I really don't recall. I don't want to say. Actually, I don't know.

Q That's fine. Let me hand you -- do you recognize what that is?

MS. WIMBERLY: Your Honor, I'm going to object to this. This is irrelevant. We are here for the will contest. The PR of the estate, it's already been fully tried by Your Honor. So any questions about the administration of the estate is completely irrelevant. We're here for the will contest.

THE COURT: Irrelevance.

MR. HOWE: Whether it tells the truth, it's a notarized document, it's false.

MS. WIMBERLY: That's, well then, lack of personal knowledge, because this was a document that was prepared by Mr. Gunnells and not Ms. Klok.

THE COURT: Let me hear the questions and let's go from there.

MR. HOWE: I think it's part of The Court's file, and I'm going to ask The Court to look at its entire file. It's already been introduced or made part of the record by Mr. Gunnells as to what he filed.

THE COURT: Okay.

BY MR. HOWE

Q Okay. Tell me what the document is.

A Well, it says it's Inventory and Appraisement.

Q Tell me briefly, I know we know it, but for the record, what's an inventory and appraisement?

A It just says what the value of the property of the estate, reporting that to the Court.

Q And it has different categories for different kinds of property?

A Yes.

Q Okay. And if the decedent had had a bank account open at the time of her death, it should have been reported?

MS. WIMBERLY: Objection, relevance, and also lack of personal knowledge and speculation. I

mean, there's so many things that are wrong with this line of questioning.

BY MR. HOWE

Q I'll ask it a little bit different. You're a lawyer, you do probate law?

A Yes, I don't do a lot of probate administration, I do a lot of execution of wills and estate planning, but I do some probate administration.

Q Okay. And look at Schedule C, what does it say?

A It says, "List all bank accounts owned by the decedent alone or as tenants in common, checking, savings, CD, money market, brokerage, en layment (sic), bonus, cash award, final paycheck, cash on hand, notes payable to descendants, survival action proceeds. If none, so state. List such account, institution last two digits if jointly owned with rights of survivorship you may list in Schedule E."

Q So if there had been a bank account, it should have been put on that?

A Well, Schedule E is optional. So if it was a bank account that was payable on death.

THE COURT: I think you were confused by

the question. He was asking about the Schedule C.

A Yeah, on --

Q On Schedule C, she could have had a bank account in her name?

A In her own name, only in her name, yes, it should be there.

Q Okay. And look at F, that's personal property, right?

A Yes.

Q It says, "Personal property including household goods and furnishings, vehicles." Correct?

A Yes.

Q So if she had some, it should have been listed, shouldn't it?

A Yes.

Q Who -- do you recognize the person, the name of the person who notarized this?

A Yes, it's Annmarie Voytko, who is my paralegal.

Q Okay. And this was actually sent to the Probate Court by your office, wasn't it?

A Yeah, I think Glenn came by and he already had it filled out and Annie notarized it and then we sent it in.

Q Okay. Thank you. Now, the personal representative of the estate, their job is to protect the assets of the estate, right?

MS. WIMBERLY: Your Honor, relevance. I don't understand why we're talking about this.

THE COURT: Mr. Howe, that came up in the earlier hearing.

MR. HOWE: Yeah. I think it's relevant here.

THE COURT: Okay.

MS. WIMBERLY: But it really isn't, Your Honor. What we need to stick to is a certain timeframe, and also it's an improper witness to get this evidence in through. If Mr. Howe wants to impeach my witness, he can do it all day. But this is -- not through Ms. Klok.

THE COURT: Your client's firm completed the document. Let me see where the question goes and then we'll go from there.

MR. HOWE: The relevance is this. This fella had a fiduciary relationship with the momma, okay? He had a fiduciary relationship with the court when he took on the personal representative. We know he didn't pay any attention, or I believe that she will show or set up the fact that he didn't

follow fiduciary relationship with the court. Because when he sold the house, according to his own testimony, he put all the money in his personal account, knowing that there was a lawsuit pending. That shows a pattern of behavior.

THE COURT: Okay.

MS. WIMBERLY: We've already talked about all that in the previous hearing, Your Honor. That goes to something completely different than what we're here about today. What has been asserted is undue influence. It's nothing about what Mr. Gunnells did or did not do after the administration of the estate.

THE COURT: I'm going to allow the question, just continue and we'll see where it goes.

BY MR. HOWE

Q Personal representative has a duty to the estate?

A Yes.

Q They're not there for themselves, they're there for the estate?

A That's correct.

Q Okay. And part of that duty is to preserve the assets for the estate until the court decides what happens to the assets?

A That's correct.
Q You got a copy of a lawsuit that said this will was going to be contested?
A Yes.
Q You got it from Mr. Gunnells?
A I don't exactly remember, but I did receive it, yes.
Q Okay. And do you remember about -- that was in August; do you remember that?
A Vaguely. I mean, I can't give you the dates. But if you say I got it, I mean, I'm sure I got it.
Q I want you to assume for a minute that the case was filed in August.
A Okay.
Q Okay? That the house which is reflected as the sole asset in the inventory and appraisement that you filed, okay, was sold in December?
A Yes.
Q Was he free to spend that money on whatever he wanted?
A Well, I was not representing him. I mean, I conflicted out.
Q I understand. I'm asking you, is it your opinion as a lawyer who practices in the

probate court, do you believe that he was doing his fiduciary duty if he took the money from the sale of the house knowing that there was a lawsuit disputing the will and putting it in his personal account?

A In my opinion, the proper thing to do would be to put it in an estate account.

Q Fair enough. You certainly never told him it was okay to do that?

A No. He did not ask me, nor did I tell him that.

Q Hang on one second.

Was it my understanding that it was at the closing that Glenn asked you if you did wills?

A You know, throughout the process. The closing isn't just one day, you know, we gather documents, we talk, and it just came up, what else do you do? We're just chatting.

Q So that was at the closing involving his...?

A It was either at the closing or before the closing -- at, during, you know, in that process. That's how I met Glenn, was through his closing of the property.

Q Thanks.

MS. WIMBERLY: Thank you, Ms. Klok. I

don't have any more questions for you.

THE COURT: I have a question for you. Did you do any other estate planning documents, or was it just -- did you do a healthcare power of attorney or living will?

THE WITNESS: It was just the will. She told me she had her other documents. I mean, I know she had a power of attorney. I don't recall -- I didn't look at my file before I left. I don't know if I did a living will or a healthcare power of attorney. I just don't remember. With those, I do at no cost because you can get the forms off the Internet. So if the client doesn't have it, then we do it.

THE COURT: Okay. And did you -- I guess when you gave her the will, some attorneys put it like in a sealed envelope. Or did you give it loose? What's your customary practice?

THE WITNESS: Generally we do -- we have blue backs and we put it in there and then we put in an envelope and give it to the client.

THE COURT: Not in a sealed envelope?

THE WITNESS: No sealant, no.

THE COURT: Okay. And I guess you didn't have time to do like an estate analysis,

checklist of what she owned and how it was owned?

THE WITNESS: No. She just -- and I explained to her, you know, because she was doing kind of a global will of just -- she wanted to give everything. And I said, you know, what does that entail? Generally we talked about her house and I guess checking accounts and things like that, and whatever she owned. I do believe I provided her with a blank sheet where you could write out if you wanted to give particular personal items to individuals, you could sign and date and fill that in. And that was blank with her name preprinted. And I give several copies in case they want to tear it up and want to do a different one, or you know, whatever, throughout time.

THE COURT: And I believe I saw in the file somewhere that there was a doctor statement. Did you engage a doctor at all to check her capacity?

THE WITNESS: No, I did not.

THE COURT: Let me ask counsel if they have any other questions for this witness?

MS. WIMBERLY: No, Your Honor.

MR. HOWE: Nothing, Your Honor.

THE COURT: Thank you.

(At this time, the witness, Suzanne Klok, is excused from the witness stand.)

MS. WIMBERLY: At this time, Your Honor, respondent's call Ms. Annie Walton, her name's changed. It was Voytko and now it's Walton.

(At this time, the witness, Annmarie Voytko, is called to the witness stand.)

THE COURT: Good morning.

THE WITNESS: Good morning.

THE COURT: You can come on up. And I'll have you place your left hand on the Bible there and raise your right hand.

- - -

Whereupon, Annmarie Voytko, having been first duly sworn, testifies as follows:

- - -

THE COURT: Thank you, please be seated. And if you could state your full name for the record.

A It's Annmarie Voytko. No E in the middle. It's all one word. I have a court order to go back to Walton, my maiden name, but I just haven't gotten around to it.

THE COURT: Okay. Just for the record, can you spell your name for the court reporter?

A It's V, as in Victor, O-Y-T-K-O.

THE COURT: Thank you. Answer questions of Counsel. Ms. Wimberly?

DIRECT EXAMINATION

BY MS. WIMBERLY

Q Ms. Walton, thank you for being here today.

A You're welcome.

Q What is your occupation?

A I'm a contracted paralegal for the Klok Law Firm.

Q How long have you been working there?

A Through various jobs, probably 2009.

Q How long have you been working as a paralegal?

A Last three years, maybe.

Q What are your daily duties as a paralegal at the Klok Law Firm?

A I'll notarize things, talk to clients, make appointments, you know. I don't know. You know, do certain, you know, file forms, notices of appearances and stuff like that.

Q Who do you work under at the Klok Law Firm?

A Suzanne and her husband Rhett.

Q Do you know why we're here today?
A Yes.
Q And do you know Ms. Helen Gunnells came to your office and executed a will; do you remember that day?
A Yes.
Q And do you remember Ms. Gunnells in particular?
A Uh-huh, yes.
Q Earlier you heard Ms. Klok testify about y'all met with her for about three hours; is that correct?
A Yes.
Q Was anybody else in the room with you when you met with Ms. Gunnells?
A Originally maybe Glenn was there at first, but we normally make them leave. And by "leaving," unless it's like a torrential rain, we ask them actually to get out of the building, because our lobby is right next to the conference room. So we don't want whoever we're talking to to feel influenced that, oh, my God, they're out there listening to what I'm saying. That's just normally what we do.
Q Did you ask Mr. Gunnells to leave that

day?

A Uh-huh, yeah. I think he went outside with Casey the dog, you know, and was walking around outside.

Q With regards to your discussions with Ms. Gunnells, did you feel as though she had a sound mind the day that she was in your office?

A Uh-huh.

Q Did anything stand out to you with regards to either her appearance or how she was talking that raised any red flags?

A No. I mean, her body was frail, her mind was fine. And if Suzanne would run out, and you know, do whatever, add things to the will, take things out, change, you know, whatever, I would -- normally I sit with them the whole time. You know, hey, what did you have for breakfast? You know, you guys have lunch plans? Or you know, how are the grand kids? How many do you have? Just to kind of make sure that, you know, like Suzanne said, that they're with it.

Q Did Ms. Gunnells engage in your conversation?

A Oh, yeah.

Q Did you believe that she was, as you

said, "with it"?

A Yes.

Q With regards to any discussions about the will, what do you remember, if anything regarding the disposition of the new will?

A That she wanted everything to go to Glenn. Like Suzanne said, that she was disappointed in her daughters.

Q Any other discussions that you remember with regards to that?

A No, not really.

Q Okay. Do you remember about how long she was at your office that you were meeting in the conference room with her?

A A good hour and a half, two hours, maybe. It's not a quick thing.

Q Is that fairly typical of your protocol at your office to have clients in for that amount of time, just meeting once?

A If we're meeting them once, yes.

Q So usually if you're meeting them multiple times, do you meet for less amount of time?

A Yes.

Q So if you meet once, you meet for an extended period of time?

A Yes. Usually if it's going to be multiple, we'll, you know, get basic information, you know, names, addresses, telephone numbers, stuff like that. And then, you know, it's a work in progress.

Q Do you remember if Ms. Gunnells said anything to you with regards to how her feelings or her relationship with Mr. Gunnells might have went?

A She loved him very much. He did everything for them. He was there, you know, when his father was passing away. You know, she was very grateful to him that she had him at -- I don't want to say at beck and call, but he was always there for her, you know.

Q Were any red flags raised in your head about any undue influence or any kind of control that Mr. Gunnells had over Ms. Gunnells?

A No, not at all.

Q Have you ever had the occasion to meet Ms. Harkness who's sitting here?

A She's come to the office just once.

Q Do you remember that interaction at all?

A No, not really. I think it -- I can't remember. She was there to meet Suzanne, and I think it was the whole beginning of the -- when she

wanted it contested.

Q So that was after the death of Ms. Gunnells?

A Yes.

Q Have you had an occasion to meet Ms. Belinda Davis who's sitting in the back of the courtroom?

A No.

Q Do you remember if Ms. Gunnells made any comment about how her children might react when they learned about the disposition in her will?

A The girls were going to be furious.

Q I'm recalling from evidence what's been marked as Respondent's 1. Ms. Walton, do you mind looking at that? Do you recognize that?

A Uh-huh.

Q What do you recognize it as?

A It's the Last Will and Testament of Helen B. Gunnells.

Q How do you recognize it?

A Well, it's got my initials on it. And it's got Suzanne's and hers. And I notarize it.

Q And as you work in Ms. Klok's office, do you see wills pretty often?

A Uh-huh.

Q Would you that this is a pretty standard will?

A I would say so. Usually I don't prepare them, I will read over them just to make sure, you know, spelling is correct, because spell check is not going to correct like a there and a their. So I'll read over them, but I don't do anything with them other than proofing them.

Q Did you read over this document?

A Yes.

Q And at the bottom of each page, is your signature on the bottom of each page?

A My initials.

Q And on the last page, I believe, is your signature there?

A Yes, that's my signature.

Q All right. I'll put that back in evidence. Thank you.

MS. WIMBERLY: No further questions at this time.

CROSS-EXAMINATION

BY MR. HOWE

Q Casey the dog, who is Casey the dog?

A It was Mr. and Mrs. Gunnells' dog. Wasn't it?

Q That wasn't the office dog, that was Glenn's dog?
A Oh, that was Glenn's dog. I thought it was your mom's dog. Okay.
Q Just looking -- I'm sorry.
A I'm sorry.
Q And Glenn brought her there?
A Uh-huh.
Q Glenn drove her away?
A Uh-huh.
Q And there's no way for you to know whether Glenn said, let me see that will, I want to see it before we leave the parking lot, you don't know that, do you?
A No.
Q And is that your notarization on the inventory and appraisement was filed?
A Yes, that is.
Q Okay. What did Glenn tell you about what was in the estate?
A He didn't tell me anything.
Q Okay. He just filled it out?
A Yeah. It's not like I -- you know, I didn't scrutinize what was filled out. I just saw him write his name, and that's what I was notarizing

was his signature.

Q So he gave you all the information?

A Yes.

Q And he signed it and you notarized it as being correct?

A I notarized his signature.

Q Right.

MR. HOWE: That's all I have. Thank you.

MS. WIMBERLY: Your Honor, this witness may be excused.

THE COURT: Thank you.

(At this time, the witness, Annmarie Voytko, is excused from the witness stand.)

MS. WIMBERLY: Your Honor, is it too early for lunch?

THE COURT: Not at all.

(At this time there is an off-the-record conversation.)

THE COURT: See you at 12:40.

(At this time there is a brief break in the deposition for lunch from 11:30 am. to 12:45 p.m.)

MR. VARNADO: We're ready to call our last witness.

THE COURT: Okay.

MR. VARNADO: Mr. Gunnells.

(At this time, the witness, Glenn Gunnells, is called to the witness stand.)

THE COURT: Good afternoon, Mr. Gunnells. How are you?

THE WITNESS: Good sir. How are you?

THE COURT: Good.

- - -

Whereupon, Glenn Gunnells, having been first duly sworn, testifies as follows:

- - -

THE COURT: Please be seated. I'll have you state your full name for the record.

THE WITNESS: Glenn Arden Gunnells.

THE COURT: Thank you, Mr. Gunnells. If you answer any questions of counsel.

MR. VARNADO: Thank you, Your Honor. May it please the Court.

DIRECT EXAMINATION

BY MR. VARNADO

Q Mr. Gunnells, tell the judge how old you are today?

A Fifty-eight.

Q What's your birthday? And where were you born?

A 7/7/57. Charleston, South Carolina.
Q And you're the third child of the late Arden and Helen Gunnells; is that correct?
A That's right.
Q And you grew up in Charleston. And where did you attend high school?
A St. Andrews.
Q West Ashley, right?
A That's right.
Q And what did you do after you graduated from West Ashley? Why don't you tell the judge, just briefly run down what you did career-wise, and work-wise.
A Well, I didn't graduate at the time. But I went to work for a service station. This was during the time of things happening with my parents. But I went back and took the GED and then I went to Trident Tech for little over a year.
Q When was that, roughly? When were you at Trident Tech, roughly?
A About '77, I believe.
Q Okay. Then what happened?
A I studied power mechanics, psychology and physics without mathematics, and then I proceeded to another job.

Q What was that?
A That was with Davis & Doscher Construction, I believe, which was my sister's husband's company.
Q Okay. And what did you do with Davis & Doscher Construction?
A I was a laborer at first and worked my way up to a heavy equipment operator.
Q Okay. And when did you leave that firm?
A I'm not sure.
Q Was it in the '80s or the '90s?
A Probably the '80s.
Q Okay. Then what did you do next?
A I went to another construction company, which was Truluck Construction and did the same thing, machine operator.
Q How long did you stay around with Truluck?
A About a year and a half.
Q Okay. And then did you ultimately end up going into business with your father?
A Yes, I did.
Q What was your father's business?
A Used car sales.
Q So that was the family business, used

cars?

A Yes, mine and my father's.

Q And where was the lot?

A It was on Folly Road.

Q On James Island?

A That's right.

Q Okay. And how long did you work with your dad?

A Little over three years.

Q Okay. Then ultimately you had a disability condition?

A I did.

Q And when was that? When were you disabled?

A About '99 was when I first considered, or 2000, of having minor -- minor problems with my heart rhythm and everything. And then went to the doctor and then went to the hospital and found out I had congestive heart failure.

Q Okay. So you've been on disability since then; is that correct?

A I have.

Q So you're retired for all intents and purposes, right?

A That's right.

Q So tell me a little bit about your late mother and your late father. What did your father do? He was in the Army or the National Guard for a while?

A My father was wholesale radio supplier for 38 years. He was in the National Guard Armory for 28 years.

Q And what was his rank in the Guard?

A Major.

Q He was a major. Okay. And then when did he open this business, his car business?

A We opened up in '98 or -- '98, I believe.

Q Okay. And what did your mom do? Did she stay at home or did she have outside work?

A She stayed at home.

Q Okay. And how would you describe your relationship between your mother and your father while they lived?

A It was good.

Q I mean, loving? Close? What kind of words would you use to describe it?

A It was loving. Mom and Dad had a real good relationship.

Q They never had problems between each

other, right?

A Everybody has a little problems, but you know, nothing major.

Q Now, I think it's become patently clear that the three children had a lot of problems with each other; is that fair?

A That's right.

Q So Belinda, she testified about your character. So what would be your response? What would Belinda's character like? She was pretty frank about how she felt about you. What do you feel about her?

A Me and Linda got along well over the years until the last time when she found out that dad and mom wanted me to be power of attorney, and then the mood just changed for the worse.

Q What happened, I mean, in terms of forgiving you for doing that?

A Yeah, she felt like she deserved to have control over everything, which I was there every day and I knew the finances of the parents. I knew from dad showing me how to do things, and they're the ones who wanted me to have it.

Q Okay. Well, we're still talking about her. She said you were conniving and a control

freak. How would you describe her level of control that she wanted to assert?

A I think it was reversed, that she wanted to be in control of everything.

Q And then Cathy. How would you describe Cathy's character?

A Very demanding.

Q In what ways?

A When things weren't done her way, she would get all upset and have a little tantrum and just wouldn't confront the issue and just either walk out or hang up on the phone, according to what I've seen.

Q Is it fair to say that you and Cathy did not have a good relationship?

A Ever since I was around 10 years old we never got along.

Q All right. Now why don't we fast forward up to the time when your mother and father -- this is before your dad has cancer, but they need help, okay? And I'd like to talk about how y'all, the children, divided the labor of how you would help care for your elderly parents, all right? So how did it start that your father and your mother both needed help and assistance? What

had happened? When did your dad -- this is before the cancer but when he needed help. Tell me around what time and what happened.

A This was about eight years before Mom's passing that I started coming into the picture just about every day. Dad and Mom was physically fit. I came over there because I was on disability, and you know, to give me something to do and help them out. Which I did. I helped with the lawn and cooking for them. And me and Dad loved to plant the garden all year long. And Mom would come out there and sit with us or sit down and watch us. And you know, just do whatever needed to be done around there.

Q What did Belinda do to help out?

A Really nothing. She'd come over and just communicate for a little while and then she'd go on her way.

Q How did your parents react or what did they want in terms of her helping out or being there, or not?

A Before or after the cancer?

Q Before the cancer.

A Before the cancer, really no need.

Q Well, was there -- okay. What about Cathy, what was she doing around this time?

A Come over sometimes and give a haircut or -- just really not that much. You didn't see that much of her. You know, after I entered the picture she just weaned off.

Q Didn't she move to Myrtle Beach for a while?

A This was after her divorce right before dad got cancer.

Q Okay. Now, right around the time that your father gets cancer, I want to know what your parents expected of you and Belinda and Cathy in terms of coming over and helping or even wanting them there at all. Okay? So let's start with Belinda. How did your parents want her to be involved in their life or not?

MR. HOWE: Objection. That's all just summary of hearsay.

THE COURT: Okay. If you can just ask a direct question. Sustained.

A May I go back a little bit on as far as what they wanted, Belinda?

THE COURT: Just wait for the next question.

MR. VARNADO: I'm trying to rephrase it, Judge.

BY MR. VARNADO

Q All right. Belinda admitted on the stand she had a drinking problem. All right. Was that an issue with your mom and dad?

A Yes, it was.

Q How was that an issue with your mom and dad?

A Well, she would always come over usually high, and always she had a little stash in her purse, and would go off into the bathroom quite frequently. And then she'd come out not being the same.

Q Would they want her to be around?

A Not in that condition.

MR. HOWE: Objection.

THE COURT: Why is that?

MR. HOWE: Objection. I mean, the only way he could know that is to say they said. I mean, he's asking for what they said to him, basically, in an indirect way.

MR. VARNADO: Presence and suppression.

THE COURT: Overruled. If you have another question, go ahead.

MR. VARNADO: He overruled the objection, so you can answer the question.

A Which one?

THE COURT: State the question again.

MR. VARNADO: Can you read it back, Madam Court Reporter. Would that be a problem? The last one before Mr. Howe's objection.

(At this time there is read back in the record.)

A Not in that state of mind.

BY MR. VARNADO

Q Okay. How big an issue was that in your family?

A It was getting pretty big. I mean, just every time she'd come over it was like she was at ease and wouldn't tend to hide it anymore. I mean, it was like her normal life of being that way.

Q Now, Cathy says you got a drinking problem?

A No, sir.

Q Okay. Have you ever been institutionalized for alcohol?

A I have not.

Q Have you attended Alcoholic's Anonymous?

A No, sir.

Q Have you been in an alcohol treatment program?

A No, sir.
Q Or a drug treatment plan?
A No, sir.
Q Do you drink?
A Yes.
Q Do you consider yourself an alcoholic?
A No.
Q Has any doctor ever told you that you're an alcoholic?
A No.
Q Has anyone ever accused you of being an alcoholic other than your sister, Cathy Harkness?
A No.
Q Okay. Tell me about Cathy's reputation in your family.
A Cathy is very demanding. If things don't go her way, she gets all upset, she storms out, she hangs up the phone on you. She's just -- it's hard to describe her. From the time I've known her -- I don't know how she's been in the last eight years, except for the last time I've seen her. But the years that I've known, she's just high pressured on everybody when things aren't done her way, you know. Just like, for instance, she came over one day to help clean up and she brought the kitchen

trash beside me when I was in the den talking with my parents. And she said, can you take the trash out? And I said yes.

So it wasn't two minutes later she comes up a huffing and puffing, grabs the trash bag, goes out, puts the trash bag and comes back in the house and just started an attitude from there on during that day.

Q How would she assert herself in terms of trying to put you down or put herself forward?

A Just everything I did was wrong, you know. It's like damned if you do and damned if you don't. I mean, it's just like in her eyes it's okay, but behind her eyes, it's like backstabbing. I mean, Cathy didn't know me.

Q And how did she and your late father get along right around the time he got the cancer and needed the cancer treatment?

A Well, that's when I took my tail and I called Cathy in Myrtle Beach and told her about dad having cancer.

Q Okay.

A So we talked a little bit. And she said, well, I guess I'm going to have to pack up and move. So she did. And then when she got down and

settled, we discussed things. And she was going to come over and help me out, because the pressure was on me taking care of dad now, to where dad used to help with Mom. So I had to fill in some blanks.

Anyway, this went on for about 30 days. And like I said, like with the trash incident, things just kept going on. She started getting demanding until finally after about 30 days Dad said, Cathy, you know...

MR. HOWE: Objection.

THE COURT: Sustained.

MR. VARNADO: May I have one second, Your Honor?

I would say he was talking about his father.

THE COURT: Okay.

MR. VARNADO: And I would say that his father is not part of the dead man statute. That's already, whatever's happened there is already done.

THE COURT: Okay.

MR. VARNADO: I mean, I know Ms. Wimberly and I haven't objected a lot. Mr. Howe got a lot of the same leeway. I just want -- I'm happy to --

THE COURT: Okay. State your question

again and let me hear his objection and we'll go from there.

BY MS. WIMBERLY

Q How did your --

THE COURT: Because if you don't object doesn't mean that he can't object.

MR. HOWE: That's a new rule.

A No, I was there.

MR. VARNADO: I would need to have the question read back again. I think that the question was, how did your dad react to that? And he started to testify, well, dad said this, and Mr. Howe got up at that point, so...

THE REPORTER: Do you want the question?

MR. VARNADO: Sure, the last question.

(At this time there is read back in the record.)

MR. VARNADO: May he testify to it, Your Honor, what his dad said.

MR. HOWE: A reported statement by somebody who is dead and by somebody who has interest, it's hearsay and not subject to cross-examination.

MR. VARNADO: It's part to a -- he doesn't have an interest in the late Arden Gunnells

estate, that's already done. Two, it's presence and suppression. Three, we've already been sort of going down this road a bunch.

MS. WIMBERLY: Sorry. May I interject?

THE COURT: Okay.

MS. WIMBERLY: Under 804, it's when a declarant's unavailable, if they passed, they can testify to anything regarding family history including relationships and family history. So it's 804 (B), family history and family relationships, 804 (B) 4.

THE COURT: Okay. Statute approach to that, actually I think everybody agreed that everybody wanted to invoke.

MS. WIMBERLY: I think we invoked testimony about the will in general.

MR. VARNADO: Your Honor, I'll try to wrap it up. Because I need an instruction on how to go forward. Yesterday both the girls testified kind of at length about what the family relationships were like, and he went, and it's fair.

I'm trying to establish a family relationship. This is what we wanted to say. We constantly were involved in mom and dad's life until Glenn cut us off entirely, and that is proof

positive, they say, that there is undue. And that's what he wants to argue. And that's he's going to argue in summation and in a written order. So I need to be able to say, at least I have some probative testimony from my client. I was the guy actually there and this is the reason why they weren't around, when they probably were around.

MR. HOWE: And he can do that any way, except quoting his father. He can bring in evidence he wants to, but he can't say dad said this, mom said this. That's what the whole purpose of the dead man's statute is.

MR. VARNADO: It's dead man's statute if you have a benefit, Your Honor. And Arden Gunnells' estate is not...

THE COURT: Well, I think the benefit goes to the person testifying. Question applies to --

MR. VARNADO: We would just renew our point, talking about family relationships, and the door is wide open on that.

THE COURT: I'll allow the question.

BY MR. VARNADO

Q Thank you, Your Honor. Tell me about what your dad said about Cathy and this time, he's

gotten the cancer. He's not able to help your mother as much as he used to be. You're living in the house.

MR. HOWE: Now we're getting into a whole argument, not just a leading question.

MR. VARNADO: No, I'm just trying to get back to where we were after this long objection.

THE COURT: Just ask him a direct question.

BY MR. VARNADO

Q What did your dad say?

A I was there, and dad said, Cathy, we need your help, Glenn needs your help, but you can't come in here and try and change us, try and tell us what to do. We've been living here our whole life. I'm 80 years old.

And she didn't take that too well and she went storming out the house and never to be seen again as far as in the house.

Q Okay. What about this business of you threatening to call the cops on her?

A That's not true.

Q What about telling her she'd be trespassing if she came?

A That's not true.

Q What about changing the locks?
A That's not true. The same lock was on the door. Nothing was changed.
Q You never changed the lock?
A No, sir.
Q How would she know the lock was changed then?
A Pardon?
Q How would she know the lock was changed then?
A Well, unless she snuck over overnight or something, I don't know. Because she was never there.
Q When was this that your father said, you know, don't tell us what to do?
MR. HOWE: Objection just continuing.
THE COURT: Noted.
A About 30 days after she came in the picture, moved from Myrtle Beach.
Q Okay, after your father got cancer?
A That's right.
Q When did you move in the house?
A After I sold my house, which was April, I believe.
Q Of what year?

A 2013.
Q Thereabouts?
A Somewhere there, '13, I think so.
Q When you sold your house, how much money did you bring in in your own personal account?
A Little over $35,000.
Q Okay. So you're living in the house, correct?
A That's right.
Q Who was forbidden to -- who was forbidden to enter house, anybody?
A Nobody.
Q Who is -- who has been told never to step foot on the house property again?
A I don't know.
Q Who has ever called the police ever told somebody not to call the police to come?
A Nobody.
Q Okay. What evidence is out there to support your sister's contention that she was told by you never to come over again under and the threat of law enforcement?
A I have no idea where that came from.
Q Okay. How did it go -- who was in the house helping take care of your parents right around

the time your father's cancer got to that final stage?

A It was just me and healthcare workers and the nurse.

Q We heard from two of them today?

A Yes.

Q Okay.

A And also a friend of hers from 20 years that worked for Roper healthcare during the years, and so she'd come over and give mom hygiene twice a week on her own time, because she loved mom that much, and mom loved her.

Q Well, how is Cathy coming over every day and taking your mom out shopping, what's your position on that?

A That never happened.

Q Explain how Cathy is involved right around the time your father goes in that late stage of cancer through his death. When is she over? When is she coming? What is he doing?

A Never seen her. Don't know what she was doing. She wasn't there.

Q What about forbidding to use the van?

A That was dad's van. And when I was taking dad to the cancer center, we went there, and

all of a sudden Cathy started coming up with things wrong with mom and said, oh, she's got an emergency and everything. This is after we got back from the cancer center. She said she had an emergency and everything and I have no transportation, y'all have the van, you got the keys to your truck. And here she is sitting with her car, which is a Corvette, and she's worried about why I can't get the wheelchair in there. And I said, Cathy, they have wheelchairs at the emergency center or doctor's offices if you needed them. So she got all upset about it. And then dad stepped in. But that's dad's van, and that's what we used every day to go to the cancer center and back.

Q But you never forbade her from using it?

A No. As a matter of fact, she used it a couple of times a couple of times during the time she was over there to take mom to the doctor.

Q Okay. And that's before she voluntarily took herself out of the picture; is that your testimony?

A That's right.

Q How would you describe the level of upset that your mom and dad were about Cathy and Belinda?

A They couldn't believe that was their children. That you know, why -- and they can't understand and I still can't understand either, why they wouldn't come over and help. I mean, I even offered to remove myself, that would give me a break, to where they didn't have to see me at all. They could come over and help them out, and that didn't even go. I don't know what the picture was. But she did not want to step in that house at all. And Linda come over and helped a couple times and then she was done. So Linda next would come over every now and then and socialize and then she'd be gone.

Q How did they react to her going to Hawaii when your father had his cancer?

A They didn't understand that either. They said her daughter-in-law is going to lose her job if she didn't go over there to take care of the new grandchild. Now, there are daycare centers in Hawaii. They didn't understand. Now, the final stages of my father's life is more important than going over there and taking care of a grandchild.

Q She knew there was cancer when she left?

A Yes, she did. She knew that before she even took off to go.

Q And you didn't keep her in the dark as to your father's medical condition? They could have called at any time, right?

A That's right.

Q Tell me about Helen Carroll. Nice lady. We saw her deposition yesterday.

A Me and Helen Carroll have been good to go all these years. As a matter of fact, the last time I saw Helen Carroll, she was there -- I was running an errand or something, and she was there, and I hugged and kissed her. And anyway, she said, I brought you a sucker-to-me cake. And I don't know if y'all are familiar with that, but it's like a pound cake with nuts in it, but she makes it. She makes plenty of them. So that was presented to me. And we talked a little bit and then I went outside and started doing what I do and let mom and Ms. Carroll have their girl stuff.

Q When did you cut your mom off from communicating with her friends?

A I never cut my mom off.

Q When did you cut your mom off from communicating with Ms. Helen Carroll?

A I never cut Mom off from anybody.

Q Okay. Ms. Helen even said she'd come

over once when you weren't there. Were there times when she would visit and you weren't there, you weren't around?

A I don't know.

Q Was there ever a time that you know that Helen Carroll visited but you weren't there?

A That's right. Okay.

Q Tell me about those. Do you remember that? Once? Twice? How many times did that happen?

A It started okay at the beginning, but this was when dad was alive. But when he got the cancer and everything, things started easing off because Ms. Carroll's health problem was getting bad because she couldn't drive from Goose Creek to West Ashley anymore, and plus she was having problems with her own children, so it got limited. And even so with the phone calls, because of one of her daughters was really having problems. And like I said, the health issues of her were really going down so...

Q Who were your mother's other friends?

A She had Grace.

Q Who is Grace?

A Grace was that home healthcare worker

that after 20 years of being friends wanted to come over on her own time to help Mom with hygiene.

Q Do you remember her last name?

A Vanderhurst.

Q So Grace would visit?

A Yes.

Q So who are your mom's other friends?

A This lady named Cam, she owns a beauty salon, which that's where mom would get her hair done. And she'd come over and visit with mom. And sometimes she'd come over and crab. Mom told her to come over and crab anytime, so she did. And we'd walk Mom out to the swing to where she could watch. And mom really enjoyed watching.

Q She had fallen on her hip?

A She's fallen a couple of times, yes.

Q So what was her physical condition right around the time your dad goes into that final cancer stage?

A She wasn't bad. I mean, she could get up and walk on her own with the walker and she didn't need no help.

Q What kind of things did she like to do in terms of getting out the house?

A She liked going outside in the backyard

and looking at the boats go by and looking at -- she loved the clouds. And taking rides. We rode down the Battery. Just wherever she wanted to go. She just liked the outside. She didn't like staying inside too much.

Q You heard the lawyer Ms. Klok and Annie say that she seemed frame, but she had a good mind. How would you describe your mother's mental state and her mental abilities right around that time your father went into that final cancer stage?

A Mom was fine.

Q Elaborate. What do you mean by fine? What was her mental acuity like? What was her ability to know her family and understand what was going on?

A She was very aware of what was going on. I mean, there were times I had to explain the medical conditions to her, exactly what was happening. And then she started keeping up when we'd come back from the cancer center, because she had some booklets reading on what kind of cancer dad had, and she wanted to know what the white cell counts were, the red cells. And so she was pretty much up on everything, what was happening, when we told her the information. She had her head

together. She was still head of the household.

Q What kind of -- your father passed away in June of 2013. How would you describe what impact that had on your mother, personality and how she outlook on life?

A Well, she grieved. But she handled it a lot better than what I thought it was going to be, but...

Q Why do you say that?

A Well, I mean they'd been together for so many years and they loved each other, and just the sudden impact of him gone, she cried a little bit, but she was just -- come out at a better stage of life than what I thought she would have.

Q What other deaths or trauma had she suffered sort of mentally and emotionally in that time?

A We had three passings in eight months; that was my father's, that was her sister in Waynesboro, and that was her 13-year-old Dachshund dog.

Q Because she was very attached to it?

A Yes.

Q And that Aunt, is that Aunt Evelyn, was that her brother and Jack's sister who lived in

Waynesboro --

A That's right.

Q -- who lived in Waynesboro with Uncle Jack?

A That's right.

Q Carly Bryant (ph)?

A Right.

Q All right. So what about this business at the funeral? When did you ever wave round a power of attorney at the funeral in your sister's faces?

A Probably in her imagination, because I would never disrupt a funeral like that. That didn't even make any sense.

Q Did you ask her to leave the funeral?

A No, I did not.

Q Did you use your power of attorney to eject her from the funeral?

A No, I did not.

Q I mean, that's what I thought when I first heard it.

THE COURT: If I am correct, I think her testimony was during the arrangements, not during the funeral.

Q Okay. During the arrangements, like the

visitation, did you ask her to leave?

A I never asked anybody to leave.

THE COURT: Even before the visitation. I guess meeting with the funeral home director.

Q Okay. Did you ask other to leave the funeral home?

A No.

Q Did you kick her out of the funeral home at the director's meeting?

A No.

Q Did you prevent her from putting up pictures and stuff?

A No. As a matter of fact, I distributed pictures to Linda from the house to bring over to the funeral home to put up.

Q Okay.

A And Linda even come over to the house to pick pictures out of the house to take pictures to the funeral home.

Q Your Uncle Jack seemed his sister seemed more emotionally distant. How would you describe -- did your mother -- was she more distant? Was she more cold during this time of grief after Arden's passing?

A I wouldn't say cold. I would say kind

of rebounding. And it would come a part where you'd grieve and then you'd come back, and it'd hit her sometimes. But overall, I thought she was doing pretty good.

Q Did y'all change bank arrangements after your father passed?

A We did.

Q What did you do?

A It was in my father's name and her name.

Q Okay.

A So we got his name off the account, me and Mom went to the bank and we had a joint account.

Q You had a joint account with -- is that one of those things they call joint of account with rights of survivorship, do you know?

A That sounds right.

Q Okay. So that's in both your names?

A That's right.

Q So that if one dies, the account continues on in the name of the other?

A That's right.

Q All right. So after your father's death after the funeral, was there a time when your mom didn't want to see Belinda?

A After the father's funeral?

Q Yeah. Was there a time when she didn't want to see Belinda, and why? Where I'm kind of going, just to give you heads-up, into that whole situation where you allegedly assaulted your sister.

A No, not at that time.

Q Okay. Well, tell us about that day. What happened on that day? We heard from Cathy. We didn't hear much about -- Belinda said she tried to get in and someone said call the cops. Then we heard from Cathy that you actually Cathy that you actually physically braced her against the wall. Then we heard from the home healthcare nurse. Now we want to hear from you.

A Okay.

Q Okay. What happened that day? And why did your mom not want to see her?

A She was still upset --

MR. HOWE: I'm going to object to hearsay again, so I'll object to that.

THE COURT: Okay.

BY MR. VARNADO

Q What was your understanding why your mother didn't want to see her? And that's not hearsay.

MR. HOWE: That's the same as what did

your momma tell you.

MR. VARNADO: I don't think so.

THE COURT: Ask again.

MR. VARNADO: You do? Okay.

BY MR. VARNADO

Q What happened that day?

A From my picture, she was still upset. But Belinda had called that day and said she needed death certificates because she was in charge of dad's arrangements. She called a few days before that, a few days before, but we had a waiting on them to process to get them. So anyway, we had gotten them in. And I told her I'd put them in a bag and leave it at the front door, because mom didn't want to see her that day.

Q Why not? What was your understanding?

MR. HOWE: Objection.

MR. VARNADO: Is he sustained?

THE COURT: I mean, I'm not sure what he's objecting again.

MR. HOWE: He said, why didn't want to see her? The answer is going to be -- the only way for him to get there is, mom said so and so. That's what the objection is.

MR. VARNADO: I think he can answer the

question.

THE COURT: Go ahead. You can answer the question.

A She was still upset with everything that had been going on and she didn't really want interruptions that day, and plus, we had the physical therapist there. So that's why I was going to leave it out there on the front door.

Anyway, she said that's fine. She'd just come pick it up and go take care of business.

Q Let me ask you this. Was it your decision to keep Belinda out?

A No.

Q Did you ever tell Belinda she could never come over if you hadn't been told by your mom?

A No.

Q Did you use physical threats against Belinda?

A I did not.

Q Did you use physical threats against your mother?

A No.

Q Has anyone ever accused you of that except Cathy Harkness?

A No. I protected my mom.

Q Did you physically assault your sister Belinda?

A I did not. She assaulted me.

Q Is this something you want to get past and move on?

A Yes, I would like to get on with my life.

Q All right. Was there a -- after your father died, was there a fish fry at the house?

A No. This was before. Sorry.

MR. VARNADO: One second, Your Honor.

THE COURT: Take your time.

A I'm sorry. You said after my father died?

THE COURT: Sorry. Just wait for the next question.

THE WITNESS: Sorry, sir.

THE COURT: That's okay.

BY MR. VARNADO

Q Let me start back at the beginning. I'm sorry. Just a little bit back. After your father died and before your mother's death --

A Right.

Q -- and even before you had the will changed, okay -- she did. Were people over at the

house?

A Yes.

MR. VARNADO: Really not feeling good.

MR. HOWE: I wish I could say that's never happened to me.

Q Did you have people over at the house?

A Yes.

Q Okay. And give me an example of when that happened?

A We had Jack and my cousin Patricia and mom's sister Aunt Evelyn. And Linda came over, we had a little fish fry.

Q So there were people in her life? There were people coming over; is that correct?

A That's right.

Q Now I just made a complete buffoon of myself, but tell me, whose idea and how did it come up to change the will?

A That was Mom's.

Q And why? What was her understanding?

A She did not like the way --

MR. HOWE: Objection.

THE COURT: I think he can't testify as to what she told you.

BY MR. VARNADO

Q Can't testify to what she told you. But what was going on in her decision making that you understood without being told?

A I was there. And from what I heard was, the kids -- the two girls wouldn't come over and help and she was not happy with that, and this was also being submitted when my father was alive in front of Jack Brantley, in front of Terry Gunnells about the will being changed, how she wasn't satisfied with the girls.

MR. HOWE: I'll object. My objection into that is because it's all talking about what she said. I'm sure where "there" is, so...

MR. VARNADO: Okay. It's essential in the case, Judge?

THE COURT: I understand, but...

MR. VARNADO: Okay. I respect you. Do I --

THE COURT: I think you continue on, but it depends on how he answers it.

MR. HOWE: Just note my objection. Thank you.

THE COURT: Noted.

BY MR. VARNADO

Q What choice of law firms did she have?

A She had Weeks & Irvine and Ms. Klok's.
Q How did you know that she had the choice of those law firms?
A Mom and Dad and myself went to Weeks & Irvine, and that's where we had the power of attorney done.
Q Okay.
A And with Ms. Klok, I had the closing on the house, not by my choice, but the buyer.
Q Why did she end up with Ms. Klok?
A She would feel more comfortable being around women than she would the men.
Q Okay. Was it your idea to go to Ms. Klok?
A No, it was suggestion of the two that I had recommended, that what had happened with the power of attorney and what had happened with the selling of the house, and she wanted to go and talk with Ms. Klok.
Q And what was the reason why she wanted the will changed?
A Because of the girls, because of no help, no love, no respect, no attendance. Just weren't there. They were absent.
Q Did you tell her to change the will?

A No, sir.
Q Did you tell her it was time to change the will?
A No, sir.
Q Did you tell her to write the girls out of the will?
A No, sir.
Q Did you have that ability to control your mom like that?
A No, sir.
Q What was your mom like? I mean, what was her -- how would she react when people came around and tried to push her around and make her do something?
A She didn't like it. She'd try to hold her tongue sometimes. But she wouldn't let herself get run over.
Q In that way is she kind of like Cathy and Belinda? They don't seem to let themselves get run over much either.
A Okay. Well, she didn't go to that extreme. Like I said, she was a southern woman, southern lady. But she stood her ground when she couldn't stand it no more.
Q What power did you have to make her do

what you want instead of what she wanted?

A I didn't have any power. She had the head of the household, whatever she wanted to do.

Q I'm not talking about the power of attorney. I'm actually talking about, what ability did you have to make her do something if she didn't want to do it?

A I had no ability.

Q Was she a meek? Was she a meek person? Meek and timid? Or was she assertive, she would say what she wanted?

A Kind of in between, if that makes any sense.

Q So you go to the law firm. What does Ms. Klok tell you to do?

A Well, we talked and said hello for a few minutes and everything. And then when it was time for business, she said, Glenn, you know, you're going to need to go outside.

Q Did you know you would have to go outside.

A Yeah. Because when we talked before, you know, I even asked her, I said, you know, make sure that mom's knowing what she's doing, you know, that way I don't want nothing done that's not right

and that she's fully capable of knowing what the will says. And she knows that. And she said, I'm planned on that anyway.

Q So you left the office voluntarily? Where did you hang out while she was meeting with Ms. Klok?

A I had Casey with me. She let me walk in the office with Casey, which is my dog. So me and Casey went and hung out outside until I was called in.

Q Okay. And what happened with this personal property dispute that Cathy has going on about? When was the first time that crops up? And were there 14 times that you stood with your arms crossed in the driveway laughing at her or telling her she couldn't get her property?

A There was only two times that she come over to get things, and that was it.

Q Not 14?

A No.

Q So there's this email that came in to your Uncle Jack. How did that start? Did your Uncle Jack call you up? Tell me how it started that she wanted property back.

A This was my suggestion, not his. I

told -- called Terry Gunnells.

Q Who's Terry Gunnells again, just to remind?

A He's my cousin. He's my dad's nephew, lives in Barnwell.

Q Okay.

A I asked him if he could call Cathy up and see if there's anything she might want of dad's. That's where it started from. And then it just escalated to where we're at now.

Q Well, how did it escalate? So you called Terry. He's a minister too, right?

A Yes.

Q He's a doctor of divinity, and he lives in Barnwell?

A That's right.

Q And did you make the same offer to Belinda?

A Yes, Belinda physically came over. I invited her over and told her let's go through some things, see what she wanted. I said, you can have complete control over upstairs, which was mainly Mom's clothes and whatever else was up there for her.

Q Did she take you up on it?

A Yeah. We walked around the whole house and walked into the yard and she pointed out a few things.

Q Did she take them?

A Not at that time. She said she was going to make arrangements to get some help and a truck, and she said that she'd be over, I think it was a Tuesday, and this was a Sunday that she was over -- that's she'd be over Tuesday around 11 o'clock. Anyway, 11 o'clock come and gone, and I ended up calling her. And by the way, she said she was also representing Cathy while she was at the house of the things to pick.

Q Did they ultimately get picked up?

A No.

Q Okay. Then what happened next with this whole property business?

A With -- the rest with Linda?

Q No, with moving on to Cathy now.

A Like I said, it escalated with that. She started nick-picking things, just like Dad and Mom --

Q How was she nick-picking? How was she communicating with you to nick-pick?

A Through Terry, she emailed him a list of

things that she wanted.

Q Okay. Did you refuse it, or what?

A I asked Terry about that. And he said it would probably be best to give her what she wants.

MR. HOWE: Objection.

THE COURT: Wait. Stop.

MR. HOWE: I'll withdraw it. Go ahead.

BY MR. VARNADO

Q All right. And then what happened?

A It would be best to give her what she wants so I can be done with it, and that way everything is done and everybody go on about their business.

Q Then what happened?

A Then this was the first load, which was done with not the court proceeding. This was done on free will, that I got everything together that she wanted and put out on the driveway.

Q She came and got it?

A She did. And then I asked for the sheriff to be there, which was, and everything went smooth.

The second time, this is when y'all are back -- I'm getting a court order.

Q What about this letter that's in evidence as Respondent's Exhibit 3, did you see that?

A Yeah, this is her doing. This had nothing to do with -- that's completely her doing. That's not even legal.

Q But you got -- did you see this letter? Is this part of what -- the excalation you were talking about?

A Yes.

Q And why did you refuse her on this?

A I didn't refuse her. Oh, on the legal?

Q No. She writes the letter and then there's this lawsuit. That's this (indicating)?

A This one was mailed and --

Q You're looking at Exhibit 3?

A Yeah. And this is the stuff I got together on free will for her, but that wasn't good enough, she wanted more. So that's where this court order came in, this summary.

Q Exhibit 4? Okay. And so now we're at that point, did your mom see that summons before she died?

A Yes, she did.

Q How did your mom react to that summons?

A She about broke down. Couldn't believe that she's being sued. She couldn't quite take it in that her own daughter is suing her.

Q Was that before or after y'all drove over to Ms. Klok's office?

A This was before.

Q To your knowledge, was that lawsuit part of what precipitated her wanting to change the will?

A I believe the free will one before was the one that she wanted, but I could be wrong. But this showed me right here that --

Q I don't think you understood my question, I'm going to ask it again.

A Probably not.

Q Your mother, she saw that -- those legal papers, okay? Did that precipitate her wanting to get the will changed? Was that part of it?

A No.

Q It wasn't?

A No.

MR. VARNADO: Hold on one second, Judge, Please.

BY MR. VARNADO

Q Glenn, I'm sorry. I feel like I may not be asking good questions. I'm going to try --

Your mom saw those legal papers, correct?

A Yes.

Q You said it almost made her break down?

A Yes.

Q It was before she decided she wanted to change the will?

A Looking at the date, the will was changed before that. I mean, excuse me, the will was -- hold on a minute. I'm a little confused.

THE COURT: I thought one was late July and one was early July?

MR. VARNADO: That's right. We'll move on.

BY MR. VARNADO

Q Mr. Howe, he has made a big deal about an inventory and appraisement. Do you remember doing an inventory and appraisement?

A I do.

Q Your mom's dead at this point, correct?

A Right.

Q You're the personal representative of the estate, correct?

A Right.

Q I'm going to show you this inventory and

appraisement, all right? Whose handwriting is on this thing mostly?

A Mine.

Q Had you ever been a personal representative before?

A No, I haven't.

Q Have you ever done an inventory and appraisement before?

A No, I hadn't.

Q Is Ms. Klok your lawyer at this time, or is she helping at all? Or what is she...?

A Well, no, she just gave me a little advice, and then I took it home and tried to take care of it. And I brought it back and then let Annie review it. So all she did was notarize it because of my signature.

Q What was your intention in terms of filling this thing out? What was your goal? What were you trying to do? Were you trying to be truthful? How were you approaching this thing?

A Yeah, to get things taken care of the way it was supposed to be that I thought.

Q What was your thinking about the bank account?

A What was I thinking about the bank

account?

Q Yeah, Mr. Howe made a big deal you didn't put a bank account on there. I know you testified earlier it was a joint bank account. Why did you not include a bank account in there? It seemed to be a big deal to the other side?

A Mom's already passed. I haven't been served yet. The will's in my name. Everything belonged to me, according to what I thought. So I put the house down and thought that represented everything in the house, or you know, the whole property.

Q What was the furniture like in the house?

A Years.

Q I mean, describe it. I mean, Mr. Howe thinks it's a very big deal. So what was in the house in terms of the furniture?

MR. HOWE: I object.

THE COURT: Okay.

MR. VARNADO: I'll rephrase it.

BY MR. VARNADO

Q Respondent's have raised the position that the failure to put down the household items means that you were untrue and not -- and lying on

purpose. So I want to know what you were thinking when you didn't put the inventory of the house down.

A I tell the truth. I don't lie. And like I said, what I was thinking was, the house would take care -- the furniture, anything that had to deal with in the house, the house itself and business-wise, checking account, anything that had to do with it. That was my thinking.

Q And the checking account you thought was your own name then?

A The checking account was in my mom's name.

Q And she was dead and it was in your name still?

A It goes changed, closed out that account.

Q But not at the time you filled that appraisement out, correct?

A I'm not really sure.

Q Okay. You filled that appraisement out right after she died, correct?

A Yes.

Q Okay. You kept that joint account open?

A Yes, I did. Yes, I did.

Q It was a joint account?

A It was.
Q In both your names?
A Yes.
Q Okay. In terms of the household items, what was the quality of the household items?
A Quality?
Q Value? Quality?
A It was mediocre. It was okay, but it wasn't the fanciest thing in the world. I mean, it was just --
Q What ended up happening to it?
A Some was sold and some was donated and some is still in my house.
Q Were you trying to mislead the Court?
A Never.
Q Were you trying to undervalue the house?
A No.
Q How did you come up with that valuation on the house?
A I had a statement before, and I didn't have a statement with me at the time, because we get one every month. And I came as close as I could. But at that time it was like 385-, $380,000. So in my memory of trying to recall the last statement, this is what I came up with.

Q All right.

MR. VARNADO: Judge, that would finish my Direct Examination, and I really could use a two-minute break.

THE COURT: Okay.

(At this time there is a brief break in the deposition.)

THE COURT: Counsel, ready?

MR. HOWE: Yes, sir.

THE COURT: Mr. Howe?

MR. HOWE: Thank you, Your Honor.

(At this time there is a brief break in the hearing.)

CROSS-EXAMINATION

BY MR. HOWE

Q Mr. Gunnells, let me get my notes here. You went to St. Andrews school; is that right? Where had you gone to school?

A That's right, Wappoo Road.

Q And you went to the 9th grade?

A Yes.

Q Did you finish the 9th grade?

A No.

Q So you finished the 8th grade but you didn't finish the 9th grade?

A Right.
Q You audited some courses at Trident; is that right?
A That's right.
Q You didn't get any official credits for any of that?
A No.
Q You haven't worked since 2000?
A No, I've worked after that.
Q Okay. You've been on disability since then?
A Yes.
Q You haven't had a full-time job?
A No.
Q You're allowed to do some partial small things, that kind of thing?
A Right.
Q And essentially you live on your social security?
A That's right.
Q And you receive about $1,138 a month?
A Yes. But it's like a -- I went back and it's like a hundred and something more dollars to that, but Medicare is taken out for that, but the net is $1,138.

Q And when you were living over in the Ponderosa, your house payment was about 448?
A That's about right.
Q So that gave you about $690 a month to live on?
A Okay.
Q All right. In terms of employment, your dad, he worked at the wholesale radio place over on East Bay, didn't he?
A Yeah, he was retired.
Q But his main job, he had been full time over there for 38 years?
A Thirty-eight years, yes.
Q Thirty-eight years, okay. And you mentioned that you and your dad were in business. But you worked at a variety of places in used cars. You worked at Yonco, right?
A That's right.
Q Hoover Chrysler?
A Right.
Q Stokes Honda?
A Yes.
Q Burnside?
A Yes.
Q And y'all had your own place. So that's

one, two, three, four, at least five -- oh, yeah, Burnside Dodge, correct?

A Uh-huh.

Q You worked at all those places?

A I did.

Q All as a used car salesman?

A That's right. Some were new cars.

Q All right. You got power of attorney for your mom and your dad in 2011 from Irvine & Weeks; is that right?

A I'm not sure what year it was, but yes at Irvine & Weeks.

Q Okay. I think, just so I got it straight. Let me make sure I have the record straight, if I can find that I have it. Does this look like a copy of what you got from Irvin & Weeks?

A It does.

Q Okay. And what was the date on that, just so we have it sort of nailed down?

A Looks like 21st of January 2011.

Q Okay. So this was well in advance of your dad's diagnosis or anything like that?

A Yes.

Q Okay. And you had power of attorney for both parents at that time?

A That's right.
Q All right. So when your dad was diagnosed with having his cancer, you were still living in the Ponderosa?
A That's right.
Q And you were getting that 1,138, correct?
A Yes.
Q Paying the 440?
A No, it was more than that because Medicare would -- I had extra help then, so that extra hundred something dollars would come up to where the State was paying my Medicare.
Q Okay.
A So you can add that.
Q All right. So another hundred or so dollars. So you were living on between 7 and $800 a month?
A Right.
Q And it was around this time, or you were helping your parents, according to you, as I understand, with everything?
A With whatever needed to be done, yes, and plus.
Q One of the things you helped to -- I'm

sorry. Go ahead.

A And plus.

Q Okay, and plus. And one of the things you helped them with was in January of 2013, you helped them get a reverse mortgage on the house?

A I made the connection, but they did it on their own.

Q Well, you're one of the witnesses, aren't you?

A I am.

Q And that was -- you got $50,000 out of the equity of the house?

A That's right.

Q And did you discuss that with the girls?

A No.

Q Now --

A It wasn't my job to discuss it. It was Dad and Mom.

Q And in March and April, you moved into your parents' house, of 2013?

A Yes.

Q So that would have been a couple months after this reverse mortgage, correct?

A Sounds right.

Q Okay. And your closing was actually on

June 6th, 2014, on your house, the day before your dad died -- two days maybe?

A Something like that, yeah.

Q And that's where you got to know Ms. Klok, correct?

A Prior to that, yes.

Q Right. And once you sold that house and you were living in Capri, you didn't have anywhere else to go, did you?

A It was all planned before I sold the house.

Q And once you did that, you didn't have anywhere else to go. You didn't have another home to go to, did you?

A No.

Q And your position is that Cathy and Linda just didn't show any love to your momma or your daddy, did they?

A That's right.

Q And that was for like a seven-year period basically before they died?

A That's right.

Q And you begged people for help to try to get them to come help you?

A I wouldn't say beg, but I pleaded.

Q Okay. So you pleaded, and one of those people was Jack Brantley?

A I mentioned to Jack that -- what the situation was and that I could use their help.

Q And you asked them to help you to get them to help you?

A Not directly, no.

MR. HOWE: Hold on a second, Your Honor.

Q And did you also talk to Terry?

A About?

Q The same thing?

A Yes.

Q And Terry, as I understand it, you and Terry and your dad were almost like three brothers, y'all were very close?

A That's right.

Q Okay. And I noticed, too, that in your direct testimony you mentioned that when your parents were talking about this will and about why they were changing things, that one time Mr. Brantley was there?

A Yes.

Q Did you put surveillance cameras in the house?

A Outside the house.

Q Right. And what all did you see?
A Saw the front door. Saw the driveway. Saw the backyard. Saw the back door. That way, in case I left somewhere, Mom knew if somebody come up. If the door bell rings, she could see who's at the door, see who's at the back. She could see them.
Q And you had surveillance at the Ponderosa when you had that?
A That's right.
Q And did you make your bedroom in the living room at some point?
A I did.
Q Now, the closing attorney for you was Ms. Klok; we went over that, right?
A Yes.
Q How many times did your mother see -- go to Klok's office before executing this will?
A I thought it was one to two times, but it was actually one time and talked to her three times. So it was reversed from what I had said before. I thought it was two to three days that we'd seen her, but it was two to three hours that we saw her.
Q I'm going to hand you a copy of your deposition, Your Honor. That's a copy of your

deposition (document tendered to witness).

If you'll turn to page 37. I'm looking at -- let's start at line 9.

A Okay.

Q And I asked you, or you answered, "And she felt comfortable with going to females.

That's what you talked about a little bit earlier, correct?

A Right.

Q Question, "And so how many times did she go? And tell me about that. Did she go there once?"

MS. WIMBERLY: Objection. Mr. Gunnells just corrected his testimony, so this is an improper impeachment. He actually just corrected his testimony on the stand. He said he had read through his deposition and he wanted to correct it. So improper impeachment.

THE COURT: I'm going to allow the question.

BY MR. HOWE

Q "Did she go there, once, twice, three times; do you remember?"

And what was your answer?

A It's what I just told you, that I

thought it was two or three times. But it was actually one time for two to three hours. So I had it reversed.

Q Okay. Let's go to the next page then, and let's look at line 21. And I asked you, "How long did they spend with her?"

What was your answer?

A I put down, "Thirty to 45 minutes."

Q And I said, "Okay. And was that on two or three different occasions?"

What was your answer?

A Well, I said, "That's right."

But I just told you that I had it turned around, reversed.

Q Okay. So it was wrong?

A Right.

Q On this inventory and appraisement, you actually -- so I understand it, you took it home to look at it. I'm going to hand you that (document tendered to Witness). This is what you filled out for the court to talk about your mother's belongings?

A Right.

Q So you weren't in a rush. You filled that out and you had plenty of time to read it and

look at it?

A No. This -- I'm sorry. This was done there at the office. My mistake.

Q You didn't go home and bring it back?

A No. My mistake.

Q So now you didn't go home.

A No. My mistake.

Q All right. And there's a --

A That's why I didn't have the exact mortgage amount on there, because I was at the office.

Q This Section F, you're supposed to put down personal items, aren't you?

A As far as I'm concerned, like I told you before, there's the -- the will was in my name. I hadn't been served yet. So everything that was associated with this was in my name. So I figured it wasn't Mom's at all anymore, it was mine.

Q Okay. I understand your legal interpretation. The question says -- it's a form that's by The Court, isn't it?

A Yes.

Q Does it ask for Glenn Gunnells' interpretation of what he's supposed to be doing?

A I did what I did.

Q Okay. And you said, you put in that blank there were no personal items, didn't you?

A There wasn't.

Q Let's look at your deposition on page 51. Look at line 18. My question was, "All right. How about personal items around the house? What all did she have?"

What was your answer? Are you with me?

A Yeah, I am.

Q Okay, okay. Sorry.

A This was second time around after the -- this deposition, this was -- my answer was before, with this, none. This is after the definition (sic). How am I trying to say this? This is afterwards when I found out I was doing things wrong as far as when I first filled out this inventory here.

Q Well, I'm not asking about inventory here. I just said how many -- I said, "How about personal items around the house. What did she have?"

What was your answer?

A It's showing furniture, clothes.

Q Just read your answer, please. I'm sorry.

A "There's so many, I mean it would take a day to list everything. I mean, furniture, clothes."

Q Right. "There's so many, I mean, it would take a day to list everything. I mean, furniture, clothes." Correct?

A That's right.

Q And in fact, when we asked for a list of non-probate assets later, you did list a whole bunch of furniture and stuff, didn't you?

A I did.

Q And you also said, well, it's been so long now I can't remember?

A Well, it's going back to the same deal again here, to where my first one was done before this deposition was ever served, before I was served. So I was going back to where I thought everything was in my name. So it was mine and there was nothing there as far as in her name. So this is totally getting turned around back and forth here from one to another.

Q You got me turned around, you're talking used-car-ese.

A You're turning me turned around, too.

MR. VARNADO: Judge?

BY MR. HOWE

Q You also put there were no bank accounts on that personal -- on the inventory and appraisement, didn't you?

A There wasn't at that time.

Q And why wasn't there at that time?

A Because it was in my name.

Q You had already closed it out and put it in your name?

A That's right.

Q Okay. And did you -- you talked about that there was something about the joint tenancy. Now, did you bring any of those documents to show to The Court that what you're telling is the truth about that account?

A No. I tell the truth. I wasn't told to bring any documents.

Q Okay. They were your accounts; you got control over them, right?

A That's right.

Q You certainly could have brought them?

A Why?

Q To show the Court that what you're saying is the truth?

A Well, I didn't know we needed that.

Q You were served with a lawsuit about this will in August, weren't you?
A Okay.
Q And -- well, let's go back for a second. You had a yard sale of a number of the personal items, didn't you?
A Yes.
Q You sold some silver, a set of silver?
A Not in the yard sale.
Q Okay. You sold that, too, didn't you?
A Yes.
Q Put all that straight in your personal account, didn't you?
A Yes.
Q And there were creditors' claims being filed on the estate all through this time, weren't there, credit card bills?
A I received a couple of them.
Q Six?
A Not at the time.
Q Well, all right. You want to go over and look at them?
MS. WIMBERLY: Objection, Your Honor. This is Déjà Vu. We have been through these creditor claims already, gone through the

administration of the estate. We are getting close to that time to wrap up.

THE COURT: Overruled. I'll allow the question.

BY MR. HOWE

Q There were a number of creditor's claims, were there not?

A Yes.

Q For thousands of dollars?

A Yes. They all got paid, too.

Q In 2015, correct?

A They got paid.

Q In 2015; is that correct?

A They got paid, yes.

Q In 2015; is that correct?

A As far as I know, yes.

Q Well, you paid them, didn't you?

A I did, through the company, the attorneys.

Q And so in August of 2013 -- if I got my dates -- I'm starting -- my head is swimming a little bit. It's Rob's fault (laughing). You got served with a lawsuit that Cathy had drawn up?

A In 2013?

Q Yeah. And after your mom -- oh, 2014.

Thank you. After your mom passed away. She passed away February 2014.

A Yes.

Q See, I was wrong.

A Yes.

Q And in August that year you received court suit papers, legal papers saying that this will was being challenged?

A Right.

Q And the challenge was essentially that there had been something wrong about the will, that your mom signed at Suzanne Klok's office, correct?

A Right.

Q And you knew if that was successful you weren't going to get all the money anymore, didn't you?

A Oh, this was done before the lawsuit come to me.

Q Right. But I'm getting ready -- but -- I'm not talking about -- you're anticipating something that's not there.

You knew that if you -- if that lawsuit was successful that the money would not all go to you, didn't you?

A Yes.

Q And then it was some months later you sold the house, didn't you?

A Yes.

Q And you put it all in your personal account, didn't you?

A Some of it. Most of it.

Q Like you had $140,000 net?

A $20,000 of that went to pay off the credit cards.

Q But those weren't paid off until months after?

A Right, but they were paid.

Q Okay. At that time, that money went in -- how much -- when that check came, what account did it go into?

A It went into mine and then 10,000 was transferred into the estate.

Q Okay.

A And if any money needed to be handed out more, all I had to do was transfer it over.

Q How long was your dad in ICU before he passed away, or in the hospital?

A Two weeks.

Q I want to hand you what's been marked as Petitioner's Exhibit No. 4. Can you tell me what

that is?

A Yeah.

Q What is it?

A It says I have power of attorney and Dad wasn't able to handle things. I had asked Mom to be weary of things that Linda or Cathy brought to them, to please let me look at it first. Because seeing how they are as far as sneaky, so to speak, I wanted to look at them to make sure everything was okay. So I let her know that.

Q And so that was something you sent to Linda?

A Yes.

Q So you had her address, you knew how to contact her, correct?

A Yes.

Q You had her mailing address, knew how to write her a letter?

A Yes.

Q And your position is that you reached out to them directly and said, I could use some help with Mom, didn't you?

A Yes.

Q And you reached out to Uncle Jack and said, I sure could use some help from the girls?

A I could use help, yes.
Q And to Uncle Terry?
A Yes.
Q And how about these other ladies you talked about, Aunt Mildred?
A Aunt Mildred is 96 years old.
Q Right. And did you reach out to her?
A No.
Q What about Grace? How about Grace, did you talk to her about it?
A Yeah, Grace came over.
Q Yeah. Did you tell her, say, boy, I sure could use some help from these girls?
A Yeah. And she came.
Q Do you have any letters or emails that you wrote to Uncle Jack saying, boy, I sure could use some help from these girls?
A I don't think so.
Q How about to Uncle Terry?
A I don't think so.
Q How about Grace?
A No.
Q How about Cathy?
A No.
Q How about to Linda?

A Just this.
Q Just that?
A As far as I know.
Q It says, don't do nothing unless I look at it, basically?
A Yeah.
Q You do have -- you did put into evidence, at least your lawyer put into evidence and you did bring a birthday card.
A What about this?
Q You did bring that and y'all put that into evidence, right?
A Yeah.
Q And it says basically that Cathy is a phone call away and she wishes she could see her momma, doesn't it?
A Okay.
MR. HOWE: That's all I have.
MS. WIMBERLY: Your Honor, I'm going to take over because Rob's not feeling so well.
THE COURT: Yeah, he doesn't look so good.
MR. VARNADO: Do you mind if I don't stand over you? Probably more kosher and gets done faster.

MS. WIMBERLY: Just very briefly.

THE COURT: Let me just make sure Mr. Howe's fine.

MR. HOWE: I'm sorry. I missed it.

THE COURT: She wants to substitute for Counsel.

MS. WIMBERLY: Rob's not feeling very well.

MR. VARNADO: I'm going to tap out on this.

MR. HOWE: Oh, sure.

MR. VARNADO: I won't touch you on the way.

REDIRECT EXAMINATION

BY MS. WIMBERLY

Q Mr. Gunnells, Mr. Howe just asked you about whether or not you reached out to family members and friends to ask for help. Do you remember him asking you that right now?

A Yes.

Q How did you typically reach out to family members and friends, in general, just to talk and discuss things that were going on with your parents?

A I talked with -- over the phone with

Jack and Terry.

Q Was that your main method of communication?

A Yes. I'm not a big text deal or computer. I'm still illiterate on the computer.

Q All right. And do you ever remember ever writing Cathy or Linda a letter asking for help?

A No, I don't.

MS. WIMBERLY: Well, at this time, Your Honor, I'm going to mark for identification a letter that was actually produced to us by Ms. Harkness.

(Respondent's Exhibit No. 9 is marked for identification.)

BY MS. WIMBERLY

Q Mr. Gunnells, if you don't mind just looking over. It's actually two pages, the first page is a letter, the second page is an envelope with a date. And once you're done looking at the letter, just let me know.

A Yes, I wrote that.

Q And in that letter, you actually ask both of your sisters, or you actually ask Cathy for help; is that correct?

A That's right.

Q What kind of help were you asking for?
A To relieve some of the pressure of work loads that I was doing. I was taking care of the house. To take care of Mom in little ways where I can have a break. Just basically take care of what I've been doing to where I can have some time.
Q So would you like to change your answer to that question? So did you ever reach out to your sisters to ask for help?
A Yes.
Q Thank you.
MS. WIMBERLY: Just a moment. No further questions, Your Honor.
THE COURT: Thank you. Mr. Howe?
MS. WIMBERLY: That's all, Your Honor.
THE COURT: Mr. Howe?

RECROSS EXAMINATION

BY MR. HOWE
Q This is a letter asking for money?
A Yes, it was, because they still owed the parents money and weren't paying them.
MR. HOWE: That's all the questions I have, Your Honor.
THE COURT: Thank you. You may step down. Thank you.

THE WITNESS: Yes, sir.

(At this time, the witness, Glenn Gunnells, is excused from the witness stand.)

MR. HOWE: Looks like at a bewitching hour. I don't anticipate having any rebuttal, but if I do it won't be more than five or ten minutes, so...

THE COURT: Okay. Anything else for tomorrow?

MS. WIMBERLY: No, Your Honor. I think we rest.

THE COURT: Okay. Y'all are up.

MR. VARNADO: I'll renew my motion, but respectfully -- closing arguments.

THE COURT: Okay. You want to do closing arguments in the morning or do you want to submit proposed order, how would you like to do it?

MR. VARNADO: I would like to submit a proposed order.

MR. HOWE: Whichever way you'd prefer, Judge.

THE COURT: Either way. I will be here, so let me know what y'all --

MR. HOWE: I'd like to do a little closing argument. It won't be long. I promise.

THE COURT: Okay. We'll do that at 9 o'clock in the morning.

MR. VARNADO: Your Honor, may I be excused from that? I double booked. I thought we'd be done in two days.

THE COURT: Okay.

MS. WIMBERLY: Same court room?

THE COURT: Yes, should be same courtroom.

MR. VARNADO: If we do a proposed order, if there is a closing argument or a proposed order, 30 days, is that your normal?

MR. HOWE: That's fine with me, I certainly can't be quicker than a month.

THE COURT: That's fine with me. Whatever y'all need.

(Whereupon, the hearing is concluded at 2:20 p.m.)

CERTIFICATE

I HEREBY CERTIFY that the above-referenced hearing was taken by me and that this transcript is a true record of the testimony given.

Judy W. Galuppo
Court Reporter/Notary Public
Commission Expires 3/18/2023

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STATE OF SOUTH CAROLINA)PROBATE COURT
COUNTY OF CHARLESTON)CASE NO.: 2014-ES-10-0202
IN RE: THE ESTATE OF
HELEN B. GUNNELLS

VOLUME III

BEFORE JUDGE IRVIN G. CONDON

Date Taken: Thursday, March, 3rd, 2016
Time Taken: 9:00 A.M.
Location: Judicial Center
100 Broad Street, 3rd Floor,
Courtroom 3D
Charleston, South Carolina 29401

Reported By: Judy W. Galuppo, Court Reporter

Job No.: 238385

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INDEX TO EXAMINATION

	Page
Glenn Gunnells Recalled by Judge Condon	05
Glenn Gunnells Excused from Stand	08
Belinda Davis Recalled by Mr. Howe	09
Redirect Examination by Mr. Howe	09
Belinda Davis Excused from Stand	14
Glenn Gunnells Recalled to Stand by Ms. Wimberly	14
Redirect Examination by Ms. Wimberly	14
Glenn Gunnells Excused from Stand	18
Closing Argument by Mr. Howe	19
Closing Argument by Ms. Wimberly	49
Reporter's Certificate	75

INDEX TO EXHIBITS

Petitioner(s)

No.	Description	Page
	No Exhibits Marked or Offered	

Defendant(s)

No.	Description	Page
	No Exhibits Marked or Offered	

THE COURT: Counsel, ready to proceed?

MR. HOWE: Ready, Your Honor.

THE COURT: Okay. I know there were two things; one, that document that was attached to the, I guess, the video deposition, I'm not going to allow that in. Under the rules, I don't believe it comes in.

MS. WIMBERLY: Thank you, Your Honor.

MR. HOWE: Subject to my objection.

THE COURT: I understand. And then I had a few questions that I had written down that I didn't get a chance to ask Mr. Gunnells; I don't know if you have any objection to that.

MR. HOWE: No, Your Honor.

MS. WIMBERLY: No objection, Your Honor.

THE COURT: All right. Mr. Gunnells, please come forward.

(At this time, the witness, Glenn Gunnells, is recalled by The Court to the witness stand.)

THE COURT: You're still will be under oath.

Good morning, how are you doing?

THE WITNESS: Well, sir. Thank you.

THE COURT: I know they were talking yesterday about the joint account.

THE WITNESS: Right.

THE COURT: And I'm not even sure what the value in that account was. I know you filled out what, a non-probate document, but I don't think that was made a part of the exhibits. But when the account was changed, do you know how much money was in the account?

THE WITNESS: About $8,000.

THE COURT: And then when she passed?

THE WITNESS: 24, I believe.

THE COURT: Okay. And I guess the question now is, why was that changed to a joint account? I mean, you had the power of attorney.

THE WITNESS: My father had deceased. My father's name was on it and my mother's name was on it, so we went to we close it out and to have his name taken off and me put on it as a joint.

THE COURT: Okay. But you also at that time, I guess, had power of attorney?

THE WITNESS: Yes, sir.

THE COURT: And you could have just added yourself as power of attorney, or did you think about doing that?

THE WITNESS: I didn't.

THE COURT: Didn't, okay.

THE WITNESS: This was all new to me, and I just...

THE COURT: Yeah, I understand.

And then I know your mother changed her will. Do you know why your father didn't change his will and, I guess, disinherit your sisters and name you as personal representative?

THE WITNESS: I'm sorry. Bring that to me one more time?

THE COURT: I guess, first of all, why he didn't disinherit your sisters as the alternate takers?

THE WITNESS: Dad was really down from the chemo and everything, and Mom had talked to him about changing the will while he was alive.

MR. HOWE: Objection.

THE COURT: Okay.

MR. HOWE: That's total hearsay. Objection.

THE COURT: Okay.

Let me make sure I'm clear that the joint account was changed I guess sometime in the summer after your father had passed?

THE WITNESS: Probably around March.

THE COURT: Because he had passed what,

in February?

THE WITNESS: Oh, I'm sorry. I was thinking about my mother. Yeah, he passed in June, so it would have probably been about July or August.

THE COURT: August, okay. I'm just trying to get my timeline squared away.

That's all I have. I've asked you some additional questions, I'm going to ask counsel if they have any follow-up questions to what I've asked.

MS. WIMBERLY: I do not, Your Honor.

THE COURT: Okay.

MR. HOWE: I don't think I have any, Your Honor.

THE COURT: All right. Thank you. You may step down. Thank you, Mr. Gunnells.

THE WITNESS: Yes, sir.

(At this time, the witness, Glenn Gunnells, is excused from the witness stand.)

THE COURT: Was there any other, I guess, was there a reply --

MR. HOWE: Just very briefly, Your Honor.

THE COURT: Okay. Ms. Wimberly, do you have any objection?

MS. WIMBERLY: No objection, Your Honor.

MR. HOWE: We recall Ms. Belinda Davis, Your Honor.

(At this time, the witness, Belinda Davis, is recalled to the witness stand.)

THE COURT: Thank you. You're still under oath. And again, just state your full name for the record.

THE WITNESS: Belinda Davis.

THE COURT: Okay. Answer questions of Counsel.

THE WITNESS: Yes, sir.

REDIRECT EXAMINATION

BY MR. HOWE

Q Ms. Davis, there were a few things that came up in Mr. Gunnells' testimony that we've discussed and I wanted to clarify for His Honor in terms of your perspective on them, so just go down the list real quick, okay?

A Thank you.

Q First of all, there was an incident at the funeral home after your dad died involving, I guess, him using the power of attorney or something. But what can you tell us? What do you remember about that?

A It was referencing him waving the power of attorney and making sure that the personnel at the funeral home was aware that he was in control.

Q What was the nature? Like give us a little background on how it came up that he felt he had to do it?

A How he...?

Q Why he was doing that? What was his --

A Oh, to make a point that we had -- that Cathy and I did not have any say-so in anything. This was during the planning stages.

Q Okay.

A This was not during the funeral itself. And with reference to the pictures, he only wanted pictures of daddy and I believe our cousin Terry in those pictures, not representing pictures of he and mom or any of the children or grandchildren or other friends.

Q Okay. And y'all had brought some of the other pictures?

A Correct.

Q And the Terry that you're talking about is Terry Gunnells?

A Correct.

Q He's the Reverend that was like a

brotherhood friend with your dad, they were all --

A He's a cousin.

Q Cousin. I'm sorry.

A That's okay.

Q And again the dispute was, you had -- you guys had pictures of the whole family, he just wanted certain pictures?

A Yes. He was very controlling with Dad's and Mom's arrangements.

Q Now, he also made a point that you often went to your parents' house in an altered state of mind, I guess we'll say, intoxicated in some way. What can you tell His Honor about that?

A I have done drugs with different people and with Glenn many times. I never took it into my parents' house.

Q And you also --

A Can I add something to that?

Q Okay, sure.

A To stop smoking, drinking, I went through Chantix, which is a prescribed medication, which was originally for alcohol but was given to me for smoking. And so that was over about a two-and-a-half month period of time many years ago that I took that.

Q Okay. Now, Mr. Gunnells also talked about a time that you came by the house on Capri, and this was after -- if my thoughts are correct, after your mother passed away and you came by to look at some items to see whether you and/or Cathy might want some of those items. So tell me a little bit about what you remember about that visit from your perspective?

A From my perspective, that was not a visit that would encompass me going upstairs or outside. He and I never went outside to look at any goods at all. I walked into the house. It was very strange. There were curtains up on the open doorways of the living room to where he said, you don't go in there, you don't go in the little office here. I continued to walk to the kitchen, and he said, here's your stuff. And it was items like cheap vases that were from -- if somebody sent you some flowers. Very incidental junk. And I asked him about the other goods, and he said he was going to keep them all. That was very insulting to me and I left.

Q Okay. And the email that has been marked Petitioner's No. 4 --

A Yes, sir.

Q -- Mr. Gunnells sort of said that was sort of a generalized email just saying -- to let y'all know he had the power of attorney. But you already knew he had the power of attorney, didn't you?

A Yes.

Q What was that email about, from your perspective?

A Control.

Q Okay.

A Power.

Q And what incident led to it?

A Me going to Bon Secours Hospital when Daddy was given chemotherapy and I was sitting with him, and I wanted to -- I asked Dad who was -- I wanted to check to see who was allowed and approved to receive information about his health.

So I went up to the front where the records were kept, and it was only Glenn and Mom. I had me added because I felt sure it was all still there, you know, that we should be -- we're still children of, you know, Dad and Mom. So to me this just represents another manipulation.

MR. HOWE: That's all the questions I have. Thank you.

THE COURT: Thank you, Ms. Davis.
THE WITNESS: Thank you, sir.
THE COURT: Wait a second.
Ms. Wimberly, any questions for this witness?
MS. WIMBERLY: No, Your Honor. But I would like to briefly recall Mr. Gunnells as rebuttal to that statement for just quick minute.
THE COURT: Okay. You may step down. Thank you.
THE WITNESS: Thank you.
(At this time, the witness, Belinda Davis, is excused from the witness stand.)
THE COURT: Take your time there.
THE WITNESS: Yes, sir.
THE COURT: If you can answer questions, Mr. Gunnells, of Ms. Wimberly.
(At this time, the witness, Glenn Gunnells, is recalled to the witness stand.)

REDIRECT EXAMINATION

BY MS. WIMBERLY

Q Mr. Gunnells, you just heard what your sister Belinda Davis had to say about several incidents that you had with her. What, if anything, do you have to say about what she just testified to?

A I called Linda up to come and look

through some stuff at the house. And we made an appointment and she came over I believe it was a Sunday. And we walked upstairs and looked. And I told her she could have just about everything upstairs she wanted, Mom's clothes. There was jewelry on the dresser drawer. And I left her up there.

So I came downstairs. And then when she was done she came downstairs. And sure there was a curtain closed, because that curtain was my bedroom. I was in the living room, I was in there. And on the right side was the office, and the door was closed. And I did not say anything about going in there.

So we proceeded down the hallway, and all of a sudden she grabs a picture off the wall and just starts putting it over to her stuff. And I said, hold on, wait a minute, I said, don't just come in here and start grabbing things. I said, you know, we talk about things first, whether this is yours or what. But anyway, I let her have it.

So we did walk up into the dining room. And yes, there was a lot of stuff that was from the dining room, crystals and everything sitting on the dining room table. And she went through that.

There was pictures of Mom there, and I let her have that, too. And then we went into the den and automatically she ran to the couch and pulled from underneath the cushions this Mexican, I don't know what you call it, some kind of blanket that she got that she gave to Mom and Dad and immediately just started taking that off. And I said, I remember that. Go ahead.

So yes, we did walk outside because she asked if we had any garden tools we wanted to get rid of. So we walked out to the shed and I showed her rakes, and you know, excess of tools that we had and a bench that she wanted.

So anyway, after that she said, well, this little table here, you know, was promised to me through Mom. And I said, okay, you can have that, and I carried it out for her. So we made arrangements to where she was going to get some people together and come back two days later at 11 o'clock, which I think was a Tuesday. She never showed up.

So let me go back a minute. She also said that she was representing Cathy while she was there, too, on the things there. So she never showed up at 11 o'clock. I ended up calling her

about 11:30, and she was there at the house. And I said, well, are you coming to get the stuff, or what's going on? And she said, no. She said, none of the stuff is worth it to me, just forget about it. I said, you and Cathy don't want none of this stuff? She said, no, we're done. So I figured everything was said and done.

Q Okay. And with regards to you living in the living room, why were you living in the living room?

A Well, my little dog Casey has seizures, and I've got to take him outside, and you don't know when he's going to have it, it could be 1 o'clock the morning, 4 o'clock in the morning. And it's access to go out to the backyard, because after a seizure he throws up and he poops and he's not in a state of mind, you know, to control himself. And plus, I had complete access of airway to hear my mom if she needed anything.

Q With regards to the pictures that Ms. Davis just talked about at your mother's funeral, what, if anything, do you have to say about that?

A Well, like I said yesterday, Linda came over and picked clothes out for Mom's funeral. So

she wanted to get some pictures also. So we went down in the den and she got the big pictures and all the frames with Mom and Dad and whatever she wanted to bring to the funeral home. So we got that together, loaded it in the car, and she took off with them. So I don't know what's going on about the funeral home.

MS. WIMBERLY: Thank you. That's all the questions I have. Thank you, Mr. Gunnells.

RECROSS EXAMINATION

BY MR. HOWE

Q You mentioned that there was jewelry and stuff. What type of jewelry did your mom have?

A All types of necklaces and pins and rings; most of it was cosmetic.

Q And you never put any of that on the distribution either, did you?

A No.

THE COURT: You may step down. Thank you.

(At this time, the witness, Glenn Gunnells, is excused from the witness stand.)

THE COURT: Anything else, Counsel?

MR. HOWE: No.

MS. WIMBERLY: No.

THE COURT: Thank you. You want to do closing arguments or do you want to submit proposed orders, whatever is --

MR. HOWE: I'd like to do a closing argument.

THE COURT: Okay.

MR. HOWE: And let me just say, Judge, the reason is, I guess, before I start, I don't do a lot of probate stuff. These are messy situations. I still feel like I'm getting, as I say, I'm drinking from a fire hose when it comes to the facts. And I think about you watching this for the first time. I've been dealing with it for a year and I still have a hard time keeping it straight. So I feel I need to for my clients to sort of give it our best shot to make sure we sort of get down the list. So with that, I'll start.

THE COURT: Okay.

- - -

CLOSING ARGUMENT BY MR. HOWE

- - -

MR. HOWE: May it please the Court.

What I'd like to do first is, we've talked, and I'll spare you the argument on the law, too much, but it is a case of undue influence. We

have to show that what happened was not what Ms. Gunnells wanted to happen. And obviously the first and main poor witness is Helen Gunnells (ph). And while the statement may not come in, her testimony comes in. And her testimony, not the statement, her testimony as part of the deposition was that Helen had told her, having been refreshed by the statement, is still good evidence, that Helen said, I did something I didn't want to do. I didn't want to sign the will and basically Glenn made me do it. You'll have to go listen to the exact wording or look at the transcript, but that's the essence of that. And that in and of itself proves the case, I mean in terms of is there enough evidence.

And I want you to think for a second about the setting in which that conversation came up in. Of all the things that happened in the case, when she talked to her brother Jack on the phone, Glenn was always around. The other times that she talked to Helen Carroll, I mean, Glenn was always around.

She -- her best friend of like 40 years, they used to go on church trips together. Ms. Carroll said that when her husband died she would go over to her Helen's house and hang out all

day. Those are bosom buddies.

If you've got a bad family situation and you're distraught and you're concerned and you vent, who do you vent to? You vent to your best friend. That's what best friends are for. Best friends are the people we go and hang our heads a little bit and say, oh, my God, I'm having trouble with Brother X, Sister Y. Okay? And the context of this outcry is that Helen Carroll drops by, drives herself, unannounced and happens to walk in when Glenn's not around. And they start talking, and Helen Gunnells says, I just -- man, I did something terrible, I had to do this, you know. And as soon as Glenn comes back in she clams up. That is just compelling testimony. That is powerful stuff. And you saw Ms. Gunnells, she's a nice lady. And she said she quit going after that --

THE COURT: You mean Ms. Carroll.

MR. HOWE: Ms. Carroll. I'm sorry. Too many Helens, too many Gunnells. Sorry. And she quit going after that because it was cold and it was unfriendly when Glenn was around.

Now, Glenn has no problem, interestingly, speaking for Ms. Carroll. He said she quit coming because she had health problems and

she couldn't drive. I think you remember his testimony. Okay? Well, that's not what Helen Carroll says. Helen says, I drove myself that day. I went there and they were so cold and so unfriendly I just decided to stay away from them. Okay? Helen Carroll never said she had any problems getting over there. Glenn does. So that's really the point.

And like all lawyers, I've already gotten ahead of myself a little bit.

What I want to do first, really, is I want to catch you up, but I want you to keep those things in mind. I want to catch you up a little bit on the deposition of Dr. Chanson which has been put into evidence, but if you've read it, it's hard to read. And I'll admit I didn't do my best job on keeping that straight. But there are some nuggets in it that are, I think, extremely important to The Court. I have it highlighted so I don't mess it up.

MS. WIMBERLY: I'd like to see it, if you don't mind?

MR. HOWE: Yeah.

Dr. Chanson, as you remember, was the doctor that Belinda helped Ms. Gunnells get to after she left Ms. Davis, Segal (ph) Davis, or something. Okay? And Dr. Chanson says that Ms. Gunnells had a

sound mind. We don't have any problem with that. She has a sound mind, she wrote the letter that you looked at. But when it comes to the date of the will, of the execution of the will, July 3rd, 2013, Ms. Gunnells not only went to see Ms. Klok, she went to see Dr. Chanson, same day, and Dr. Chanson says in there that when she checks for us it was around 11 o'clock. Okay? And the words that Dr. Chanson uses to describe Ms. Gunnells on that day is, she was distraught, she was visibly upset and she was crying. And this number over here circled 35, that's the page number of the deposition you can find it at. That was the doctor's assessment.

And when I asked the doctor, I said, listen, with all that, was she emotionally stable to make an important legal decision? And she says she has no opinion on that. That's on page 38.

So if they say to you, oh, the doctor said she was fine. When it comes to undue influence issue, the doctor had no opinion and says so under oath in her deposition on page 38.

The visit was around 11:15. And then I went through some things about Glenn's care of his mother because -- and this goes to the point they made that Glenn was this fabulous caregiver, always

concerned about his mom, didn't miss a beat, okay?

If you will look at Exhibit 2, it's attached and I made a copy, just so I don't have to find it, but on page 2 of that exhibit, Ms. Gunnells had had a fall and she was taken to the emergency room, and I don't remember the date right off, but in January, early, I think. And at the bottom of that page, Mr. Gunnells is instructed in the emergency room to take his mother to Dr. Chanson, not one of these general, hey, follow up with your provider. Take this lady to Chanson tomorrow. And we asked Dr. Chanson, did that ever happen. And on page 64 she checks her records and it was never done. This is the world champion caregiver.

Another thing that Chanson said, it's stunning, they're discussing one time, you know, maybe the mom should be coming in a little bit more. And Glenn said, you know, "I can't do that. Because of my ongoing work schedule, I can't get my mother here like I'd like to." This is the guy who's been on disability for almost 15 years at that point, and his ongoing work schedule's got him so busy he can't make the visits. That's what he told the doctor. And they're bringing up -- they're obviously talking about the fact -- there's no reason for that to come

up, except maybe, you know, why didn't she come in a little earlier? What's going on? Oh, I've been working so hard, you know, I've just got so many things to juggle.

There were three particular medications that I want to point out. On page -- it's really from pages 58 to 61, you will see that she was prescribed potassium. And she talks about the reasons for it and what happens -- Dr. Howe here, so be careful -- when you're taking diuretics and things like Lasix and those -- my father-in-law had this. But anyway, you've got to have potassium, it's an electrolyte and it keep your heart going and you can have all kind of heart problems if you don't do it.

And on January 7th she was prescribed potassium, and that prescription was never filled. And that's noted when he takes her back in February, a month later, and she leaves the doctor's office in an ambulance to go to the hospital to die. Potassium never filled, okay?

There's another drug called Tiazac, and I'm not even sure what that is, but it was prescribed, okay? And the doctor's testimony on pages 67 to 68 was that the drug was prescribed, and

then when I hand her the pharmacy records she saw that it was last filled, a 90-day supply, one a day, on July 23rd, 2013. And she's way past 90 days. And the records show that it was never refilled. It had two or three refills, but she got the initial one, but it was never refilled. So she got 90 to cover 180 days worth.

Then one of the most peculiar things, it is a little hard to read, so I'm going to put my description on it. But one of the problems she had and that you'll see is, there are diagnosis of senile dementia. She's older. She's having trouble. And one of the drugs that's given to help with this senile dementia is a drug called Remeron. It's also got a second name, I can't remember right now, but Remeron is the one that comes up quite a bit. And there's a number of visits in December and little earlier where she says, well, go try the Remeron. And then they come back. And she says, are you taking the Remeron? Well, she doesn't -- there seems to be confusion, she says, about the Remeron, okay? Whether she's really getting the Remeron or not.

So she actually says that she -- in one of her notes she says, I had to counsel them. And I

said, this Remeron's really important now. And this would be on December 16th, if you look at page 45. And the reason you can tell that it got to be sort of more of an issue is that on December 18th she actually has her office call and saying, did you get it? Are you giving it to her yet? As a follow-up. Because she's supposed to have been taking it before. They come in, well, you know, we don't have the Remeron yet, okay? And it appears, as we progress, that the reason Glenn gives is I've been having trouble getting it from the pharmacy.

Script's not going through? Well, no, I don't think we've gotten it. Okay? And the reason we know that is that on January 2nd, you'll see this on page 53, he comes in and she says, is she getting the Remeron? Oh, I still haven't been able to get those pharmacies to get it, or something. And she's frustrated so she hand writes out the prescription. In a day when everything is computerized and says, well, if there's a problem, here's this. Because he's still making this excuse that he's having a hard time. Go check the records. He, frankly, already picked it up in December. He picked it up the week before. He's still giving her the excuse that the pharmacy won't get it. I don't know why he

has to make that stuff up. But the records are there, and the records show that what he's telling her, it's just flat not correct. And it's about a really important drug to keep his momma's mind working, and the potassium is to keep her heart working, okay?

So from our standpoint, Dr. Chanson is of no value to them when it comes to whether or not there was undue influence because she says, I have no opinion about that. I have no opinion about whether she was emotionally stable enough to make a decision on that day. All I know is, she was distraught, visibly upset and crying in my office for 45 minutes.

But when you go down this other list, we were able to discover that when Glenn's supposed to take her to the doctor after a fall in the hospital, he doesn't do it. He says he's busy because of his work schedule. And there's three drugs that she's prescribed, but he has not followed up on that.

So keeping focused, it's not easy. So that's Dr. Chanson.

So now we're going to go -- what is our case? First and foremost, obviously, our case is Helen Carroll. And as I've said, we believe that

her testimony -- and I sort of put -- there's the independent witnesses down here, there's the stakeholders over on this side. So it gives you an idea who's the...

Helen Carroll's a good friend, I've described that situation: Bosom buddy, compelling testimony.

The next witness is Jack Brantley. And Jack Brantley says a number of things that are important. He says the girls had a good relationship with the parents. He was extremely close with his sister Helen, that he noticed a remarkable difference in her during the time after Glenn moved in; so much so that he mentioned it to his wife; so much so that when Cathy said, I've been to DSS and I'm concerned, he says, I'll talk to them, too. That family member doesn't say, Cathy, what on earth are you doing? DSS? Are you crazy? And says, oh, no, here's my number, tell them to call me at any time. I'm concerned, too. I talked to her yesterday and I'm still concerned, and I'd love to be available to talk to her. You don't do that to your sister unless you're very concerned about her, okay?

Glenn says that he asked Mr. Brantley,

help me get -- help with his sisters. I asked him, I said, can you get me some help from the girls? Jack Brantley says, no, that didn't happen. Never happened. He said, in fact, when Dad went in the hospital and we were talking about what would happen to the mom, he said, I mentioned, you know, the girls would be there, they'll be available. He said, no, that'll never happen. That was a year before Dad died.

Mr. Brantley is I guess about as trustworthy and model of a witness as the Court could hope to get. He's been a lieutenant colonel in the services. He's been a city administrator for 20-something years. He remains, even in his 80's, on the election board and has to run back when there's a trial. How do you get a nicer guy? And he comes over here from Georgia to help set the record straight in this case. And in doing so, he says, what Glenn says is not correct.

He says Cathy and Linda had good relationships. I wrote these emails, and it shows that at the time he was concerned, ready to go to DSS and go to bat -- not for Cathy, for his sister. It's not a will dispute at time. This was concern about his sister who wasn't herself anymore while

living with Glenn and under his control.

Cathy and Belinda have testified. Now obviously as stakeholders, they're, you know, I mean, use your common sense and credibility, there are different issues with them. But these two, they don't have the -- no stake in the game, just love for a best friend and a dear sister.

When you come to them, Cathy says, I did a lot of stuff for Mom and Dad. What kind of things? Cleaned the house, cleaned up the rooms, took my mom shopping, took her to the doctors. What doctors did you go to? Oh, Dr. Poletti, this doctor, that doctor. Knows all the names. Knows where they went. You know, she did it. Okay?

Glenn, however, says nobody did anything for seven years with me. Okay? And that's one of the reasons I want to give the closing is, I want to remind you, he doesn't say all this just happened.

The girls say, the girls say once -- we were all doing fine, Dad gets sick with the cancer, things start going back and forth a little bit more and goes downhill. Glenn says, oh, no, for seven years I was the only person that did anything.

Cathy obviously is the workhorse because she's here. She's a little closer. Belinda has

some relatives in Hawaii, there's a new baby, grandmother goes over to help take care of the baby. That's what people do. Lives are busy and you have to make some choices sometimes.

In many ways one of the most telling things in terms of whether they were interested in their mother, whether they were reaching out, there's sort of two examples. One was a little rough around the edges, and that's Belinda being at the front door and saying, my God, I still can't see her? This is crazy. And maybe not with the best manners but certainly with the best heart, she says, I just want to see my mom. Okay? That's -- what you see there is frustration with not being able to see her.

Glenn says, no one ever reached out. I mean, please, Judge, go back and read this card, this birthday card that Cathy writes to her mom in October. It says, I miss my old mom. Don't you want to go shopping at Belk's like we used to? Call me sometime. That's not someone who's turning their back on their mother.

What about the fact that, in a more formal sense, these girls go down to the Probate Court to find out what they can do to get access to

their mother. Cathy goes to Legal Aid. They both go to DSS. Okay? And they both see a lawyer. What do we do? What do we do? Those aren't steps of people who are disinterested, as Glenn says. Those are steps of people who are desperate and very interested. As my mom used to say, "It's not what you say, it's what you do."

And we know, one of the reasons, and I think this is important when you're looking at the evidence in a whole, we've done, I'll say, a good job. We've made efforts to show that when we say certain things happened, like there was contact with DSS, we brought in witnesses to back that up so that it's not, well, I just said so and I say I tell the truth. And what's important about Jack Brantley's email is, he says, have DSS call me, here's my number.

So clearly there's talk at the time about DSS, and concern, if you can get that point. That's not just Cathy saying, hey, I went to DSS. We've got the cards, too. But it is -- this was an issue, we were going out, we were trying to get help. So what we see is a situation where these girls were kept away from their mother and that Glenn was controlling and that Helen lost her old

self. And what I would point out to you one more time is this is the same experience that her best friend had and the same experience, not keeping away as much, but the difference in the lady that her closest living relative had with her. So what these people say is entirely consistent with what they say.

Let's look at their case for a minute. There's a doctor named Chanson, and that doctor has no opinion about the critical issue in this case. The issue is not whether she had a sound mind. I know -- sound mind in Probate Court is a low hurdle. Okay? The issue is, was she under someone else's control or did she do what she wanted to do. And the doctor has no opinion about that. And that's what she says. There's a lawyer that says, well, I talked to her and I think she was doing what she wanted to do. And that lawyer met her one time.

The appointment was made by Glenn, he brought her there, he left with her, and gave her the will in a loose envelope, wasn't even sealed up. I mean, that's about as much control as you can have, other than sitting in the room. And very interestingly, Ms. Klok also said that Glenn asked her if she did wills when they were doing the

closing. This is like -- they closed a day before the dad died. And he's asking, do you change wills for people?

So it's obviously not for the dad, it's for the mom. That's coming from him. He called to make the appointment, he drove her there, he drove her back. His lawyer. His lawyer before, started doing the estate work, his lawyer after.

The nurses, the nurses were only there on a professional basis. They only were there relatively briefly when compared with Helen Carroll and Jack Brantley. They were there, at most, of the last couple of years of her life, over a 60-day period here, 30-day period there. One of them was only there over the last two months, five months after the will was executed. And she said something I'll get back to in a minute which I think is actually quite helpful.

And then we have Glenn's position. Glenn's position is that, I wanted help, I asked everybody in town to help me get help from these girls, but they just wouldn't help me.

Now, as I said, we brought Jack Brantley to say, that didn't happen with me, despite what he said to the contrary. Well, I asked all these other

people. Terry Gunnells, who's like a brother to me. No Terry Gunnells here. Grace somebody, all these different people. Not a single one of them is coming in here to back them up based on what he says. Okay?

There's a letter from the dad that totally negates what he says, that she did nothing for the dad. Because she said, my dad called me among other things, little migrant worker, and that kind of stuff. You don't get names like that if you don't do things for people. Glenn says they did nothing for seven years. This is two years before the dad, three years before the dad dies. And she's saying, and he's still got this nickname for me because I do so much stuff for him. So really the dad has contradicted him as well. His disposition is absolute, the girls just left him, which is not true. It's just not supported by anything except his bald statement.

Now, it's supported by the nurses who were there when he was there, when he was living in the living room. Okay? Talk about control. Oh, my mom had a great social life, you know, but my dog needed to go to the bathroom so I put myself in her living room. Can you imagine trying to go by and

see somebody under those circumstances? Just the body language of that is stunning. He took over the house. As Uncle Jack said, you know, his bedroom's upstairs. Well, yeah, the dog had some problems so I just made the house mine.

We know that Glenn's a good salesman. He's a good talker. If he wasn't very good at it he could not have been in the car business for as long as he was. He worked at four or five different places. What he's done for a living is to be a good communicator and make a good sale.

I will just point out this is a little more jury-like, but bear with me for a second. The old AT&T ad, you remember they used to say, "Put it in writing." Don't tell me what you say. Put it in writing.

He says a lot of stuff. But what backs him up? There's little things that he could do. He's never brought in the joint -- oh, that joint account. But did you bring us something to see on that? Nope. I said so, I tell the truth.

Well, Jack Brantley was there when my mom told him all about why she didn't want to leave this stuff to the girls. Oh, really? Jack Brantley never said anything about that. Glenn says about

that. Glenn says a lot of things. But when it comes to the things that you can check, you can't check everything. But when it comes to the things that you can check, he doesn't pass, okay? We'll get to that in a second.

There are three instances of manipulation in here that I want to point out to Your Honor that it, frankly, took me until the middle of this trial to kind of get that ah-ha moment. These nurses and Glenn say, this lawsuit really made Ms. Gunnells mad at Cathy. Stunning thing that this girl would do a lawsuit against her mother. Okay? No wonder she was mad.

Point No. 1, lawsuit wasn't filed until after the will had been changed. The lawsuit was filed on June 15th. Will was changed on July 3rd. Okay.

No. 2 --

THE COURT: You mean the will was July?

MR. HOWE: July. Yeah, July 15th and July 3rd. There was absolutely no need for a lawsuit, except for Glenn. I want you to think about that for a second. Jack Brantley, the most credible guy I maybe ever met, says, "Hi, Cathy, hope all is going well. I talked to Helen and Glenn

on July the 12th. Helen gave the phone to Glenn to explain to me what was going on with the property.

He handed that problem over to the son.

"After some discussion, he told me to have the property ready for you to pick up on Friday, July 12th."

This is a done deal. It's worked out, there's no reason for a lawsuit. I've got a date.

"I encouraged Glenn to do this because it would seem so easy and it would prevent controversy with him and Helen."

He had the control to stop it, prevent it and get it done. He didn't do it. Didn't live up to what Uncle Jack had set up because he knew she'd have to go to court, and he knew it would infuriate the mother. That was in his control. And she hands the phone because he's in charge, she doesn't know what to do. He sits back, all he's got to do is grab those two things, put them out where she could get them and there would have been no lawsuit. He created the need for the lawsuit. That was totally in his court.

No. 2, one of the nurses -- and I'm pretty sure it was the nurse that was only there that last two months, that December and January,

said that she's walking through the living room with Ms. Gunnells and Ms. Gunnells says, you see that table? My daughter tried to take that from me in a lawsuit. That's what she believed. She was still mad about it. She was still talking about it. Wasn't true. Never was part of the lawsuit. The lawsuit was over. She got everything back, it didn't include the table.

Now, who would have ever made her think that that table -- in fact, she said she's trying to take my whole dining room, basically is what she said. But they were looking at the table, she said, oh, my daughter tried to take all this from me. The daughter never tried that. Wasn't part of the dispute. She believed it. Wonder where she would have gotten that idea?

Probably the starkest manipulation, we heard from the nurses that Ms. Gunnells really resented the fact that when Arden was really having his hardest time with his cancer the girls didn't come through. And you can see why that would stick in her craw. I think that would be tough. Yet we know that according to Glenn's testimony that about two weeks before his father died he went into the hospital and was in ICU. Two weeks. We know that

one week before he died Belinda was coming home. And her testimony, undisputed, is that Cathy called her and said, I can't find anybody. I don't know where anybody is. Something's going on. I can't get in touch with anybody. And she says, hmmm, I better call Jack. And she learns from her uncle that her father's been in the intensive care and he's been in the hospital for a week already. Who created that resentment? Who created that resentment? He says it was two weeks. She came a week before he died. She called Jack, and Jack says, oh, no, you didn't know your -- your dad's in the hospital. News to Cathy because she's calling around saying I can't find him. News to Belinda. She's getting on the phone, come on back. She called the week before and said, well, how is he really doing? You know, no communication that way. Who created that resentment?

Now again, let's look at just credibility for a second. Give me one second. I promise I'm getting close, Judge. Because as I pointed out many, if not most, of the things that we have alleged, we've tried to bring in independent people who knew her a long time to have credibility.

I want to go over with you now a list of

assertions by Mr. Gunnells that we don't believe have been backed up or that have been contradicted.

Glenn testified that he asked specifically Jack Brantley to help him get the girls to help. Jack Brantley says, he never asked me to do that. In fact, he says, when he mentioned -- when Jack Brantley mentioned to him the girls coming to help, he said, that'll never happen.

And in one of these same emails, he mentions, this is in July -- this is July 22nd: Glenn should be thankful for you both to help, and so should Helen.

Should be? That's not how you describe someone who's calling you for help. He's saying, Glenn says he needs help. He says, Glenn should be helpful -- should be thankful that you're willing to help. And he's saying that because he's not getting the vibe that he wants the help. There's no reason for him to write that sentence.

Glenn says he did it all and Cathy was there for basically one month. Brantley says that Cathy was one of the main helpers. Ms. Carroll says Cathy was one of the main helpers with chores and stuff. Belinda says Cathy was one of the main helpers. And Cathy describes a myriad of things

that she did for her parents for many years, and her daddy has a little off-color nickname for her because of her incredible amount of help.

Glenn says that the girls just showed no love. They were just -- they were just a vacuum there. Not according to Brantley. Not according to Carroll. Not according to the kind of birthday card that Cathy's writing to her momma when she's been told she can't have any contact with her.

And again, I'll just point out that, when you look at -- and I'm going to pick especially Brantley. If you look at motives, sort of, what is that, sort of context of credibility. On the one hand you've got Glenn, he's a party, he's a shareholder in this action, he lives on disability, there's not much money to get by on. We believe he has a drug and alcohol problem. And I will point out that not only has Cathy said it, not only has Belinda said it, Ms. Carroll said it. She said, well, I knew him. This is not in the statement, this is -- well, I knew him to have a alcohol problem.

Why do you say that?

Well, he's slurring his speech all the time. It's a pretty objective finding. Okay?

So it's not just the girls, not just ya-ya-ya. Okay? And Belinda, very truthfully said, yeah, I know he had one because I used to do a lot with him. It's pretty truthful stuff. Glenn says, no, he was Mr. Clean.

Glenn says very specifically, because this is important to his case, oh, Ms. Carroll, Helen Carroll, I got along with her great. She brought me a cake. I used to leave them alone all the time. Helen Carroll says, no, he never left us alone, except when I had my surprise visit. She directly contradicts that.

Helen Carroll, yeah, she quit coming by. Oh, she had her own problems, she couldn't drive anymore. Helen Carroll doesn't say that. Helen Carroll says, I quit going by because of the unfriendly attitude that I felt after Glenn moved in. Glenn had no problem saying that. But when you ask somebody else -- you know, we've all had that experience -- oh, I met so and so, he says he's one of your best friends. He says he's one of my best friends? Are you kidding me? That's what's going on here.

She couldn't drive, but she drove herself on the day that he wasn't there.

He's a salesman. He knows what to say. He just won't put it in writing and back it up. I took his deposition. I said, how did your mom get to Klok?

He said, well, I knew Klok from this closing. He said, but she met with her two or three times before this will.

I said, two or three times?

Yeah.

I said, how much would she meet?

Oh, 20, 30, 40 minutes, I think it was. About 30, 40 minutes at a time when went in.

That's not what Klok says. Klok says I met with her one time. He testified under oath, she met with them two or three times to get this thing ready to show me that Klok was spending time with his mom and there wasn't control or all that kind of -- oh, two or three times. Not true.

With Dr. Chanson, we know he's on disability, but when he's not getting his mom in, oh, my work schedule. My ongoing work commitments, I think it was. Ongoing work schedule, page 49. My ongoing work schedule keeps me from getting her in like I'd like to.

That's just not true. He's been on

disability for years. Admits to the doctor not giving the Remeron. Comes up with the story that he can't get it from the pharmacy, and then when we check the pharmacy records he already had it. He's telling another story. They just roll off the salesman's lips.

So Helen Carroll has directly contradicted him on his assertions. Jack Brantley has contradicted him on his assertions. Dr. Chanson has directly contradicted him on his assertions. And last but not least, when it comes to being honest with The Court and filling out the inventory, and I know they don't like me talking about this because it hurts, he doesn't fill it out right. He doesn't do things right. He does it his way on his terms. And we found out today there was jewelry, all kind of personal items. He just doesn't write them down. Oh, I thought this, or my lawyers told me that, so and so. He's been around. He ran his own business. He knows how to read a simple form that says, "write this down." And he sat right there, right here in front of Your Honor and I handed them that letter and he says, this letter says I was reaching out to the girls to try to get all this help and so and so and so. When you look

at the letter, he's asking them to send some money. He's representing it one way, and it's not that way. He just doesn't tell the truth. Over, over, over, over again documented by independent witnesses and court documents.

So in the end we think that we have shown all the elements that we need to show. We showed that he had control, he had powers of attorney, he brazenly whisked them around. Poor sister tries to put her name on a visitation, a little information, and she gets a scalding email. And you'll have to look at it, but it's all caps and exclamation points all over the place: Let it be said, let it be done, no one does anything for the parents but me.

This is crazy stuff, because she wants to know about her dad in the hospital. So he's got control, he has to drive them, he's helping with their affairs. And boy, does he wave that power of attorney around when it so places him when anybody steps out of line.

Does he have a motive? Yes, he has a really strong motive. He's in a desperate situation. He's living on about 7, $800 a month. He's an alcoholic. He's has nowhere to go. He

burned his bridges when he sold his house, nowhere to go.

Sure would have been easy to take her to her old lawyer. Sure would have been easy to have somebody else go. Sure would have been easy to go back and give her a couple times to see, which is what he said, and he didn't. But even the lawyer said, oh, she just loved Glenn because he just took her everywhere, and you know, she liked to go places. But she wanted this done once and because she was so frail I didn't want her to have to come back. On the one hand she's saying they go everywhere together, but she was too frail to come back. That didn't even match up very well.

And then last but not least, it's just inequitable. It's three kids, they all did a lot of stuff in a lot of ways for a lot of years. And the law recognizes, one of the first elements is, does it look like a generally fair distribution? And it doesn't. It's not a fair distribution. And it was done at his instance for his needs.

And I'll just end on this: When it comes between Glenn's needs and other people or other things, it's always Glenn. When his dog needs to go to the bathroom at night, he takes over the

house. When he needs more money, he does the will. When he doesn't like what the court form says, he writes down what he wants to write down. When he sells the house as a personal representative and he's supposed to hold the money, he goes and buys himself his own house and spends it all. He does what he wants to do for him and everybody takes a back seat.

That's exactly what happened in this case. It's a pattern of activity for him as his ability not to tell the truth. And we think that it's clear and convincing evidence under the facts.

Thank you.

THE COURT: Thank you.

Ms. Wimberly, are you ready? Do you need a break?

MS. WIMBERLY: Yes. No.

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CLOSING ARGUMENT BY MS. WIMBERLY

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MS. WIMBERLY: May it please The Court. Your Honor, today Petitioners have brought serious accusations against my client that require serious proof. And you have seen no serious proof today. You have seen inference after inference after

inference, and Mr. Howe has done a phenomenal job of that. But you have not seen proof that my client unduly influenced his mother to change her will.

Now, first we heard from Jack Brantley, and Colonel Brantley is a relative that lives in Waynesboro, Georgia. He's seemed to be kind of the go-between when the family had their spats and arguments. He would calm them down. They would call him, they would communicate through Mr. Brantley. He came here and he said that he actually talked to Ms. Gunnells more after Mr. Gunnells passed. Of course she changed, her husband had just died. You also heard that her dog died and her sister died all within a period of eight months. She was distraught, understandably. But that did not change the fact that her daughters had stopped coming to see her. Her daughters had stopped caring for her and her husband. It doesn't change that. And it doesn't rise to the level of not having a sound mind and being unduly influenced.

Now, Mr. Brantley said that Ms. Gunnells was opinionated. Said she was independent up until the day that she died. She knew exactly what she wanted to do, and she did it. And on July 3rd, 2013, she walked into Ms. Klok's office for a

meeting. She was there for two to three hours. They talked openly about what she wanted to do, and she did it. And she told them, I want to do this because my daughters have disappointed me. And that's sad. I know. It is. It is sad. But it is what happened. And that's why we're here today. It's about Ms. Gunnells. It's about her will. It's about what she wanted. And unfortunately she can't be here today to tell us that.

So the petitioners have used inference after inference to try to change your mind and to try to get you to overturn that will that was obviously something Ms. Gunnells wanted to do.

Mr. Brantley also said that Ms. Gunnells was never hiding. He went to visit her. Yes, Mr. Gunnells was living in the living room, but it was because of his dog. This family loved their pets, they were like family. Mr. Gunnells told you his mom was more distraught over the death of her dog than her sister. There was a difference in her. But she had suffered losses that some of us have never suffered, all of it within a very short period of time.

With regards to the deposition of Ms. Carroll, which Mr. Howe has said is the core of

their case, and you got to see it, Ms. Carroll is a good friend of Ms. Harkness. She testified that she's almost like a daughter to her, that she trusts her with everything, that she would do anything that Ms. Harkness asked her to do. And that's exactly what she did during her deposition. She testified to everything Mr. Howe wanted her to say. She had to be reminded of this letter that really no one understands how it came about that was based on things that when I asked Ms. Carroll if she remembered, she didn't. She said she never remembered a conversation about a will.

If Ms. Carroll was so concerned, so concerned to the level that Mr. Howe has said that she was concerned, why didn't she do anything? Why didn't she call Ms. Harkness? Why didn't she call Ms. Davis? She didn't. She just stopped going because she felt uncomfortable. If it was so bad, if she thought it was so bad, why didn't she tell somebody? She didn't. She just felt uncomfortable.

Along those lines, if it was so bad, why didn't she say something to her best friend? Why didn't she say, do you need help? Do you need something? She didn't say anything. When I asked her, did you ever express any concerns about Glenn

to Ms. Gunnells, she said no, I didn't think it was my place.

But did you ever say anything to Glenn about your concerns?

No, it wasn't my place.

But if it was so bad and it was her best friend and what Mr. Howe was saying that he just exercised this crazy influence over Ms. Gunnells, why didn't she say something? She didn't.

Next you heard from Ms. Belinda Davis who the -- the absent daughter. She was in Hawaii much of the time when her father was sick with cancer. She actually left right after his diagnoses. However, she did testify that she talked to her mother quite often over the phone when she was in Hawaii and she talked to her mother quite often when she came back.

However, her mother was upset that she had moved to Hawaii right after her husband was diagnosed with cancer. She was understandably upset about that. And then you heard about a certain Christmas, I believe it was 2013 when the family didn't get together. Well, Ms. Davis said it was her choice, it was all too fresh, she couldn't take it, that's why she didn't go over to the house. It

wasn't Glenn keeping the family away. It was just all too fresh. And that's why she didn't go.

Then you heard from Ms. Harkness who you heard was an investigator for many years. She used to take her mom along for rides. She used to take Ms. Carroll along for rides. I find that very interesting, because being an investigator for that long, you think she could have investigated maybe this case a little better and maybe could have had some people come to actually prove what Ms. Harkness and Ms. Davis have said. But we didn't get anybody. We just got them. And we got a family member and we got a best friend who trusts Ms. Harkness with whatever she says and will do anything for her.

And we've heard a lot about her going to DSS and a lawyer and Legal Aid, but where are those people and what was done? Nothing. Because Glenn's actions did not rise to any level for any of those people to be concerned. If they were concerned something would have been done and we would have had someone come in here and testify to that, some kind of proof for these serious accusations, serious accusations that require serious proof, and we saw none of that.

Furthermore, you saw letters that

Ms. Harkness wrote to her mom and dad that are just out of this world. They dragged Glenn through the mud. And that is what she has been doing throughout the entire pendency of this litigation, dragging Glenn through the mud. This sibling rivalry has gotten out of hand. It started when they were ten years old and it has culminated into this trial. You heard a lot of bad things about Glenn, but it's all opinion testimony based from his sisters, no independent witnesses.

Now, Glenn never said that he was the only one to help for seven years. He did say his sister moved in -- Ms. Harkness moved in for about 30 days, and he said that his dad couldn't take it. She was actually the one that was too controlling, that she needed to move out because it was too much. She was trying to tell them how to live their lives. And you -- and Glenn testified also that she was trying to control him as well. She was asked to leave by the father, and their relationship was strained after that and it never really came back together. And that's unfortunate. That is unfortunate. But never has it risen to the occasion of anything that Mr. Gunnells did. He was there throughout the entire drama throughout this entire

time. He was not controlling anyone. It was actually the opposite.

With regards to Ms. -- or Dr. Chanson's deposition, which I'm not quite sure if you had a chance to read, but you will. In regards to Mr. Howe's take on what she actually said, we'll go through it.

Dr. Chanson did say that Ms. Gunnells was of sound mind throughout the entire time she treated her, which I believe was about two years. On July 3rd, 2013, the same day that she drafted her will, she testified that she was distraught, visibly upset and crying. But she didn't say it was because of Glenn. She didn't say it was because she was about to go change her will and she didn't want to do it. She said, my husband just died, I'm feeling good today. Understandably. They're been together almost their entire lives. That is less than a month after her husband has died. She's upset. Understandably. But it's not because of anything Glenn did. It's because her husband just died.

Next, with regards to any undue influence, I did ask Dr. Chanson, did you see anything, any red flags, anything that might show you undue influence? She said, I don't understand

that term, so I can't make an opinion on that. She didn't say I don't have an opinion on that because I know what it is and I don't want to say. She said I don't understand what that is, so I don't have an opinion.

With regards to the ER record after Ms. Gunnells' fall, that says follow up with Dr. Chanson tomorrow. That's actually false. That was done. Mr. Gunnells called, and there's several calls between the time -- this happened, I believe, in January and Ms. Gunnells died in February. There's about six phone calls to Dr. Chanson's office between those two days, the time of her fall and the time of her death. And you'll see that in the deposition. There are exhibits to the deposition. And there are exhibits in the deposition where Glenn called in. You'll see where home healthcare nurses called in. You'll see that there was care being given. And while they didn't go to the doctor the next day, Glenn did, in fact, call.

With regards to Mr. Gunnells saying he had an ongoing work schedule, you heard on the stand that, yes, he wasn't working full time, but he was working part time. And Mr. Gunnells has his own

health issues. He goes to the doctor quite often, too. It could -- you know, as much as we want to think doctors put everything truthful down on their notes, it could have been interpreted a different way.

With regards to the medications, potassium that was "never filled," Dr. Chanson says in her deposition that these types of prescriptions are 90-day prescriptions and they can be filled over and over and they can be stockpiled. And she had absolutely no reason to believe Glenn was not giving his mother the best care and her medication. If she had ever had a red flag, why didn't she do anything? I mean, this is a serious allegation that Mr. Howe has put before you today. It sounds like what he's trying to say is that Glenn killed his mother. I mean, that is how I heard it. And that is a serious allegation that requires serious proof. And did you see any doctor come in today that had reviewed those records and said, well, that's what I think. You didn't. It's all Mr. Howe's conjecture, it's all based on inferences, and there's absolutely no proof.

With regards to the rest of the prescriptions, you'll see in Dr. Chanson's

deposition, these things are explained away. She understands that there was -- she was not mad at Glenn when she wrote that prescription for the Remeron. And it's actually called Mirtazapine, or something else, too. There was a confusion at the pharmacy and she hand wrote the prescription, and it had actually already been filled. And Mr. Gunnells has an 8th grade education. He was confused. She took a lot of medication, a lot of medication. And you heard from the physical therapist, Ms. Wechter, that she saw Mr. Gunnells several times administer those medications to his mother and talk to her and say, mom, you need to take your medications. She saw that Mr. Gunnells was not withholding medication. That is a serious allegation and that requires serious proof.

And you'll see from the deposition of Dr. Chanson that this is not how it reads at all. If Dr. Chanson had one inkling that Mr. Gunnells was withholding medication or wasn't following up on medical care for his mother, she would have done something. But nothing was done. She said he was an excellent caregiver. Whenever they went to the office to visit, Mr. Gunnells was outside the room. She could talk freely with Ms. Gunnells. They did

talk freely. And then she would follow up with Mr. Gunnells afterwards regarding medication, regarding care. But she had a solid 45 minutes alone with her every time she visited, which was about once a month. If she has any reservations about the care, she, as a doctor, would have done something, but she didn't.

So with regards to the physical therapist who we brought in, you heard from the first one, Ms. Wechter, who was with Ms. Gunnells at the end. She was there two to three times a week for about 45 minutes. She said that she spoke with Ms. Gunnells, she spoke with Glenn, and she said that she was distraught. I don't think anyone is saying that she wasn't. She was distraught. But she was distraught not because of anything that Glenn did, she was distraught because her daughters were absent. She was distraught because at the end of her life she had lost so much. She was not distraught because of anything Glenn did. And Glenn left her alone with these physical therapists. If she felt she was being controlled or she wasn't allowed to go outside of her home or Glenn was being this conniving control freak that they have said that he was today, she had the opportunity to tell

somebody. She had the opportunity to tell Dr. Chanson. She had the opportunity to tell Helen Carroll. She had the opportunity to tell the physical therapists. But none of them said that she said anything with regards to Glenn.

Next you heard from this Ms. Jill Costa who is also a physical therapist who actually treated Ms. Gunnells from 2009 until 2013. She saw her on a fairly regular basis. She saw her while her husband was still alive and then she saw her after he had passed. And she said that she heard the same thing, Ms. Gunnells was distraught. She didn't see her daughters anymore because they weren't around. They weren't around to care for her and she was upset about that.

You also heard about an incident where one of the daughters tried to push her way into the house. And Ms. Gunnells said herself she didn't want her there. It was just too much to take, she needed a simple life. She couldn't take the drama anymore. She was just done. And it was not because of anything Mr. Gunnells did. It's quite the opposite. It was because of what the daughters did.

Now, after you heard from the physical therapist, you heard from Ms. Klok who is another

independent witness. She's an attorney. She drafted the will. Yes, Glenn is the one that contacted her to draft the will. But she said that in her discussions with Glenn over his house closing, it was just a discussion, and she mentioned that she drafted wills. It wasn't, do you draft wills? No. She just told Glenn, it's something that I practice.

Glenn and I had the same discussion the first time I met him. What do you do? What kind of things do you do? It's a very normal discussion to have with your attorney the first time you meet them. What other things do you practice? So the fact that they're saying yes, specifically, do you draft wills? Ms. Klok said that's not what happened.

Furthermore, Ms. Klok said she asked Ms. Gunnells all the right questions: Who's the president? What day is it? Who are your children? And she knew everything. She was quick. She was witty. She was on it and she knew what she wanted to do, and she knew why she wanted to do it, too. She wanted to do it because she was upset with her daughters. She was upset with the drama. She was upset. She was done. And she had talked about this

for a long time coming. It wasn't just on this day. It wasn't just after Mr. Gunnells passed. It'd been a long time coming.

This is an attorney who has no stake in this game who sat up here and told you if she had one inkling of doubt as to whether Ms. Gunnells had the capacity to draft a new will or was being unduly influenced, she would not have done it that day. She says she's done that in the past. She's seen other people who maybe she thought, hmmm, I'm not quite sure, and she's not drafted the will. She did not do that in this case. She had no doubt that Ms. Gunnells was completely sound mind and completely knew what she wanted to do and she drafted it.

And then you saw Ms. Annie Walton, her paralegal, who backed up everything Ms. Klok said. Said that she was in the room with her the entire time. That she knew, she was quick, she was witty. She knew what she wanted to do and she knew why she wanted to do it, and it wasn't because of anything Mr. Gunnells did. She was a strong, independent southern lady. She knew what she wanted to do.

Then you heard from Mr. Glenn Gunnells. You heard that Ms. Gunnells was frustrated with her

daughters for a long time, and that their parents, both parents actually changed their POA back in 2011, both parents. It wasn't just one. It was both. And the daughters were really upset about that. And that's, you know, among other things, what kind of set this catalyst of events happening, is that power of attorney. And you know, Cathy and Belinda have come up here and said he was waving it at the funeral home. I mean, that's insane. Where's the funeral director to say that that's what happened? Where is an independent witness to say that's what happened.

I mean, you saw Mr. Gunnells, he's pretty just even. He just kind of tells it like it is. He's a simple man. But he was upset about his father's passing, understandably. He didn't wave the power of attorney in front of their faces. That's just drama.

You also heard that it was actually Mr. Gunnells, Mr. Arden Gunnells who didn't want Cathy back at the house. He called her a disgrace, among other things that he called her. She couldn't follow the rules. She was being controlling. She was telling him how to live their life. It was nothing that Mr. Gunnells did.

You heard that families still visited. You heard that families still called. You heard that people were always around. Everyone said that, the physical therapist said there was other home healthcare nurses in the house. They said that people -- Mr. Brantley said he came to visit, Ms. Carroll came and visited and then chose not to come again. She wasn't not invited, she chose not to come again.

You saw that Mr. Gunnells, in fact, did reach out to his family for help. He called Mr. Brantley. He called Mr. Terry Gunnells. He wrote a letter to his sisters asking for financial help. He did reach out for help.

With regards to these three instances of manipulation that Mr. Howe brought up. First, the lawsuit, it was filed after the will was changed. But the initial letter threatening the lawsuit was actually sent right before the will was changed. I believe it was June 27th. And that letter states a list of property that Ms. Harkness wanted back, and it says, if you don't give it back, I'm not quoting it, but, I'm going to file a lawsuit is basically what it says.

And you heard Glenn up on the stand say,

we gave all those items back. That was actually given back to Ms. Harkness. These are -- the lawsuit was filed over more stuff that she wanted. It was more stuff that she wanted after she had already come and picked up the items that were in the threatening letter. So it was the threatening letter that was the straw that broke the camel's back, not the actual lawsuit, the threat of the lawsuit.

With regards to the nurse that was walking Ms. Gunnells to the house and she pointed out a table and said, oh, my daughter wanted that in a lawsuit. That actually was not the words. Her words were, my daughter wants this property back. She thinks this is her property and she wants it back. There's no lawsuit ever mentioned in her testimony. So that was simply not true. It was never said.

With regards to Glenn creating the resentment for the daughters, which is a very crafty tale, the resentment was created because of the drama created by Ms. Harkness and the abandonment created by Ms. Davis. It is nothing that Mr. Gunnells did. He didn't create any resentment. Mr. Howe is basically saying that my client

concocted this scheme seven years prior to his parents' death. Okay, well, now I'm going to be the power of attorney, and then I'm going to try to get them to hate my sisters, and then I'm going to sell the house, and then I'm going to figure out how to get into their finances. Mr. Gunnells has an 8th grade education. You saw him. He is a simple man. He couldn't come up with this even if he tried. And there's been no proof. These serious accusations and these serious tales require serious proof, and there's been none.

Now, Your Honor, as you know, they have a very high burden in this case, a very high burden. They must prove to you by unmistaken and convincing evidence that my client, Mr. Gunnells, exercised such force and coercion over Ms. Gunnells that basically his intentions became hers. As you know, on their best day, on their best day, they may prove influence. But what they have to prove is undue influence, an influence that rises to such a degree that it shows that Ms. Gunnells had no free will. She had no ability to do the things that she wanted to do on her own.

She essentially -- her mind became essentially Mr. Gunnells' mind. And that's not what

happened here. You heard from multiple people, including their witnesses, that she was of sound mind, she knew what she wanted to do, she did what she wanted to do, she was strong-willed and independent. Furthermore, you heard from Ms. Klok that she executed her will in July, she died in February the next year, she had seven months to change her will. And Ms. Klok told her, call me, call me if you want to change your will. She had that ability, and she didn't.

Finally, Your Honor, I want to bring your attention to the case, I'm sure you're familiar with, of Russell v. Wachovia. In that case -- let me make sure I have the facts straight. In that case, the testator had several instances where he didn't know what kind of state of mind he was in and overtook his medication. The beneficiaries of the will often yelled at the testator about money. The proponents of the will monitored the telephone in the home, told him how to dress, would not let the testator adjust the thermostat. The beneficiary spent large sums of money in the testator's estate, and they were in constant contact with the testator's attorney. The doctors even said, two doctors, two independent witnesses said there was

undue influence. And The Court found no undue influence. Now, that is a precedent in our state. So under that, clearly they haven't met their burden. Clearly.

Ms. Gunnells marched into Ms. Klok's office on July 3rd, 2013, and knew what she wanted to do, and she did it. And she had seven months to think about what she did. She had seven months to say, well, you know, maybe that's not what I really wanted to do. And you heard, there was times during that seven months where Glenn wasn't around, but there was other people she could have said, help, help. She never said it. You didn't hear any of that today. She knew what she wanted to do and she did it. And it wasn't because of anything my client, Mr. Gunnells, did. It was because of everything her daughters did.

So Your Honor, I ask respectfully that you find in favor of my client, Mr. Glenn Gunnells. Thank you.

THE COURT: Thank you, Counsel.

MR. HOWE: Very briefly, Your Honor. Just very briefly.

THE COURT: Okay.

MR. HOWE: One thing that I forgot to

mention, and I think sort of goes to the heart of this thing. Nobody said Glenn had any control. Poor Cathy had some kind of cancer on her leg. Brother calls up Ms. Gunnells and says, you ought to give Cathy a call and see how she's doing, she's had this thing removed from her leg. Do you remember what her answer was? I'll have to ask Glenn. Can you imagine that? There's no evidence of control? How much more evidence do you need of somebody's control? I'll have to ask my son if it's okay for me to call my daughter about a serious medical condition.

She says, he tells it like it is, a simple guy. He didn't tell it like it was when I asked him how many times he went to the lawyer. He said he went two or three. He went one.

He didn't tell it like it was when he said Brantley was going to back him up on what was going on, about asking for help. And I won't go through the whole list. He didn't tell it like it was on a number of things from what he said to the Court to what he said to everybody else.

Another thing that's really interesting is, this thing, she had been wanting to change her will for such a long time, she was just tired of

this drama. They haven't brought any witness, no other relatives, no other friends to say that was true. The only person that's come in to give direct testimony, other than Glenn, okay, my momma told me this, was Helen Carroll. And Helen Carroll is dead against that. She says that she came to me and said I can't hardly live with this, this has happened.

Why didn't Helen Carroll do something? Well, when you're a 80-something year old widow, you drop by for a pleasant visit, somebody unloads that on you, what do you do? I don't know what you do. She didn't know what to do. And maybe she took the safe way out and said, ewww, it's not business and I'm not going back there.

As if she had all these other people to talk to. She hadn't talked to anybody without Glenn around, according to Jack, according to Helen, nurses.

Some -- the chronology, trying not to get too bite-sized facts. This will got changed 25 days after the husband died. They talk about how distraught she was. She was in an emotionally fragile state. It was 25 days after he died. I don't know how many days the funeral took. It was probably 20 days after the funeral. That's a tough

time. That's a tough time. Dad's out of the way, mom's more vulnerable. Take her to my lawyer. It'll be one visit. Those circumstances. And yes, lots of control. Can't call people. Can't talk to people. Then when she gets the one chance and the surprise visit comes, there's an outburst about what happened. The idea that we haven't offered evidence is just not correct.

One last thing, hopefully, why didn't they crank up all this conservatorship if there was a -- you and I know that -- well, let's -- and this is another thing that's real important. We tend to look back at this, all through this prism of the will got changed. Nobody knew the will got changed. He knew, Klok knew, Ms. Gunnells knew, the girls didn't know. They didn't find that until later. When they're calling DSS and stuff, they're not concerned about the will. They think the will's the same. Never occurred to them the will's been changed. They're concerned about their mother. And they go and they find out, nobody knows better than you what a hearing would require to DC Glenn as a conservator when he's not giving them access. And you know, when you go into it, but common sense would tell you, you'd say, y'all don't want to do

that, the treatment's going to be worse than the cure. You're going to have this trial, there's going to be all this stuff, it's going to be awful, and what are you really going to get. And they're kind of, yeah, I guess the Court can't fix that kind of problem. Because court's can't. Alexanders used to have a cute thing about domestic cases that fits here, he said, "Asking The Court to come into a divorce is like calling the TV man to have him show up at your door with a crowbar and say I'm here to fix your set." Just not equipped. And the courts aren't equipped to handle that kind of situations that's in front of us here.

So I want you to remember when you're looking at all these things and all these concerns, these are not things constructed because of a will, they're just concerned about the mother. It was seen in light of the will months later, it was ah-ha, then they kind of realized it doesn't all add up.

Last but not least, I don't say that he sat down seven years ago, or even two years ago, and said, oh, I'm going to do this. But I do say this, he's an opportunist. He knows his way around, when his dad was out of the way, 20 days later he was at

his lawyer with his mother, it was one visit changing the will. Thank you.

THE COURT: Thank you. I think we discussed yesterday, 30 days for proposed orders. Anything else for today?

MR. HOWE: Just thank you for your patience.

THE COURT: All right. Thank you.

MS. WIMBERLY: Thank you. We appreciate it.

THE COURT: Thank you. It's been a pleasure. And I think I say at the end of every trail, but if you come to a resolution before we issue an order, just let us know. Otherwise, we'll look for the proposed orders and then we'll go from there.

Thank you very much.

CERTIFICATE

I HEREBY CERTIFY that the hearing before Judge Condon was duly taken by me and that this is a true record of the testimony given by the witnesses.

Judy W. Galuppo
Court Reporter/Notary Public
Commission Expires 3/18/2023

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STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF CHARLESTON
CASE NO. 2014-ES-10-202-2

CATHY G. HARKNESS, Petitioner, -versus- GLENN A. GUNNELLS, Individually and as Personal Representative of the Estate of Helen B. Gunnells, Respondents. In the Matter of: Estate of Helen B. Gunnells	DEPOSITION OF: RHONDA CHANSON, M.D.

DATE: Wednesday, September 30, 2015

TIME: 2:08 p.m.

LOCATION: West Ashley Internal Medicine
12 E Farmfield Avenue
Charleston, SC 29407

REPORTED BY: JENNIFER M. HUGGINS,
Certified Shorthand Reporter

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INDEX

Witness

CHANSON, RHONDA, M.D. (sworn)

	Page
Examination by Ms. Wimberly	4, 71
Examination by Mr. Howe	27, 74
Reporter's Certificate	80
Signature Page	81

EXHIBITS

Petitioner's:

Exhibit No.		Marked
1	(Patient Prescription List)	55
2	(Roper 1/6/2014 Record)	66
3	(Medication History)	68

Defendant's:

Exhibit No.		Marked
1	(Letter from Dr. Chanson)	21
2	(Telephone Encounter)	74

(The reading and signing of the deposition by the witness is not waived.)

(RHONDA CHANSON, M.D., having been first duly sworn, testified as follows:)

EXAMINATION

BY MS. WIMBERLY:

Q. All right. Dr. Chanson, I introduced myself earlier to you. My name is Alexis Wimberly. I represent Glenn Gunnells in a matter that's pending in probate court here in Charleston County --

A. Yes.

Q. -- with regards to his mother and her mental capacities at the time that she formed a will. And it is our understanding that you were her physician around that time; is that correct?

A. Correct.

Q. And have you ever given your deposition before?

A. It's been years.

Q. Okay. Can you approximate when that was, the last time you gave it?

A. Maybe 2003.

Q. Okay. So it's been quite a while?

A. Yeah.

Q. And we went over some ground rules earlier, but, just to reiterate, if you don't mind, you know, waiting for me to finish my question, I will wait for you to finish your answer.

A. Okay.

Q. And that is strictly for the court reporter's convenience because she is taking this all down by hand and just in normal speaking, sometimes we anticipate the answer and anticipate the question and then --

A. Correct.

Q. -- try to answer it. And then yeses and nos as opposed to uh-huhs and huh-uhs are better for the court reporter to take down. And, of course, if you need to take a break at any time, let me know. If you need to get some water or go to the restroom, I'm more than happy to do that. Like I said earlier, I don't anticipate this taking too long.

A. Okay.

Q. But just let me know.

A. I will.

Q. And, if you have any questions about anything that I ask or any clarification, when

I'm asking the question, if you don't mind asking me, and then when Mr. Howe is asking the questions.

A. Okay.

Q. Okay. And we are going to go over some really preliminary matters first that we have to do just legally. So it might sound silly, but we just have to. So are you licensed to practice medicine in South Carolina?

A. I am.

Q. Okay. And how long have you been licensed to practice?

A. Since 2000.

Q. And do you mind giving me a little benefit of your educational history prior to being licensed to practice?

A. I did my undergraduate degree at Furman University. I obtained a PhD in biochemistry at the University of South Carolina. I went to medical school at the Medical University of South Carolina. After graduating from there, I did my internship at Bethesda Naval Hospital and my residency training in internal medicine at Portsmouth Naval Hospital. I was in the United States Navy at that time.

I then went to Beaufort, South Carolina to active duty, served there for four years. I was honorably discharged from the United Stated Navy. I moved to Charleston, started practicing at this practice in 2000 and been here since.

Q. Well, thank you for your service. And you've been at West Ashley Internal Medicine since 2000?

A. 2000.

Q. Okay.

A. Correct.

Q. What are your areas of concentration at West Ashley Internal Medicine?

A. Basically, we're internal medicine. We see a variety of disease processes and issues that would come underneath that umbrella.

Q. Do you -- would you say that you typically see a certain age range or you see all age ranges?

A. 18 to 102.

Q. And today we've noticed your deposition. It's called a deposition duces tecum. I know. It's a legal term of art --

A. Okay.

Q. -- that means we requested a document from you, and that was your CV. Did you happen to bring that today?

A. I don't have it.

Q. Okay.

A. I can get it for you.

Q. Wonderful. We will just follow-up with that. Okay. Great. And, in your CV, is it updated?

A. It will be.

Q. It will be. And would everything in that fairly and accurately represent your past medical --

A. It would. The only thing it wouldn't have was the fact that I've been here since 2000 until now.

Q. Okay. All right. Wonderful. We will get that later from you. I appreciate that. In the course of your practice here at West Ashley, did you come in contact with a woman named Helen Beatrice Gunnells?

A. Yes.

Q. And do you remember Mrs. Gunnells?

A. I do.

Q. Okay. And have you had a chance today

to review her medical records?

A. I have.

Q. Okay. Do you remember when you first saw Mrs. Gunnells?

A. Can I --

Q. And, yes, you're more than -- yes.

A. My memory is good but not that good. All right. My first visit with her was July 23rd, 2012.

Q. Okay. Do you remember about how long that you treated Mrs. Gunnells?

A. From July 23rd, 2012 until 2/6/2014.

Q. And are you aware that Mrs. Gunnells has passed?

A. Yes.

Q. Do you know on what date she passed?

A. I don't know the exact date. I -- she came to me on the last day I saw her, and I transported her to the emergency room emergently at that time, and I think her death was shortly thereafter. But I don't have the exact date.

Q. Okay. If I was to tell you it was the next day on February 7th, would you have any reason to --

A. Yeah. That seems to be -- I knew it

was either one or two days later.

Q. Okay. Are you aware of the cause of her death?

A. I believe it was a myocardial infarction.

Q. If I -- and I'm not -- this is not a test, but if I was to say -- and please --

A. Okay.

Q. -- if I mispronounce these things, please let me know. Ischemic cardiomyopathy, does that sound --

MR. HOWE: Ischemic.

MS. WIMBERLY: Ischemic, thank you.

A. Ischemic cardiomyopathy.

Q. See, told you -- aortic stenosis --

A. Her cardiologist took care of her in the hospital.

Q. Okay.

A. So, other than a phone call from him, I didn't --

Q. But that doesn't seem way out of bounds from --

A. No.

Q. -- what you were treating her for?

A. No.

Q. Okay. And then coronary artery disease?

A. Yes.

Q. So do you know how it came to pass when Mrs. Gunnells sought your initial treatment?

A. Say that one more time.

Q. Do you know how it came to pass that Mrs. Gunnells sought your initial treatment?

A. For -- for the first visit?

Q. Yes.

A. My understanding is that she had changed physicians from the doctor she was seeing in the Mt. Pleasant area and was looking for a new physician. She came here initially with her daughter to establish care.

Q. Do you remember that initial meeting?

A. Yes.

Q. Okay. What do you remember -- do you need to get that?

A. That's a fax.

Q. Okay. What do you remember, if anything, about that initial meeting with Mrs. Gunnells?

A. She was an elderly lady who seemed to be somewhat frail but probably not unexpectedly so

for being 82. She was accompanied by her daughter at that time. And everything else would have been in the note from that day.

Q. Do you remember her daughter's name?

A. That daughter's name was named Belinda Davis is I think her last name.

Q. And, upon that initial visit, did you diagnose Mrs. Gunnells with anything or set up a treatment schedule?

A. She -- yes. I mean, we reviewed her past history. She had chronic ongoing issues that needed to continue to need care. Let's see. She had had a -- let me see here. She apparently had a -- what we call a syncopal episode at home, and, for that, was strongly recommended that she go back to see a cardiologist. She had not seen a cardiologist in a number of years.

Other than that, it was, you know, continuing her ongoing care, and then I would need to have seen the records from her previous physician to see what other things needed to be taken care of. But that was the most pressing issue at that first visit.

Q. Okay. Did you set up a treatment schedule? Did you ask her to come in, you

know --

A. Yeah. She -- let's see. She was to follow-up in three to four weeks after that, and then, subsequently thereafter, depending on what active issues were going on.

Q. So, from that initial visit, would you say she followed up with you every three to four weeks?

A. Well, she didn't come every three to four -- it wasn't necessary to come every three to four weeks.

Q. Okay.

A. You know, we would need to see her every two to three months and certainly sooner if --

Q. As needed?

A. -- issues came up.

Q. How long generally would Mrs. Gunnells be in your office for care?

A. Are you talking about from the time she came -- or just face to face?

Q. Face to face.

A. Anywhere from 30 to 45 to 50 minutes, depending on what was happening at the time.

Q. Okay. During the course of your care

with Mrs. Gunnells, did you notice any unusual weight loss?

A. Yes.

Q. Okay. And would you describe it as unusual, or was it normal for her situation?

A. It was unusual.

Q. And how would you describe it as unusual?

A. Just let me get through here a little bit. It would be the amount. Typically it's an amount over time, and -- which brings up a lot of issues in terms of, are they eating properly? Are they -- is there anything else going on that would add to their anorexia and their ability not to eat? Are there any other metabolic or physical things going on that would contribute to that?

Q. Did you speak to Mrs. Gunnells about these issues?

A. We did.

Q. Okay. Do you remember what you discussed with her?

A. We discussed the different etiologies that might be contributing to that. Most of this, if I remember correctly, occurred after the death

of her husband, and she was very distraught after that and just was not eating very well. We sent her to a gastroenterologist, did a number of other tests to try to elucidate other causes of why that would occur.

Q. Do you believe that it occurred because of the depression that she was suffering because of the death of her husband?

A. After doing a relatively thorough workup and not coming up with much else that would contribute to that, I felt that that was a large contributor to that.

Q. All right. Other than the weight loss, did you notice anything else unusual about Mrs. Gunnells' behavior over that time frame that you treated her?

A. The most marked thing would have occurred after her husband died and appropriately so. She was very depressed about that. That is one of the most significant losses a person can undergo, secondary to the loss of a child. And it is not uncommon that people will have a difficult time with that. And she was no different.

Q. Did you speak to her about the loss of

her husband?

A. We -- she talked about it every single time she came in.

Q. Did you ever have the occasion to meet anybody else in Mrs. Gunnells' family?

A. On her initial visit, I spoke with her daughter, Belinda Davis. I think I have the correct last name. She came to the first couple of visits. Her husband, that I don't recall his name, came for the next maybe two or three visits.

After the death of her husband, her son was the main caretaker that brought her to all her visits after that, and those are the only family members that I know of.

Q. Okay. Did Mrs. Gunnells ever come to an appointment alone that you remember?

A. No.

Q. She was always accompanied by somebody?

A. Yes.

Q. And you mentioned Mr. Glenn Gunnells earlier, and that is my client?

A. Yes.

Q. What was your impression, if any, of

Glenn Gunnells?

A. In the context of our office visits, he seemed to be attentive towards his mother, brought her to the appointments. I don't think she missed any. He asked what I felt were appropriate questions.

Q. Did you talk to Mr. Glenn Gunnells at any time outside of her regular appointments?

A. How do you mean exactly?

Q. Did he call in and ask any questions or --

A. He would occasionally call in to ask for, you know, things such as, you know, if he needed medicine refilled, if he had a question about his mother's health. We did see her pretty reasonably frequently, but certainly would call in if he had any concerns.

Q. Okay. Did you believe him in general to be a good caregiver to Mrs. Gunnells?

A. Yes, in the context of our office visits. Like, you know, he seemed to be giving appropriate care to his mother.

Q. Okay. And I know -- I think that you are aware of this, but, just to make you aware of this that Ms. Cathy Harkness, who is also the

daughter of Mrs. Gunnells --

A. Uh-huh.

Q. -- has brought a claim against my client as the personal representative of her estate for mismanagement of care and withholding of medications and general mismanagement. So that is basically why we are here today to try to figure that out because unfortunately --

A. Right.

Q. -- Mrs. Gunnells is dead, and so we cannot talk to her about it. So were you aware of anything of that sort, mismanagement of care or mismanagement of medication?

A. I was not. Her behavior seemed to be appropriate in our offices. She didn't seem to be fearful. I always examined her, and he was not in the room, so I didn't see anything that would have been concerning.

Q. Did she ever say anything to you that would have been concerning?

A. She did not.

Q. She is also -- she has a claim of undue influence. So she has basically -- do you know what that means?

A. I have no idea.

Q. Okay. It's a legal term that basically means that her son influenced her to write the will a certain way.

A. Okay.

Q. And do you have any reason to support that? Did she ever say anything to you?

A. She never even spoke about a will or any -- any regards. It really wouldn't have been a medical issue.

Q. Okay. Do you believe that from the time that you began treating Mrs. Gunnells until the time of her death, that she was of sound mind?

A. She -- define what you mean by sound mind.

Q. That's another kind of term of art. Did she ever indicate to you or intimate to you that she might not know where she was or who --

A. She knew who she was --

Q. Right.

A. -- and who her -- who her family, children were. She -- we carried on intelligent conversations in our office visits.

Q. Did she follow your instructions?

A. She did.

Q. Okay. Did she ask questions of you about her treatment?

A. She would. She would always thank me for carrying for her. Most of the time she talked about her husband and how despondent she was about that.

Q. Do you have any reason to believe that Mr. Glenn Gunnells ever exercised any influence over her?

MR. HOWE: Object to the form, but go ahead.

THE WITNESS: Go ahead and answer?

MR. HOWE: Yeah.

BY MS. WIMBERLY:

Q. Any negative influence over her?

MR. HOWE: Object to that as well. Go ahead.

A. I never saw anything in the context of my visits with her.

Q. Okay. And you said earlier that he usually wasn't in the room with her when you were --

A. He was not.

Q. Okay. Do you remember writing a letter dated August 6th, 2013 with regards to Mrs.

Gunnells? And I will actually let the court reporter mark it.

(DFT. EXH. 1, Letter from Dr. Chanson, was marked for identification.)

A. I believe that was in the context of a telephone consultation.

Q. Okay. I believe you're right.

A. But he is the one that initiated the request.

Q. Right. And I believe that was on -- and I have here the records that you provided to us via subpoena. It looks like -- I'm sorry for the bulkiness of them. If you just want to take a look at that. I am not going to mark it as an exhibit, but it looks like it's July 19th?

A. Yes.

Q. Does that refresh your recollection a little bit of what happened?

A. Yes.

Q. All right. Do you mind explaining to me how this letter came to be?

A. He called and asked that -- that his mother was going to see a -- seek legal consultation, and this letter was requested.

Q. Okay. All right. And this letter,

it's very short.

A. Okay.

Q. Matter of fact, it says, "To whom it may concern, Mrs. Gunnells is a patient of mine and seems competent to make her own decisions, signed Rhonda Chanson, M.D."

A. Yes, correct.

Q. And it's dated August 6th, 2013; is that correct?

A. Correct.

Q. Do have any reason to take back what you said in this letter?

A. Again, you know, with our conversation with Mrs. Gunnells, she seemed to know who she was, what her surroundings were, having intelligent conversations. There seemed to be nothing to suggest that she couldn't make decisions on her own.

Q. Okay. Just a few more questions.

A. Sure.

Q. Did you ever prescribe home healthcare for Mrs. Gunnells?

A. Yes.

Q. Okay. Do you remember around what time that was? I'm sorry, I'm not trying to quiz you,

but --

A. No, no, no. That's okay. It was probably on more than one occasion. It was likely for physical therapy. And I'd have to look back and see the exact dates but yes.

Q. It looks as though there was a telephone encounter where somebody called in asking for home healthcare? Does that sound correct?

A. That would have been one occasion, but, again, I think it was on several occasions, and some of those would have even come from out of the office. But I would have to read through all of these and find the exact time.

Q. You do remember?

A. Yes.

Q. Okay. And did you have the occasion to talk to Mrs. Gunnells about her home healthcare provider?

A. I don't --

Q. Do you remember?

A. I can't recall specifically. Can you tell me what you would mean by --

Q. Did she ever talk about people coming into her home and providing care with you? Did she

ever complain about them?

A. She never complained about it to me.

Q. All right. And do you have reason to believe that, once you prescribed it, they went through with the home healthcare provider?

A. That is my understanding. I think there was even maybe one or two times to extend the home healthcare that was being provided that the physical therapist felt was -- sometimes they will call to extend the amount of time they can stay in the home.

Q. Okay. And then I'm going to direct your attention to -- and I believe you have the medical records in front of you, but, if you need to look at mine, it's fine. But it's actually -- looks like your notations on July 3rd, 2013.

A. Are you talking about the actual office note?

Q. Yes. I'll just -- do you mind, I will just give you mine.

A. I believe I have it right here. Yep, got it.

Q. All right. And take time if you need to, but I'm going to intimate to you that this was the date that she actually executed her last

will and testament, the same day of this office visit.

A. Okay.

Q. And after review of this, if you need to review it here or if you already have reviewed, is there anything in this office visit that would make you think that she was not of sound mind on that day?

A. She was certainly upset because her husband had died several weeks earlier, and, as I stated before, that's a loss that is second to only losing a child and decisions and -- will need to be made with the burden of that knowledge.

She did not, you know, tell me that she was going to do any -- I mean, didn't have any -- it didn't have any bearing on her healthcare that day, whether she was going to a lawyer or not. So we didn't discuss that specifically.

Q. Okay.

A. So I have no knowledge of that --

Q. That's fair.

A. -- after the fact.

Q. All right.

A. Does that answer your question?

Q. Yes, thank you. And you have given us a lot of opinions today about the medical care of Mrs. Gunnells as well as her state of mind. And this is something that we all have to ask when we are --

A. Sure.

Q. -- talking to doctors, but do you hold all of the opinions given today most probable and to a reasonable degree of medical certainty?

A. Yes.

Q. Okay. And then something I didn't explain to you at the beginning.

A. Okay.

Q. You have the opportunity to read and sign your deposition.

A. Okay.

Q. Oftentimes we suggest it for medical professionals just if there's something that the court reporter didn't understand, a term of medical art --

A. Okay.

Q. -- or something like that.

A. Okay.

Q. So is that something that --

A. So she'll just --

Q. You'd like to do that?

A. Yes.

MS. WIMBERLY: Okay. All right. And I am done for now.

EXAMINATION

BY MR. HOWE:

Q. Okay. My name is Donald Howe. We met a little bit earlier.

A. Uh-huh.

Q. I have a list. Hopefully I shouldn't take very much longer. I found it. So, for me to get the right picture, you would examine her by herself without her son?

A. Yes.

Q. But you certainly -- he was waiting on her in the lobby, right?

A. Yes.

Q. And he drove her here and drove her back?

A. Yes.

Q. She couldn't drive herself?

A. No, she couldn't drive herself.

Q. Completely dependent on somebody to drive her?

A. Correct.

Q. Okay. And you would talk to her son about her?

A. I would.

Q. And get information about how she was doing?

A. As well as the patient herself.

Q. Right. But the son is, I guess, a team player in helping evaluate a patient in those settings?

A. Any family member would be.

Q. Sure. And you rely on their accuracy, don't you?

A. You do.

Q. And their completeness?

A. You do.

Q. And their truthfulness?

A. You do.

Q. Okay. Let me go through some of your notes --

A. Okay.

Q. -- to make sure I ask the right questions. So if you will go to February the 20th of 2013?

A. February 20th. Okay.

Q. And I'll point, but, up here, it does appear that she came with her son?

A. Yes.

Q. Okay. And down at the bottom of symptoms?

A. Yes.

Q. One, two, three -- four lines up, "she is on Celexa for depression"?

A. Uh-huh.

Q. "And continues to have some neurovegetative symptoms"?

A. Uh-huh.

Q. Tell me what neurovegetative symptoms are.

A. Symptoms of depression. I don't feel like doing anything. I sleep too much, don't sleep enough.

Q. Okay.

A. It's a medical term for signs of depression.

Q. And on the next page?

A. Uh-huh.

Q. I noticed that her primary assessment that you noted but was primary was HTN. What is that?

A. Hypertension.

Q. Okay. And then --

A. And it's only because we have to order -- we have to have some order to the way the computer system is set up.

Q. Okay. And then at the bottom -- and we kind of went over this, but on number 14, "patient cannot drive herself to and from physical therapy. She was dependent on family members to come back and forth?

A. Family members or friends, yes.

Q. Okay. All right. And then the next visit, it looks like -- sorry, I just had some eye surgery. All right. May 23rd, does that look right?

A. It does.

Q. And that seems to be primarily a urinary --

MS. WIMBERLY: What year, I'm sorry?

MR. HOWE: May 23rd, sorry.

MS. WIMBERLY: May 23rd of what year?

MR. HOWE: 2013.

MS. WIMBERLY: 2013. Thank you.

THE WITNESS: Repeat that question again. I'm sorry.

BY MR. HOWE:

Q. Well, just the next visit was May 23rd?

A. Yes.

Q. And it seems primarily that was a urinary tract infection-type problems?

A. It -- yes.

Q. Okay. But you do note in the -- under symptoms again, one, two, three -- fourth line up, "she does have some cognitive issues"?

A. Yes.

Q. Okay. But "does not recall whether she's had frequent UTIs in the past"; is that right?

A. If it's there, that's probably what's --

Q. Well, it's the next sentence. I was just going to say, what kind of cognitive issues were those?

A. Cognitive impairment as most people over the age of 70 will likely have.

Q. Okay. And what would that include?

A. Sometimes they can't remember things.

Q. All right. Anything else that you can remember about this lady?

A. Repeat the question. I'm sorry.

Q. Anything else that you remember about this specific lady that we are here about today?

A. Not anymore than I've mentioned unless you have some specific.

Q. Well, the word cognitive issues is a general term, right?

A. Right.

Q. And I'm just trying to figure out, I mean, there are -- I don't know how many, but there could be a number of things that could constitute cognitive issues. And I was wondering which of those specifics you would apply to Mrs. Gunnells on this date --

A. On the --

Q. -- that you know of?

A. On the 5/23rd date?

Q. Yes.

A. I had asked her whether she had had frequent UTIs in the past. She couldn't recall that.

Q. Okay.

A. It's not uncommon. Sometimes they can't remember every single aspect of their health --

Q. Okay.

A. -- from years gone by.

Q. Okay. So nothing more pronounced other than that at that point?

A. No.

Q. So then the next visit that I have is June 4th, 2013; is that right?

A. Yes.

Q. And that looks like it's sort of a general wellness visit?

A. It was supposed to be, but we ended up having to just go over some other things that were more ongoing for her at that time, which we often do.

Q. Well, one thing I just wasn't sure -- and some of this might be the typing of --

A. Uh-huh.

Q. -- the wording I didn't understand.

A. Right.

Q. "Symptoms, she comes in today initially for an annual wellness visit; however, she does not wish to have that done now or uterine --

A. Yes.

Q. -- the future"?

A. That's -- that's a Dragon typing.

Q. That's what I figured. So teach me what that was supposed to say as best you can.

A. For Medicare patients now, they are able and encouraged to have an annual wellness visit, if they come in for that. But there are other things ongoing with her health or they choose not to do that. We are certainly not going to, you know, have -- make them go through the motions of having that.

Q. Okay.

A. It is a - obviously it's something that's available to them.

Q. Okay.

A. And encouraged, but --

Q. She passed?

A. Yeah, basically.

Q. Fair enough. And on assessments, primary was the HT, and that was hypertension?

A. It was.

Q. And the thing under that, CAD?

A. Coronary artery disease.

Q. Yeah. Tell me, what does that mean?

A. Blockages of your coronary arteries.

Q. All right. And what effects does that have on people?

A. They have coronary disease. They have heart attacks. They have ongoing issues that stem from that.

Q. Okay. And does this --

A. She had that for years.

Q. Okay. All right.

A. She had a heart attack in the '90s, had a cardiologist.

Q. Fair enough. Okay. And then the next visit was this July 3rd, 2013?

A. Yes.

Q. Okay. And you had mentioned this, but she was -- sounds like she was pretty distraught at that time about the death of her husband?

A. She was.

Q. And you noticed it's been difficult for her to deal with that, correct?

A. Correct.

Q. And she's visibly upset at times?

A. Yes.

Q. And what was she doing that was visibly upset?

A. Crying.

Q. That's what I assumed, but I need to

ask. Okay. Can you tell by looking at your records -- or is there any way for us to maybe check before we go or even later -- what time of day this appointment was?

A. I would not know from the record. You would have to look it up through the computer.

Q. Okay. Is that something you could ask one of the ladies to do for us maybe before we left?

A. Sure.

Q. Okay. And her son did come with her on that visit, didn't he?

A. Yes.

Q. It's obviously a very difficult thing to put a measure on something, I guess, as subjective as grief. Do you -- you used, and I think we used word distraught. Would you -- was she -- would it be fair to say she was emotionally fragile? Would that be another term that would be fair?

MS. WIMBERLY: Object to the form.

A. She --

Q. She gets to object, but go ahead.

A. She was upset.

Q. Okay.

A. So I guess it depends on a subjective of what you mean by emotionally fragile.

Q. Okay.

A. I mean, I think it was appropriate for what had happened.

Q. All right. As you said, it wasn't a -- it never came up as to whether she should or shouldn't go see a lawyer that day. Had she asked you, based on what you saw in the room that day -- let's make it something a little simpler. I'm thinking about going to buy a timeshare in -- sign a timesharing contract today. Would you have said that was a good idea or a bad idea?

MS. WIMBERLY: Object to the form.

A. I don't know that I can speculate about something that I wasn't asked at the -- at the time. I mean, you know, I don't think -- I mean, we're dealing with the medical issues.

You know, unless there was something there that I -- that medically or legally would be not a good thing for her to undertake, her business of what she has to do and when she has to do it, I mean, I don't see that I really have any bearing on that.

Q. Okay. So your answer ultimately is you just don't have an opinion one way or the other?

A. Correct.

Q. And, on your assessments on the second page, it looks like depression and anxiety got to be the primary --

A. Well, she was -- I mean, because that was the most -- that's the only thing we talked about that day --

Q. Okay.

A. -- for the most part.

Q. All right. And that was 45 minutes, it looks like, on the first page; is that right --

A. Right.

Q. -- under symptoms? Okay. Then I promise we are making progress. It looks like the next visit, September 9th?

A. Yes.

Q. And, again, her son came with her?

A. Yes.

Q. And he describes -- I might can find it quicker. It's kind of down near the bottom, about there.

A. So you --

Q. That's where I'm -- yeah, I'm just trying to --

A. Okay.

Q. Okay. He is the lone caregiver for the patient?

A. Uh-huh.

Q. And is asking for help in the home, and in terms of caring for his mother, correct?

A. Correct.

Q. All right. So he acknowledged to you then that, number one, he was the lone caregiver?

A. Yes.

Q. And, number two, he needed help?

A. Yes.

Q. Okay. And it looks like, if you go to the next page under assessments, that you discussed or made a change in her medicines. I'm looking under number one, depression with anxiety.

A. Uh-huh.

Q. That you were going to taper her off Celexa and then maybe substitute something called Remeron?

A. Uh-huh.

Q. So tell me the reason for that and kind of what happened there.

A. There was a potential interaction with one of the medicines she was taking, and, to be proactively safe in that regard, it's probably best not to mix those medications.

Q. Okay.

A. So I felt it would be better to change her to something else. The Remeron also can stimulate the appetite, and that has a positive side effect, so to speak.

Q. Okay. So the Remeron was sort of the substitution as --

A. For the Celexa.

Q. -- the Celexa as tapered off; is that fair?

A. Yeah.

Q. Okay. All right. Do you know where the Remeron was called into pharmacy-wise or whether you gave prescriptions or samples or anything like that?

A. I don't have samples. It would have been e-prescribed. I would have to -- I don't have that part. I would have to look in the computer again to see.

Q. Okay. We can check it if we take a two-minute break at some point and you can check it?

A. Uh-huh.

Q. Okay. Fair enough. All right. And I think -- at the very end, it looks like three-week follow-up, correct? That was your plan?

A. That was a long note. Hold on a second.

Q. It was long.

A. Yes.

Q. Okay. And then it looks like that was followed up 9/30. September 30th, 2013 was the next visit, correct?

A. Correct.

Q. And it says she's taken Remeron to help with her weight loss and anorexia, correct?

A. Yes.

Q. Okay. And then it said something about -- and it was a little bit further. "Hospice has evaluated her, but it's unclear whether she's been accepted". What do you remember about that?

A. They had asked if they could -- and it's not uncommon to have some help in the home for members of families to care for their elderly

parents. Sometimes Hospice can stay in longer than home health can. There's just limitations by Medicare rules.

Q. Okay. I just -- to me, Hospice is sort of end of life, and I -- maybe that's wrong. I don't know.

A. You know, it -- it has a wider definition these days.

Q. Okay.

A. And, again, from the standpoint of the longest amount of time that a -- any kind of agency can help a patient, Hospice is going to have the most flexibility in Medicare guidelines.

Q. Got it.

A. Sometimes they're not able to accept the patient.

Q. Okay.

A. Of course, there has to be, you know, a proper evaluation, and I -- I'm not sure whether that occurred or not.

Q. Sure. You just checked -- you just heard that an evaluation had been made?

A. Right. Right.

Q. And you weren't sure what the result was?

A. Right.

Q. Gotcha. Okay. And then back over, I guess, on the next page, assessments. Again, depression with anxiety?

A. Uh-huh.

Q. "We talked at length about her ongoing anxiety and depression", correct?

A. We did.

Q. Is that still grief with the husband and the --

A. And her sister.

Q. Oh, right. And her sister, that's right. Okay. Her sister had passed away as well?

A. Yes.

Q. All right. And you continued her on Remeron for now?

A. Yes.

Q. Okay. There is some other medicines. While we are on that, there was -- under hypertension, Micardis. What is that, and what does that do?

A. It's an anti-intensive receptor blocker.

Q. You better explain that one.

A. It blocks anti-intensive receptors in the kidneys. It helps with blood pressure. It also can serve other purposes as well.

Q. What were you seeking to accomplish with Micardis in Mrs. Helen Gunnells?

A. I feel reasonably sure she came to me on that medication and had been it on for a long time.

Q. I think that's correct.

A. It is to control her blood pressure.

Q. Gotcha. All right. And then the next one was Tiazac?

A. Correct.

Q. And what does that do?

A. It is a calcium channel block.

Q. Okay. And it's under the HTN. So is that another blood pressure helper?

A. It is a blood pressure medicine.

Q. Okay. And --

A. Among other things.

Q. Oh, I'm sorry.

A. No. And among other --

Q. And what's sort of its specific task in the context of her health situation?

A. It is a calcium channel blocker. It

helps with her blood pressure. Both of those also will be used to help -- are cardio protective-type of drugs.

Q. Okay. All right. So it looks like the next -- well, while we are on medications, did he ever complain that she wouldn't take medicines? I know sometimes older people just say, I'm not taking that.

MS. WIMBERLY: Object to the form.

Q. Did you ever have that battle that you remember?

A. I would have to look specifically whether -- he did say at times she wouldn't take all of her medicine. She did have some swallowing issues.

Q. Okay.

A. So it was difficult sometimes to -- to take a number of them.

Q. If it had been a problem, you would have noted it?

A. Most likely if he had brought it up to me.

Q. Okay. So the next visit I have is December 16th; is that right?

A. Correct.

Q. All right. She's accompanied by her son again?

A. Uh-huh.

Q. Okay. And it says, "because of her cognitive issues" -- and I might have gotten ahead. Y'all had tried an Exelon patch?

A. Uh-huh.

Q. What is that for?

A. It is for -- it's actually medicine that's indicated for Alzheimer's, dementia.

Q. Okay.

A. We will use some of these medicines off label for patients who have cognitive impairment because there isn't anything at that time that was FDA indicated for that.

Q. Okay. But I think you did -- I mean, it was a dementia diagnosis that --

A. Senile --

Q. -- this was prescribed for?

A. Yeah, senile dementia.

Q. Okay. Fair enough. And -- all right. Then a couple lines, according to our conversations today --

A. Uh-huh.

Q. And this is going to be one of those

Dragon --

A. Okay.

Q. -- transcription issues.

A. Yeah. Sorry about that.

Q. That's okay. "It does not appear that she and her son won't pursue further". Is that probably want to pursue or something like that?

A. They wanted to pursue continuing those medications.

Q. And that's the Exelon?

A. Yes.

Q. What side effects was it having with her or what problems, if you remember?

A. I believe she was on Donepezil earlier, which is Aricept, and that caused nausea, which is not an uncommon side effect. The Exelon patch sometimes gets around that. I think that was more that she was going to continue on the Exelon patch.

Wait a minute. Sometimes that can also cause nausea, so it could be that that's what was going on, and he didn't to -- she didn't want to continue to use that.

Q. Okay. But you -- as we sit here,

you're not positive? You're just looking at it and trying to piece it together?

A. Yes.

Q. Fair enough. Now, a little further down --

A. Uh-huh.

Q. -- about there, two-thirds.

A. Okay.

Q. She's supposed to be taking Remeron --

A. Uh-huh.

Q. -- but apparently there's some question as to whether she is or not.

A. Uh-huh.

Q. What do you remember about that?

A. When I asked if she was taking the Remeron, he -- she didn't seem to recall that name. And, again, you know, in all fairness, there's two names for each one of these drugs.

Q. Okay.

A. So I just wanted to make sure that she was on the correct medication and she was taking it.

Q. Okay. What is the other name for it?

A. Mirtazapine.

Q. Okay. And then almost down to the

bottom?

A. Uh-huh.

Q. He says, "it's difficult for her son to bring her into the office frequently because of his ongoing work schedule and other responsibilities". Is that what he told you?

A. Yes.

Q. What did he tell you about his work, anything in particular? Do you remember?

A. He didn't.

Q. Okay. Do you know what he does?

A. No.

Q. Okay. And that was a 40-minute visit?

A. Yes.

Q. All right. And let me see. On the next page under assessments, on number two, it looks like your notes say you strongly recommend that she restart her Remeron?

A. Again, if I'm -- if there's some question of whether we're actually taking something, I just want to be very sure that the patient understands it's important that we take the medications.

Q. Right.

A. And make sure that we have, you know, the prescription --

Q. Right.

A. -- that it's filled, et cetera.

Q. Okay. All right. And then the next one, I believe --

A. Uh-huh.

Q. I promise we're making progress. January 2nd.

A. Yes.

Q. And I'm going to go down to this middle section because this is --

A. It's about --

Q. -- we're back to the Remeron issue.

A. Okay.

Q. Quoting, "patient is supposed to be taking Remeron, but apparently this has been some confusion will be with getting that medication prescribed". It says, "spite", but I don't -- I'm thinking inspite "having it sent to her pharmacy on multiple occasions. Patient's son was given prescription to take to the pharmacy". And later it seems to indicate you, like, actually hand wrote a pharmacy note.

A. I would have handwritten that

prescription and given it to them rather than e-prescribing it.

Q. Because apparently it wasn't going through or there was some problem?

A. Yes.

Q. Okay. And, again, you -- you thought it was an important medicine that she --

A. Yes.

Q. -- should be taking?

A. Yes.

Q. Okay. Had he ever called you in the meantime, and said, I'm having a hard time getting this filled?

A. Not that I recall specifically. 12/18/2013, I just wanted to make sure that she was taking it.

Q. So that was y'all following up with him?

A. Yes.

Q. Okay.

A. And the Remeron was recent at that time.

Q. And can you tell where it was sent to?

A. My guess is -- I would have to look

specifically in the computer, so it's not on here, but --

Q. Okay. All right.

A. Let me see. We've got --

Q. So just to back up and make sure I'm straight, you had seen them on 12/16?

A. Uh-huh.

Q. Strongly recommended recontinuing the Remeron?

A. Uh-huh.

Q. And you followed up with a call on the 18th?

A. Trying to make sure that -- that we were clear.

Q. To make sure there were no problems?

A. Right.

Q. Okay. But, when it came back on the 2nd, apparently there had been a problem of some sort?

A. Enough for me to print out a prescription and give it to him.

Q. And my impression of that is, like, if this isn't going through the --

A. For what they --

Q. -- E-prescribe or whatever, I'm going

to write it and --

A. Yeah, and then --

Q. -- that will keep us from having this communication problem?

A. Right, right, like we did in the old days.

Q. Okay. Best laid plans of Mice and Men, sometimes you just have to write it and hand it to them?

A. Yeah.

Q. And that was on January the 2nd of 2014, correct?

A. Correct.

Q. And his basic, I guess, problem was, yeah, we're trying to get the Remeron, but we just can't get it?

MS. WIMBERLY: Object to the form.

A. I don't think he voiced those specific concerns, but I just wanted to make sure she was taking it. And, since we couldn't relate specifically whether we were or not, I wanted to make sure that he had a prescription and there was certainly no barriers to get them filled other than taking it to the pharmacy.

Q. Okay. But, apparently at that point,

he hadn't been able to fill it?

A. That's what I had been told.

Q. Okay. All right. And I want to hand you a printout from a place. It's Plantation Pharmacy.

MS. WIMBERLY: I'm going to object to this.

MR. HOWE: Yeah, you can object to it.

MS. WIMBERLY: Oh, I'm just telling the court reporter.

MR. HOWE: Yeah.

BY MR. HOWE:

Q. And I want you to look on the bottom of that page at what's highlighted.

A. I'm sorry. If I can ask a question?

Q. Yeah. You can go ahead.

A. Am I still allowed to --

Q. Sure, yes.

MR. HOWE: And your objection is reserved for anything that --

MS. WIMBERLY: And can you say what page?

MR. HOWE: I'm looking at the second page.

THE WITNESS: Is this the page I'm looking at?

BY MR. HOWE:

Q. Yes. At the bottom is a big, orange highlighted thing.

A. Uh-huh.

Q. Mirtazapine -- I can't say it.

A. Mirtazapine?

Q. Yes. Is that the same thing as Remeron?

A. It is.

Q. Okay. And right under where it says the name of the medication, it's got your name as the prescriber, correct?

A. Yes.

Q. And what was the date that prescription was filled?

A. It appears to be 12/21/2013.

Q. Okay. Two weeks before you hand wrote this prescription because you couldn't get it filled, correct?

A. Correct.

Q. Okay. And I'm going to mark that as an Exhibit for us, No. 1.

(PET. EXH. 1, Patient Prescription

List, was marked for identification.)

Q. And I skipped over this, and I apologize. This is January 2nd, 2014?

A. Uh-huh.

Q. This was not sort of a normally scheduled wellness. It looks like, reason for appointment, she'd had a fall?

A. Yes.

Q. Okay. And the fall was, it looks like, 12/31, so a couple days before; is that correct?

A. Let me just see.

Q. Reason for appointment there at the top.

A. She had two recent falls. They may not have told me exactly when that was, but --

Q. I mean, I'm looking for January the 2nd.

A. Two days ago, yeah.

Q. Okay. Yeah. All right. So fell, ER, follow-up pain?

A. Right.

Q. Okay. And she fell on December 31st; is that --

A. It -- that's what was reported to me.

Q. Okay. All right. And then skipping, I'm sorry, but to the back.

A. Uh-huh.

Q. On number six under treatment in your list of things, hypokalemia. What is that?

A. Let me make sure I get the right page here. That's low potassium.

Q. Are we on the same page?

A. Yes.

Q. Do you see it?

A. I see.

Q. Okay. And did you prescribe anything for that?

A. Did I describe the potassium?

Q. Did you prescribe anything for the condition of hypokalemia?

A. Yes, potassium.

Q. All right. What -- what does low potassium do? What risks does it present to a patient, that kind of thing? Why did she need it?

A. She needs it because she is taking a diuretic, more than likely, and low potassium can cause a number of different issues to include muscle spasms, cardiac issues and a number of other

things. So obviously we don't want low potassium.

Q. Okay. I just went through this --

A. And that was --

Q. -- with the father-in-law. He was on diuretics.

A. Right.

Q. His potassium was low. He has heart problems. It's a -- it becomes a big concern if you have heart issues, doesn't it?

A. Yes.

Q. Because potassium is an electrolyte; is that right?

A. It is an electrolyte.

Q. That helps the muscles have their --

A. Function.

Q. Function, right.

A. Yes.

Q. And one of the biggest and most important muscles we have is the heart?

A. It's -- it's an important one, yes.

Q. An important one, okay. And she had heart problems?

A. She did.

Q. Okay. So potassium was, I guess

we'll say the order of the day if it was low, correct?

A. It was needed.

Q. Okay. So the next appointment is this February 6th, 2014?

A. Yes.

Q. Okay. And under the reason -- well, actually, this was a follow-up. It was actually a scheduled appointment as best I can tell?

A. It was.

Q. Okay. So that's why it has follow-up in number one, correct?

A. Right.

Q. And, under the history of symptoms, it says -- it looks like she was getting short of breath the night before and maybe a few days before?

A. Yes.

Q. And said, "he almost" -- "son almost took her to the emergency room last night", and here's another transcription "dissipated on its --

A. Probably --

Q. Probably own?

A. Yeah. Probably that her symptoms dissipated on -- on their own.

Q. Okay. And was taking some Ativan?

A. Uh-huh.

Q. Was Ativan something that you had prescribed?

A. She was already on that.

Q. Okay.

A. But that was also used for her anxiety.

Q. Okay. Is that the same as Lorazepam?

A. It is.

Q. Okay. She was having pain in her shoulder and tingling down to her arms, correct?

A. Yes.

Q. And significant cognitive issues making it difficult for her to give a good history that day?

A. She did not feel well.

Q. Okay.

A. She felt very poorly actually.

Q. All right. And you decided, based on your evaluation --

A. Uh-huh.

Q. -- that she needed to go straight to the hospital?

A. Yes.

Q. And the ambulance came to your office --

A. Yes.

Q. -- and took her right on up?

A. Yes.

Q. Okay. And under -- at the top, reasons for appointment, I notice number five "never got K plus RX". What does that mean?

A. She never received the potassium prescription.

Q. Okay. And do you know why?

A. I do not know that because we had all of these other key things going on.

Q. Okay.

A. And so I don't know if -- who verbalized that. My nurse would have taken that history, so, I mean --

Q. Okay. And I -- and you correct me if I'm wrong here, but part of what goes to the hospital when she gets here is kind of your workup?

A. Yes, yes.

Q. And that would be one of the things you would --

A. Sure.

Q. -- want them to know?

A. Oh, absolutely.

Q. Okay. The lady's had low potassium, doesn't seem to be getting the treatment I prescribed?

MS. WIMBERLY: Object to the form.

Q. Is that a fair way of saying it?

A. It was important for them to know what medicines she was currently on.

Q. Okay.

A. And obviously if potassium is not on the list, then they would see that.

Q. Yeah. Okay. Were there any visits between that January 2nd of 2014 and the February 6th? Let me make sure I've got everything.

A. I don't see any.

Q. Okay.

A. Let's see. She was coming in about four weeks from the 2nd.

Q. Okay. All right. You've seen -- my copy is missing here. One second. I'm assuming you're familiar with the records at Roper St. Francis? Y'all are all computerized these days, right?

A. Actually, the hospital is not connected

to us.

Q. Okay.

A. It's a totally separate computer system.

Q. Okay. But you've seen those kind of records before?

A. Oh, yes.

Q. Okay. Does this look like records from Roper St. Francis?

A. It does.

Q. All right. And look at the date on that and tell me what the day of this visit is?

A. 1/6/2014.

MS. WIMBERLY: I'm going to object to this.

MR. HOWE: Okay. Yeah.

MS. WIMBERLY: Did you ever produce this to me?

MR. HOWE: I think so. I think we did.

MS. WIMBERLY: I didn't get it.

MR. HOWE: If not, we'll get it.

BY MR. HOWE:

Q. "An 84-year-old white female presents to emergency department via wheelchair with

complaints of a fall injury"; is that correct?

A. Yes.

Q. Okay. And if you will look on the second page, near the bottom. What directions did they give?

A. To follow up with me.

Q. And when was she supposed to do that?

A. The following day.

Q. Okay. Which would have been the 7th?

A. Right.

Q. Which we will go to the fourth page, maybe fifth page on the encounter summary. It has a special note. And what does that direct them to do?

A. Please follow-up with Dr. Chanson tomorrow.

Q. Okay. And do you have any -- anything in your file that noted that that was complied with?

A. It wasn't a visit. Let's see. Just bear with me here.

Q. Yeah. If I'm missing it, I want to know.

A. No. I'm just -- okay. Let's see. No, I don't see anything.

Q. No calls or anything?

A. Not on --

Q. I don't have a call log.

A. Not on the 7th.

Q. Okay. All right. If we want to get the physical therapy slash home healthcare notes, we would get that through Roper St. Francis somewhere; is that what --

A. I would, or whoever the home health agency we did use.

Q. Okay. It seemed to be that's whose -- who it was. Can you tell from looking or -- I hate making you do that; but while I've got you in here.

A. Let's see what we've got in here. It looks like it was Roper St. Francis Home Health.

Q. Okay. Good. Let me go ahead and mark one of those as No. 2, I guess. I'm just having her mark a copy of the emergency room notes that we just went over.

A. Okay.

MR. HOWE: Subject --

MS. WIMBERLY: Subject to my objection.

MR. HOWE: -- to Alexis' objection.

(PET. EXH. 2, Roper 1/6/2014 Record, was marked for identification.)

BY MR. HOWE:

Q. Okay. Almost done. I also looked -- I have a prescription printout from the Naval Hospital, and it's dated January 28th, 2015.

A. Okay.

Q. Okay. So this would have been almost a year after she died. Okay?

MS. WIMBERLY: Do you have a copy for me?

MR. HOWE: I do.

MS. WIMBERLY: I object.

BY MR. HOWE:

Q. And if you look, go down one, two, three. What is that word?

A. Diltiazem.

Q. Yeah. Is that the same as the Tiazac?

A. Tiazac, uh-huh.

Q. Okay. And, if you read with me -- make sure I'm right here -- that looks like she got 90 of those, pursuant to prescription. Your prescription was that July 3rd -- no, it was wrong, sorry. Start date, July 3rd, 2013?

A. Yes.

Q. So that would have been the visit?

A. Yes.

Q. Okay. So that would've been when it was, I guess, e-sent over to the hospital --

A. Yes.

Q. -- or to that pharmacy? All right. And it says refills left, three of three. So three of three would have been in addition to --

A. Yes.

Q. -- the one that they picked up that day?

A. Right.

Q. Just making sure, okay. And then it says, last filled on 23rd, July 2013?

A. Wait a minute.

Q. Sorry. Right in the middle under where it says --

A. Oh, last filled, 23rd July 2013.

Q. Okay. Is that correct?

A. That's what it -- yes.

Q. All right. And does that -- you're the doctor. Does that indicate to you that the three of three refills were left remaining?

A. It would indicate that that's the last

time it was filled.

Q. Okay. We'll just mark that as No. 3.

(PET. EXH. 3, Medication History, was marked for identification.)

Q. Now, she got 90 of them at that time; is that right?

A. Correct.

Q. Am I reading -- okay. And she was supposed to get one a day?

A. Yes.

Q. All right. Okay. I think I'm done, except for a couple of -- what I would like to do is take a two-minute break, and if you could check with your office to see -- I'll write these down -- the time of the appointment on July 3rd, 2013.

A. Okay.

Q. The pharmacy potasium got called into and the pharmacy for Remeron. I put called in, but that may be the E thing. And then -- and also the time of the visit on that February 6th -- at the time of schedule. If you could check those for me --

A. Okay.

Q. -- that would be great.

A. Sure.

Q. Oh, and, last but not least, if there were any other pharmacies that were in your system, like that I didn't know about.

A. Okay.

Q. Okay. The ones I've been able to find were the Plantation Pharmacy and Navy Hospital or the Navy whatever it is. But if there's something else --

A. Okay.

Q. -- that will let me know where else I need to check.

A. You want me to --

Q. Can we take a three-minute break and you double check those things?

A. Okay. All right. Do you just want me to verbally report that back to you?

Q. Yeah, that's fine.

A. Okay. All right.

(A recess transpired.)

BY MR. HOWE:

Q. All right. So we took a quick break, and you went and checked a couple of things for us. And tell us what you found.

A. The time of the appointment on July 3rd

was approximately 11:00 in the morning.

Q. Okay.

A. And the potassium, it must have been handwritten because there isn't an e-prescribe.

Q. Okay. All right.

A. The Remeron on 12/2013, Plantation, e-prescribe was sent in.

Q. Okay.

A. And there was another one on 12/16/13 to Express Scripts, which is a mail order.

Q. Okay.

A. And that's another mail order pharmacy that was on her list.

Q. Okay.

A. That was the only other pharmacy that I could ascertain.

Q. Okay.

A. The time of the visit on the February visit was 11:15, and that's, you know, approximate.

Q. Right.

A. That's just based on, you know --

Q. Right, right. Morning as opposed to afternoon basically?

A. Yes.

Q. Okay. And I'll get that. When we get the EMS run, it will probably have a specific time.

A. Yeah.

MR. HOWE: So I think that should do it. Okay. That's all the questions I have. Thanks.

EXAMINATION

BY MS. WIMBERLY:

Q. Okay. I just have a few follow-ups.

A. Sure.

Q. And then we will be done.

A. Okay.

Q. With regards to any communication that you had with Mrs. Gunnells and/or Mrs. --

A. Helen? Okay.

Q. I call her Mrs. because she's --

A. No, no, that's fine.

Q. -- a widow.

A. I just wanted to make sure.

Q. Yeah, sorry. Mrs. Helen, your patient. Between the January 1st, 2014 visit --

A. Uh-huh.

Q. -- and the February 6th, 2014 visit?

A. Uh-huh.

Q. I found, it looks like one, two, three, four, five -- six phone calls. Do you have those records?

A. I don't have a date on that one. Okay. From what dates again?

Q. It's between the January 2nd, 2014 visit and February 6th, 2014 visit. And I believe the first one is on -- from what I can tell, and you are much better at reading these than me -- but January 10th, 2014, answered by Susan Frees.

A. I'm not seeing that one. I don't see that one in here. I see a couple others.

MR. HOWE: If you want to just hand it to her and let her read it in the record, that's fine.

MS. WIMBERLY: Yeah.

BY MR. HOWE:

Q. I'm going to hand you these phone calls.

A. I'm sorry.

Q. That's totally fine. And they are -- I apologize. They're really small, but if you can just clarify what the phone calls -- the date of each phone call and what was said on each phone call, just read it into the record.

A. This is from 1/10/2014. "Please call for son. We may need to adjust her" -- it totally makes no sense -- "may need to adjust her blood pressure at home". And that was the home health people calling on that particular day.

Q. Okay.

A. On the 14th, she -- I think that was him calling and --

Q. Just to clarify --

A. Because her blood pressures were lower, so to see if her blood pressures were better. And my answer was, "is she back to taking her Micardis", and then I wanted to have her come in and see me and "patient signed given instructions".

Next is dated 1/20/2014. It is the Plantation Pharmacy calling. She is requesting Celexa and Nexium, and she's not sure of the strength of either one. So it must have been the pharmacist calling.

The answer is, "she is not supposed to be on Celexa, but called to clarify. I feel it's important for her to take her Mirtazapine", which is a Remeron and "left message for son to call on potassium; never received it. Son told, patient is not taking Micardis. Son told, does not need

potassium.

My answer is, "yes, because she wasn't taking the Micardis any longer and wasn't taking the diuretic". Next was on 1/23/2014 was a call for Tramadol, and that was the pharmacy. And I think that's -- wait a minute.

This is on 1/27/2014 about her blood pressure readings and told me, "blood pressure by home health Saturday night, 144/64". I'm better without my glasses. "Saturday night called her son, chest pain and arm pain; went to the emergency room". And that's probably when she was told to follow-up with me shortly thereafter.

Q. Okay. Doctor, I'm going to mark these as the next exhibit.

MR. HOWE: Yeah. Let's get a copy so you don't lose track of them.

(DFT. EXH. 2, Telephone Encounter, was marked for identification.)

MS. WIMBERLY: And that is all I have.

MR. HOWE: All right. I just need to look at those for one second, if I can read them.

EXAMINATION

BY MR. HOWE:

Q. Okay. And, I'm sorry, let's just go through these.

A. Okay.

Q. So this first one, where is -- what is the date on that?

A. This is 1/27/2014.

Q. Okay. So we are going, I guess, backwards. And so that was Glenn calling?

A. It was.

Q. All right. And he was worried about her blood pressure?

A. He was calling in blood pressure readings probably per my request.

Q. Okay. If you get numbers of such and such?

A. Yes.

Q. And what were the readings?

A. 168/80, 144/64.

Q. Those are on the high side or --

A. They are, but, since it was lower now that her blood pressure has gone back up, we would have reinstituted her medications.

Q. Okay.

A. But previously they had been in the 90's.

Q. Okay. All right. Let's go -- it looks like February 3rd.

A. Yes.

Q. And so what does that one tell us?

A. Caller can't be -- it says caller self. They didn't delineate who that was, but apparently prescriptions were asked for.

Q. Okay.

A. And those were filled.

Q. Okay. And that was Plantation or something, or does it say?

A. It doesn't specify.

Q. Okay. This one?

A. That is Mr. Glenn Gunnells calling again with blood pressure readings on the 14th. Off the Micardis because the blood pressure had been lower, and I wanted make sure she was getting back to taking her medication.

Q. Okay. It says something about "back taking Micardis"?

A. That was my question to him, whether she was back taking her medication.

Q. And he was saying not yet or --

A. Yes. The answer was no.

Q. Okay. I think I got it. And this --

maybe I'm just missing -- I don't see the date yet, I'm sorry. Just tell me what that one says.

A. The date was on the 10th.

Q. Okay. Of January?

A. Yes.

Q. All right.

A. This is the physical therapist calling. They would like to extend the therapy twice a week for three more weeks.

Q. Got it.

A. I had mentioned the lower blood pressure readings and had asked my nurse to call and get more details on what was occurring so I can make an appropriate decision on what to do.

Q. Okay. Got it. And then this one, the caller was Plantation Pharmacy?

A. It is Plantation Pharmacy calling for a refill, and there's some -- calling for a refill on the medication that she shouldn't be taking at that time.

Q. Right.

A. I just wanted to make sure that we were clear.

Q. And that was the Celexa? She had tapered off because of the interaction with the

Ultram, I think it was?

A. Yes.

Q. Okay. And then this 1/23, it looks like another pharmacy refill?

A. It is the pharmacy calling for a refill on Tramadol.

Q. And that's pain medication, right?

A. It is.

Q. Okay. Is that a narcotic? Is that considered a narcotic?

A. It is not a narcotic.

Q. Okay. Tell me what it is then.

A. It is a non-narcotic opioid.

Q. Okay.

A. It is not a non-steroidal, but not Hydrocodone.

Q. Okay.

A. It's sort of in between.

Q. In between, okay. And I think -- she had been on that for quite a while?

A. Intermittently.

MR. HOWE: Yeah. Okay. That's all I have. Anything else?

MS. WIMBERLY: That's it.

(The deposition concluded the 3:40

p.m.)

CERTIFICATE

I do hereby certify that the witness whose attached deposition was taken before me in the aforementioned matter was, by me, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the testimony contained in said deposition was, by me, reduced to writing in the presence of said witness by means of computerized transcription. The said deposition is a true and accurate transcript of the whole of the testimony given by the said witness, as aforesaid.

I do further certify that I am not connected by blood or marriage with any of the parties or their attorneys or agents, and I am not an employee of either of them, nor interested directly or indirectly in the matter of controversy either as counsel, attorney, agent, or otherwise.

Jennifer M. Huggins
Court Reporter And Notary Public
My commission expires: 02/07/2022

DEPONENT CORRECTION SHEET

I, the undersigned, RHONDA CHANSON, M.D., do hereby certify that I have read the foregoing deposition and wish to make the following clarifications and/or corrections, if any.

PAGE	LINE	CHANGE	REASON

RHONDA CHANSON, M.D. Date

JH

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY
VIDEOTAPED DEPOSITION OF HELEN CARROLL

IN THE MATTER OF:
HELEN B. GUNNELLS

CATHY G. HARKNESS,

Petitioner,

vs. CASE NO. 2014-ES-10-2022

GLENN A. GUNNELLS, Individually and as Personal Representative of the Estate of HELEN B. GUNNELLS,

Respondent.

DEPONENT: HELEN CARROLL
DATE: November 6, 2015
TIME: 9:53 A.M.
LOCATION: LAW OFFICES OF DONALD H. HOWE, LLC
818 Wappoo Road
Charleston, South Carolina

REPORTED BY: TRISHA RARICK
MAGNA LEGAL SERVICES
(866) 624-6221
WWW.MagnaLS.com

A P P E A R A N C E S

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I N D E X

EXAMINATION	Page
By MR. HOWE	5, 40
By MS. WIMBERLY	23
Certificate of Reporter	41

E X H I B I T S

		Page
PETITIONER'S EXHIBITS		
1	STATEMENT	4

VIDEOGRAPHER: We are now on the record. This begins videotape number 1 in the deposition of Helen Carroll, in the matter of Cathy G. Harkness versus Glenn A. Gunnells in the State of South Carolina, in the Probate Court, County of Charleston. Case number 2014-ES-10-2022.

Today is November 6th, 2015, and the time is 1:09 p.m. This deposition is being taken at the law office of Donald Howe, LLC, 818 Wappoo Road, Charleston, South Carolina, at the request of attorney Donald Howe. The videographer is Michael Carr of Magna Legal Services, and the court reporter is Trish Rarick, also of Magna Legal Services.

Will counsel and all parties present state their appearance and whom they represent, after which, the court reporter will swear in the witness and we will proceed?

(Petitioner's Deposition Exhibit No. 1 was marked for identification.)

MR. HOWE: Good afternoon. My name is Donald Howe, and I'm here on behalf of Ms. Cathy Harkness.

MS. WIMBERLY: Good afternoon. My name is

Alexis Wimberly, and I am here on behalf of Glenn Gunnells.

THE WITNESS: Oh, I'm Helen Carroll and --

MR. HOWE: You're just the witness. So you need to put your -- she's going to swear you in.

THE WITNESS: Oh, okay.

MR. HOWE: Sorry.

HELEN CARROLL,

having been first duly sworn, was examined and testified as follows:

THE WITNESS: Yes.

BY MR. HOWE:

Q Good afternoon, Ms. Carroll. We've met before. My name is Donald Howe, and I'm just going to ask you -- I've already lost my mic -- ask you a few questions. Yeah. I think I'm close enough. All right. What is your full name, please, ma'am?

A Helen -- Helen Campbell Carroll.

Q Okay. And Ms. Carroll, how old are you?

A Ninety-two.

Q And where do you live?

A 403 Splitrail Drive, Goose Creek.

Q How long have you lived at that address?

A Thirteen years.

Q How long have you lived in the Charleston area?
A Since 1948.
Q And I believe you are a widow; is that correct?
A Yes.
Q What did your husband do when he was down here in Charleston? Where did he work?
A What he'd done?
Q Yeah.
A He worked at Westvaco.
Q Okay. And do you have any children?
A I have four, one deceased.
Q Okay.
A I have three now.
Q Three now? Okay. Tell me a little bit -- how is your health?
A It's fair.
Q All right. But you feel well enough to answer questions today and be truthful; is that correct?
A True.
Q Okay. As I explained to you a little earlier, we're taking this deposition to be used in a court hearing. It's a trial before a judge, and

it's about the will of a lady named Helen Gunnells, and you understand that?

A Yes.

Q And you understand you're under oath today?

A Yes.

Q Okay. How did you know Helen Gunnells? Did you know her?

A I knew her through the church.

Q All right. And over how long a period did you know her?

A Oh, I think about 40 years.

Q Okay. And were you -- how close of friends were you? What was your relationship like with Ms. Gunnells?

A Well, we started getting -- we started getting pretty close, and we got closer when the church would go on trips and we'd room together.

Q Okay. And how long ago was that?

A I don't remember.

Q All right. Good while though?

A It's been a good while.

Q And how would you describe how close you-all were as friends? Good friends, medium friends? What would you say?

A I'd say we were pretty good friends, because I was over at her house a good bit.

Q And when you say a good bit, what was that? How much -- how often would you say?

A Well, after my husband passed away, I didn't have nothing to do. And I'd -- she'd called me, and we'd -- I'd come over there and stay most of the day.

Q Okay. And how often would you do that?

A At least once a week.

Q Okay. And did you also talk on the phone?

A Oh, we talked on the phone every day.

Q All right. Now -- and did you know her husband as well?

A Yes.

Q All right. And do you -- his name was Arden; is that correct?

A Yeah.

Q Do you remember, and I'm not looking for an exact date, but just sort of a generally when Arden was diagnosed or got news that he had cancer?

A I don't remember.

Q Okay. Do you remember that he did at some point --

A Oh, yeah.

Q -- become sick with cancer? I'm not looking for the date, but just generally that that happened?

A I guess about a month before it happened.

Q Okay.

A I mean after it happened.

Q Okay. And were you still in contact with Helen during that time?

A Oh, yeah. Uh-huh.

Q All right. Still talking to her regularly and --

A Oh, yeah.

Q -- see them? Would you go by and see them after that?

A Yes.

Q All right. And do you remember when their son, Glenn, moved in to help take care of Arden and Helen?

A About -- I guess about four months before -- three or four months. I don't recall.

Q Right. And before what?

A Before he moved -- after he moved in.

Q Okay. So you were aware that he moved in a little bit afterwards?

A Uh-huh. Uh-huh.

Q All right. And how did your relationship with Helen progress after Glenn moved in?

A Well, she quit calling me, and -- and we -- whenever I'd -- I'd call her. Most of the time, she wouldn't -- didn't answer the phone.

Q Who would answer?

A Glenn.

Q Would you get to talk to her?

A No. He would say she was upstairs going -- taking a nap or in the bathroom.

Q All right. And was that -- I guess, would you -- well, would you hear back from her?

A No. He'd say he'd tell her to call me, but she never did.

Q Okay. And was that different from what -- how it had been before?

A Oh, yeah.

Q And did you ever go by and see Helen after Arden died?

A Yeah.

Q All right. And why did you -- tell me how that came about and why you would -- why you did that.

A Well, he didn't -- he'd never go out of the room or stay in the kitchen while I was -- whole

time I was there.

Q Okay. And you say he, are you talking about Glenn?

A Glenn, uh-huh.

Q All right. So when you would go by and visit, did you ever have any time alone just with Helen?

A Huh-uh, no.

Q Okay. And what were your conversations like with Glenn? How was -- how did Helen act when you were talking when Glenn was around?

A Well, she wouldn't say very much.

Q And that --

A As if -- as if -- as if she didn't want Glenn to know what I was saying -- what we were talking about.

Q And was that different from the way she had been before?

A Oh, Lord, yes.

Q Okay. And how -- so tell me a -- I guess give me little bit before and after. What were your conversations like and how were you before he moved in?

A Well, before that, we would just talk and tell each other jokes, and -- oh, I'm sorry. Tell

each other the jokes, and we just had a conversation or talk about church or something like that.

Q Okay.

A And our traveling, what good times we had.

Q And the nature of that changed after Glenn moved in?

A Yeah.

Q All right. You had a particular visit after Mr. Gunnell -- Gunnells, Arden, died; is that correct?

A Uh-huh.

Q Where you went over; is that correct?

A Yes.

MS. WIMBERLY: Object.

BY MR. HOWE:

Q And that's okay. And did you -- how did you get to Helen's house that day?

A Well, I -- I generally went through the garage, because most of the time, the garage door was open. And it wasn't open that day. So I went to the door and rang the door bell, and I knew she was there, because I could see her sitting in the den. And it had taken her a long time to get to the door.

Q Okay. Was anybody with you that day?

A No. I was alone.
Q Had you driven yourself?
A Pardon?
Q Did you drive yourself --
A Oh, yeah.
Q -- to get there?
A Uh-huh.
Q Okay. All right. And so did she, ultimately, come and answer the door?
A Yeah. She came and answered the door.
Q All right. And so tell me a little bit about that visit.
A Well, she said she was glad to see me, that she was there alone, and that Ar- -- Glenn was gone somewhere.
Q Okay. And I'm sorry. I'm tearing a piece of paper from my own notes here. And how did she seem to be that day?
A Well, she kept -- kept looking out the window waiting to see -- seemed to me like waiting for him to come home.
Q Okay. Were you able to talk to her though and have a conversation?
A Oh, yes. We had a conversation.
Q And did at some point she start talking to

you about her -- I guess her living arrangements?

A Yes. She did.

MS. WIMBERLY: Objection.

BY MR. HOWE:

Q And what all did she tell you?

A I don't really recall everything, but she said that she couldn't talk on the phone like she used to could, and that he'd tell her she need to get up and walk more, and she needed to do this and she needed to do that. And she said, Helen, I just don't feel like it.

Q Okay. And what about talking on the phone? Did she mention any particular people that she had a hard time --

A No.

Q -- talking with?

A Not that I can recall.

Q Any family or anybody like that?

A Not that I recall.

Q Okay. All right. What else did she tell you?

A Well, she said she'd like to go see her sister in Georgia, Evelyn, but Glenn wouldn't take her.

Q Okay. Did she mention anything about

going with Glenn to see a lawyer at any time?

MS. WIMBERLY: Objection.

A No.

BY MR. HOWE:

Q Okay. Did she ever talk to you about signing a will or something like that?

A No.

Q Never came --

A No.

Q All right. Did -- how long were you there?

A I'd say about an hour.

Q Okay. What else did she tell you, if anything, about Glenn that day?

MS. WIMBERLY: Objection.

A Nothing that I can recall.

BY MR. HOWE:

Q Okay. You and I have met before, correct?

A Yes.

Q All right.

A Uh-huh.

Q And do you recognize -- I got a -- what we call a document.

A Yeah.

Q All right. And tell me, it's got a date

up here of April 2nd, 2014. Is that a couple of months after Ms. Helen Gunnells died, correct?

A Yes.

Q All right. And have you had a chance to look that document over?

A Yes.

Q Before we started?

A Yes.

Q You and I went over it just a little while before we came in here, correct?

A Yes.

Q And actually made a couple of little changes on letters but nothing on the content; is that correct?

A Right, right.

Q All right. And --

MS. WIMBERLY: Sorry. Changes on letters?

MR. HOWE: Yeah. There was a one -- it said every instead of very.

MS. WIMBERLY: I see.

MR. HOWE: And then -- and she initialed it.

MS. WIMBERLY: Thank you.

MR. HOWE: Yeah. It's very minor, but it's just something --

MS. WIMBERLY: Okay.

MR. HOWE: -- she noticed as we were going through.

MS. WIMBERLY: Okay.

MR. HOWE: Okay? We didn't even catch them all when we called.

BY MR. HOWE:

Q I'm going to turn to the third page, and -- well, before we look at that, when we went over the document, did you have any changes you wanted to make about any of the substance of anything that's in it?

A No.

Q Do you feel like it's true and correct?

A I do.

Q And it was done pretty -- well, about two months after -- after your friend died; is that correct?

A Yes, sir.

Q All right.

MS. WIMBERLY: I'm going to make an objection to this document.

MR. HOWE: That's fine.

BY MR. HOWE:

Q Let me ask you -- how is your reading?

Can you read well enough to look at that? I'm looking right --

A Yeah, uh-huh.

Q Yes, ma'am. If you'll just look at that paragraph just for a second, let me ask you a couple of questions.

A Okay.

Q Does that help refresh your memory about whether she talked to you about a will?

A Yeah.

Q Okay. What -- and what did she tell you about a will?

A She said that -- she didn't say too much, but she said that Glenn told her she had to.

Q Had to do what now?

A Sign a new will.

Q Okay. And how did she seem to feel about it?

A She didn't want to.

Q Okay. And your statement says, Helen, I had no choice. Is that her talking to you?

A Yeah, uh-huh.

Q All right. And the paragraph right above as well, right here, does that refresh your memory a little bit about what she may have said about

talking to relatives and things like that?
A Yeah. She talked to Evelyn a good bit.
Q Okay.
A That was her sister.
Q Okay. But your opening sentence says, Glenn has made it to where I can't even talk to my brothers anymore.
A Uh-huh.
Q Is that correct?
A Yeah.
Q Was that something she discussed with you that visit?
A No. She just said -- she just said she couldn't talk to her brother and sister.
Q Okay. And why was that?
A I don't really -- I don't know.
Q Okay.
A She didn't say why.
Q When -- when you had been there a while, apparently Glenn came back?
MS. WIMBERLY: Object to the form.
BY MR. HOWE:
Q Is that correct?
A Yeah.
Q And tell me what happened once he came

back.

A Well, she seemed to clam up and wouldn't -- didn't talk anymore. So then I told her that I was going home, and that I loved her.

Q Okay. What did you feel like being there and watching the relationship between Glenn and Ms. Helen? What --

A It just didn't seem the same.

Q Okay. And how was it different? How would you describe that?

A Well, it was kind of cold.

Q Okay.

A And she generally asked me to stay for lunch if I went over there about lunchtime, but I didn't feel welcomed, so I left.

Q Okay. And what was it that didn't make you feel welcomed?

A I just felt -- well, you know, you can go in places, and you don't feel right?

Q Okay. And I --

A I guess that's the only way I can put it.

Q And didn't -- was that coming from Helen, or was that coming from Glenn?

MS. WIMBERLY: Objection.

A Well, I'd say kind of both of them.

BY MR. HOWE:

Q Okay. And in what way?

A Well, Helen would clam up and wouldn't -- didn't have much to say after that.

Q Okay. Was that different --

A It was just --

Q -- when you saw her -- excuse me -- when you saw her later without Glenn? Was she pretty open at that time?

A Yeah, uh-huh.

Q All right. How was Ms. Helen's daughter, Cathy, about doing things to take care of her and being of assistance for her mother?

A Well, Cathy was always there, and -- and she said she would have done more after Glenn went in there, but he wouldn't let her.

Q Before Glenn got there, would you -- were you there to see Cathy coming by and being around --

A Oh, yeah. Cathy came by a good bit and done -- done things for her.

Q There's one other paragraph I wanted to talk to you about on this second page. I'm just going to point and let you look at it, and then I'll ask you what you remember about it, starting right there.

A Okay.
Q Okay. So that's the one --
A About calling Jack and --
Q Yeah. About calling and asking about Jack?
A Uh-huh.
Q First of all, who is Jack?
A It was Helen's brother.
Q Is it Jack Brantley I think is his name?
A Yeah. Brantley.
Q Okay. And so, apparently, you were asking her about --
A I was asking her about Jack and Evelyn.
Q Okay. And you were on your phone at your home or wherever, correct?
A Oh, yeah. Uh-huh.
Q She was at her house?
A Yeah.
Q Glenn would have been present with her?
A Uh-huh.
MS. WIMBERLY: Object.
A And also her niece.
BY MR. HOWE:
Q Okay. And so tell me a little bit about that conversation and what you noticed that was

unusual about it.

MS. WIMBERLY: Object to the form.

A I just asked her, and she said, I don't know. I don't talk to him that -- I can't talk to him that much.

BY MR. HOWE:

Q Okay.

A And generally, she would tell me anything I asked her about him.

MR. HOWE: I think that's all the questions I have. Answer any questions that Ms. Wimberly has for you.

EXAMINATION

BY MS. WIMBERLY:

Q Hi, Ms. Carroll, once again, my name is Ms. Wimberly, Alexis Wimberly, and I represent Glenn Gunnells. Can you hear me okay?

A Yeah.

Q Okay. And as you know, this is a lawsuit that is pending in Charleston about a will that Ms. Gunnells executed on or about July 3rd, 2013. Ms. Harkness has brought this action against my client, Mr. Gunnells, saying that Ms. Gunnells was unduly influenced by Mr. Glenn Gunnells to sign a will. So saying that, I want to direct your attention, once

again to --

MS. WIMBERLY: Is this Petitioner 1?

MR. HOWE: Yes.

MS. WIMBERLY: Okay.

MR. HOWE: Exhibit Number 1 is, one and only for today.

MS. WIMBERLY: Okay. Okay.

BY MS. WIMBERLY:

Q Exhibit Number, 1, which you have in front of you.

A Yeah.

Q I just have a few questions about this, and this is my one chance to kind of talk to you.

A Uh-huh.

Q So if you don't mind just answer my questions, and if you have any questions, direct them towards me. Did you prepare this document?

A No.

Q Okay. Who prepared this document?

A I'm -- one of -- somebody else did it. I don't know -- recall their names. I don't know who.

Q Okay. How did this document come into being? Did you speak with somebody, and did they write it down? I'm just -- I'm a little confused about how this --

A Yeah. Uh-huh.
Q -- document was typed up.
A Yeah.
Q Is that what happened?
A Yeah.
Q Was it typed on a computer in front of you?
A No.
Q Did you talk to somebody over the phone?
A Talked to -- told them over the phone.
Q Okay. And you don't remember who that was?
A No.
Q Okay. You don't remember who it was, because it was somebody you didn't know, or you don't remember who it was because you --
A I don't remember who it was.
Q Okay. Did you sign this document?
A Yes. I did.
Q Okay. And it looks like on the fourth page -- I'll direct your attention to the fourth page and last page. It looks like it says, Helen Carroll, and then it is signed underneath. Is that your signature?
A The top one is my signature.

Q Okay. And who is -- it looks like Polly Davis is the person that signed underneath you. Do you know who that is?

A I think it's a friend of Cathy's.

Q Okay. But you don't know her personally?

A No.

Q Okay. So you didn't type out this document?

A No.

Q Okay. And you don't know who did?

A No.

Q When you signed this document, did you read through the document before signing?

A Yes. I did.

Q Okay. Did you have any chance to change things at that time?

A No. I mean, I didn't -- I didn't want to change anything.

Q Okay. But today, earlier today, you wanted to change a few things when you arrived at Mr. Howe's office, is that correct, just some grammatical errors?

A Well, some words is all.

Q Okay. Who was with you when you signed this document?

A I was -- Cathy.
Q Cathy. Did Cathy bring you this document?
A I guess. I don't know.
Q Okay. I'm asking, because I wasn't there, obviously, so I need to know, you know, how this document came into being. So do you remember when you signed this document?
A No. I can't recall. It was a day or so afterwards.
Q I'm sorry?
A It was a day or so -- the day that it -- I can't remember all of that.
Q I understand. And I'm not -- I promise I'm not trying to get you to --
A It might have been the same day. I can't remember.
Q Okay. Do you remember where you signed it? Was it at your home? Was it at Cathy's home? Do you remember?
A It was at my home.
Q Okay. And other than yourself and Cathy --
A That's all.
Q -- was anybody else present?
A No. Because I live alone.

Q Did Cathy explain to you why --
A Yes.
Q -- you needed to sign this document? What did she say?
A What did she say?
Q Yes, ma'am.
A I don't remember.
Q Okay. But she explained to you why she needed this document?
A Yes.
Q Okay. And I'm sorry. I just don't know these things, and this is my one opportunity to ask so -- going through this document a little, it looks like you say that, I grew to know Cathy as if she was my own; is that correct?
A That's right.
Q Would you consider Cathy almost like a daughter to you?
A Uh-huh.
Q Okay. Do you trust her?
A Sure, I trust her.
Q Okay. When did you get to know her almost like a daughter to you?
A Well, she was a private detective, and I went with her a lot.

Q What -- what kind of things would you-all do?

A We went different state -- different towns and all. What did we do?

Q Yes, ma'am. What would --

A Just sit around -- sit in the car and watch them -- watch them -- watch the ones that she was -- I don't know what you call it, but anyway.

Q Investigating? That sounds like fun.

A It was fun.

Q Yeah. That does sound like fun. How many times would you -- would you say you accompanied Cathy to do --

A Oh, Lord. I don't remember. A lot.

Q A lot? So you grew close during those times?

A Uh-huh.

Q Okay. Would you say since Cathy was like a daughter to you, would you do anything for her?

A Sure.

Q And earlier, you said that Cathy was always over at the house. How did you know that?

A Helen would call me and tell me that she was there.

Q When -- were you ever there when Cathy was

there?

A Sure, yeah.

Q About how many times would you say that --

A I can't remember.

Q Okay. It also says here -- I'm just going through --

A Okay.

Q -- the first page here, if you want to turn to it. It says you did not know Belinda very well?

A No. I didn't know her very well.

Q Okay. And why is that?

A She never came around.

Q Okay. How many times would you say that you were around Belinda?

A Not no more than four or five times.

Q It also says, Glenn, I knew him to have a drinking problem. Can you kind of explain that to me?

A Well, I can't hardly -- I don't know how to explain it, but he was just a different person. I mean, you know, how you -- I guess voice slurred -- slur in his voice.

Q Okay. Did you ever see him drinking?

A No.

Q Okay. And it looks like you also said something, and I got a little bit confused in this part about a Jeep, a vehicle. I guess my confusion is it looks like -- honestly, can you just explain to me what's going on, because I couldn't really understand that part of it?

A Well, they had a -- the big Ford I think, and then they traded it -- I mean then he got the Jeep, and Jordan -- Arden got the Jeep, and I didn't know that it was -- Arden was whatever, done the car lot until Helen told me about it.

Q Okay. So you didn't really have any interactions regarding this Jeep until Ms. Helen told you about it?

A Until Helen told me about all of it.

Q Okay. Can you kind of explain, since you were such good friends with Cathy, did she ever talk about Glenn?

A Oh, yeah, a lot of times that he -- he didn't -- she didn't -- was worried about him, his drinking problem and all. She told me more about it -- that than I knew.

Q Okay. Did you know Cathy and Glenn to have a close personal relationship?

A No.

Q Okay. So how would Cathy know about his drinking problem?

A Well, she was around him, I guess, a good bit after she -- he moved in. I mean no -- I don't remember all that.

Q Okay. And that's fair. I'm just asking what you do remember.

A I don't remember all of that.

Q Okay. But you did say earlier you remember when Arden got sick with cancer?

A Uh-huh. Uh-huh.

Q And he passed, I believe -- do you remember?

A No. I don't. I don't even remember when Helen passed way.

Q Okay. It looks like it was --

A Not even my own son. I don't remember.

Q I'm not good with dates either. So that's why I had to write them down, but I wrote this one down. It looks like June 8th, 2013. Does that sound right?

A About, uh-huh.

Q Okay.

A I know it was in the spring some, seemed like. I don't know though.

Q Okay. Did you attend the funeral?
A Yeah. I went to the funeral.
Q Okay. And did you see Glenn there? Did you see Glenn at the funeral?
A Just a short time.
Q Okay. And did you see Cathy at the funeral?
A Oh, yeah.
Q Okay. And then it says -- and this is at the bottom of the first page. It says, the last few months of Arden's life, Helen changed. What -- can you kind of explain that to me?
A Well, no. Not really. She just was different -- a different person.
Q Do you think she might have been sad because her husband was passing away?
A I don't know. It could be.
Q Okay. Between the time of Mr. Arden's passing and Ms. Helen -- Mr. and Mrs. Gunnells. Sorry, there's just a lot of Gunnells in this case. I like to go by first name. How -- about how many times would you say that you visited Ms. Helen Gunnells at her home?
A After or before?
Q After Arden passed away.

A Not many.
Q Okay. Would you say about five, more than five?
A I can't recall.
Q Okay. But you did testify earlier that you went to see her when Glenn was not there one day; is that correct?
A Uh-huh.
Q Do you remember when that was?
A No. I don't.
Q Okay. When was the last time that you saw her?
A I guess about a week before she passed away.
Q Okay.
A Somewhere around there.
Q Okay. Was that that same time when you came over and Glenn was not there?
A No. That was another time.
Q Okay. When you saw her for the last time, where did you see her?
A At her house.
Q Okay. So you at least saw her two times?
A Yeah.
Q Okay. Maybe more at her home?

A I don't think so.
Q Between the -- between, let's see, June 8th, 2013, and then February 7th, 2014, when she passed?
A I probably did, but I can't recall how -- when and what.
Q Did Glenn ever tell you if you showed up at the house to go away?
A Huh-uh, no.
Q Is that a no? Did you ever talk to Mrs. Gunnells about any concerns you had about Glenn?
A No.
Q Why not?
A Well, I didn't think it was any of my business.
Q Okay. That's fair. Did Mrs. Gunnells ever talk to you about Glenn?
A Yes.
Q What did she say?
A I can't remember.
Q Okay.
A I'm one of them that when you talk about somebody, I forget it.
Q That's a good way to be. So earlier, Mr. Howe had to remind you about it looks like a

conversation you had about the will with Mrs. Gunnells. Do you remember that conversation?

A No. I don't.

Q Okay. And I'll submit to you that Mrs. Gunnells signed a will, the one that is in dispute here, on July 3rd, 2013. Did you see her that day? Do you remember?

A No.

Q Did you talk to her on the phone that day?

A Not that day.

Q Okay. Did you talk to her on the phone around that day?

A I don't remember.

Q Okay. And did you go to the lawyer's office with her that day?

A Huh-uh.

Q Did you ever go to any doctors' appointments with Mrs. Gunnells?

A No.

Q Do you know who Mr. Terry Gunnells is?

A Who?

Q Mr. -- he's actually Dr. Terry Gunnells. He's a minister.

A No.

Q You don't know him? You've never met him?

A I met him, but that's all.
Q Okay. So you do know who he is?
A Yeah.
Q Okay. Did you -- have you ever talked to him about this situation that we're in right now?
A No.
Q No? Have you ever talked to anybody other than Mr. Howe about this situation?
A No.
Q You haven't talked to Cathy about it?
A No.
Q When is the last time you spoke with Cathy?
A Today.
Q Okay. What did you talk to her about?
A Just girl talk. I guess that's what you'd call it.
Q Okay. How often do you speak with her?
A About every day.
Q Okay.
A Every day or every other day.
Q So in between the time that Mr. Gunnells died and Mrs. Gunnells died, did you have the opportunity to talk with Cathy?
A No.

Q You didn't talk with her during that time?
A No.
Q Why didn't you speak with her?
A Pardon?
Q Why did you not speak with her during that time? Seems like you talk every day now, but that was a -- that was --
A Well, at that time, she was working, and she was -- I couldn't talk to her during the day when she was working, and I didn't bother to talk to her at night and -- only when she'd call me. Because I knew what it was about life, what it was like to work all day and then --
Q I'm sorry. I'm just looking over my notes to make sure I don't have anything else. Were you aware that Cathy brought a lawsuit against her mother? Were you aware that Cathy sued her mother?
A Knew her?
Q Sued her.
A I don't know what you're saying.
Q She -- she brought a lawsuit against her. Were you aware of that?
A No. I didn't know that.
Q Okay. I'll submit to you that she brought a lawsuit against her to -- to recover some personal

items from the home on Capri Drive. You don't know anything about that?

A No.

Q Okay. Cathy's never spoken to you about that?

A Not that I recall.

Q Okay. Do you know anything about Ms. Cathy coming to pick up items at Mrs. Gunnells' house?

A Huh-uh.

Q No?

A No.

Q Okay. During the time after Mr. Gunnells passed, do you think that Mrs. Gunnells still knew who she was?

A Knew who Cathy was?

Q Knew who she was.

A Yeah. She knew who she was.

Q Okay. Did she still know who her children were?

A Yeah.

Q Okay. Did she still have her whereabouts, wherewithal about her?

A Uh-huh, yeah.

MS. WIMBERLY: Okay. That's all I have

for now. Thank you so much.

RE-EXAMINATION

BY MR. HOWE:

Q When you went by to visit, excuse me, did Glenn ever mention that he wanted Cathy helping him?

MS. WIMBERLY: Objection.

A Uh-huh.

BY MR. HOWE:

Q Okay. You have to say yes or no, so --

A No.

Q Okay. And except for the one time that we've talked about when Glenn was out of the house, did he ever leave you alone to talk to Helen?

A No.

MR. HOWE: That's all the questions I have. Thank you very much.

THE WITNESS: You're welcome.

VIDEOGRAPHER: This concludes tape number 1 and the deposition of Helen Carroll. We're off the record at 1:49 p.m.

(Videotaped Deposition was concluded at 1:49 p.m.)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

I, Trisha G. Rarick, a Court Reporter and Notary Public of the State of South Carolina at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on _____, 2015, at Charleston, Charleston County, South Carolina.

_____
Trisha G. Rarick
Court Reporter

My commission expires:
April 9, 2019

Case#: 2014ES10-00202
Filed: 2-10-14

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

LAST WILL AND TESTAMENT
OF
HELEN B. GUNNELLS

I, HELEN B. GUNNELLS, a resident of Charleston County, South Carolina, being of sound and disposing mind and memory, do hereby make, publish and declare this as my LAST WILL AND TESTAMENT, hereby revoking all Wills and Codicils heretofore made by me. I am not married and I have three children, GLENN ARDEN GUNNELLS, CATHY ANN GUNNELLS HARKNESS, and BELINDA MARIE GUNNELLS DAVIS.

ITEM I. FUNERAL AND ADMINISTRATION EXPENSES. The expenses of my last illness and funeral, including a suitable marker for my grave; legally enforceable claims against me or my estate; and all expenses relating to the administration of my estate shall be paid out of my residuary estate. My Personal Representative shall be indemnified from the estate for any damages sustained by my Personal Representative as a result of exercising, in good faith, the authority granted to my Personal Representative under this Section. The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against my Will by virtue of such discretionary authority. My Personal Representative shall have the sole authority and discretion to assess the cost and expense for the transportation and delivery of any asset directly to the beneficiary or beneficiaries receiving such asset. The decision of my Personal Representative with regard to this matter shall be final and binding on all beneficiaries.

ITEM II. DIRECTION TO PAY DEBTS WITH DISCRETIONARY REFINANCING BY PERSONAL REPRESENTATIVE. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Personal representative may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Personal Representative may deem advisable taking into consideration the best interest of the beneficiaries hereunder. If at the time of my death any of the real property herein devised is subject to any mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage and that the devisee shall not be entitled to have the obligation secured thereby paid out of my general estate.

ITEM III. TAXES. I direct that:

(1) Direction to Pay All Taxes from Residuary Estate. Except as provided in (2) herein, all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will and Testament (which term wherever used herein shall include any Codicil hereto), be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

EXHIBIT 4

000711

(2) Apportion Taxes on Non-probate Property. All such taxes in respect to any property or interests in property included in my gross estate under Sections 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, and 2044 of the Internal Revenue Code shall be charged against and paid by the recipient or beneficiary of such property or interest in property or from the property or interest in the property, provided, however there shall be no apportionment against any donee or recipient or any such property or interest in property which is a qualified charity under Section 2055 and the property or interest in property was allowed in my federal estate tax proceedings as a charitable deduction. The amount of the tax to be charged against such donee or recipient shall be determined by multiplying a fraction (the numerator of which shall be the federal estate tax value of the property to the apportioned as finally determined in my federal estate tax proceedings and the denominator of which shall be the total value of my taxable estate for such federal estate tax purposes) times the net amount of such taxes payable by my estate after the application of all credits against such taxes.

ITEM IV. GENERAL BEQUEST OF PERSONAL AND HOUSEHOLD EFFECTS WITH A MANDATORY MEMORANDUM. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items or my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Personal Representative's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternative provision has been made shall pass according to the provisions of the of following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath all my personal and household effects to GLENN ARDEN GUNNELLS. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

ITEM V. SPECIFIC DEVISE OF AUTOMOBILE. I give and devise to GLENN ARDEN GUNNELLS any automobile that I may own.

ITEM VI. SPECIFIC DEVISE OF RESIDENTIAL PROPERTY (NOT IDENTIFIED). I give and devise to GLENN ARDEN GUNNELLS any interest which I own at the time of my death in the house and lot which I occupy as my residence at time of my death. If this property at the time of my death is subject to any mortgage, then this devise shall be subject thereto and

the devisee shall not be entitled to have the obligation secured by such mortgage paid out of my general estate.

ITEM VII. OUTRIGHT GIFT OF ALL PROPERTY. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises) wherever situate and whether acquired before or after the execution of this Last Will and Testament, absolutely in fee simple to GLENN ARDEN GUNNELLS.

ITEM VIII. NAMING THE PERSONAL REPRESENTATIVE, PERSONAL REPRESENTATIVE SUCCESSION, PERSONAL REPRESENTATIVE'S FEES AND OTHER MATTERS. The provisions for naming the Personal Representative, Personal Representative succession, Personal Representative's fees and other matters are set forth below:

(1) Naming an Individual Personal Representative. I hereby nominate, constitute, and appoint as Personal Representative of this my Last Will and Testament GLENN ARDEN GUNNELLS and direct that he shall serve without bond.

(2) Naming Individual Successor or Substitute Personal Representative. If my individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representative who shall also serve without bond shall be TERRY GUNNELLS.

(3) Final Succession If Individual or Successor Personal Representative Cannot Act. If my individual or successor Personal Representative should fail to qualify as Personal Representative hereunder or for any reason should cease to act in such capacity, then the successor or substitute Personal Representative shall be appointed by the court and shall also serve without bond.

(4) Fee Schedule for Individual Personal Representative. For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(5) Fee Schedule for Corporate Personal Representative. For its services as Personal Representative, the corporate Personal Representative shall receive an amount determined by its Standard Fee Schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, it shall be entitled to reasonable compensation for the services rendered.

(6) Change in Corporate Fiduciary. Any corporate successor to the trust business of the corporate fiduciary designated herein or at any time acting hereunder shall succeed to the capacity of its predecessor without conveyance or transfer.

ITEM IX. DEFINITION OF PERSONAL REPRESENTATIVE. Whenever the word "Personal Representative" or any modifying or substituted pronoun therefore is used in this my Last Will and Testament, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the

000743

Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

ITEM X. POWERS FOR PERSONAL REPRESENTATIVE. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Last Will and Testament: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Last Will and Testament, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM XII. DISCRETION GRANTED TO PERSONAL REPRESENTATIVE IN REFERENCE TO TAX MATTERS. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions.

ITEM XIII. DEFINITION OF CHILDREN. For purposes of this Last Will and Testament "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent.

000714

The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM XIV. DEFINITION OF WORDS RELATING TO THE INTERNAL REVENUE CODE. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Last Will and Testament, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Last Will and Testament if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to Sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XV. SIMULTANEOUS DEATH PROVISION PRESUMING BENEFICIARY DID NOT PREDECEASE TESTATRIX. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Last Will and Testament that the beneficiary did not predeceased me.

TESTIMONIUM, ATTESTATION AND SELF-PROVING AFFIDAVIT. I, HELEN B. GUNNELLS, the Testatrix, sign my name to this instrument this 3 day July 2013, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Helen B. Gunnells
HELEN B. GUNNELLS,
TESTATRIX

We, Suzanne Lafleur Klok and Annmarie Voytko, the witnesses, sign our names to this instrument consisting of six (6) pages, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix, HELEN B. GUNNELLS, signs and executes this instrument as her Last Will and Testament and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, HELEN B. GUNNELLS, and in the presence of each other, hereby signs this Will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix, HELEN B. GUNNELLS, is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

WITNESS No. 1
Annmarie Voytko
Mount Pleasant, South Carolina
Charleston County

WITNESS No. 2 (Not Notary)
Suzanne Lafleur Klok
Mount Pleasant, South Carolina
Charleston County

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

s.s. PROBATE

Subscribed, sworn to and acknowledged before me by HELEN B. GUNNELLS, the Testatrix, and sworn to before me by the other witness whose name appears above this 3 day of July, 2013.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: Comm. Exp. Sept. 8, 2020

ANNMARIE VOYTKO NOTARY PUBLIC SOUTH CAROLINA

dad,

Read all of

this

&

reread again

& you need

too

PENGAD 800-631-6989
EXHIBIT
2-Respond.
3-1-16 tr
000717

Dad & Mom

I still cannot believe dad that you called me a "disgrace" to you & mom and to your household-

Me? Unlike your daughter & your son, I am not an alcoholic or a drug user-

- I have never stole any checks from you. But I am a disgrace to you
- I have never forged your signature on checks stolen from you, but I am a disgrace to you
- I never stole your shotgun & sawed the barrel off, but I am a disgrace to you
- I didn't take the Cherokee Jeep you bought mom away from you, But I am a disgrace to you
- I never used your boat - but the others did, always left for you to put up, repair & clean, But I am a disgrace to you
- I have never been drunk & call your friends & relatives trying to play an electric piano with the keys lit up & still couldn't play it - But I am a disgrace to you
- I never drank enough alcohol to cause me to have fluid around my heart & caused a heart attack but I am a disgrace to you
- Never came to see you or mom

000718

in the hospital. And that is
many times with mom for surgery
But I am a disgrace to you

I have always been there
for you & mom - I always
put both of you 1st. Regardless
if I was sick, well, tired,
family problems - what ever
you & mom came 1st - All
mom had to do was think &
I tried to make sure it happened
But I am a disgrace

Where was the other 2 for
13 yrs?

I have always tried to live
my life with your standards
& what is right & wrong - up
until now, you were
my hero in life -

Me? I was always there.
I always stopped what I
was doing to come help -
Regardless - But I am a disgrace

Friends (Berta & Frances) family
(TC, Aunt Evelyn, Uncle Jack Pete etc etc

would come down - I always came to clean house, cook & clean up -

Me? I was always there to help you in your beds & re garden - broke arm, surgery on my knee - I was there pulling weeds, picking & watering without you taking note & the pain I was in - on crutches & cast -

Where was the other 2 - One always laid up drunk while the other was wrapped up in their social life - I never complained -

I help Mr Frances with his yard for weeks because she was sick - I cut his grass. I never said a word - That was your friend & she meant a lot to you - So I helped

As you called me, your little Nigger —

I am not a lesbian nor gay - Being queer, gay + having sex with another man is just not right - "your standards". But I am your disgrace.

But you dad, the mere fact that choose to take bad advise against your better judgement, only a con person with motive could have convienced you too:

#1. think me, Chad or Tracy would have taken mom's rings - (you never thought of Glenn, Linda, English or her children - which had been there for the holidays) you allowed it. You allowed someone to make you think of all people me, Chad + Tracy - (there they were right next to mom side of the bed in a jewerly box)

And here mom wanted the house cleared - all Tracy + I did was to help yall -

#2. You allowed Glenn to slap a police report on me, Tracy & Chad. a drunk! Someone who has stolen from you, forged & stole checks from you.

You allowed a drunk & a queer who didn't live in your house to file a police report because you couldn't.

#3. You put a drunk 3rd in line on your will.

You really need to take a look at to whom is the conniving, con & one with a motive.

Who has taken advantage of you! who has conned you! Who has taken & stolen from you! Who has given you bad advice.

IT WASN'T ME.

Who is it dad.

#4 - Who talked you into a car lot - You had to moraga your house + you got stuck paying that payment yourself -

+ not to forget - Don't let Cathy know anything about it - Be very quiet - (Linda, Gary, all moms family knew about it, Belinda's kids knew) Everyone but me knew -

#5 Glenn's trailor - Again everyone knew But me -

#6 Belinda house + your credit card - Everyone knew but me -

Even when I showed you the tax papers with your Name on it, you still Lied to me - Black + whit Charleston + N. Charleston

Your papers - they couldn't have put your name on any property or sell without you -

No wonder Nothing is left? No wonder you are in a financial disaster? Look what "your" 2 children did to you - And you allowed it.

Your 2 children who put you in this mess can bail you out -

Rick offered to buy your house from you + you could live there forever you + mom - Never would have to worry -

But again you choose to look after Glenn + Belinda - ~~there~~

their part? what did you say 15,000 for each -

They already spent their inheritance - I do believe they owe you money -

Again you wanted us to pay them 15,000- each, we work our butts off to make a 1700= house pymt to a house we wouldn't live in for many many years to help you get relief.

Here Ric + I were going to buy your house + all you could think about was your daughter Belinda + your son Glenn -

They spent their inheritance!

#7. The year I lived with y'all - I paid rent, I lived by your rules:

rules where: (You will have all respect for anyone who comes into your house - (your Quote) if you can't get along with any one, go

upstairs or Leave for a while.

I was never out of line. Why because of respect for you & mom. Your house, your rules-

But 12-23-2010. (if you had a hearing aid & paid attention to Glenn) Your son was out of line- He provoked me, looked at me smiling while provoking me while saying things:

You missed it all? All of what he said & the looks & smiling while saying them

Glenn knew you wouldn't be able to hear him & he knew you could see him because your head was down while I was cutting your hair-

You "NEVER" considered why I lashed out to Glenn- You Never thought to ask me!

Again, you believe Glenn. I was not wrong - You just believed what you wanted.

All these years I Glenn + Belinda sibling rivalry, watching them + Listening, I have Never been out of line on your house.

But Glenn moves in with yall + you allow him to disrespect others, I don't understand -

Again, rules change for them you only see what you want + hear what you want -

Your question should be what does he want now in return —

12-24-10 - X-mas eve - I brought over your + mom's X-mas gifts.

You told "me" I was a disgrace to you + mom + to your household.

You looked right in my eyes + called me a "disgrace"

I asked you, did you call Glenn a disgrace, you held your head down, never said a word + walked away.

I have allowed you + mom to [redacted] continious hurt me, accuse me of theft, be lied to, be put 3rd line line, be addressed as oh this is my other daughter, + allow others to plot with you

The look in your eyes when you called me a "disgrace" is a look I will never forget. +

[redacted]

I do believe you need to reevaluate who is a disgrace -

I am not a disgrace!

I stood my ground with Glenn in your home. I called it as it is - You can started it whether you want to believe it or not - It doesn't matter anymore -

+ another thing, the nerve of your son to send me a letter asking for me to help [redacted] financially - Yall did that, not me? You, Glenn + Linda put you in that bind. It's their responsibility to pay back + help - Yall did it all Together -

Bic + I offered to buy your house But you choose Glenn + Linda again -

Just remember dad

I AM NOT a disgrace

I am not a disgrace I'm a wrong Child a disgrace

Someone can't be a disgrace who tells the truth as I did & stood up for myself as you allowed Glenn to talk to me that way - Shame on you dad

You judged & took one side of the story & not the whole story & you judged & said I was a disgrace. [redacted]

You didn't even consider asking me my side you again took Glenn's side & believed him -

Pre-judgement

You didn't take the time or be open to who was wrong - You listened to a lie or maybe ½ the truth & that what you went with

Be you can bet on one thing dad

I am not a disgrace

Cathy Harkness
2255 Lamb St.
Charleston, SC 29414
843-830-5018

June 27th, 2013

Helen Gunnells
1931 Capri Dr.
Charleston, SC 29407
843-556-2837

Re: Items That Belong Too Me (list below)

Dear Helen Gunnells (Mom),

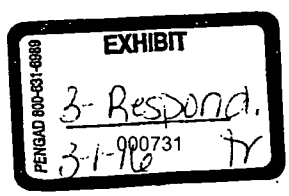
I have been advised by a Judge to send you this notice informing you that you have 10 days from the above date to respond back to me in regards to me picking up my personal things. Due date for your response is July 8th, 2013.

If I do not receive a response or my personal things, you leave me no choice but to take Legal Action against you mom. The continuous bad advice your son gives you have left me no choice too get my personal things.

My personal outside the house items listed below I want back:

#1. My green riding lawn mower. (Glenn helped load & move from my house & unload to dad's house) My lawn mower is to be in great working order with the key. No one is to damage, destroy, tamper with the wires, gas tank, motor, wheels or harm in anyway or I will request for you to buy me another one.

#2. My white washer & white dryer. (Glenn helped load & move the washer & dryer from my house & unload to dad's house) My washer & dryer are to



be in great working order. No one is to damage, destroy, tamper with wires, motor or harm in anyway or I will request for you to buy me another.

#3. My 3 stainless steel tables outside. (Glenn helped load & move them from my house & unload to dad's house) No one is to damage, destroy, tamper with them or harm in anyway or I will request for you to buy me 3 other ones.

#4. My stand up white refrigerator/freezer in the garage (Glenn helped load & move from my house & unload at dad's house) My refrigerator is to be in great working order. No one is to damage, destroy, tamper with the wires, motor, ice maker, cooling system, free-on or harm in anyway or I will request for you to buy me another one.

#5. My orange hedge clippers that I bought for my Aunt Dovie & me. My hedge clipper is to be in great working order. No one is to damage, destroy, tamper with the wires, motor or the blades or harm in anyway or I will request for you to buy me another one.

#6. 1 black firewood rack. (Glenn help move from my house & unload at dad's house).

#7. Glenn has already given Terry Gunnells dad's table saw. No other tools are to be sold or given away until I can get mine back. A blue drill, the big clear plastic covered assorted with drill bits etc. on left side of garage on wire stand, the big & little black clamps with yellow holders (approx 4 each), the big & little blue & yellow clamps (approx 4 each), the LCD light that fits around your head, an a few other tools. I will look through dad's tools and get just mine.

On June 25th, 2013 Tuesday, Terry Gunnells called me and said he spoke to your son, Glenn Gunnells and that Glenn agreed he knew of these items and acknowledge them as being mine but Glenn wanted me to leave a letter in the mail box so he can review them. I called @ 5:30 p.m. and left a message on your phone recorder that I just talked to Terry and I can pick up my refrigerator, washer & dryer, lawn mower and then you pick up the phone. You said you had company and asked for me to call back tomorrow. I said, mom I have already got people lined up to pick up my things Wednesday around 6:30 p.m. You said you have a doctor appointment and I said, mom

you should be finished by 6:30 but you said I don't know if I will, call me tomorrow. I said ok.

I called June 26th, 2013 @ 11:35 a.m. I got the recorder again. I said mom, I will be over there around 6:30 to get my washing machine & dryer, my lawn mower, refrigerator and before I could finish your son Glenn picked up the phone. Stated he just walked in. Terry doesn't tell us what we can do or don't do here. You will write me a list and leave it in the mailbox and I will look it over and let you know. I hung up!

I "do not" have to leave Glenn a letter of what is mine for him to decide or review. Glenn was there at my house & helped remove, load onto dad's truck with dad there and he helped unload my items at dad's house. Plus I have left 2 messages on your phone recorder of these items.

Legal Counsel has stated this Certified Letter and the information above and below is only required, unless "you do not respond.

I also want my personal items from inside the house. That list is as follows:

#1. DINNINGROOM:
2 candle holders on table with glass globes.
2 pictures on the wall. My name is written on the back.
2 vases that are tall, reddish with tan swirls.

#2. LIVINGROOM:
My white couch

#3. MOM'S BEDROOM
My white chair that matches the white couch.
My tall standing oak jewelry box by the door.

#4. UPSTAIRS HEAD OF STAIRS: (Where gun case was at)
My oak table (approx 4') with thin gold trim.

#5. KITCHEN:
The stainless steel 3 tier cart by refrigerator on casters.

#6. OVER ATTIC:

I know I have some of my things up there as well. I need to come look.

Mom, I am so sorry you have chosen to continue take bad advise. Look what it has done to us mom and what it is boiling down to now legally.

Mom, you and Glenn need to understand what Power of Attorney means and represents. You are not incompetent! This is your decision alone to make.

Mom, legal recourses can be avoided if you choose. Please I ask of you. Do the right thing. Give me back my personal things.

"You" need to call me if you decide to give me back my personal belongings. I "will not" except a phone call from Glenn. If you chose, I would need a date and time for pick up. A weekend would be great please. "Do Not" put or leave my belongings on or by the street, up close to garage doors please, for Glenn can move one of the vehicles out of the way for a few hours. "Do Not" put my belongings out if it is raining or overnight outside please. I would not want another legal issue with you mom. I will be taking photos for any damages before anything leaves your property.

Your daughter,

Cathy Cathy

cc/Jack Brantley
cc/Belinda Davis
cc/Terry Gunnells

Or if you want you can buy these items that belong to me for $1845.00 ++

766-6531

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE MAGISTRATES COURT Case # 243
Rec #

Cathy Means-Hutchness
843-830-5018
Phone # Plaintiff(s)

vs

Helen B. Gunnells
843-556-2837
Phone # Defendant(s)

SUMMONS IN CLAIM AND DELIVERY

To: Helen B. Gunnells Defendant, complaint having been made to me by the Plaintiff in this action, that you are in the wrongful and unlawful possession of the personal property described in the attached Complaint and Affidavit. You are therefore required to appear before me, in my office located at 1720 Sam Rittenberg Blvd., Unit 11, Charleston, SC 29407 (Address) on August 23, 2013 (Date) at 10:00 AM (Time) to answer this complaint, or judgement will be given against you by default for the possession of the said personal property or in the event possession cannot be had for the value thereof in the amount of $ 1845.00 together with the cost and disbursement of this action.

DATED 7-15-13

Ellen S. Steinberg
MAGISTRATE
~~Bonnie L. Koontz~~

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

ORDER RESTRAINING DAMAGE OR CONCEALMENT OF PROPERTY

You, Helen B. Gunnells the defendant in this action, who, upon information and belief, has possession of the personal property describe in the attached Complaint and Affidavit, are ordered to restrain from damaging, concealing, or removing from Charleston County the described property.

This order shall remain in effect until final adjudication of this action, and violation of this order shall subject you to a fine of $100.00 or a term of imprisonment of thirty (30) days.

DATED 7-15-13

Ellen S. Steinberg
MAGISTRATE
~~Bonnie L. Koontz~~

EXHIBIT
4- Respond.
3-1-16 tr
PENGAD 800-631-6989

000735

2431

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE MAGISTRATES COURT

Cathy Morris-Harkness
843-830-5013
2255 Lamb St - Charleston, SC 29414
Plaintiff(s)

vs

Helen C Gunnells
843-556-2837
931 Capri Dr - Charleston SC 29407
Defendant(s)

AFFIDAVIT and COMPLAINT
in
CLAIM and DELIVERY

Plaintiff, Cathy Morris-Harkness personally appearing before me, who being duly sworn, states the following:

1. The Plaintiff is the owner, or is entitled to possession, of the property described below:
My Green Riding Lawn Mower, white washer & dryer, 3 stainless steel commercial tables, Starlyo Refrigerator/freezer, orange hedge clippers, Work fire wood rack, 2 marble holders, wall curtains, Queen White Couch, White Chair, oak Jewelry Box, oak table, stainless steel 3 tier cart, tools, flat screen attic prints
2. The property described above is being wrongfully withheld by the defendant, Helen N Gunnells
3. To the best knowledge of the plaintiff, the property is being withheld by the defendant because: her son claims it's hers since dad died -
4. The property was not/was taken from the ownership or possession of the plaintiff due to any tax, fine or assessment (and if seized, it should not have been seized by virtue of its exempt status).
5. The actual value of the above described property is: (Itemize and give total if more than one item involved.)
riding lawn mower 600, washer & dryer 500, stainless steel tables 100, Refrigerator 150, clippers 25, fire rack 10, tools 100, white couch 75, white chair, 50, oak Jewelry Box 30, oak table, 25, stainless steel 3 tier cart 50, 3 marble holders pictures vases 75, (attic contents unknown)
TOTAL $ 1845.00. This amount has been determined in the following manner, to wit: fair value price
6. That the Notice of Right to Cure as required by Section 37-5-110 and Section 37-5-111, Code of Laws of South Carolina, 1976, as amended, has been given by _____ on _____.
DATE

DATE FILED: _____

SWORN TO BEFORE ME THIS 15th DAY OF July 2013

MAGISTRATE OR NOTARY

MY COMMISSION EXPIRES: 2.17.15

PLAINTIFF

000736

EXHIBIT
PENGAD 800-631-6989
5 Respond.
3-1-16 tr

Happy Birthday Mom!

I'm sorry about Amy and that dad isn't there with you on your / Yall's Birthday -

It's OK to cry & wish they were with you, each day -

But it seems you are happy & satisfied with your choices you have made -

I am happy for you that you are happy, have every thing you need and want and most of all that you are content and can sleep good at night.

It's tough being isolated & told what to say and being couched all the time -

Choices we make in our life, (right or wrong) are ones we live with each day - Some we can never fix and others are a phone call away -

Love to you on your Birthday Mom -

Mom, don't you miss just getting out and riding around or going threw Belks- Nothing but being in your wheel chair and strolling around-

My Neighbor is 81 + we go twice a week just riding around, go around the mall just looking, Costco looking around, out for just an ice cream-

It's a shame you "can" + "don't want to be apart of that-

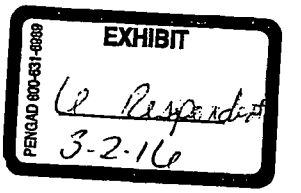
When did your desire in life stop mom? There is so much now that you could see + enjoy.

I DO NOT WANT to talk about or hear about Glenn But there are other things in life to talk about, laugh about + cry about-

You + Me always had a great time together-

I have "NO" desire to go in your or Glenn's house But I do have the desire to be with the mom I use to know - / Cat

November 4, 2014



S. Leigh Wechter, PT
PO Box 610
Ravenel, SC 29470

To Whom It May Concern;

In December of 2013 and January of 2014, I worked as a Home Health Physical Therapist with my client Helen Gunnells. Her son, Glenn, lived in the home with her and was her primary caregiver. He frequently answered the door when I arrived and often walked out with me as I left, during which time we would discuss her progress or health care issues regarding her Physical Therapy. He appeared genuinely concerned about Mrs. Gunnells, and would take care to prepare her meals, fix her medications and make recommended safety changes to her home to protect her from falls. Glenn worked to ensure Mrs. Gunnells had caregivers in the home to assist her with her personal care, as well as provided her with transportation and assistance with all of her medical appointments.

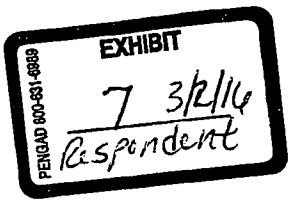
Mrs. Gunnells rarely talked with me of her daughters and whenever she did, she would become emotional and she would say that she only trusted Glenn when it came to her children.

As a practicing PT of 28 years, it is my personal and professional opinion that Glenn was an exceptional caregiver for his mother.

Sincerely,

S. Leigh Wechter PT

S. Leigh Wechter, PT



November 4, 2014

Jill S. Costa, PT
2244 Ashley Crossing Drive #131
Charleston, SC 29414

To Whom it May Concern:

I first met Glenn Gunnells in the summer of 2009 when I was taking care of his mother for Home Health Physical Therapy. Glenn would usually arrive during our visits and bring groceries to cook lunch/dinner for his mother and father. When I treated Mrs. Gunnells a year later, Glenn was still assisting his parents with meals/groceries/running errands and assisting around the house.

I had the chance to work with Mrs. Gunnells again, in the summer of 2013, right after her husband passed away. At this time, Glenn had moved in to the house and was his mother's main caregiver. He made sure that she had other caregivers to assist with her bathing, and to make sure she was never alone. Every visit, I got to see how devoted he was to his mother, in which he made sure she had the best possible care. During these visits, Mrs. Gunnells shared with me how upset she was with her daughters, that they weren't there for their father as he was ill/dying. She was also concerned that they were not helping her, and that they were being mean to Glenn.

During one of my visits (6/24/2013), I had an encounter with one of Glenn's sisters, Linda. She arrived during our treatment session and Mrs. Gunnells did not want to see her, so I went to the front door to tell Linda we were in the middle of a treatment session and that her mother asked that she phone her later. Linda screamed at me, "I want to see my mother now" and then pushed the door into me and tried to shove me out of the way, at which point I screamed for Glenn and together he and I tried to keep her from getting into the house. Linda left when we threatened to call the police. Mrs. Gunnells was crying when I got back to see her, she said she couldn't believe that her daughter would act like that.

I have met many families over the years, and I can say that Glenn Gunnells is one of the best caregivers I've ever worked with. His concern was evident for his mother's health, safety and well being. He always followed and asked for recommendations to make sure his mother was as safe as possible in the house. Mrs. Gunnells was very lucky to have Glenn taking care of her.

Sincerely,

Jill S Costa, PT

Jill S. Costa, PT

CATHY

YOU MIGHT NOT KNOW IT BUT YOUR FATHER AND MOTHER ARE IN A FINANICAL BIND! HE'S BORROWING FROM CREDIT CARDS TO MAKE END'S MEET EVERY MONTH. THESE MEDICAL BILLS AND DENTAL BILLS HAVE A CO-PAYMENT THAT KEEPS COMING AND DOESN'T SEEM TO STOP! THE REASON I KNOW IS BECAUSE I TRIED TO HELP THEM REFINACE THE HOUSE AND KNOW THEIR INCOME AND OUT GOING, WHICH THE MINUS$ IS MORE THAN THE PLUS$! THEY WERE DECLINED FROM THE BANKS BECAUSE OF INCOME AND AGE! I GIVE THEM$200.00 A MONTH WHEN I CAN AND LINDA GIVES THEM$100.00 A MONTH WHEN SHE CAN! HE'S TO PROUD TO ASK FOR ANYTHING BUT I'm ASKING IF YOU COULD "HELP" JOIN US IN GETTING THEM OUT OF THIS "~~HOLE~~" AND MAKE THEIR "LIVES" A LOT LESS WORRING AND STRESSED FOR THE REMAINDER OF THEIR YEARS LEFT ON THIS EARTH! PLEASE GIVE THIS YOUR CONCERN AND ATTENTION IF YOU WOULD!!

PENGAD 800-631-6989
EXHIBIT
9 Respondent
3-2-16

a letter
Glenn wrote
me
mailed
Aug. 6, 2010

CHARLESTON SC 294
06 AUG 2010 PM 1 T



Cathy Hartman
1007 Raven Rd
Wando SC 29492-9551

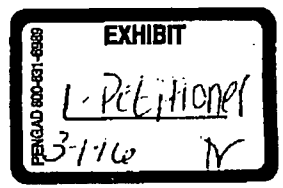
Hi Cathy:

Hope all is going well with you today. It was good to hear from you, but sorry that you are having trouble getting some of your property back.

I talked to Helen and Glenn this past Monday (July 12th). Helen gave the phone to Glenn to explain to me what was going on with the property. After some discussion, he told me that he would have the property ready for you to pick up on Friday, July 12, 2013. I encourage Glenn to do just that and get this over with because it seemed so simple to do and would prevent any more controversy with him and Helen. Hopefully, this can all be resolved with no disturbance or embarrassment to Helen and in the community.

Take care and hope you can get this taken care of quickly and amicably.

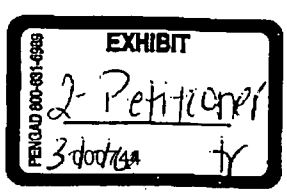
As ever,
Uncle Jack



Cathy Harkness <cg.hark@yahoo.com>
Fw: Your e-mail
July 22, 2013 7:55 AM

Belinda, can you print this out for DSS visit today for us.
—— Forwarded Message ——
From: THOMAS BRANTLEY <thomasbrantley@bellsouth.net>
To: "cg.hark@yahoo.com" <cg.hark@yahoo.com>
Sent: Monday, July 22, 2013 7:47 AM
Subject: Your e-mail

Cathy: sent you an e-mail last night, but it would not go from my I-Pad. Guess you do not have an I-Phone or something else was wrong. It is perfectly okey for you to give my phone number to DSS. It is 706.554.7866. I was surprised again yesterday. I received another call from Helen. That was the second one on two consecutive days. She still does not talk to me about things like she did when Arden was living, but only nondescript things, e. g. the weather, how are we doing healthwise, etc. I am still concerned that you and Linda are not going over and providing some oversight on her health situation and lending some help.Glenn should be thankful for you both to help out and so should Helen.
Hope things go well. and will talk later.
Jack



You're seeing Basic Mail because you're using an unsupported Internet browser. Upgrade your browser or get the mobile app for the full Yahoo experience.
Don't show this again.

Search Mail | Search Web | Cathy | Profile | Go | Sign Out | Home

Mom | Contacts | Notepad | Calendar

Compose | Delete | Reply | Reply All | Forward | Actions | Apply

Inbox (4)
Drafts (6)
Sent
Spam (9) [Empty]
Trash (13) [Empty]

My Folders [Edit]
documents
Jokes etc
legal k-mart d...
Misc e-mail ad...
Mom
wedding pictur...
Work Informati... (5)

Sponsored
ADT Pulse
ADT
FREE Installation & Activation on ADT Pulse

MUSC Health — Shorter Wait Times for Lung Transplants — Sponsored

Helen Brantley Gunnells

Wednesday, February 26, 2014 6:45 PM

From: "THOMAS BRANTLEY" <thomasbrantley@bellsouth.net>

To: "cg.hark@yahoo.com" <cg.hark@yahoo.com>

Full Headers Printable View

TO WHOM IT MAY CONCERN:

My sister, Helen, was an independent and opinionated, but loving person. She was intelligent and at one time, owned and managed her own business.

Soon after the diagnosis of her husband's (Arden) illness, it was necessary for them to depend somewhat on the assistance of their children. At one time, Cathy was their main helper with household chores and personal requirements.

Shortly after Arden died in July 2013, their son Glenn moved into their home. After his death, I began to notice a change in Helen's communication with me. We always called each other at least once a week, but after Arden's death I called more often--2 or 3 times a week. If she didn't hear from me, she would call me. When she called, it was when Glenn was either outside or doing errands.

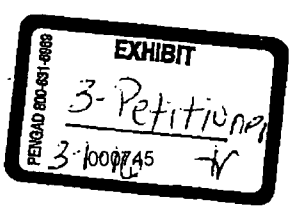
Some of the conversations troubled me. For instance, during the time Cathy had surgery on her leg to remove a cancer, I often suggested that she should call her daughter and ask how she was doing. Helen's response was always, "I'll ask Glenn". After I insisted, she would say, "I'll ask Glenn and think about it".

Other concerned conversations were anytime I asked about how things were going, she would give the phone to Glenn to answer any questions or comments.

For some reason, she seemed reluctant to respond to my comments or questions if Glenn were present. When she called me, (always when Glenn was not there) she would conclude the conversation when he came into the room. I commented about this to my wife and told her I thought something was not right--Helen won't talk to me as freely and warmly as she had in the past.

Helen, a formerly loving and caring sister, had suddenly become quite distant to her baby brother.

Compose | Delete | Reply | Reply All | Forward | Actions | Apply



Home | TV | Connect | Account | Shop | Help | Security | Hi, bgdavis101 | Sign Out

Email Usage: 2% of 10 GB | Email | Search

Home | Email | Voice | Address Book | Calendar | Preferences

Folders
- Inbox (9)
- Sent
- Drafts
- Spam
- Trash
- Audi
- Charleston Ma
- Dad Mom
- Donations
- eBayPayPal (1
- Eddie (1)
- English

New | Get Mail | Reply | Reply to All | Forward | Delete | Move | Spam | View

Arranged by: Date — 9 messages

Re:	Belinda Davis	May 19
<No Subject>	GLENN GUNNELLS	May 19
YOU	GLENN GUNNELLS	May 18
Re:	Belinda Davis	May 13
Re:	Belinda Davis	May 07
<No Subject>	GLENN GUNNELLS	May 07
YOU	GLENN GUNNELLS	May 06

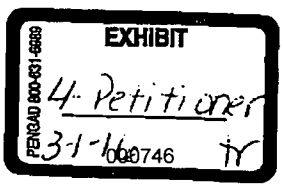
YOU

On:M
0
1
P

Sent By: "GLENN GUNNELLS" <caseygunn1@att.net>

To: Belinda

LET IT BE KNOWN , NOTHING WILL BE SIGNED ARE INITIALIZE TILL I LOOK AT IT!!!SO LET IT BE WRITTEN SO LET IT BE DONE!! ALL AS BEEN NONE AND NOTIFIED!!!!!!!!!!!!!!!!



TIMELINE – WILL CONTEST
ESTATE OF HELEN B. GUNNELLS
2014-ES-10-0202

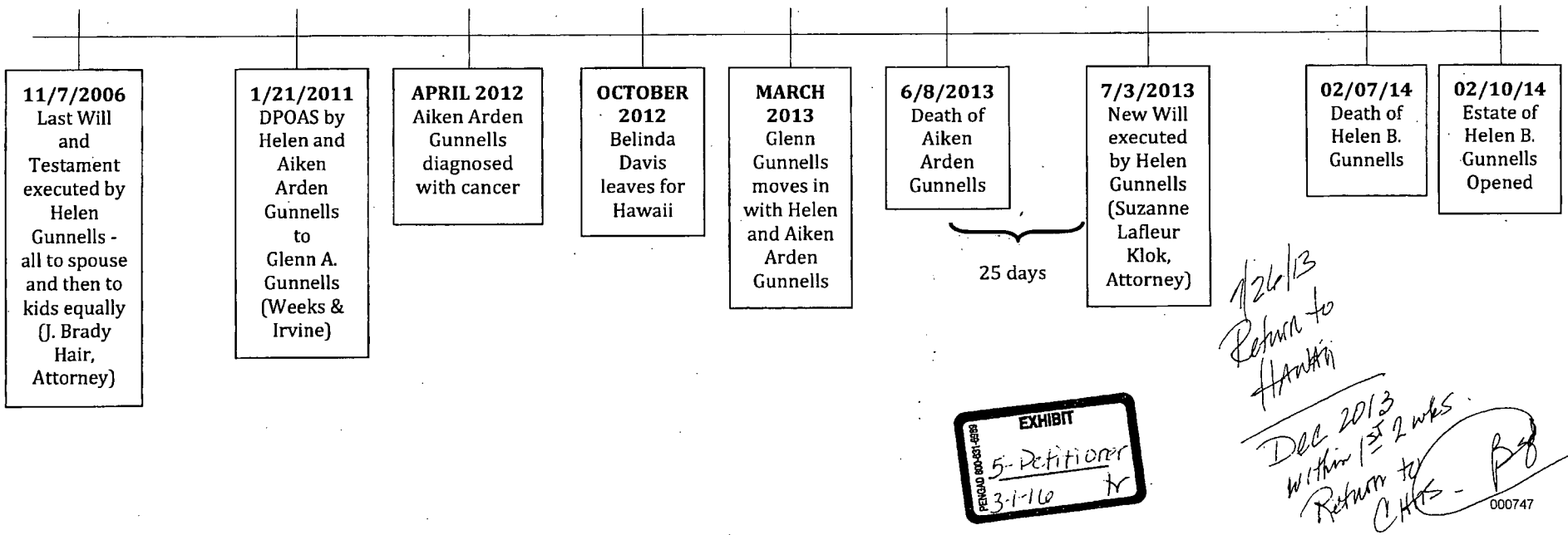
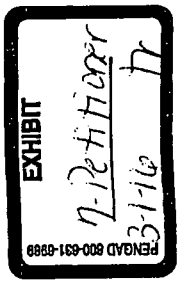


EXHIBIT
PENCAD 800-451-8999
5- Petitioner
3-1-16

1/26/13
Return to Hawaii

Dec 2013
within 1st 2 wks
Return to CHKS - BG

000747



000748

DSS
Serving Children and Families

CHARLESTON COUNTY
DEPARTMENT OF SOCIAL SERVICES
3366 Rivers Avenue
North Charleston, SC 29405
Telephone: (843) 953-9400 Fax: (843) 953-9620

Blair James
NAME

953 0688
EXT. NUMBER

DSS
Serving Children and Families

CHARLESTON COUNTY
DEPARTMENT OF SOCIAL SERVICES
3366 Rivers Avenue
North Charleston, SC 29405
Telephone: (843) 953-9400 Fax: (843) 953-9620

Kishia Gibbs
NAME

953-0687
EXT. NUMBER

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
IN THE MATTER OF: HELEN B. GUNNELLS)
(Decedent))

IN THE PROBATE COURT

CASE NUMBER: 2014ES1002622
2014 FEB 25 PM 12:50

*COMPLETE THIS SECTION ONLY IF FILING PETITION FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT

* _____,
Petitioner(s)
vs.
* _____,
Respondent(s)

APPLICATION FOR INFORMAL (check any that apply)
- ☑ PROBATE OF WILL
- ☑ APPOINTMENT

*PETITION FOR FORMAL
- ☐ TESTACY
- ☐ APPOINTMENT

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. If this is a formal filing, please explain below or attach pleadings pursuant to *SC Rules of Civil Procedure*.

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

If not a formal filing, please indicate N/A. N/A

2. Decedent Information:

Full Legal Name (including all known names): HELEN BEATRICE GUNNELLS
Date of Birth: OCT 1 1929
Date of Death: FEB 9, 2014
Age at date of death: 84

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

☑ Decedent was domiciled in this County at date of death:
Address: 1931 CAPRI DR. ;County: CHAS. ; State: South Carolina.
☐ Decedent was **not** domiciled in **South Carolina**, but property of Decedent was located in this County at date of death:
Address: ;County: ; State: South Carolina
☐ Decedent has a right to take legal action in this County because: _____

If the above address is the address of a nursing home, a prison, or other residential facility, please give the last address of the Decedent prior to entering the facility: _____

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
GLENN ARDEN GUNNELLS	7-7-57	1931 CAPRI DR. CHAS. S.C. 29407	(SON)

(use additional sheet if necessary)

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
BELINDA DAVIS	ADULT	CHAS. S.C.	DAUGHTER
CATHY HARKNESS	ADULT	CHAS. S.C.	DAUGHTER

(use additional sheet if necessary)

4(c) Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

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

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

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

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

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

7. Has a Guardian or Conservator ever been appointed by the Court for this person?

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

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this State or elsewhere?

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

9. Have you received or are you aware of any Demands for Notice (FORM 111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

☑ NO ☐ YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten (10) years passed since the Decedent's death?

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

11. The Decedent died with probate personal property having an approximate value of $_____ and/or probate real estate having an approximate value of $ ~~$449000~~ $449000. (Note: A complete inventory of probate assets with fair market values to be filed after Personal Representative is appointed.)

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

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

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

☑ The original is attached.
☑ The original is in the Court's possession.
☐ An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
☐ An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
☐ The Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

2. The execution date of the Will was: JULY 3, 2013
Codicil(s): 0

3. Does Decedent's Will refer to a Memorandum (list disposing of tangible personal property)?

☑ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

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

5. To the best of your knowledge, is any witness to the will an "interested witness" (devisee, spouse of a devisee, or issue of a devisee)?

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

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

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

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

_____

_____

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:

- [x] named as Primary Personal Representative in Will
- [ ] named as Alternate Personal Representative in Will
- [ ] nominee of above Primary Personal Representative in Will
- [ ] nominee of above Alternate Personal Representative in Will
- [ ] surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
- [ ] other devisee of Decedent (describe): _____ or nominee of said devisee
- [ ] surviving spouse of Decedent or nominee of said spouse
- [ ] other heir of Decedent (describe): _____ or nominee of said heir
- [ ] creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
- [ ] other (describe): _____

3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

N/A

_____

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

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

SWORN to before me this 14th day of Oct., 20 14

_____
Notary Public for South Carolina
My Commission Expires: 4/11/21

Signature of Applicant/Petitioner: Glenn A. Gunnells
Print Full Name: GLENN ARDEN GUNNELLS
Address: 1931 CAPRI DRIVE
CHARLESTON, S.C. 29407
Telephone (work) _____
(Home): 843-556-2837
(Cell): 843-343-3270
Email: CASEYGUNN13@COMCAST.NET
Relationship to Decedent/Estate: SON

SWORN to before me this _____ day of _____, 20 ____

_____
Notary Public for South Carolina
My Commission Expires: _____

Signature of Co-Applicant/Co-Petitioner: _____
Print Full Name: _____
Address: _____
_____
Telephone (work) _____
(Home): _____
(Cell): _____
Email: _____
Relationship to Decedent/Estate: _____

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed July 3, 2013

be informally ☑ GRANTED ☐ DENIED.

Executed this 25th day of July, 2014.

William Ince
, Probate Court Judge

☐ For formal probate of Will, see separate order executed _____.

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

Notice to Creditors
☑ Required
☐ Not Required

☐ Fiduciary Bond in the amount of $_____
☒ Bond waived by Will or Personal Representative nominated by Will
☐ Bond waived by Will or Personal Representative nominated by Will
☐ Bond not required as Personal Representative is sole heir or sole devisee
☐ Bond not required as Personal Representative is state agency, bank, or trust company
☐ Bond waivers filed
☐ See order dated _____
☐ Other: _____

Executed this 25th day of July, 2014.

William Ince
, Probate Court Judge

☐ For formal appointment of Personal Representative, see separate order executed _____.

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: Glenn A. Gunnells
Print Full Name: GLENN ARDEN GUNNELLS
Address: _____

_____

Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

Signature: _____
Print Full Name: _____
Address: _____

_____

Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

Attorney: _____
Address: _____

_____

Telephone: _____
Email: _____

STATE OF SOUTH CAROLINA)
COUNTY OF: CHARLESTON)
IN THE MATTER OF: HELEN B. GUNNELLS)
(Decedent)

IN THE PROBATE COURT

2014 MAR -5 AM 11:27

PROBATE COURT CHARLESTON COUNTY

INFORMATION TO HEIRS AND DEVISEES

CASE NUMBER: 2014ES10-00202-2

On FEB. 25, 20 14, Application/Petition was made to the Probate Court of CHARLESTON County at (address), _____, for the (check all that apply):

INFORMAL	FORMAL
☐ PROBATE OF WILL	☐ TESTACY
☑ APPOINTMENT	☐ APPOINTMENT

in the above matter.

(Complete if applicable) The Decedent's Will dated JULY 3, 2013, Codicil(s) dated NONE, and Memorandum(s) dated NONE was/were presented.

Bond HAS ☐ HAS NOT ☑ been filed.

This notice is being sent to persons who have or may have some interest in the estate.

Please note: This form is required to be sent to all potential devisees and heirs of the Decedent. Receipt of this form does not mean that you will inherit from the Decedent. You may review the file in the Probate Court or see an attorney if you desire further information.

My application/petition was granted within the past thirty (30) days on FEB. 25, 20 14.

Applicant/Personal Representative Name: GLENN A. GUNNELLS
Address: 1931 CAPRI DR.
CHAS., S.C. 29407
Telephone (Work):
(Home): 843-556-2837
(Cell): 843-345-3270
Email:

Co-Applicant/Co-Personal Representative Name:
Address:

Telephone (Work):
(Home):
(Cell):
Email:

Attorney:
Address:

Telephone:
Email:

FORM #305ES (1/2014)
62-3-305, 62-3-705

000755

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr.
Circuit Court Judge

APPELLATE CASE NO. 2017-001131

Glenn Gunnells, Individually and as the Personal Representative of the Estate of Helen B. Gunnells.....Appellant.

v.

Cathy G. Harkness .....Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the ***Record on Appeal*** contains all material proposed to be included by any of the parties, not any other material.

Robert B. Varnado, S.C. Bar # 0007850
Alexis Wimberly McCumber, S.C. Bar # 101611
BROWN & VARNADO, LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7300
Attorneys for Appellant

March 1, 2018

RECEIVED
MAR 02 2018
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr.
Circuit Court Judge

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APPELLATE CASE NO. 2017-001131

Glenn Gunnells, Individually and as the Personal Representative of the Estate of Helen B. Gunnells.....Appellant.

v.

Cathy G. Harkness .....Respondent

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Statement of the Case 1

Standard of Review 3

Statement of Issues on Appeal 4

Argument 5

I. The Probate Court erred in finding that the Testatrix's Will was the product of undue influence in the face of uncontroverted evidence and testimony from Testatrix's attorney and her paralegal – who were the only witnesses to the testamentary act – to the contrary 7

II. The Circuit Court's affirmation was incorrect 14

III. The Probate Court erred in considering facts and testimony of events that occurred in the time after the testamentary act and after Testatrix's death as probative in finding that Testatrix's Will was the product of undue influence 17

IV. The Probate Court relied on irrelevant facts and/or made factual findings not reasonably supported in the record in making its determination that that Testatrix's will was the product of undue influence 19

V. The Probate Court erred in finding the testatrix's will was the product of undue influence when there was no showing of threats, force or restrict visitation. 22

VI. The Probate Court erred by giving great weight to the Respondent's misstated and misrepresented testimony of Testatrix's physician, Dr. Rhonda Chanson, when the medical conclusions found by the Probate Court are not reasonably supported in the record 26

VII. The Probate Court erred in admitting and giving great weight to the unsubstantiated, unsupported and unauthenticated medical records from one of Testatrix's pharmacies 28

VIII. The Probate Court erred in accepting the testimony of Ms. Helen Carroll regarding Testatrix's Statement "I had no choice" when Ms. Carroll testified several times she did not remember ever having a conversation with Testatrix about a New Will, nor knew the circumstances of the statement from which she read 30

IX. The Probate Court's Order denying the motion to reconsider did not address any of the legal and factual errors of the Probate Court's original Order 31

Conclusion 32

TABLE OF AUTHORITIES

Page(s)

CASES

Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135 (2010)..... 3, 14, 28

Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982) ..... passim

Estate of Cumbee, 333 S.C. 664, 11 S.E.2d 390 (Ct. App. 1999) 7, 10

First Citizens Bank v. Inman, 296 S.C. 8, 370 S.E.2d 99 (1988). 26

Hairston v. McMillian, 387 S.C. 439, 692 S.E.2d 549 (Ct. App. 2010) 10, 11, 22

Hembree v. Estate of Hembree,
311 S.C. 192, 428 S.E.2d 3 (Ct. App. 1993)..... passim

Howard v. Nasser, 364 S.C. 279, 613 S.E.2d 64 (Ct. App. 2005).....6, 10, 15

In re Estate of Anderson, 381 S.C. 568, 674 S.E.2d 176 (Ct. App. 2009) 10

In re Estate of Palliser, 363 S.C. 437, 611 S.E.2d 250 (2005) 3

In re Last Will and Testament of Smoak, 286 S.C. 419, 334 S.E.2d 806 (1985)..... passim

Johnson v. Painter, 279 S.C. 390, 307 S.E.2d 860 (1983) 16

Melton v. Olnik, 379 S.C. 45, 664 S.E.2d 487 (Ct. App. 2008)..... 14

Mock v. Dowling, 266 S.C. 274, 222 S.E.2d 773 (1976)..... 5, 6, 11

Neely v. Thomasson, 365 S.C. 345, 618 S.E.2d 884 (2005) 3

Okatie River, LLC v. Southereastern Site Prep,
353 S.C. 327, 577 S.E.2d 468 (Ct. App. 2003) 16

RRR, Inc. v Toggas, 378 S.C. 174, 662 S.E. 2d. 448 (Ct. App. 2008) 17

Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003) ..... passim

Sundown Operating Co. v. Intedge Indus., Inc.,
383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) 14

Smith v. Whetstone, 209 S.C. 78, 39 S.E.2d 127 (1946)..... 5

Vaught v. A.O. Hardee & Sons, 366 S.C. 475, 623 S.E.2d 373 (2005) 29

Vinson v. Harley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996) 15

Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013)..... passim

RULES and STATUTES

S.C. Code Ann. § 62-3-407.....5

Rule 602, SCRE 31

STATEMENT OF THE CASE

Helen Beatrice Gunnells ("Decedent" or "Testatrix") died testate on February 7, 2014 in Charleston County, South Carolina. Decedent was the window of the late Aiken Arden Gunnells. They were married for many years and resided at 1931 Capri Drive, Charleston, South Carolina ("Residence"). They had three (3) adult children: Appellant, Glenn Gunnells ("Appellant"), Respondent, Cathy Harkness ("Respondent"), along with Ms. Belinda Davis ("Ms. Davis"), who was not a party to these proceedings but was present and testified at trial.

Testatrix executed a prior will on November 7, 2006 ("Old Will"), in which she left everything to her husband. [R. p. 399 line 24 – p. 400 line 4]. However, in the event her husband pre-deceased Testatrix, everything would pass to her children in equal shares.

On January 21, 2011, Decedent and Arden Gunnells executed General Durable Power of Attorneys appointing Appellant as their attorney-in-fact. These documents were prepared by Weeks & Irvine of Charleston, South Carolina.

In the Spring of 2012, Arden Gunnells was diagnosed with cancer. Soon thereafter, at his parent's request, Appellant moved into the Residence to care for his ailing parents. [R. pp.453-455]. In doing so, Appellant sold his own home. [*Id.*]. Arden Gunnells died June 8, 2013. [R. p. 263 lines 9-11].

On June 27, 2013, shortly after her father's death, Respondent wrote her mother a letter threatening to sue her for personal property items at the Residence. [R. pp. 731-734].

Less than a month after her husband's death, Decedent executed a new Last Will and Testament on July 3, 2013. ("New Will"). [R. pp. 711-716]. This document was prepared by Suzanne Klok, Esq. of The Klok Law Firm, Mt. Pleasant ("Attorney Klok" or

"Ms. Klok"). [R. p. 396, line 23]. The New Will appointed Appellant as the Decedent's Personal Representative and designated him as the sole beneficiary of the Decedent's Estate. [R. pp. 711-716]. Testatrix changed her Will because "she was really upset with her two daughters . . . she was unhappy with the way that they were – you know, she just didn't want to be around them. There were some fights, I believe, over her husband's property, and she was very unhappy with the two daughters." [R. p. 400, lines 16-22].

Ultimately, Respondent followed through on her prior threat and filed an *Affidavit and Complaint in Claim and Delivery* against the Testatrix on July 19, 2013, in which Respondent claimed she was entitled to certain personal property items that remained at the Residence after her father's death. [R. pp. 735-736]. The matter proceeded to a hearing on August 23, 2013 resulting in a judgment for Respondent as the Testatrix did not appear.

Testatrix died February 4, 2014. Appellant began administration of the Estate on February 25, 2014 as evidenced by the *Application for Informal Probate of Will of Helen B. Gunnells* and *Information to Heirs and Devisees*, both completed and filed with the Probate Court. [R. pp. 749-755].

On July 28, 2014, Respondent filed a Petition seeking to set aside the New Will alleging causes of action for undue influence and duress against Appellant. [R. pp. 66-70]. She filed an Amended Petition thereto on April 16, 2015. [R. pp. 79-82].

Respondent also filed a separate Petition against Appellant on April 16, 2015 seeking to remove him as Personal Representative of the Estate. [R. pp. 86-88]. A hearing on the removal Petition was conducted August 19, 2015. The Court has held that matter under abeyance pending final disposition of the instant Will Contest.

This matter came to a bench trial before the Honorable Irvin G. Condon of the Charleston County Probate Court on March 1-3, 2016. By Order dated May 12, 2016, Judge Condon found for the Respondent. [R. pp. 34-50]. Specifically, the Court found there was "clear and convincing" evidence that the Testatrix was "under undue influence when she made and executed the July 3, 2013 Will" and the New Will was found to be invalid. *Id.* This Order was received by Appellant's counsel on May 19, 2013.

On May 31, 2016, Appellant's counsel filed and served his Motion to Alter, Amend and/or Reconsider upon opposing counsel and the Probate Court. [R. pp. 97-122]. On August 25, 2016, Judge Condon denied Appellants Motion. [R. pp. 51-57]. The August 25, 2016 Order was electronically mailed to all counsel of record. On August 26, 2016, Appellant served the Notice of Appeal on Respondent. [R. pp. 94-96].

On March 3, 2017, the appeal came to a hearing before the Honorable Roger M. Young, South Carolina Circuit Court Judge. [R. pp. 58-65]. In his *Order Affirming Probate Court Orders of May 12, 2006 and August 25, 2016*, Judge Young denied the appeal. [*Id.*] This appeal timely followed. [R. pp. 94-96].

STANDARD OF REVIEW

An action to set aside a will is an action at law. *In re Estate of Palliser*, 363 S.C. 437, 474, 611 S.E.2d 250, 255 (2005). When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them. *Neely v. Thomasson*, 365 S.C. 345, 349-350, 618 S.E.2d 884, 886 (2005). Questions of law, however, may be decided with no particular deference to the lower court. *Id.* An abuse of discretion occurs when the decision of the trial judge is unsupported by the

evidence or controlled by an error of law. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 37, 691 S.E.2d 135, 143 (2010).

STATEMENT OF ISSUES ON APPEAL

I. Whether the Probate Court erred in finding that the Testatrix's Will was the product of undue influence in the face of uncontroverted evidence and testimony from the Testatrix's Attorney and Paralegal to the contrary, who were the only witnesses to the testamentary act itself?

II. Whether the Circuit Court's affirmation was incorrect?

III. Whether the Probate Court erred in considering facts and testimony of events that occurred in the time after the testamentary act and after Testatrix's death as probative in finding that Testatrix's Will was the product of undue influence?

IV. Whether the Probate Court relied on irrelevant facts and/or made factual findings not reasonably supported in the record in making its determination that that Testatrix's will was the product of undue influence?

V. Whether the Probate Court erred in finding the Testatrix's Will was the product of undue influence when there was no showing of threats, force or restricted visitation?

VI. Whether the Probate Court erred by giving great weight to the Respondent's misstated and misrepresented testimony of Testatrix's physician, Dr. Rhonda Chanson, when the medical conclusions found by the Probate Court are not reasonably supported by the record?

VII. Whether the Probate Court erred in admitting and giving great weight to the unsubstantiated, unsupported and unauthenticated medical records from one of Testatrix's pharmacies?

VIII. Whether the Probate Court erred in accepting the testimony of Ms. Helen Carroll regarding Testatrix's Statement "I had no choice" when Ms. Carroll testified several times she did not remember ever having a conversation with Testatrix about a New Will, nor knew the circumstances of the statement from which she read?

IX. Whether the Probate Court's Order denying the Appellant's Motion to Reconsider addressed any of the legal and factual errors of the Probate Court's original Order?

ARGUMENT

The right to make a will directing the ultimate disposition of one's property is one of the basic rights known to our civilization; it encompasses the right to make it to the testatrix's pleasure and in her absolute discretion, whether judiciously or capriciously, justly or unjustly, subject only to the restraints upon the power of disposition that the law has imposed. *Wilson v. Dallas*, 403 S.C. 411, 445, 743 S.E.2d 746, 765 (2013); *In re Last Will and Testament of Smoak,* 286 S.C. 419, 427, 334 S.E.2d 806, 811 (1985) (citation omitted).

"It is elementary that the statutory right of a competent person to dispose of her property as she wishes may not be thwarted by disappointed relatives or by one who thinks the Testatrix used bad judgment or was misled." *Mock v. Dowling,* 266 S.C. 274, 278, 222 S.E.2d 773, 775 (1976).

In will contest litigation that alleges undue influence, the South Carolina Probate Code states that: "[the Respondent] will have the burden of establishing undue influence." *See* S.C. Code Ann. § 62-3-407. ("Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof."); *Calhoun v. Calhoun,* 277 S.C. 527, 530, 290 S.E.2d 415, 417 (1982) ("The contestants continue to bear the burden of proof throughout the will contest"); *Smith v. Whetstone,* 209 S.C. 78, 84, 39 S.E.2d 127, 129 (1946) (stating in case where a will is formally executed, the burden of proof is on the contestant to prove undue influence "and this burden remains on him to the end").

Undue influence may be proved by circumstantial evidence, but the circumstances relied on to show it must point **un-mistakenly and convincingly** to the fact that the mind

of the testator was subjected to that of some other person, so that the will is that of the latter and not of the former. *Howard v. Nasser*, 364 S.C. 279, 286, 613 S.E.2d 64, 67 (Ct. App. 2005) (emphasis added); *Mock v. Dowling,* 266 S.C. 274, 278, 222 S.E.2d 773, 775 (1976) ("Undue influence may be proven by circumstantial evidence. However, that evidence must be of a substantial nature.")

For a will to be invalidated for undue influence, the influence must be the kind of mental coercion which destroys the free agency of the creator and constrains her to do things which are against her free will, and that she would not have done if she had been left to her own judgment and volition. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003); *Smoak,* 286 S.C. at 424, 334 S.E.2d at 809.

Undue influence must amount to force and coercion, destroying free agency; it must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act; by importunity which could not be resisted; that it was done merely for the sake of peace; so, that the motive was tantamount to force and fear. *Calhoun v. Calhoun,* 277 S.C. 527, 532, 290 S.E.2d 415, 418 (1982); *Russell,* 353 S.C. at 217, 578 S.E.2d at 333 ("The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf. Undue influence is demonstrated where the will of the influencer is substituted for the will of the maker.")

The mere existence of influence is not enough to void a will as all influences are not unlawful. *Hembree v. Estate of Hembree*, 311 S.C. 192, 196, 428 S.E.2d 3, 5 (Ct. App. 1993). "A mere showing of opportunity and even a showing of motive to exercise undue influence does not justify a submission of that issue to a jury, unless there is additional

evidence that such influence was actually utilized." *Smoak,* 286 S.C. at 424, 334 S.E.2d at 809; *Russell,* 353 S.C. at 217, 578 S.E.2d at 333.

Where the testator has an unhampered opportunity to revoke a will or codicil after the operation of undue influence upon him, but does not change it, the court – as a general rule – considers the effect of undue influence destroyed. *Estate of Cumbee,* 333 S.C. 664, 511 S.E.2d 390 (Ct. App. 1999); *Russell,* 353 S.C. at 217, 578 S.E.2d at 333-334.

I. The Probate Court erred in finding that the Testatrix's Will was the product of undue influence in the face of uncontroverted evidence and testimony from Testatrix's attorney and her paralegal – who were the only witnesses to the testamentary act – to the contrary.

The Probate Judge, in denying the motion to reconsider, affirmatively stated that he had examined "all circumstantial evidence" in this case. [R. p. 52, p. 47]. The Probate Judge also went on to say that he "expressly acknowledges and contemplates the testimony of Attorney Klok and [her paralegal] Ms. Voytko. [R. p. 56, p. 46].

But when one refers to the original Order, the only time the Probate Judge discusses the attorney and paralegal, he merely says "Attorney Klok testified there was only one (1) visit for two to three (2-3) hours" and that the attorney "only had contact with the Testatrix for a couple of hours" [R. p. 47]. That is the sum-total of the Probate Court's analysis regarding Klok and Voytko. In other words, the Probate Judge pulled and isolated one fact [the duration of the visit to the attorney's office] and then failed to analyze the substance of the testimony of the only two witnesses who were present at the time the execution of the New Will.[1]

---

[1] In doing so, the Probate Court isolates as conclusive a single detail regarding the execution of the Will, "to the exclusion of all other circumstances leading up to and immediately following the visit to Attorney Klok's office" – which he chides the undersigned for doing (incorrectly) in the Motion to Reconsider. [R, p. 56].

It should be noted the in both Orders, the Probate Court never rejected the testimony of Klok or Voytko. [R. p. 34, p. 57]. He never made a finding that their testimony lacked credibility. [*Id.*] He never ruled that Klok violated her obligations as an attorney or acted in any way inappropriately. [*Id.*] Respondent offered no rebuttal testimony or witnesses that showed Attorney Klok mishandled the execution of the New Will, or violated her professional duties. Contrary to his assertion that he fully acknowledged and contemplated the testimony of Klok and Voytko, the Probate Judge treats them as though they didn't testify at all – contrary to how other Courts have treated the testimony of the drafting attorney.

Since the testimony of the drafting attorney has consistently been found to be probative in all other recent, reported "undue influence" cases in South Carolina, this should amount to reversible error.

It should be noted that these witnesses had direct evidence. Attorney Klok substantiated the original copy of the New Will for the Court. [R. p. 404, lines 2-10]. She said Testatrix met with her and her legal assistant Ms. Voytko on July 3, 2013 for about three (3) hours. [R. p. 397, lines 13-24]. Ms. Gunnells was adamant about having the New Will done that day. [*Id.*]. She brought the Old Will to the meeting with Attorney Klok, knowing that she wanted to change her disposition. [R. p. 399, lines 15-19]. Attorney Klok satisfied herself that Mrs. Gunnells was competent to make a new testamentary disposition. [R. p. 401]. "[T]hroughout our discussions, she was very frail physically but mentally she seemed to know what she wanted. She was pretty clear. Very adamant about it." [*Id.* lines 12-15].

While Respondent drove Testatrix to her appointment at the Klok Law Firm, he was not present in the conference room at any time during any discussion or drafting of the New Will. [R. pp. 398-399]. Klok testified that her policy is not to allow anyone who comes with the client into the conference room during her interviews and no one else enters except her staff; in fact, she directed that the Respondent be outside the building throughout the meeting so that he could not possibly overhear the discussions – a decision the Respondent respectfully complied with. [R. pp. 399-400].

On the day she met with Klok, Testatrix was very upset with her two daughters, she did not wish to be around them and she was adamant about wanting to leave her Estate to Respondent. [R. p. 400-401]. "She seemed very, very sure, and that's one thing that struck me that I still remember." [R. p. 409, lines 15-17]. Klok said that had she ever felt the Testatrix was unsure, she would never have finished the Will that day. [*Id.* lines 18-24]. Klok remembered that Mrs. Gunnells glowed when she talked about Respondent – "It was very sweet. She was very, very loving about Glenn. It was really in contrast to how she spoke about her daughters, that for them they were more -- it was disappointment, I think, with the daughters. But she was very, very happy that Glenn was taking care of her. And you know, she said she couldn't get out and interact as much as she did if it wasn't for Glenn. And that he really was just, you know, wonderful of all the things he did. And took great care of her." [R. p. 402, lines 2-11]. Klok explained to the Testatrix that changing her will was her decision and no one else's; Klok then asked the Testatrix if she felt any force or pressure from any of her children in any way to change her will, to which she replied "no." [R. pp. 407-408].

Testatrix – while alone and confiding with Klok and Voytko – thoroughly explained her reasoning and rationale for executing the New Will. It was not because she necessarily wanted to give Respondent the entire estate, it was more so that she did not want to give anything to her daughters – "she told me her rationale for it wasn't related to how great Glenn was and she loved him, but it was more how she was disappointed with her daughters." [R. p. 401, lines 1-15]. Klok remembered that the Testatrix was very worried about her daughter, the Respondent, causing problems once she found out about the New Will. [R. p. 401, lines 16-19].

Voytko corroborated Klok's testimony: she testified that Testatrix (1) met alone with Klok and Voytko while Respondent waited outside; (2) was of sound mind; (3) was very disappointed with her daughters; and (4) was grateful for her son. [R. pp. 425-430]. In her judgment, there were no "red flags". [R. pp. 430-431]. Voytko witnessed the New Will. [R. p. 432].

For decades, reported decisions in South Carolina have given great weight to the testimony of the attorney who drafted the challenged testamentary document. *See, e.g., Russell v. Wachovia Bank, N.A.,* 353 S.C. 208, 216, 578 S.E.2d 329, 333 (2003); *Calhoun v. Calhoun*, 277 S.C. 527, 531, 290 S.E.2d 415, 418 (1982); *Hairston v. McMillian*, 387 S.C. 439, 446, 692 S.E.2d 549, 553 (Ct. App. 2010); *In re Estate of Anderson*, 381 S.C. 568, 575, 674 S.E.2d 176, 180 (Ct. App. 2009); *Howard v. Nasser,* 364 S.C. 279, 284, 613 S.E.2d 64, 66 (Ct. App. 2005); *Hembree v. Estate of Hembree*, 311 S.C. 192, 195, 428 S.E.2d 3, 4 (Ct. App. 1993); *Cf. Estate of Cumbee*, 333 S.C. 664, 673, 11 S.E.2d 390, 294 (Ct. App. 1999) (finding undue influence where, *inter alia*, Testatrix did not meet with lawyer nor did she read the will). In fact, in *Hairston*, the drafting attorney's testimony was

considered so significant that it outweighed that of a testifying medical expert who had not examined the Decedent. 387 S.C. at 446, 692 S.E.2d at 553. Here, however, the Probate Court ignored this testimony.

It is well-settled that in a will contest based on undue influence, the contestant must show that the influence was brought directly to bear upon the testamentary act. *Russell,* 353 S.C. at 219, 578 S.E.2d at 335; *Mock,* 266 S.C. at 277, 222 S.E.2d at 774; *Hairston*, 387 S.C. at 446, 692 S.E.2d at 553; *see also Wilson v. Dallas*, 403 S.C. 411, 337, 743 S.E.2d 746, 760 (2013) (holding that in a will contest case, facts are irrelevant "if they have no bearing on the execution of [testator's] testamentary documents" and "shed no light on whether the [testator's] will was somehow overcome at the time he signed the documents finalizing his estate plan"). In *Calhoun v. Calhoun*, the Supreme Court found probative the fact that "the record is devoid of any evidence the [Appellant] interfered with the making of the will." 277 S.C. at 533, 290 S.E.2d at 419. Once again, however, the Probate Court ignored this as well.

Accordingly, the Probate Court committed reversible error when it adopted the Respondent's proposed order (identical to the 5.12.2016 Order) with absolutely no mention of the substance of Klok and Voytko's testimony, then later affirmed that the Court balanced all the evidence. That simply did not happen; it is the elephant in the room.

By electing to ignore the drafting attorney's testimony – *almost as if she didn't interview the Decedent at the time of the New Will or testify at trial* – the Probate Court has substantially deviated from what has been considered probative and compelling evidence by the higher courts in South Carolina.

By overlooking the testimony of the legal professionals, the Probate Court has essentially turned undue influence jurisprudence on its head. It is uncontroverted that Klok is a licensed, reputable and competent attorney who has practiced law in the Charleston area for over twenty years in the field of Wills and Estate Planning. Respondent offered no rebuttal testimony that put into question Klok's qualifications or professionalism in any manner, nor any expert testimony that Klok failed: (1) to adequately discharge her duty to the Testatrix; (2) was governed by some conflict of interest; or (3) deviated from the acceptable standard of care for probate attorneys. Yet if the Probate Court's Order becomes the new standard for undue influence litigation, all this formerly probative and compelling testimony is deemed irrelevant. Respondent offered no testimony that Klok in any way deviated from the standard of care for an attorney practicing in the area of Wills and Estates.

Additionally, the only factors the Court relied upon concerning "all other circumstances leading up to and immediately following the visit to Attorney Klok's office" were irrelevant and/or non-dispositive under current jurisprudence.

For example, the Court seemed to find probative that Appellant drove the Testatrix to Klok's office. [R. p. 35]. However, in *Calhoun v. Calhoun*, our Supreme Court did not find the fact the beneficiary drove the testator to the lawyer's office was at all probative. 277 S.C. at 532, 290 S.E.2d at 419 (1982). Neither, apparently, did the Court of Appeals in *Hembree*, 311 S.C. at 195, 428 S.E.2d at 4.

Next, the original Order found that "Respondent acknowledged that Susanne Klok had been his closing attorney on June 6, 2013 and that Attorney Klok had no relationship with Helen Gunnells prior to the Testatrix changing her Will" [R. p. 44] – as if to suggest

some improper collusion between Appellant and Klok. This suggestion is risible. Klok was the closing attorney for the property Appellant was selling [R. p. 422] and in conformity with South Carolina practice, she would have been selected by the buyer's attorney – i.e. not the Appellant. Even if this Court discounts the Appellant's testimony that the Testatrix wanted a female attorney rather than return to the firm where she had her Power of Attorney drawn [R. pp. 472-473], in *Smoak, supra*, the Supreme Court found nothing untoward that the beneficiary took the testatrix to his personal attorney. 286 S.C. at 422, 334 S.E.2d at 808.

While seeming to suggest the one visit with a new lawyer for 2-3 hours is somehow dispositive [R. p. 35], it is not. As Klok stated in her testimony, most times her elderly clients do not want to have multiple meetings. [R. p. 397, lines 4-12]. She schedules and tailors her meetings for each individual client. [*Id.* line 12]. Furthermore, the meeting was a long one – about three hours. [*Id.* lines 13-17]. The facts in *Smoak*, for example, show only one meeting with the lawyer. The number of visits simply is not dispositive – it's what transpired during the attorney meeting that makes the difference. Following *Hembree*, supra, the fact that the Will was "unsealed" when Testatrix left Klok's office, and the Respondent had access to it [R. p. 49] is likewise irrelevant.

If the law of South Carolina is that the *testamentary act* is the principal thing in an undue influence suit, how can the Probate Judge ignore the testimony of Klok and Voytko – the only two witnesses to the testamentary act – without it being an abuse of discretion? If the Probate Judge was truly taking into consideration *all* of the circumstantial evidence, why did he not consider the probative evidence of Klok and Voytko without it being an

abuse of discretion? If not an abuse of discretion, how can Klok and Voytko's probative, uncontested and relevant testimony not only be omitted from the Orders? What is it then?

The Probate Judge finds clear and unmistaken evidence of undue influence on the testamentary act *while ignoring the only witnesses to the testamentary act.* Bluntly, the Probate Court has abused its discretion in finding that "circumstances surrounding the execution clearly indicate the Will was the product of the Respondent and that the Testatrix 'felt she had no choice' but to execute a New Will." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 37, 691 S.E.2d 135, 143 (2010) (holding an abuse of discretion occurs when the decision of the trial judge is unsupported by the evidence or controlled by an error of law); *Sundown Operating Co. v. Intedge Indus., Inc.,* 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) (holding an abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support); *Melton v. Olnik*, 379 S.C. 45, 55, 664 S.E.2d 487, 492 (Ct. App. 2008) (abuse of discretion arises when the judge's decision was controlled by some error of law or lacks evidentiary support).

II. The Circuit Court's affirmation was incorrect.

In his *Order Affirming Probate Court Orders of May 12, 2006 and August 25, 2016*, Judge Young relied upon the fact that "the probate court found, among other circumstances, that a fiduciary relationship existed between the appellant and the testatrix; that on some occasions the appellant prevented testatrix from talking on the phone or having friends visit; that appellant was living with testatrix, was sole caretaker and was testatrix's power of attorney." [R. pp. 62-63]. He also found that the Probate Judge "is not required to

believe uncontroverted testimony because it remains in the fact-finder's province to weigh the credibility and interests of a witness. [R. p. 63].

However, Judge Young also cited to *Howard v. Nasser* for the holding that "when determining whether the testatrix was unduly influenced, all circumstantial evidence, meaning **all circumstances surrounding the execution of the Will that indicate it is as though the Will was the product of another person** rather than the product of the testatrix, is the critical component of evaluation (emphasis added)." [R. p. 62]. He further cites to *Calhoun v. Calhoun* for the principal that "the circumstances must point unmistakenly and convincingly to the fact that the mind of the testator was subjected to that of some other person so that the will is that of the latter and not the former." [R. p. 61]. Finally, he cites to the "abuse of discretion" standard. [R. p. 60].

Judge Young's reliance on the *Vinson v. Harley*, 324 S.C. 389, 409-410, 477 S.E.2d 715, 726 (Ct. App. 1996) is misplaced when considered in relationship to *Howard* and *Calhoun*. If the testamentary act is the "critical component," then the Probate Court cannot ignore the testimony of Klok and Voytko who were the only witnesses to it. At the very least, the Probate Court had to say why Klok and Voytko's testimony was not credible; yet the Probate Court does no such thing—even in the Order denying the motion to amend.

Similarly, if all the circumstances must point "unmistakenly and convincingly" to the fact that the Will is the product of Appellant's mind and not the Testatrix's, then the Probate Court cannot ignore the uncontroverted testimony of the legal professionals or the sole medical witness who testified – nor can an Appellate Court say the Probate Court was not required to weigh this testimony. And what makes this case so critical for Appellant is that this isn't simply a case where the Probate Court believed the Respondent's fact

witnesses over the Appellant's (troubling as that is when the entire record is reviewed), but the fact that the Probate Court ignores the critical testimony of Klok, Voytko and Dr. Chanson, while at the same time cherry-picking their testimony for plums. It is nothing like in *Vinson* where a jury could reasonably find that the low impact of an automobile collision was sufficient to sustain a defense verdict – it's as if there was no testimony or evidence whatsoever about the accident; in other words, by ignoring it, the Judge treated the testamentary act as a complete cipher.

No one was present at the testamentary act but for the Testatrix, Klok and Voytko. Respondent did not challenge the legal professional's testimony or credibility; she ignored it. She prevailed on the Probate Judge to ignore it, too – and he did. If it is the critical element of the case, and the Probate Court must weigh all the evidence to make a circumstantial case, then the Probate Court abused its discretion when it simply ignored their testimony without saying why or how. Otherwise, the Appellant is left to wonder how the Probate Judge could rule against him on such weak facts that the Probate Court included in its Order, and wonder why it omitted any discussion of the critical testimony. This constitutes a clear abuse of discretion by the Probate Court.

Moreover, it has been held that a "court is not required to accept undisputed evidence as establishing the truth **where there is reason for disbelief** (emphasis added)." *Okatie River, LLC v. Southeastern Site Prep*, 353 S.C. 327, 338, 577 S.E.2d 468, 474(Ct. App. 2003) (citing *Johnson v. Painter,* 279 S.C. 390, 392, 307 S.E.2d 860, 861 (1983)). Note that the Probate Court never found Klok and Voytko's testimony about the testamentary act unconvincing or challenged – there was no explanation offered at all; rather, the Probate Court acted as if they hadn't testified at all rather than make a credibility

ruling. *See RRR, Inc. v Toggas*, 378 S.C. 174, 180-181, 662 S.E. 2d. 448, 441-442 (Ct. App. 2008). To receive deference that Judge Young gave him, the trial court must make a credibility finding or explanation; as here, however, the evidence the Court ignores is probative to a ruling of all the facts of the "critical component" of an undue influence case. There is no reason that the Probate Court should disbelieve Klok and Voytko.

The fact that the Court ignored their clear testimony, rather than deal with it head-on, shows that it is probative. When restored to its proper place, their testimony shows that there is not unmistaken and clear evidence of undue influence. Since this is what the trial court was tasked to find (i.e., **all circumstances surrounding the execution of the Will**), it is an abuse of discretion to paper over Klok and Voytko's testimony, and error on the part of the Circuit Court to say that it was within the Probate Court's power to do so if their testimony is otherwise believable.

III. The Probate Court erred in considering facts and testimony of events that occurred in the time after the testamentary act and after Testatrix's death as probative in finding that Testatrix's Will was the product of undue influence.

The 5.12.2016 Order clearly establishes that the Testatrix went to change her Will on July 3, 2013 – less than a month after the death of her late husband on June 8, 2013. [R. pp. 35, 49]. Findings of fact for alleged acts of undue influence after July 3, 2013 – including after Testatrix's death – should not be permitted to serve as a basis for finding influence *at the time of the testamentary act*. At best, such evidence could only go to whether the Testatrix had unfettered opportunity to change her will. *Hembree*, 311 S.C. at 196-97, 428 S.E.2d at 5.

The Probate Judge seems to acknowledge this in the second Order [R. p. 56], but never goes back and corrects the erroneous finding of undue influence at the time of the testamentary event based on facts which occurred long thereafter.

With regards to whether Testatrix had the "unfettered opportunity" to change her will, there was no testimony or evidence presented that Testatrix, after executing the New Will, (1) wanted to change her Will; (2) tried to change her Will, or (3) was denied access to an attorney to change her Will; likewise, the Probate Judge made zero finding in either Order to that effect – despite suggesting that such evidence might be pertinent in the second Order. [R. p. 56].

In reality, what happened here is that the Probate Judge executed the Respondent's proposed order – which is silent on the opportunity to change the Will. None of the Probate Court's findings of post-Will events goes to this issue. It is a red herring to cover the original Order's clear use of post-testamentary events to improperly support a pre-testamentary finding of undue influence. In any event, Respondent failed to show by unmistakable and convincing evidence that there was any undue influence exerted by Appellant – either before or after the testamentary act.

The Court also relied heavily on Appellant's alleged maladministration of the Estate in concluding the New Will was the product of undue influence. [R., p. 45] ("In short, he has not administered the Estate in an honest and forthright manner.") This, however, is completely irrelevant and improper for the same reason. Events that allegedly occurred after the Testatrix's death in the opening and administration of the Estate have no bearing on whether she was unduly influenced during her life.

IV. The Probate Court relied on irrelevant facts and/or made factual findings not reasonably supported in the record in making its determination that that Testatrix's Will was the product of undue influence.

The Probate Court states that the Testatrix changed her Will "but had not wanted to do so." [R., p. 38]. This is not supported by the record. The only possible evidence to support such a finding was that Testatrix allegedly told her friend, Mrs. Carroll, "I had no choice." [R. p. 687]. There are several problems with this testimony, however.

First, Ms. Carroll could not remember the actual conversation with Testatrix ever taking place – showing she lacked the personal knowledge required of a witness. [R. pp. 704-705] ("Q: Okay. Did [Testatrix] ever talk to you about signing a will or something like that? A: No. Q: Never came – A: No.") [R. p. 684 lines 5-9]. Similarly, on cross-examination after she read the letter, Ms. Carroll did not remember discussing the will with the Testatrix, either. ("Q: So earlier, Mr. Howe had to remind you about . . . a conversation you had about the will with Mrs. Gunnells. Do you remember that conversation? A: No. I don't.") [R. p. 704, line 24 – p. 705, line 3].

Second, the meaning behind this statement could be many things – "no choice" because her daughters had abandoned her, "no choice" because her daughters could not be trusted, "no choice" because it was the right thing to do to remove them from the New Will? In *Smoak*, the Testator told one of his daughters, "[t]here's nothing you can do. It's just too late. There's no time." The *Smoak* Court found that even if it believed the testator was speaking about the Will, the conclusion that the Will was the product of undue influence was simply not warranted. *Smoak*, 286 S.C. at 425, 334 S.E.2d at 810. Here, similarly, Ms. Carroll testified that Testatrix told her, "I had no choice." Following *Smoak*, even if the Probate Court believed this statement was about the New Will, the conclusion

that the New Will was the product of undue influence is simply not warranted. *Id.* The Probate Court failed to take any such questions into consideration, and as such, committed reversible error for relying on Ms. Carroll's testimony.

The Probate Court noted "Ms. Carroll testified that she knew Glenn to have an alcohol problem because she noticed he would 'slur his words' when talking." [R. p. 39]. This is a single sentence in the 5.12.2016 Order that is not relevant and supports nothing in the Court's findings; it is wholly irrelevant to the matter at hand. Further, Ms. Carroll testified that she never saw Appellant drinking and it was Respondent who voiced these concerns to her. [R. pp. 700-701]. As such, by considering rumors over the testimony of unbiased witnesses, the Probate Court committed reversible error.

The Probate Court also gave weight to Respondent's assertion that she visited with DSS, the Probate Court, independent legal counsel and Legal Aid – with the only evidence of such being a business card to DSS and Respondent's testimony. Respondent presented no independent witnesses or testimony to support the same. The Probate Court failed to consider that nothing came from these visits. No legal action was ever taken. No one from DSS ever intervened. Nothing ever happened after these alleged meetings.

The Probate Court further gives weight to Respondent selling her Corvette to better accommodate her mother when taking her to doctors' visits. [R. pp. 39, 41]. Yet, in the same breath, the Probate Court seems to punish Appellant for selling his house to be a live-in care-taker for his parents. It should be noted that Respondent traded in her Corvette for a Lexus SUV – not an unsightly conversion van or wheelchair accessible shuttle. [R. p. 301].

Furthermore, the Probate Court gives weight to the testimony that Mr. Brantley knew about the contents of the Old Will, but not the New Will. [R. p. 38]. The Probate Court does not explain how this is relevant or probative in its ultimate finding of undue influence. It, along with the other irrelevant and immaterial evidence scattered throughout the 5.12.2016 Order do not support the Probate Court's finding that the New Will was the product of undue influence.

The Probate Court mentions a time when Ms. Davis attempted to enter the house when Ms. Costa and Testatrix were in the middle of a physical therapy session. [R. p. 41]. The Probate Court gives weight to Ms. Davis' and Respondent's testimony but does not take into consideration the testimony of Ms. Costa (an independent and unbiased witness) – who was there caring for Testatrix. Ms. Costa testified "Ms. Gunnells did not want to see [Ms. Davis], she was upset." [R. p. 362, lines 3-4]. But when Ms. Costa attempted to tell Ms. Davis the same, "she pushed into the door and pushed me out of the way." [*Id.*, lines 7-8]. The Court gives great weight to Respondent's testimony on the matter. However, Respondent was in the car during this entire encounter.

Finally, and most importantly, the Probate Court ignored another elephant in the room – the fact that Respondent sued her mother almost immediately after her father's death and that her other daughter, Ms. Davis, was largely absent during the latter part of Testatrix's life. Respondent sued her mother for personal items in the Residence she believed rightfully belonged to her – including two candlesticks from Tuesday Morning. [R. p. 312]. The Probate Court failed to take these very probative uncontroverted facts and circumstances into consideration at all in its finding that the New Will was the product of undue influence.

The Probate Court committed reversible error when it found the following unsubstantiated evidence probative: (1) rumors about Appellant's drinking; (2) Respondent's selling her Corvette in exchange for a Lexus SUV; (3) Ms. Carroll's testimony regarding a conversation she cannot remember, and; (4) DSS and Probate Court visits over uncontroverted testimony and evidence showing: (a) Respondent sued her mother almost immediately after her father's death; (b) Ms. Davis was an absent child; (c) No follow up was ever done by DSS or other legal services; (d) Appellant had met Klok on one other previous occasion; and (e) independent witnesses confirmed Testatrix did not want to interact with her daughters.

V. The Probate Court erred in finding the Testatrix's Will was the product of undue influence when there was no showing of threats, force or restricted visitation.

It has been held repeatedly that "[g]enerally, in cases where a will has been set aside for undue influence, there has been evidence either of threats, force, and/or restricted visitation, or of an existing fiduciary relationship." *Russell,* 353 S.C. at 217, 578 S.E.2d at 333; *Hembree*, 311 S.C. at 196, 428 S.E.2d at 5. Even when a fiduciary relationship exists, the Courts still analyze whether there were threats, force and/or restricted visitation. *See. e.g.*, *Hairston*, 387 S.C. at 447-448, 692 S.E.2d at 553.

While the Respondent and her sister claimed that Appellant "threatened" ***them*** with "calling the police" (which is rebutted by independent witness testimony from Ms. Costa) – there was absolutely no testimony or evidence that Appellant used threats or force on the Testatrix – which is the person to whom the threat/force would have to be made on in order for it to be probative. *See Hairston,* 387 S.C. at 447, 692 S.E.2d at 549.

The 5.12.2016 Order states that after the execution of the New Will, Mrs. Gunnells was "visibly upset," "crying," and "distraught" in the doctor's office. [R. p. 46]. Dr. Chanson (her treating physician) never tied these emotions to the execution of her New Will. In fact, Dr. Chanson, who testified to these emotions, makes it clear that these were experienced over a period of time and were result of Testatrix's husband's recent death – not anything to do her New Will. [R. pp. 613, 614, 623]. It should be noted that during the two years that Dr. Chanson treated Testatrix, Appellant was never in the room for any of her examinations – which lasted anywhere from 30 to 50 minutes. [R. pp. 601, 608]. Dr. Chanson opined that Testatrix's behavior was appropriate and she did not seem fearful – she saw nothing in Testatrix's demeanor that was concerning or that would lead her to believe Appellant was exercising any influence over Testatrix. [R. pp. 605-608].

Likewise, there was no testimony or evidence of restricted visitation. Quite the opposite, Klok testified that Testatrix told her that if it weren't for Appellant, she would not be able to get out and interact as much – visits to the senior center, doctor's appointments, visit family, etc. [R. p. 402]. Moreover, Testatrix's brother – Jack Brantley – visited his sister in Charleston after her husband's death and while Appellant was living with his mother: "I probably visited at least three or four times a year, sometimes more often, according to what was going on, and we talked on the telephone at least two, three, four times a week. And if I didn't call her, she would call me." [R. pp. 212-218]. He further testified that spoke to her outside Appellant's presence. [R. pp. 239-240, 244]. Appellant would also bring his mother to visit Mr. Brantley in Waynesboro, Georgia. [R. pp. 213-214].

On direct examination, Testatrix's "friend," Helen Carroll, testified that after her husband's death, Testatrix lost interest in talking on the telephone but that they would visit at Testatrix's home. [R. pp. 679-680]. She recounted several visits and telephone calls, yet she had very little recollection of the conversations. [*See, generally* R. pp. 670-710.]. She confirmed daughter Belinda Davis was an absent child. [R. p. 699].

Ms. Carroll further testified that in the last few months of her husband's life, Testatrix changed but that was probably because her husband was dying. [R. p. 702]. Testatrix never spoke about any mistreatment, threats, force or any concerns she had about Appellant. [R. p. 704]. Ms. Carroll continued to visit Testatrix after her husband's death – including when Appellant was not there. [R. pp. 679, 681-682, 704]. In fact, Ms. Carroll visited Testatrix at her home up until the last week of her life. [R. p. 703]. Appellant never kept Ms. Carroll away from his mother nor did he ever instruct her to leave when she visited Testatrix. [R. p. 704].

The Testatrix's daughters' testimony fails to show any restriction of visitation. Ms. Belinda Davis was self-admittedly absent – moving to Hawaii right after her father was diagnosed with cancer. [R. pp. 277-278]. She conceded that she had the opportunity to talk to her mother after her father's death – but she chose not to. [R. pp. 267, 282, 286]. It was that Ms. Davis did not talk to her mother much at all, including during the month of July when the New Will was executed. [R. pp. 281, 284].

Respondent's own testimony is indicative that she made a choice to stay away. Only 19 days after her father's death, Respondent admits that she wrote a letter to her mother threatening legal action to recover personal property. [R. pp. 731-736]. In October 2013, she wrote her mother yet another letter. [R. pp. 737-738]. In this letter, Respondent

sarcastically commends her mother for being happy, content and being able to sleep at night. [*Id.*] "[I]t seems you are happy and satisfied with your choices you have made." [*Id.*]. She also states that she has no desire to visit her mother at her Residence. [*Id.*].

Accordingly, the most Respondent proved was that leading up to and after her husband's death, Testatrix was sad and sometimes did not want to speak on the phone or have long visits with friends. This was an emotion that Dr. Chanson said, and common sense would dictate, was completely expected and normal – "most marked thing would have occurred after her husband died and appropriately so. She was very depressed about that. That is one of the most significant losses a person can undergo, secondary to the loss of a child. And it is not uncommon that people will have a difficult time with that. And she was no different." [R. p. 603, lines 17-24].

Short of cherry-picking snippets of testimony while ignoring admissions and concessions from **the same witnesses**, there is simply no real evidence or testimony to support the finding in the Probate Court's 5.12.2016 Order that states "other children and friends of the Testatrix were not permitted to speak to her on the phone or to be alone with her in the home." [R. p. 48]. Again – **these are the Respondent's own witnesses** who can provide no evidence of physical force, neglect or restricted visitation as to the Testatrix at the time of the testamentary act. It would set South Carolina authority on its head to find undue influence in the absence of these critical factors.

As such, the Probate Court committed reversible error and an abuse of discretion when it made this finding and finding that there was evidence of treats, force and restricted visitation when no evidence was submitted to support the same.

VI. The Probate Court erred by giving great weight to the Respondent's misstated and misrepresented testimony of Testatrix's physician, Dr. Rhonda Chanson, when the medical conclusions found by the Probate Court are not reasonably supported in the record.

The reasonable good health of a testator is considered probative in an undue influence case. *First Citizens Bank v. Inman,* 296 S.C. 8, 370 S.E.2d 99 (1988). Moreover, in case after case, the South Carolina appellate courts have found probative the testimony of the treating physician that the decedent was competent. *See, e.g., Calhoun*, 277 S.C. at 532, 290 S.E.2d at 431; *Smoak,* 286 S.C. at 426, 334 S.E.2d at 811. Thus, the Probate Court committed reversible error when it failed to consider all the testimony of Dr. Chanson – which constitutes her full opinion – rather than allowing the Respondent to cherry-pick a statement here or there.

It is uncontroverted that Dr. Chanson is a licensed, reputable and competent physician who has practiced internal medicine in Charleston since 2000. [R. pp. 594-595]. The Respondent offered no testimony that questioned Dr. Chanson's qualifications in any manner, nor any counter medical expert. It should be noted that Belinda Davis testified it was on her suggestion that Testatrix began to see Dr. Chanson [R. p. 260], which Dr. Chanson corroborated. [R. pp. 599-600, 604].

The Probate Court relied heavily on Dr. Chanson's assertion that she cannot say whether Testatrix was "unduly influenced." [R. pp. 46-57]. What the Probate Court failed to consider, however, is Dr. Chanson's own testimony that the reason she was unable to opine on that issue because she had no idea what the term "undue influence" meant. [R. pp. 606, 626]. Notwithstanding the foregoing, Dr. Chanson noted that Testatrix routinely carried on intelligent conversations during her office visits, she knew exactly who she was

and who her family and children were, she had a firm understanding of her surroundings and she made her own decisions. [R. pp. 607, 610].

The Testatrix never missed an appointment with Dr. Chanson. [R. p. 605]. Office visits would usually last between 30 and 50 minutes. [R. p. 601]. Furthermore, Appellant was never in the room when Dr. Chanson was examining/treating Testatrix – he would wait in the lobby until she needed to speak to him. [R. pp. 606, 615-617]. Dr. Chanson opined that Appellant seemed very attentive towards his mother; he asked appropriate questions about Decedent's health and he would often call the office to ask questions about medications. [R. p. 605]. "He seemed to be giving appropriate care to his mother." [*Id.* lines 21-22].

Significantly, Dr. Chanson saw Testatrix for an appointment on the same day as Testatrix executed the New Will and believed she was of mind, albeit depressed at the recent loss of her husband. [R. pp. 612-613, 624-626]. Dr. Chanson believed that Testatrix was competent to make her own decisions. [R. p. 610].

Dr. Chanson did not see anything in Testatrix's demeanor that was concerning or that would lead her to believe Appellant was influencing Testatrix. [R. pp. 605-608]. "Her behavior seemed appropriate in our offices. She didn't seem to be fearful. I always examined her, and he was not in the room, so I didn't see anything that would be concerning," she testified. [R. p. 606].

Dr. Chanson testified to all these opinions to a reasonable degree of medical certainty most probably. [R. pp. 613-614]. She is an unbiased witness with no reason to favor or discredit one party or the other. She always spent time alone with the Decedent, yet reported no findings of abuse, neglect, force, coercion or domination of Decedent by

Appellant. Concerning the medical findings, the Probate Judge said the record speaks for itself. [R. p. 57].

That would be true if the Probate Judge considered her whole testimony. He did not. Rather, while gleaning one statement, the Probate Court ignored Dr. Chanson's full testimony without weighing her complete opinion or discerning the context around the statements – including snippets of testimony about Testatrix's medication. This is an abuse of discretion. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 37, 691 S.E.2d 135, 143 (2010).

VII. The Probate Court erred in admitting and giving great weight to the unsubstantiated, unsupported and unauthenticated medical records from one of Testatrix's pharmacies.

The Probate Court makes an incredible finding of fact that Appellant withheld medication from Testatrix. [R. p. 47]. In fact, this exact theory was discounted by Dr. Chanson. ("Q: So were you aware of . . . mismanagement of care of mismanagement of medication? A: I was not . . . I did not see anything that would have been concerning."). [R. p. 606, lines 11-18]. Furthermore, Testatrix, during her long visits with Dr. Chanson, never mentioned anything of the sort to her or anything else that would have been concerning to Dr. Chanson. [R. p. 606]. Once again, it should be noted that the Probate Judge says "the record speaks for itself" [R. p. 57] – which is *only* true when all Dr. Chanson's testimony is considered.

Respondent failed to illicit *any testimony* from *any witness* that any medication was ever withheld. She failed to call in an independent medical professional, including Testatrix's pharmacist(s), to support this outrageous contention. This is pure conjecture

and speculation on behalf of the Respondent and should never have been considered by the Probate Court.

Ms. Leigh Wechter – Testatrix's physical therapist – recounted: "[Appellant] appeared genuinely concerned about Mrs. Gunnells, and would take care to prepare her meals, fix her medications and make recommended safety changes to her home to protect her from falls. [Appellant] worked to ensure Mrs. Gunnells had caregivers in the home to assist her with her personal care, as well as provided (sic) her with transportation and assistance with all of her medical appointments." [R. p. 739]. "[Appellant] made sure that she took her medications." [R. p. 355, lines 22-33]. Testatrix's other physical therapist, Ms. Jill Costa, recounted: "Every visit, I got to see how devoted he was to his mother, in which he made sure she had the best possible care." [R. p. 740].

Respondent has failed to present any evidence, let alone unmistakable and convincing evidence, that Appellant withheld medication from his mother. If there were any true merit to this contention, then Respondent would have been able to elicit the same from Dr. Chanson or another medical professional to support it. As such, the Probate Court committed reversible error when it considered this unsupported conjecture in finding the New Will was the product of undue influence. This constitutes a clear abuse of discretion. *See Vaught v. A.O. Hardee & Sons,* 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005) ("The admission of evidence is within the sound discretion of the trial judge, and absent a clear abuse of discretion amounting to an error of law, the trial court's ruling will not be disturbed on appeal.").

VIII. The Probate Court erred in accepting the testimony of Ms. Helen Carroll regarding Testatrix's Statement "I had no choice" when Ms. Carroll testified several times she did not remember ever having a conversation with Testatrix about a New Will, nor knew the circumstances of the statement from which she read.

The Probate Court accepted the testimony of Ms. Carroll that the Testatrix said she had "no choice" in signing the New Will. [R. p. 49]. Ms. Carroll's testimony should never have been admitted or considered by the Probate Court.

The "no choice" testimony came about from Respondent's counsel asking Ms. Carroll to testify regarding a letter she had allegedly signed, but which she had no knowledge regarding how it was drafted, who drafted it, when it was drafted, when she signed it, or the circumstances under which she signed it. [R. pp. 693-697]. The Probate Court correctly excluded this letter from evidence because of the same, yet still considered the testimony elicited from it.

Reading from the letter in her deposition, Ms. Carroll said that the Testatrix told her that she did not want to change her will but Appellant told her she had to. [R. p. 697]. However, before she read from the letter, Ms. Carroll testified on direct examination she did not remember any conversation with the Testatrix concerning a will ("Q: Okay. Did [Testatrix] ever talk to you about signing a will or something like that? A: No. Q: Never came – A: No.") [R. p. 684, lines 5-9]. Similarly, on cross-examination after she read the letter, Ms. Carroll did not remember discussing the will with the Testatrix, either. ("Q: So earlier, Mr. Howe had to remind you about . . . a conversation you had about the will with Mrs. Gunnells. Do you remember that conversation? A: No. I don't.") [R. p. 704, line 24 – p. 705, line 3].

It was only after Ms. Carroll read from the letter that she testified specifically that Appellant kept Testatrix from speaking to her brother and sister – which she had not testified to previously on direct examination. [R. pp. 688, 691]. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. SCRE 602.

It should be noted that Ms. Carroll, a 92-year-old ailing woman, admitted to an extremely close, personal relationship to the Respondent. She testified that the Respondent "was like a daughter to her" and she would do anything the Respondent asked her to do; she even talked to the Respondent every day. [R. pp. 697-698, 691]. Yet, curiously, Respondent did not talk to Ms. Carroll at all between the time Arden Gunnells died and Testatrix died [R. pp. 706-707]. – which could suggest that Respondent was cultivating a lonely, elderly woman more for her anticipated testimony than deep friendship. Despite all of this, the Court admits the testimony of Ms. Carroll, which should have been excluded for lack of personal knowledge. A witness must have personal knowledge of a matter in order to testify about it. Rule 602, SCRE ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."). As such, the Probate Court committed reversible error when it gave great weight to the same.

IX. The Probate Court's Order denying the Appellant's Motion to Reconsider did not address any of the legal and factual errors of the Probate Court's original Order.

On May 31, 2016, Appellant submitted his Motion to Alter, Amend and/or Reconsider the Probate Court's 5.12.2016 Order. [R. pp. 97-122]. Despite Appellant's

request for a hearing, the Court issued its decision in an Order on August 26, 2016. [R. pp. 51-57]. The Motion was denied.

The bulk of the 8.25.2016 Order discusses the correct application of the law in South Carolina with regards to undue influence and agrees with Appellant's recitation in his Motion to Reconsider. However, the Order does not address the legal and factual errors of the Probate Court's 5.12.2016 Order. Particularly, the Order is silent on much of the above-argued witness testimony – in particular, the weight and credibility of the witnesses presented and the lack of evidence and testimony to support the Respondent's allegations.

The legal and factual conclusions the Probate Court arrived at are simply not supported by the evidence and testimony. The Court simply states that "the record speaks for itself" but gives no legal or factual basis for its conclusions. [R. p. 57]. This is simply not sufficient in a case where so much testimony and evidence presented rebutted any presumption of undue influence.

CONCLUSION

The Probate Court's 5.12.2016 Order is guided by multiple errors of law and fact, which were not corrected by its Order denying the Motion to Reconsider. The Circuit Court ignored these errors in its Order. Accordingly, this Court of Appeals should reverse the Probate Court's holding based on an abuse of discretion and find that the July 3, 2013 Will ("New Will") was not the product of undue influence, is valid, and is in full force and effect.

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March 1, 2018
Mount Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr.
Circuit Court Judge

APPELLATE CASE NO. 2017-001131

Glenn Gunnells, Individually and as the Personal Representative of the Estate of Helen B. Gunnells.....Appellant.

v.

Cathy G. Harkness .....Respondent

CERTIFICATE OF COUNSEL

The undersigned certified that this ***Final Brief of Appellant*** complies with Rule 211(b), SCACR.

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STATE OF SOUTH CAROLINA
In The Court Of Appeals

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Appeal From Charleston County
Court Of Common Pleas

Honorable Roger M. Young, Sr.
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Cathy G. Harkness.....Respondent

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STATE OF SOUTH CAROLINA
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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 2

STANDARD OF REVIEW AND GENERAL APPLICABLE LAW 4

ARGUMENT OF ISSUES ON APPEAL 6

I. The Probate Court was correct in weighing the testimony of attorney and paralegal who witnessed the execution of the Will in the context of other evidence in the case. .6

II. The Circuit Court's affirmation was correct. 9

III. The Probate Court was entitled to weigh evidence that occurred after the signing of the Will 10

IV. The Probate Court did not rely on irrelevant facts in making its determination of undue influence. 10

V. There was evidence of threats and restricted visitation that supported the Probate Court's findings. 14

VI. The Probate Court did not give weight to "medical conclusions" of Dr. Chanson that were unsupported by the record. 15

VII. The Probate Court properly considered the testimony of Dr. Chanson. 15

VIII. The Probate Court properly considered the testimony of Helen Carroll. 16

IX. The Probate Court's Order Denying Appellant's Motion to Reconsider was proper. .17

CONCLUSION 18

Certificate of Counsel

TABLE OF AUTHORITIES

CASES: PAGE

Byrd v. Byrd,
279 S.C. 425, 308 S.E.2d 788 (1983) 5

Calhoun v. Calhoun,
277 S.C. 527, 90 S.E.2d 415 (1982) 5

Golini v. Bolton,
326 S.C. 333, 482 S.E.2d 784 (Ct. App. 1997) 4

Gordon v. Busbee,
397 S.C. 119, 723 S.E.2d 822 (Ct. App. 2012) 5

Graham v. Whitaker,
282 S.C. 393, 321 S.E.2d 40 (S.C. 1984) 4, 6, 16

Hembree v. Estate of Hembree,
311 S.C. 192, 428 S.E.2d 3 (Ct. App. 1993) 5

Howard v. Nasser,
364 S.C. 279, 613 S.E.2d 64 (Ct. App. 2005) 5

In re Estate of Cumbee,
333 S.C. 664, 511 S.E.2d 390 (Ct. App. 1999) 4, 5

Russell v. Wachovia Bank N.A.,
353 S.C. 208, 578 S.E.2d 329 (S.C. 2003) 6

Townes Associates Ltd. v. City of Greenville,
266 S.C. 81 (1976) 5, 6

STATEMENT OF THE CASE

This matter arises from a Will dispute in the Charleston County Probate Court. Respondent Harkness, acting pro se, filed a Petition in Charleston County Probate Court on July 28, 2014 seeking to set aside the Will of Helen Gunnells dated July 3, 2013 which had been submitted for probate. She alleged that the Will was procured by the undue influence of her brother, Glenn Gunnells. Glenn Gunnells had been informally appointed as Personal Representative of the Estate on February 25, 2014. Appellant Gunnells, individually, and as Personal Respresentative of the Estate of Helen Gunnells, filed a timely answer denying the allegations of undue influence. Harkness later retained counsel and an Amended Complaint was filed on April 16, 2015 which re-alleged undue influence. An Amended Answer denying same was filed.

A non-jury trial was held before the Honorable Irvin G. Condon, Probate Judge for Charleston County, on March 1-3, 2016. Judge Condon issued an "Order Voiding the Last Will & Testament Dated July 3, 2013 and Admitting the Last Will & Testament Dated November 7, 2006 to Probate" on May 12, 2016. Appellant Gunnells filed a Motion to Reconsider on May 31, 2016 which was denied by Judge Condon in an Order dated August 25, 2016.

Appellant Gunnells thereafter filed an appeal to Circuit Court on August 26, 2016. The appeal was argued before the Honorable Roger Young, Circuit Court Judge for Charleston County, on March 3, 2017. Judge Young issued a written Order denying the appeal on April 11, 2017.

This appeal followed, Notice of Intent to Appeal being filed on May 12, 2017.

STATEMENT OF FACTS

Helen Beatrice Gunnells ("Helen" or "Testatrix") died on February 7, 2014 in Charleston County, South Carolina. She was the widow of Aiken Arden Gunnells ("Arden") who predeceased her on June 8, 2013. The Gunnells had three (3) children: Appellant Glenn Gunnells ("Glenn"), Cathy Harkness ("Cathy") and Belinda Davis ("Belinda").

Cathy historically had a very good relationship with her mother and often took her shopping, to doctors' visits, etc. (R. p. 223, lines 5-11; R. p. 261, lines 1-25). Cathy and her brother Glenn, however, never got along. (R. p. 256, lines 23-25). Glenn was a former used car salesman who stopped working in 2000 and lived thereafter on Social Security disability payments of $1,138.00 per month. (R. p. 438, line 21). He was considered by his sister, Belinda, to be "a control freak, drug and alcohol abuser, a user of people, conniving." (R. p. 273, lines 9-10).

Arden and Helen Gunnells executed Wills on November 7, 2006, leaving everything to each other and alternatively to the children in equal shares should one spouse predecease the other.

In the Spring of 2012, Arden was diagnosed with cancer. Shortly thereafter, Glenn moved into his parents' home to help care for them. About the same time, Cathy moved back to Charleston from Myrtle Beach to help care for her parents, too. She moved into an apartment nearby. She sold her Corvette and purchased an SUV because it was easier for her mother to get in and out of when she drove her places. (R. p. 301, lines 15-22).

During Arden's battle with cancer, there was friction between Glenn, Cathy and Belinda about various things. At one point, when Belinda took steps to make sure she could consult with Arden's doctor at the hospital, Glenn wrote the girls an email stating: "Let it be known, nothing

will be signed or initialed till I look at it, exclamation point three times. Let it be written so let it be done, two exclamation points. All has been done and notified, several exclamation points." (R. p. 265, lines 17-21).

On June 8, 2013, Arden Gunnells died. Shortly after Arden's death, Glenn told Cathy that she was no longer allowed to call or visit her mother and that he would call the police on her if she attempted to do so. (R. p. 306, lines 9-13). Jack Brantley, Helen's brother, noticed a decided change in his communications with his sister, Helen, once Arden died. "[s]he did not talk as freely to me as she did in—in the previous days." (R. p. 218, lines 1-2). Helen's close friend of many years, Helen Carroll, also noticed a huge difference. (R. p. 689, lines 5-19).

On July 3, 2013 (26 days after Arden's death), Helen was taken to the office of Suzanne Klok, Esquire in Mt. Pleasant, SC where she executed a new Will designating Glenn as her sole beneficiary. Attorney Klok had no previous relationship with Helen Gunnells and the visit on July 3, 2013 was the only time she ever spoke to her. Attorney Klok had previously represented Glenn, however, and it was Glenn who set up the appointment and drove his mother to and from the lawyer's office. (R. p. 412, lines 16-25 and p. 414, lines 5-20).

There was one occasion after Arden's death that Helen Carroll visited with Helen Gunnells when Glenn was not present to supervise the visit. At that time, Helen Gunnells told her longtime friend that Glenn had made her sign a new Will although she did not want to. (R. p. 687, lines 11-21).

Throughout the time that Glenn lived with his mother, after Arden's death, she was entirely dependent on him. She could not drive or leave the house. Being on total disability himself, he was seldom away from her during the day. He totally took over the house, setting up his bedroom in what was once the living room (R. p. 219, lines 8-9) and he installed surveillance

cameras to monitor the property (R. p. 219, lines 18-23).

Helen's health was not good physically, mentally, or emotionally. She was extremely upset by Arden's death (R. p. 603, line 17 – p. 604, line 15). On the same day that she executed the "new" Will at Attorney Klok's office, she also saw her doctor who described her as "visibly upset" "crying" and "distraught." (R. p. 623, lines 12-24). Helen's health gradually deteriorated until her death on February 4, 2014. Glenn took the "new" Will to the Charleston County Probate Court soon thereafter and was appointed Personal Representative.

Acting pro se, Cathy filed a Petition to Set Aside the "new" Will. The Petition was filed in July of 2014 and served in early August. Knowing that the Will was disputed, Glenn nevertheless took steps to sell the home on Capri Drive (the only asset of any value according to the Inventory & Appraisement he filed with the Probate Court) in December 2013 and distributed the assets to himself. (R. p. 503, line 6 – p. 504, line 17).

STANDARD OF REVIEW AND GENERAL APPLICABLE LAW

An action to contest a Will is an action at law. Golini v. Bolton, 326 S.C. 333, 482 S.E.2d 784 (Ct. App. 1997). The standard of review is articulated in In re Estate of Cumbee, 333 S.C. 664, 670, 511 S.E.2d 390, 393 (Ct. App. 1999): "If the proceeding in the Probate Court is in the nature of an action at law; the circuit court and this Court may not disturb the probate judge's findings of fact unless a review of the record discloses there is no evidence to support them." An appellate court should therefore consider the evidence in a light most favorable to the Respondent. The appellate court is "not at liberty to pass upon the veracity of the witnesses" and determine the case based on how it thinks the evidence should have been weighed by the trial court. Graham v. Whitaker, 282 S.C. 393 at 398, 321 S.E.2d 40 at 41 (S.C. 1984). Rather, "the findings of fact of the judge will not be disturbed on appeal unless found to be without evidence

which reasonably supports the judge's findings." Townes Associates Ltd. v. City of Greenville, 266 S.C. 81 at 86, 221 S.E.2d 773 at 774 (1976).

A Will obtained through undue influence is not a valid Will. Undue influence exists when there has been coercion which destroys the free will of the testatrix causing her to dispose of her assets in a way contrary to the exercise of her own free will. In re Estate of Cumbee, 333 S.C. 664, 511 S.E.2d 390 (Ct. App. 1999).

Some factors considered by the Court in earlier cases include (but are not limited to, the following):

1) The Testatrix was infirm in some respects and therefore susceptible to influence. Byrd v. Byrd, 279 S.C. 425, at 427, 308 S.E.2d 788 at 789 (1983);

2) The beneficiary had a fiduciary relationship with the Testatrix. Gordon v. Busbee, 397 S.C. 119, 723 S.E.2d 822 (Ct. App. 2012). Indeed, the existence of a fiduciary relationship raises a presumption of undue influence. Howard v. Nasser, 364 S.C. 279, 289-90, 613 S.E.2d 64, 69 (Ct. App. 2005);

3) An unnatural disposition making the person charged with the undue influence the chief beneficiary. Howard v. Nasser, 364 S.C. 279, 613 S.E.2d 64, 69 (Ct. App. 2005);

4) Whether the contested Will made disposition drastically different from those in prior Wills. In re Estate of Cumbee, 333 S.C. 664, 511 S.E.2d 390 (Ct. App. 1999);

5) Motive and opportunity by the beneficiary to influence the Testatrix. Calhoun v. Calhoun, 277 S.C. 527, 90 S.E.2d 415 (1982);

6) Whether the Testatrix had unhampered ability to change the Will at a late date. Hembree v. Estate of Hembree, 311 S.C. 192, 428 S.E.2d 3 (Ct. App. 1993);

7) Whether threats, force or restricted visitation existed. Russell v. Wachovia Bank N.A., 353 S.C. 208, 578 S.E.2d 329 (S.C. 2003).

ARGUMENT

I. The Probate Court was correct in weighing the testimony of attorney and paralegal who witnessed the execution of the Will in the context of other evidence in the case.

The disputed Will was prepared by Attorney Suzanne Klok and witnessed by Ms. Klok and her paralegal, Ms. Annmarie Voytko. Both testified that they did not detect any undue influence. Appellant essentially argues that the testimony of Ms. Klok and Ms. Voytko should outweigh all of the other evidence presented in the case as a matter of law. As noted above, the appellate court is "not at liberty to pass upon the veracity of witnesses" and determine how it thinks the evidence should have been weighed by the trial judge. Graham v. Whitaker, 282 S.C. 393 at 398, 321 S.E. 2d 40, at 41 (S.C. 1984). Rather, "the findings of fact of the judge will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings." Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81 (1978) at 86, 221 S.E.2d 773 at 774 (1976).

The trial judge's Order is 17 pages long and it goes into great detail about the way the trial judge analyzed the broad gambit of factual testimony. Some of the most salient facts that the Court relied on to "outweigh" the isolated testimony of Ms. Klok and Ms. Voytko include the following:

A) Ms. Klok had been Glenn's attorney at a closing on June 6, 2013 and had no relationship with Helen Gunnells prior to the day she changed her Will on July 3, 2013. Despite Glenn's sworn testimony at his deposition that he had taken his mother to meet with Ms. Klok 2 or 3 times prior to signing the Will, Ms. Klok testified there was only a single meeting. Glenn

made the appointment for the meeting, drove his mother to and from the meeting, and waited outside the building while Helen Gunnells met with Ms. Klok. (R. p. 44/R. p. 412, lines 16-25 and p. 414, lines 5-20).

B) Helen Carroll, one of Helen Gunnells' oldest and closest friends, testified by video deposition. She recounted a visit with Helen Gunnells after Arden's death in which Helen Gunnells told her she had changed her Will because Glenn made her do so. Helen said to Ms. Carroll "I had no choice." When Glenn came home, Testatrix "clammed up." (R. p. 38/R. p. 687, lines 8-22).

C) Dr. Rhonda Chanson was Testatrix's doctor and she met with Helen Gunnells on the day she changed her Will. Dr. Chanson described Helen Gunnells as "visibly upset", "crying" and "distraught." (R. p. 623, lines 9-24). Although she believed she was competent, she could offer no opinion as to whether she was emotionally stable enough to consummate the Will on July 3, 2013. (R. pp. 46-47/R. p. 626, lines 1-4).

D) Numerous witnesses detailed the fact that Glenn limited access to his mother by other family members after Arden died. These included:

i) Cathy Harkness – who related that Glenn told her he would have her arrested for "harassment" if she tried to contact her mother. (R. p. 42/R. p. 306, lines 9-12).

ii) Belinda Davis – who related a number of incidents in support of her contention that Glenn was a "control freak", an alcoholic and substance abuser and "a user of people." (R. pp. 40-42/R. p. 273, lines 7-10). She described an incident in which Glenn physically pushed her out of the house when she tried to visit her mother. (R. p. 307, lines 3-9).

iii) Jack Brantley – the youngest brother of Helen Gunnells. Mr. Brantley was very close to his sister. He noticed a huge change in her demeanor toward him after Arden died. She became "...very hesitant to talk to me" which was a dramatic change in their relationship. (R. p. 217, lines 8-9/R. p. 37).

In an email to Cathy dated July 22, 2013, Mr. Brantley said that his sister "...does not talk to me about things like she did when Arden was living, but only nondescript things..." (R. p. 236, lines 13-14). Mr. Brantley thoroughly contradicted Glenn's assertion that he sought help from Cathy and Belinda with their mother. Indeed, Glenn made it clear to Mr. Brantley "he didn't want them there." (R. p. 237, line 17 and R. p. 37).

As noted by the trial judge, Mr. Brantley "is a retired Lieutenant Colonel who served as City Administrator for Waynesboro, Georgia for 23 years. He is now 83 years old and continues to serve on the Board of Elections in Waynesboro, Georgia." (R. p. 211, lines 11-21 and R. p. 36). As such, he was a very credible witness. The trial court highlighted numerous points from Mr. Brantley's testimony that were relevant to the Court's weighing of the evidence presented and that directly contradicted Glenn's contentions. (R. pp. 37-38).

E) Appellant Glenn Gunnells was simply not credible. His most significant lie was probably his testimony at his deposition that he took his mother to see Ms. Klok 2 or 3 times prior to July 3, 2013 when she executed the Will when, in fact, he only took her there the one time on July 3, 2013. (R. p. 494, line 16 – p. 496, line 16). Next, Mr. Brantley flatly contradicted Glenn's assertion that he asked Mr. Brantley to get the girls to help with his mother. Mr. Brantley not only testified that this was untrue but he produced an email generated on July 22, 2013 (well before this dispute) that thoroughly demonstrated Glenn's assertion was false. (R. p. 45/R. p. 236, lines 3-22 and p. 237, lines 8-23).

Helen Carroll likewise contradicted Glenn's assertion that she quit visiting because of her own health concerns and inability to drive (R. p. 39), but rather because Glenn and Helen had become so "cold." (R. p. 689, lines 5-11).

Respondent has highlighted the above because it generally reflects evidence from non-interested parties and so, by its nature, has greater weight in the Court's evaluation. Suffice it to say, there was substantial evidence for the Court to weigh against the isolated 2 to 3 hour meeting with Ms. Klok and Ms. Voytko, which Appellant argues is dispositive of the analysis.

II. The Circuit Court's affirmation was correct.

The Appellant asserts that the original Order of the trial court, the trial court's subsequent Order Denying Appellant's Motion to Reconsider and the Circuit Court's Order affirming the Probate Court's rulings all fail to give proper deference to the testimony of Ms. Klok and Ms. Voytko and indeed "acted as if they hadn't testified at all."

This assertion is simply not correct. The trial court specifically addressed the testimony of Ms. Klok and Ms. Voytko in its original order. (R. p. 46). In its subsequent Order Denying Appellant's Motion to Reconsider, the trial court stated that Appellant contends that the Court "failed to consider" the testimony of attorney Suzanne Klok and her paralegal. To the contrary, this Court's Order expressly acknowledges and contemplates the testimony of Attorney Klok and Ms. Voytko. (R. p. 56). Likewise, the Circuit Court specifically addressed Appellant's contention in Section II (3) of its Order. (R. p. 63).

Like the Probate Court, the Circuit Court has simply refused to accept that the testimony of Ms. Klok and Ms. Voytko should be considered in a vacuum and to the exclusion of all other evidence presented in the case. This affirmation was proper.

III. The Probate Court was entitled to weigh evidence that occurred after the signing of the Will.

Appellant alleges that Respondent Harkness presented evidence at trial that the Probate Court should not have considered and committed reversible error by doing so. This evidence is identified as things that happened after July 3, 2013. Appellant only identifies one specific instance of such evidence, "Appellant's alleged maladministration of the Estate." Respondent believes this evidence was properly considered and relevant to Appellant's honesty and credibility which was obviously an extremely important aspect of the case. In this regard, Respondent presented evidence that Glenn Gunnells, as Personal Representative of the Estate: 1) misrepresented the value of the house on the Inventory & Appraisement; 2) failed to list household items on the Inventory & Appraisement; 3) directly pocketed money he obtained from selling the Estate's personal property assets; and 4) directly deposited the assets from the sale of the home into his personal account after litigation challenging the Will had been filed. (R. pp. 496-504).

IV. The Probate Court did not rely on irrelevant facts in making its determination of undue influence.

In this section, Appellant lists a variety of evidentiary points that he asserts the Court improperly considered. As noted above, the weight of the evidence is not a proper subject for review. Appellant therefore casts each item as "totally irrelevant" in order to invite review.

The evidentiary matters that Appellant alleges are entirely irrelevant are as follows:

A) The testimony of Testatrix's longtime friend, Helen Carroll, who said Testatrix told her she signed the July 3, 2013 Will because Glenn forced her to do so.

It is hard to imagine more relevant evidence. The testimony of Helen Carroll in large part speaks for itself. Respondent would point out that her testimony was by video so the trial

court had the opportunity to observe her demeanor.

The relevant portion of the transcript is as follows. The context is that Respondent's lawyer has handed the witness her statement.

* * *

Q. Does that help refresh your memory about whether she talked to you about a Will?

A. Yeah.

Q. Okay. What – and what did she tell you about a Will?

A. She said that - - she didn't say too much, but she said that Glenn told her she had to.

Q. Had to do what now?

A. Sign the Will.

Q. Okay. And how did she seem to feel about it?

A. She didn't want to.

Q. Okay. And your statement says, Helen, I had no choice. Is that her talking to you?

A. Yeah, uh-huh.

(R. p. 687, lines 8-22).

* * *

The Probate Court's conclusion therefore was supported by Ms. Carroll's testimony, and there is nothing irrelevant about the evidence she provided.

B) Ms. Carroll testified that she knew Glenn to have an alcohol problem because he slurred his words.

Ms. Carroll was competent to form such an opinion. Also, her opinion was only cumulative to the testimony of Belinda Davis, Glenn's sister, on this point (he is an alcoholic and abuser of substances (R. p. 273, lines 9-10) and that of Cathy Harkness ("Glenn stayed out for almost 20 years on a drunken stupor." (R. p. 337, lines 17-18).

C) The fact that Cathy and Belinda went to DSS because they were concerned about how their mother was doing under Glenn's care.

As the old saying goes "Actions speak louder than words." The fact that Cathy and Belinda sought help in getting access to their mother was clearly indicative of the fact that their visitation was restricted. Likewise, they went to see a lawyer, Robert Polk, for help but he was too expensive. Again, their action is indicative of their level of concern about Glenn's control of their mother and the fact that he was denying them visitation. It also contradicted Glenn's position in Court that he actively sought their help in caring for their mother.

D) The Probate Court gave weight to Cathy's selling her sports car to get an SUV to allow her to transport her mother to doctors' visits.

At trial, Glenn testified that Cathy refused to help with his parents at all.

* * *

Q. So your position is that Cathy and Linda just didn't show any love to your mama or your daddy, did they?

A. That's right.

Q. And that was for like a seven year period basically before they died?

A. That's right.

(R. p. 492, lines 16-22).

* * *

The fact that she moved to Charleston and sold her car to accommodate her mother's infirmities directly contradicted his assertion and was therefore relevant.

E) Uncontroverted evidence that Respondent sued her mother almost immediately after her father's death.

This was a big part of Appellant's argument at trial. The trouble is that the context and content of the suit worked against Appellant. Cathy was forced to sue her mother to get back a number of personal items that she could not get returned after Glenn denied her access to the house. The testimony of Mr. Jack Brantley confirmed that Cathy was only trying to get what was hers and that Glenn refused to cooperate. Because Testatrix owned the house where the personal property was located, Cathy was forced to sue her mother (as opposed to Glenn). The suit was successful and the items were returned only after going to court. (R. p. 311, line 5 – p. 313, line 24). Respondent believes the lawsuit actually demonstrates how controlling and unreasonable Glenn had become.

F) Appellant met Ms. Klok on one previous occasion.

This was relevant to show that Helen Gunnells had no prior relationship with Ms. Klok although Glenn had actually used her as an attorney previously. Its relevance is obvious.

G) Ms. Davis was an absent child.

Ms. Davis was absent at times helping with her family who lived out of state but she had great knowledge of many relevant aspects of the case. She had a good relationship with her mother and Glenn over many years, much of which was relevant.

H) An independent witness confirmed Testatrix did not want to interact with her daughter.

Again, Appellant cites a single piece of evidence offered out of context and the existence

of which only goes to the weight of the evidence as a whole.

Lastly, as to each of the contentions enumerated above, as noted by the Circuit Court it is not enough to simply show a mistake in admission of evidence. There must be prejudice which caused the trial court to act in a way "inconsistent with substantial justice." (R. p. 59 citing SCRCP 61). Respondent submits that the evidence was properly admitted and considered. To the extent any evidence was improperly admitted or considered, however, then it was harmless error.

V. There was evidence of threats and restricted visitation that supported the Probate Court's findings.

At each level, Appellant has asserted there was absolutely no evidence of threats or restricted visitation despite the clear and unequivocal evidence in the record to the contrary.

Cathy testified that shortly after her father's death, Glenn threatened to have her arrested for harassment if she called or attempted to visit her mother. (R. p. 306, lines 9-12).

On June 26, 2013, Belinda and Cathy went by to see Testatrix at which point Glenn pushed Belinda out of the house and threatened to call the police. (R. p. 307, lines 3-9, p. 268, lines 14-22). Numerous witnesses confirmed this incident, including those called by Appellant.

Testatrix Helen Gunnells told her brother, Jack, "...that Glenn did not like for her to talk to Cathy." (R. p. 232, lines 18-19).

Mr. Brantley himself would ask his sister common questions about her health and be told "let me let you talk to Glenn." (R. p. 217, lines 10-11). When he suggested that she call Cathy about an operation Cathy had on her leg, Testatrix's response was "she said that Glenn did not like for her to talk to Cathy." (R. p. 232, lines 18-19).

This evidence has been brought to Appellant's attention numerous times during the review process and each time, Appellant reasserts that there is "no evidence" despite being given

proof to the contrary.

VI. The Probate Court did not give weight to "medical conclusions" of Dr. Chanson that were unsupported by the record.

Appellant's argument states that the Probate Court made "medical conclusions" not supported in the record. Appellant fails to identify a single such conclusion, however, and so it is impossible for Respondent to respond.

VII. The Probate Court properly considered the testimony of Dr. Chanson.

The thrust of Appellant's argument is that "Respondent failed to illicit any testimony from any witness that any medication was ever withheld." First of all, the Court's finding was that it was "not properly administered," as opposed to "withheld" as mischaracterized by Appellant.

Dr. Chanson testified extensively about the importance of her prescription for potassium: "...low potassium can cause a number of different issues to include muscle spasms, cardiac issues, and a number of other things." (R. p. 645, line 22 – p. 646, line 1). Nevertheless, when Ms. Gunnells came in for her appointment on February 6, 2014, Dr. Chanson's office confirmed "She never received the potassium prescription" (R. p. 649, lines 9-10) which she had prescribed on January 2, 2014. This information would have been provided by Glenn and/or his mother.

Next, Dr. Chanson's notes repeatedly referenced problems with getting the drug Remeron administered, a drug to help with dementia. Dr. Chanson prescribed it 2 times by direct email to the pharmacy but was later told by Glenn and Mrs. Gunnells, she still wasn't taking it. Dr. Chanson therefore handwrote a prescription to give to Glenn because the patient was having trouble getting the medication. Despite the Remeron being first prescribed in September 2013, Glenn never called to report any difficulties getting the prescription. He would just show up at the next appointment and say he wasn't able to get it filled. Remeron is first mentioned as a

prescribed drug on September 9, 2013, which was to replace Celexa (R. p. 627, lines 22-25). However, at the visit on December 16, 2013, there was still a question as to whether Helen was getting her Remeron or not (R. p. 636, lines 9-19) and so Dr. Chanson put in her notes that she "strongly recommend that she restart her Remeron." On January 2, 2014, the Remeron issue was still unresolved and that is when Dr. Chanson hand wrote the prescription and gave it to Glenn (R. p. 638, line 14 – p. 639, line 13). This was despite the fact that Dr. Chanson followed up after the December 16, 2013 visit, where she "strongly recommended recontinuing the Remeron," (R. p. 640, lines 5-9) with a phone call on December 18th to make sure there were no problems getting the prescription.

Of note is Glenn's representation to Dr. Chanson at the visit on December 16, 2013 that "it's difficult for her son to bring her into the office frequently because of his ongoing work schedule and other responsibilities." (R. p. 637, lines 3-7). Glenn himself confirmed that he has been on total disability since 2000 so his excuse for not getting his mother to appointments is obviously false.

The cross examination of Dr. Chanson is admittedly a bit tedious, yet it is clear that Mrs. Gunnells was not getting her dementia medication – Remeron – according to the history provided by Glenn and Testatrix to Dr. Chanson. Appellant's assertion (once again) that there is "no evidence" about "any" misadministration of prescriptions is simply not correct.

VIII. The Probate Court properly considered the testimony of Helen Carroll.

Helen Carroll was an elderly lady and knew Helen Gunnells for about 40 years. (R. p. 676, line 12). Her testimony was taken by video deposition. How her testimony should be evaluated is totally in the discretion of the trial court. Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (S.C. 1984).

To the extent Appellant has objected to the single phrase "I had no choice," that statement is only cumulative to the earlier testimony in which she said concerning the signing of the July 3, 2013 Will that "Glenn told her she had to" and "She didn't want to." (R. p. 687, lines 14-19).

IX. The Probate Court's Order Denying Appellant's Motion to Reconsider was proper.

Appellant's exception IX is so general that it is difficult to respond to. No specific failure of the Probate Court is addressed. Rather, the exception is essentially "The legal and factual conclusions the Probate Court arrived at are simply not supported by the evidence and testimony. The Court simply states that "the record speaks for itself" but gives no legal or factual basis for its conclusions." (R. p. 167).

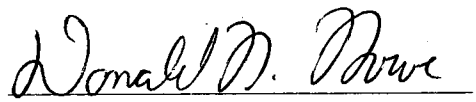
Appellant's assertion is simply not true. The original Order is almost 17 pages long and details the legal basis and factual conclusions at length. The Order Denying the Motion to Reconsider is 7 pages and specifically references Petitioner's Memorandum in Opposition to Motion to Reconsider. Pages 2-4 of the Memorandum set out numerous quotations from the record that directly contradicted Appellant's assertion that there was no evidence in the record to support certain factual findings. This portion of the Memorandum is clearly the object of the assertion "the record speaks for itself." Appellant thus mischaracterizes the Probate Court's assertion as vague and overly general when, in fact, it was full of page and line references to the trial record.

In short, the Probate Court's Orders were well documented as to the record and thoroughly based on existing law. Appellant's exception is without merit.

CONCLUSION

For the reasons outlined above, Respondent prays that the appeal be denied and that the judgment of the Probate Court be affirmed.

Respectfully submitted,



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The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

Donald H. Howe

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr.
Circuit Court Judge

APPELLATE CASE NO. 2017-001131

Glenn Gunnells, Individually and as the Personal Representative of the Estate of Helen B. Gunnells.....Appellant.

v.

Cathy G. Harkness .....Respondent

FINAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Contents i

Table of Authorities i

Introduction 1

Reply to Argument I 1

Reply to Argument V 2

Reply to Argument VI 3

Reply to Argument VII 4

Conclusion 4

TABLE OF AUTHORITIES

Page(s)

CASES

Broom v. Jennifer J., 403 S.C. 96, 742 S.E.2d 382 (2013) 3,4

Hairston v. McMillian, 387 S.C. 439, 692 S.E.2d 549 (Ct. App. 2010) 2

Turner v. South Carolina Dep't Environ. Control,
377 S.C. 540, 661 S.E.2d 118 (Ct. App. 2008). 4

Wilson v. Dallas, 403 S.C. 411,743 S.E.2d 746 (2013) 1

INTRODUCTION

The Appellant Glenn Gunnells ("Appellant") submits this Reply Brief to address errors of law and citation of improper or unavailing authority in the Brief of Respondent filed by Cathy Harkness ("Respondent").

Reply to Argument I

In this argument, Respondent asserts that the "trial judge analyzed the broad gambit of factual testimony" and goes on to recount "some of the most salient facts that the Court relied on to 'outweigh' the isolated testimony of Ms. Klok and Ms. Voytko." [Resp. Br. p. 6].

It is important to note, however, that the Probate Court did not analyze the legal professionals' testimony, nor did the Probate Court weigh their credibility versus the other witnesses.

If it is well-settled that, in a will contest based on undue influence, the contestant must show that the influence was brought directly to bear upon the testamentary act – then how would the only two witnesses to the testamentary act be "isolated" as Respondent assumes? *Wilson v. Dallas*, 403 S.C. 411, 337, 743 S.E.2d 746, 760 (2013) (holding that in a will contest case, facts are irrelevant "if they have no bearing on the execution of [testator's] testamentary documents" and "shed no light on whether the [testator's] will was somehow overcome at the time he signed the documents finalizing his estate plan").

The Respondent offers no arguments against the legal professionals' factual testimony – because the testimony shows a lack of undue influence in the testamentary act. The Respondent offers nothing in face of the Appellant's assertion that evidence from the drafting attorney is relevant – because it proves the Appellant's case.

There is something drastically wrong with the Probate Court's decision, as well as the law of undue influence in South Carolina, if the Probate Judge can simply *ignore* the testimony of the only witnesses to the testamentary act and pretend they did not see what they saw, or hear what they heard or do what they did – and then have the Appellant claim "there was substantial evidence for the Court to weigh against the 2 to 3 hour meeting with Ms. Klok and Ms. Voytko." [Resp. Br. p. 9].

If the proof must be by clear and compelling evidence, then the Probate Court cannot simply disregard the most important evidence, and have it simply be within its "discretion" to do so. That is the definition of an abuse of discretion. It shows that the Probate Court did not meet the high standard of "clear and compelling" evidence.

The Respondent suggests that the "veracity of the witnesses" cannot be passed on by the Court of Appeals. [Resp. Br. p. 6]. If that is true, then in the face of no explanation from the Probate Court (as to why he disregards the legal professionals' testimony, or finds their testimony is outweighed by the family members, or somehow failing to follow ethical, moral or professional standards), how can their testimony *not* be heard? It cannot without ignoring the vast body of undue influence law in this state.

The Probate Court's Order is a miscarriage of justice.

Reply to Argument V

Respondent does not demonstrate any evidence of threats or force to the Testarix by the Appellant [Resp. Br. p. 14], which is the critical element for finding undue influence based on physical intimidation. *Hairston v. McMillian*, 387 S.C. 439, 446, 692 S.E.2d 549, 553 (Ct. App. 2010). By arguing that threats against the *Respondent or her sister* somehow meets this test, Respondent is arguing against precedent.

Moreover, try as she might, Respondent cannot show restricted visitation – the best she can do is offer a snippet of testimony from Mr. Brantley that Appellant did not "like" for Testatrix to talk to Respondent. [Resp. Br. p. 14]. But Respondent admitted to staying away from her mother [R. p. 735 – 738], and Respondent's sister did not seek to talk to Testratrix during the month the new Will was executed. [R. p. 281, 284].

None of the examples of restricted visitation cited by Respondent is actually *proof* of restricted visitation. Mr. Brantley, Ms. Carroll and Dr. Chanson all had the opportunity to meet regularly with the Testatrix and talk alone with the Testatrix.

As stated in Appellant's Brief, "cherry picking snippets of testimony while ignoring admissions and concessions form the same witnesses" is not enough to support the Probate Court's order. [App. Br. p. 25]. This is a critical factor omitted from the Respondents' Brief, and which does not support the Probate Court's findings.

Reply to Argument VI

Here, the Respondent simply ignores the two pages of Appellant's Brief describing Dr. Chanson's testimony. [App. Br. pp. 25-27; Resp. Br. p. 15]. There is little doubt that the Probate Court cherrypicked this testimony for medical opinions. [Order, p. 13]. Therefore, Respondent has abandoned this issue on appeal and her arguments are not presented for review because they consist of cursory and conclusory statements without citation to authority. *Broom v. Jennifer J.*, 403 S.C. 96, 115, 742 S.E.2d 382, 391 (2013) ("Issues raised in a brief but not supported by authority may be deemed abandoned and not considered on appeal.").

Reply to Argument VIII

In this argument, Appellant contended that the Probate Court erred in admitting the testimony of Ms. Carroll because of the lack of personal knowledge. By failing to address the substance of the argument, Respondent has conceded the point. "If [a] respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct." *Turner v. South Carolina Dep't Environ. Control*, 377 S.C. 540, 547, 661 S.E.2d 118, 121 (Ct. App. 2008). Also, again, the Respondent uses cursory and conclusory arguments which should be disregarded by the Court. *Broom v. Jennifer J.,* 403 S.C. 96, 115, 742 S.E.2d 382, 391 (2013).

CONCLUSION

Based on the foregoing arguments and citation to authority, the Court should reject the erroneous positions advanced in the Brief of Respondent.

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March 1, 2018
Mount Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr.
Circuit Court Judge

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SC Court of Appeals

APPELLATE CASE NO. 2017-001131

Glenn Gunnells, Individually and as the Personal Representative of the Estate of Helen B. Gunnells.....Appellant.

v.

Cathy G. Harkness .....Respondent

CERTIFICATE OF COUNSEL

The undersigned certified that this ***Final Reply Brief of Appellant*** complies with Rule 211(b), SCACR.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Glenn Gunnells, Individually and as the Personal Representative of The Estate of Helen B. Gunnells, Appellant,

v.

Cathy G. Harkness, Respondent.

Appellate Case No. 2017-001131

Appeal From Charleston County
Roger M. Young, Sr., Circuit Court Judge

Opinion No. 5716
Heard June 5, 2019 – Filed April 1, 2020

AFFIRMED

Robert Bratton Varnado, of Brown & Varnado, LLC, of Mt. Pleasant; and Alexis Wimberly McCumber, of Anastopoulo Law Firm, LLC, of Charleston, both for Appellant.

Donald Higgins Howe, of Law Offices of Donald H. Howe, LLC, of Charleston; Michelle Jennifer Weil, of Michelle J. Weil, Attorney at Law, LLC, of Summerville; and Julie C. Jackson-Bailey, of Richmond, Virginia, all for Respondent.

WILLIAMS, J.: In this probate dispute, Glenn Gunnells appeals the circuit court's order affirming (1) the probate court's order granting Cathy G. Harkness's

petition to set aside Helen B. Gunnells's (Testatrix) last will and testament dated July 3, 2013 (2013 Will), based on a finding of undue influence and (2) the probate court's order denying Glenn's motion for reconsideration pursuant to Rule 59(e), SCRCP. We affirm.

FACTS/PROCEDURAL HISTORY

Testatrix and her husband, Aiken Arden Gunnells (Arden), lived in Charleston and were married for many years. The pair had three children during their marriage: Glenn, Cathy, and Belinda G. Davis (Belinda).[1] On November 7, 2006, Testatrix executed a last will and testament (2006 Will) devising her estate to Arden if he survived her and then to her three children in equal shares. In March 2013, Glenn moved in with Testatrix and Arden to help care for them. Arden died on June 8, 2013.

Less than a month after Arden's death, Testatrix executed the 2013 Will. On Glenn's suggestion, Testatrix hired attorney Susan Klok to prepare the 2013 Will. The 2013 Will left Testatrix's entire estate to Glenn. Glenn continued to live with Testatrix until she died on February 7, 2014. Less than a month later, Glenn applied for informal probate of the 2013 Will. On July 28, 2014, Cathy filed a petition opposing the probate of the 2013 Will, arguing the 2013 Will was the product of undue influence.[2] The probate court held a hearing from March 1–2, 2016.

At the hearing, the probate court heard testimony from Jack Brantley (Testatrix's brother), Belinda, Cathy, Klok, Annie Voytko (Klok's assistant), Glenn, and Sharon Lee Wechter and Jill Susan Costa (Testatrix's physical therapists). The probate court additionally considered the video-taped deposition of ninety-two-year-old Helen Carroll, Testatrix's close friend for over forty years, and excerpts from the deposition of Dr. Rhonda Chanson, Testatrix's primary care physician.

By order filed May 12, 2016, the probate court found that the 2013 Will was the product of undue influence, voiding the 2013 Will and reinstating the 2006 Will.

---

[1] Belinda was not a party to these proceedings, but she was present and testified at the probate hearing.

[2] Cathy also sought to have Glenn removed as the personal representative of Testatrix's estate. The probate court has held this petition in abeyance pending the outcome of this matter.

Glenn filed a Rule 59(e), SCRCP, motion to reconsider, which the probate court denied by order dated August 25, 2016.

Glenn subsequently appealed the probate court's decision to the circuit court. Following a hearing, the circuit court affirmed the probate court's orders, issuing an order filed April 11, 2017, in which it found the evidence supported the probate court's findings. This appeal followed.

ISSUES ON APPEAL

I. Did the circuit court err in finding the 2013 Will was the product of undue influence?

II. Did the circuit court err in its consideration of Dr. Chanson's testimony and in finding Glenn withheld medication from Testatrix based on this testimony?

III. Did the circuit court err in admitting Carroll's deposition testimony?

IV. Did the circuit court err in affirming the probate court's denial of Glenn's motion for reconsideration?

STANDARD OF REVIEW

"An action to contest a will is an action at law." *In re Estate of Cumbee*, 333 S.C. 664, 670, 511 S.E.2d 390, 393 (Ct. App. 1999). "Under the Probate Code, a circuit court hearing an appeal from the probate court must apply the same rules of law as an appellate court would apply on appeal." *Id.*; *see also* S.C. Code Ann. § 62-1-308(i) (Supp. 2019) ("The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented."). Therefore, the circuit court and this court cannot disturb the probate court's findings of fact "unless a review of the record discloses there is no evidence to support them." *Cumbee*, 333 S.C. at 670, 511 S.E.2d at 393.

LAW/ANALYSIS

I. Undue Influence

Glenn argues the circuit court erred in finding the 2013 Will was the product of undue influence. We disagree.

A contestant of a will challenging the validity of the will on the basis of undue influence bears the burden of proof and must present evidence showing the testatrix's will was overborne by that of the influencer or someone acting on his behalf. *See Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 295, 299, 569 S.E.2d 371, 375–76, 378 (Ct. App. 2002); *see also* S.C. Code Ann. § 62-3-407 (Supp. 2019) ("Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity."). The undue influence necessary to invalidate a will must reach a level of force and coercion, not "the influence of affection and attachment" nor "the mere desire of gratifying the wishes of another." *Cumbee*, 333 S.C. at 671, 511 S.E.2d at 394 (quoting *Calhoun v. Calhoun*, 277 S.C. 527, 532, 290 S.E.2d 415, 418 (1982)). However, our courts have recognized that "the evidence of undue influence will be mainly circumstantial" because undue influence is often exercised behind closed doors, preventing any direct proof. *Calhoun*, 277 S.C. at 530, 290 S.E.2d at 417. Successful will contests asserting undue influence often include evidence of threats, force, restricted visitation, or an existing fiduciary relationship. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003).

"A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one imposing the confidence." *Cumbee*, 333 S.C. at 672, 511 S.E.2d at 394 (quoting *Brown v. Pearson*, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997)). The existence of a fiduciary relationship between the influencer and the testatrix creates a rebuttable presumption of undue influence. *Hairston v. McMillan*, 387 S.C. 439, 447, 692 S.E.2d 549, 553 (Ct. App. 2010). "[A]lthough the proponents of the will must present evidence in rebuttal [when a fiduciary relationship exists], they do not have to affirmatively disprove the existence of undue influence. Instead, the contestants of the will still retain the ultimate burden of proof to invalidate the will." *Howard v. Nasser*, 364 S.C. 279, 288, 613 S.E.2d 64, 68–69 (Ct. App. 2005).

In the instant case, we find the circuit court did not err in finding a fiduciary relationship existed between Glenn and Testatrix to raise a presumption of undue influence. *See McMillan*, 387 S.C. at 447, 692 S.E.2d at 553 ("The existence of a fiduciary relationship between a testator and beneficiary raises a presumption of undue influence."). Glenn's possession of Testatrix's power of attorney created this

relationship. *See id.* (finding a beneficiary's possession of a testator's power of attorney created a fiduciary relationship); *Cumbee*, 333 S.C. at 672, 511 S.E.2d at 394 (finding a presumption of undue influence existed when the son had a fiduciary relationship with his mother because he was her power of attorney and managed all of her finances). Glenn also revealed that he changed Testatrix's bank accounts to include his own name after Arden died, further evidencing the existence of a fiduciary relationship between himself and Testatrix. However, contrary to the probate court's finding, we find Glenn presented sufficient evidence to rebut this presumption. *See McMillan*, 387 S.C. at 447, 692 S.E.2d at 553 ("If evidence of [a fiduciary] relationship is presented, the proponents of the will must offer rebuttal evidence."); *Howard*, 364 S.C. at 288, 613 S.E.2d at 68–69 ("[A]lthough the proponents of the will must present evidence in rebuttal [when a fiduciary relationship exists], they do not have to affirmatively disprove the existence of undue influence. Instead, the contestants of the will still retain the ultimate burden of proof to invalidate the will."). Klok, the attorney who prepared the 2013 Will, testified Testatrix assured her that Testatrix did not feel any pressure about changing her will to no longer include her daughters as beneficiaries. Klok recalled Testatrix was "very frail physically, but mentally, she seemed to know what she wanted" and further stated Testatrix was "pretty clear, very adamant" about the change. According to Klok, Testatrix explicitly told her that the change in the will was more about not wanting to leave anything to her daughters rather than a desire to leave everything to Glenn. Voytko, Klok's assistant, testified consistently with Klok. Further, both Klok and Voytko were adamant that the only people present for the meeting to change the will were the two of them and Testatrix. Additionally, Wechter and Costa, Testatrix's physical therapists, both wrote letters on Glenn's behalf in which they both described Glenn's care for his mother and Testatrix's anger towards Cathy and Belinda. Costa mentioned that Testatrix "only trusted Glenn when it came to her children." Based on this evidence, we find Glenn sufficiently rebutted the presumption of undue influence that arose due to his fiduciary relationship with Testatrix.

Nevertheless, we ultimately find the record contains sufficient evidence to support the circuit court's finding that the 2013 Will was a product of undue influence. First, we note the disposition of Testatrix's estate in the 2013 Will, which awarded the entire estate to Glenn, was significantly different from the disposition in her 2006 Will, which awarded Testatrix's estate to Arden, if he survived her, then to each of her children in equal shares. *See Byrd v. Byrd*, 279 S.C. 425, 430, 308 S.E.2d 788, 791 (1983) (noting that evidence of undue influence can include an unnatural disposition that makes the influencer the chief beneficiary of the will).

Second, Brantley, Testatrix's brother, and Carroll, Testatrix's close friend, both presented evidence that Glenn restricted Testatrix's communication and visitation. *See Russell*, 353 S.C. at 217, 578 S.E.2d at 333 (noting that courts have set aside wills for undue influence when contestants presented evidence of threats, force, *restricted visitation*, or an existing fiduciary relationship). Both Brantley and Carroll testified Testatrix stopped calling them, rarely answered the phone, and was "very hesitant" to talk after Glenn moved into Testatrix's home. When Brantley visited Testatrix after Arden's death, he noted Glenn had converted the downstairs living room into his bedroom and installed a video surveillance system with cameras monitoring different parts of the property. Brantley noted that Testatrix seemed reluctant to respond to his comments or questions if Glenn was present. Brantley further testified he asked Testatrix to call Cathy because she was having leg surgery, but Testatrix responded that she would have to ask Glenn because Glenn did not like for her to talk to Cathy. Brantley stated he spoke with Glenn about asking Cathy and Belinda to help with Testatrix's care, but Glenn told him he "did not want them over there." Additionally, Brantley sent a letter "To Whom It May Concern" the day after Glenn applied for probate of the 2013 Will, expressing his concerns over how Testatrix's communication and demeanor changed, especially around Glenn. Carroll indicated that when she called Testatrix's house, Glenn would not let her speak to Testatrix if he answered the phone. Carroll recalled Testatrix telling her that she could not talk on the phone like she did before Arden died. Testatrix also expressed to Carroll that she wanted to visit her sister in Georgia, but Glenn would not take her.[3]

Additionally, Carroll testified regarding the creation of the 2013 Will. Although Carroll initially testified in her deposition that she never had any conversation with Testatrix about a will, Carroll later changed her deposition testimony after she refreshed her memory by reading a statement she had previously signed. In her revised testimony, Carroll stated Testatrix informed her that Glenn told Testatrix that she had to make a new will, and Testatrix executed the new will even though she did not want to. Carroll alleged Testatrix told her, "[Carroll], I had no choice." *See Hembree v. Estate of Hembree*, 311 S.C. 192, 196, 428 S.E.2d 3, 5 (Ct. App. 1993) ("Circumstances must unmistakably and convincingly point to the substitution of another's will for that of the testat[rix]."). Carroll further indicated Testatrix "clammed up" when Glenn came home during this conversation.

[3] The evidence in the record indicated Testatrix was in a wheelchair and, thus, completely reliant on Glenn for her transportation.

Moreover, Belinda and Cathy both testified to Glenn's actions restricting Testatrix's communication and visitation with others. Belinda testified she noticed this behavior prior to Arden's death, stating Glenn never notified her of Arden's failing health.[4] Belinda testified about an email she received from Glenn after she put her name and Cathy's name on the hospital's visitation list for Arden. The email read as follows:

> LET IT BE KNOWN, NOTHING WILL BE SIGNED [or] INITIALIZE[D] TILL I LOOK AT IT!!! SO LET IT BE WRITTEN SO LET IT BE DONE!! ALL [H]AS BEEN [D]ONE AND NOTIFIED!!!!!!!!!!!!!!!

Belinda further recalled that when she went to Testatrix's house to retrieve Arden's death certificate, Glenn had placed it in a plastic bag, which he hung on the front door. Belinda explained she knocked on the door and a "woman [she] had never seen before" opened the door; Belinda asked to see Testatrix, and the woman responded that she could not see Testatrix because Testatrix was doing physical therapy. Thereafter, an argument ensued between Glenn and Belinda, and Glenn threatened to call the police. Cathy also recalled this incident.

Cathy recalled Testatrix became distant, would not answer the phone, and was reluctant to open the door after Glenn moved into the home. Cathy testified she used her key to get into Testatrix's house until Glenn changed the locks and told Cathy she was no longer welcome unless he was present. Cathy explained she tried to call Testatrix multiple times but Glenn would answer, tell her she was not allowed to speak to Testatrix, "laugh[,] and hang up." Cathy averred Glenn threatened to have her arrested for harassment if she went to see Testatrix. Cathy further alleged that on the day Testatrix passed away, Glenn told her "you're going to be surprised [with] what's in the new will. I have everything."

Based on the foregoing, we find evidence supported the probate court's finding that Testatrix's execution of the 2013 Will was a product of Glenn's undue influence.[5] Therefore, the circuit court properly affirmed the orders of the probate court.

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[4] Belinda moved to Hawaii in October 2012 to provide childcare for her grandchild before returning to Charleston in June 2013, approximately one week before Arden died.

[5] We additionally note the unusual circumstances surrounding the execution of the 2013 Will. Testatrix had never met Klok before their meeting to discuss executing the 2013 Will on July 3, 2013—less than month after Arden died. However, Klok

II. Dr. Chanson's Testimony

Glenn argues the circuit court erred in affirming the probate court because the probate court improperly "cherry-picked" statements from Dr. Chanson's deposition testimony in making its factual findings in support of its finding of undue influence. Glenn also contends the probate court erred in finding Glenn withheld medication from Testatrix based on Dr. Chanson's testimony. We disagree.

We find Glenn's initial contention is without merit. "In a law case tried without a jury, questions regarding the credibility and *the weight of evidence* are *exclusively* for the trial judge." *In re Estate of Anderson*, 381 S.C. 568, 573, 674 S.E.2d 176, 179 (Ct. App. 2009) (quoting *Golini v. Bolton*, 326 S.C. 333, 342, 482 S.E.2d 784, 789 (Ct. App. 1997) (emphasis added)). Although the probate court referenced specific evidence in its order to support its finding of undue influence, nothing in the record suggests the probate court failed to consider and weigh all of the evidence presented or that the evidence failed to support its findings. Therefore, like the circuit court, we are bound by the probate court's factual findings. *See Cumbee*, 333 S.C. at 670, 511 S.E.2d at 393 (providing that in an action at law, the circuit court and this court cannot disturb the probate court's findings of fact "unless a review of the record discloses there is no evidence to support them").

As to Glenn's contention that the probate court improperly found he withheld Testatrix's medication, we note Glenn misconstrues the probate court's finding. In

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was Glenn's attorney for the closing on his house on June 7, 2013, twenty-two days before Testatrix's meeting with Klok. Glenn stated Testatrix decided to use Klok as the attorney to revise the 2006 Will based on Glenn's suggestion. Klok only met with Testatrix one time, during which the 2013 was executed, despite her normal procedure, which consisted of an initial meeting to discuss pricing, take down information, and set goals followed by another appointment several weeks later to execute the will. Klok confirmed Glenn called her to set up the July 3 appointment and drove Testatrix to the appointment. According to Klok, she asked Glenn to leave before she discussed changing the will with Testatrix, and Glenn stayed outside the office for the duration of the meeting. After executing the new will, Klok gave the 2013 Will to Testatrix in an unsealed envelope. Additionally, Testatrix met with Dr. Chanson within hours of executing the 2013 Will, and Dr. Chanson recalled Testatrix was distraught, visibly upset, and crying over Arden's death during her visit.

its order, the probate court provided a detailed evaluation of the evidence presented and further listed evidentiary examples to illustrate its finding that Glenn's assertions regarding the family dynamics and the execution of the 2013 Will lacked credibility. Included in those examples was the following statement by the probate court:

> Additionally troubling is [Glenn]'s failure to provide prescribed medications as directed to [Testatrix], particularly Remeron, which was to improve [Testatrix]'s dementia. It appears this medication was not properly administered for the last several months of [Testatrix's] life. If the Testatrix was "weak minded," her ability to change or alter the [2013 Will], had she so desired, would have been hampered.

We find the evidence supports a finding that Testatrix was not receiving her prescribed medication in the final six months of her life and Glenn supervised her medical care by administering her medications and transporting her to and from appointments.[6] *See Anderson*, 381 S.C. at 573, 674 S.E.2d at 179 ("In a law case tried without a jury, questions regarding the credibility and the weight of evidence are exclusively for the trial judge." (quoting *Golini*, 326 S.C at 342, 482 S.E.2d at 789)). Further, regardless of whether the probate court erred in making this finding, we find the record is replete with evidence to support the overall finding that the 2013 Will was a product of undue influence. Accordingly, we find the circuit court did not err in affirming the orders of the probate court.

III. Carroll's Testimony

[6] Chanson testified: (1) Testatrix's prescription for potassium was never filled and (2) there was a long delay between the first time Dr. Chanson prescribed Remeron for Testatrix's dementia and when it was ultimately filled. Additionally, Dr. Chanson testified that there was a question of whether or not Testatrix had been taking her prescribed Remeron when she met with Testatrix on September 30, 2013, a little over four months before Testatrix died. Dr. Chanson confirmed that she strongly recommended Testatrix restart her Remeron during that visit. Moreover, Wechter's letter written on Glenn's behalf indicated Glenn provided Testatrix with her medications and was her sole means of transportation to all of her medical appointments.

Glenn argues the probate court erred in admitting Carroll's deposition testimony. Glenn, specifically, takes exception to Carroll's assertion that Testatrix stated she had no choice but to change the will.

We find Glenn failed to preserve this issue for appellate review. During Carroll's deposition, Glenn objected to the document Carroll used to refresh her memory, but he never objected to her testimony as a result of her refreshed memory. Further, when Carroll's deposition was introduced at the probate hearing, Glenn clarified he was objecting to the document Carroll used to refresh her memory and not the resulting testimony. Because Glenn did not object to Carroll's testimony regarding her conversation with Testatrix, we find Glenn has failed to preserve this issue for appellate review. *See Webb v. CSX Transp., Inc.*, 364 S.C. 639, 655, 615 S.E.2d 440, 449 (2005) (finding a contemporaneous objection is necessary to properly preserve an issue for appeal); *see also State v. Broome*, 268 S.C. 99, 103 n.1, 232 S.E.2d 324, 325 n.1 (1977) ("South Carolina is in accord with the majority rule that . . . it is the recollection of the witness and not the memorandum that is in evidence . . . .").

IV. Motion to Reconsider

Finally, Glenn asserts the circuit court erred in affirming the probate court's denial of his motion to reconsider because the evidence did not support the probate court's findings. For the reasons discussed in the prior sections of this opinion, we find Glenn's argument is without merit. Accordingly, we find the circuit court did not err in affirming the probate court's order denying Glenn's Rule 59(e), SCRCP, motion.

CONCLUSION

Based on the foregoing, the circuit court's order is

AFFIRMED.

GEATHERS and HILL, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
Apr 15 2020
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr.
Circuit Court Judge

APPELLATE CASE NO. 2017-001131

Glenn Gunnells, Individually and as the Personal Representative of the Estate of Helen B. Gunnells.....Appellant.

v.

Cathy G. Harkness .....Respondent

PETITION FOR REHEARING and MOTION FOR EN BANC REVIEW

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INTRODUCTION

The Appellant Glen Gunnells ("Appellant") submits this petition for rehearing pursuant to Rule 221(a), South Carolina Appellate Court Rules, and requests a hearing *en banc*, pursuant to Rule 219(a), South Carolina Appellate Court Rules.

Argument 1

The Court of Appeals found that, *inter alia*, the testimony of Klok and Voytko was sufficient to rebut the presumption of undue influence that arose due to Glenn's fiduciary relationship with Testatrix. [Op.at p. 5]. However, the Court of Appeals should not use their testimony for one purpose – i.e., rebutting the presumption of undue influence caused by the existence of a fiduciary relationship – but then ignore the same testimony in determining whether there was any undue influence at all. Yet, that is exactly what the Court of Appeals does.

Here, the **only** two witnesses to the testamentary act were Klok and Voytko – which makes them of critical importance; they far outweigh the other witnesses. Their testimony is essential not only to establish not only whether there (1) evidence to rebut the presumption of undue influence caused by the existence of a fiduciary relationship; but (2) whether there was sufficient evidence to find undue influence at all.

In an undue influence case, the contestant must show that the influence was brought directly to bear upon the **testamentary act**. *Wilson v. Dallas*, 403 S.C. 411, 337, 743 S.E.2d 746, 760 (2013) (holding that in a will contest case, facts are irrelevant "if they have no bearing on the execution of [testator's] testamentary documents" and " shed no light on whether the [testator's] will was somehow overcome at the time he signed the documents finalizing his estate plan"). In *Calhoun v. Calhoun*, the Supreme Court found probative the fact that "the record is devoid of any evidence the [Appellant] interfered with the making of the will." 277 S.C. at 533, 290 S.E.2d at 419. The Court of Appeals ignores this precedent, however.

It is uncontroverted that Klok is a licensed, reputable and competent attorney who has practiced law in the Charleston area for over twenty years in the field of Wills and Estate Planning. As the Opinion makes clear, Klok had the Appellant stand outside her office during the entire time

Klok was revising the Testatrix's will. [Opinion at 8, n. 5]. On the day she met with Klok, Testatrix was of sound mind; she was very upset with her two daughters, did not wish to be around them and was adamant about wanting to leave her Estate to Respondent. [R. 400-401]. "She seemed very, very sure, and that's one thing that struck me that I still remember." [R. 409]. Klok said that had she ever felt the Testatrix was unsure, she would never have finished the Will that day. [*Id.*]. Klok remembered that Mrs. Gunnells glowed when she talked about Respondent – "It was very sweet. She was very, very loving about Glenn. It was really in contrast to how she spoke about her daughters, that for them they were more -- it was disappointment, I think, with the daughters. But she was very, very happy that Glenn was taking care of her. And you know, she said she couldn't get out and interact as much as she did if it wasn't for Glenn. And that he really was just, you know, wonderful of all the things he did.. And took great care of her." [R. 402]. Klok explained to the Testatrix that changing her will was her decision and no one else's; Klok then asked the Testatrix if she felt any force or pressure from any of her children in any way to change her will, to which she replied "no." [R. 407-409]. [1]

Testatrix – while alone and confiding with Klok and Voytko – thoroughly explained her reasoning and rationale for executing the New Will. It was not because she necessarily wanted to give Respondent the entire estate, it was more so that she did not want to give anything to her daughters – "she told me her rationale for it wasn't related to how great Glenn was and she loved him, but it was more how she was disappointed with her daughters." [R. 411]. Klok remembered

[1] Voytko corroborated Klok's testimony: she testified that Testatrix (1) met alone with Klok and Voytko while Respondent waited outside; (2) was of sound mind; (3) was very disappointed with her daughters; and (4) was grateful for her son. [*Id.* at 86-91]. In her judgment, there were no "red flags". [R. 427-432]. Voytko witnessed the New Will. [R.432].

that the Testatrix was very worried about her daughter, the Respondent, causing problems once she found out about the New Will. [R. 401].

So, if: (1) the main function in an undue influence cases is to look at only the testamentary act (*Wilson v. Dallas*, 403 S.C. 411, 337, 743 S.E.2d 746, 760 (2013)); and (2) the contestant has the burden of prove undue influence (*Smith v. Whetstone,* 209 S.C. 78, 84, 39 S.E.2d 127, 129 (1946); *see also* S.C. Code Ann. § 62-3-407), then it is self-evident to the Appellant that the testimony of the only two witnesses to the testamentary act is ***critical***. Appellant has said this over and over.

Appellant does not put Klok and Voytko forward because they spent three hours with the Plaintiff; he puts them forward because it's what transpired ***during those three hours (the attorney meeting) that makes the difference in an undue influence case***. There is something drastically wrong with the Probate Court's decision, as well as the law of undue influence in South Carolina, if the Probate Judge can simply *ignore* the testimony of the only witnesses to the testamentary act and pretend that they did not see what they saw, or hear what they heard or do what they did – and then have the Court of Appeals ignore their testimony.

The case should have been over when Klok and Voytko testified[2]. Respondent offered no rebuttal testimony that put into question Klok's qualifications or professionalism, nor any expert

[2] Reported decisions in South Carolina have given great weight to the testimony of the attorney who drafted the challenged testamentary document – **except this one**. *See, e.g., Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 216, 578 S.E.2d 329, 333 (2003); *Calhoun v. Calhoun*, 277 S.C. 527, 531, 290 S.E.2d 415, 418 (1982); *Hairston v. McMillian*, 387 S.C. 439, 446, 692 S.E.2d 549, 553 (Ct. App. 2010); *In re Estate of Anderson*, 381 S.C. 568, 575, 674 S.E.2d 176, 180 (Ct. App. 2009); *Howard v. Nasser*, 364 S.C. 279, 284, 613 S.E.2d 64, 66 (Ct. App. 2005); *Hembree v. Estate of Hembree*, 311 S.C. 192, 195, 428 S.E.2d 3, 4 (Ct. App. 1993); *Cf. Estate of Cumbee*, 333 S.C. 664, 673, 11 S.E.2d 390, 294 (Ct. App. 1999) (finding undue influence where, *inter alia*, Testatrix did not meet with lawyer nor did she read the will). In fact, in *Hairston*, the drafting attorney's testimony was considered so significant that it outweighed that of a testifying medical expert who had not examined the Decedent. 387 S.C. at 446, 692 S.E.2d at 553.

testimony that Klok failed: (1) to adequately discharge her duty to the Testatrix; (2) was governed by some conflict of interest; or (3) deviated from the acceptable standard of care for probate attorneys.

Likewise, the Probate Court never rejected the testimony of Klok or Voytko. He never made a finding that their testimony lacked credibility. He never ruled that Klok violated her obligations as an attorney or acted in any way inappropriately. Respondent offered no rebuttal testimony or witnesses that showed Attorney Klok mishandled the execution of the New Will, or violated her professional duties. He never made one finding of fact that Klok or Voytko did anything wrong, unseemly or in Glenn's interest and not the Testatrix's. The Probate Court does not offer one iota of evidence sufficient to discount Klok's or Voytko's testimony.

But here, the Court of Appeals gives the Appellant the benefit of Klok and Voytko's testimony that the Probate Court and Circuit Court ignored when it found no presumption of undue influence caused by the existence of a fiduciary relationship, but then turns around and ignores it (just as the lower courts did) when it comes to the question of whether there was undue influence in the first place. The Court of Appeals did not find that Klok and Voytko had credibility then lost it; it just ignores what they had to say. So did the Probate Court. This is error.

The testimony of Klok and Voytko has to be either fully accepted or fully dismissed; it cannot be used for one finding and not the other. The Court of Appeals cannot on the one hand pass on it favorably ("Klok ... testified Testatrix did not feel any pressure about changing her will to no longer include her daughters as beneficiaries" ... the Testatrix was "very frail physically, but mentally she seemed to know what she wanted" and the "Testatrix specifically told her the change in the Will was more about not wanting to leave anything to her daughters rather than a desire to leave everything to Glenn.") but then *tut tut* over "unusual circumstances" at this July 3, 2013

meeting[3]. In fact, many of these unusual circumstances that the Court of Appeals brings up in footnote 5 are **not** that unusual when one looks at the reported cases.[4]

Yes, undue influence may be proved by circumstantial evidence, **but the circumstances relied on to show it must be such as taken together point un-mistakenly and convincingly to the fact that the mind of the testator was subjected to that of some other person**, so that the will is that of the latter and not of the former. (emphasis added); *Howard v. Nasser*, 364 S.C. 279, 286, 613 S.E.2d 64, 67 (Ct. App. 2005) (citing *Havird v. Schissell*, 252 S.C. 404, 410–11, 166 S.E.2d 801, 804 (1969)); *see also Mock v. Dowling*, 266 S.C. 274, 278, 222 S.E.2d 773, 775 (1976) ("Undue influence may be proven by circumstantial evidence. However, that evidence must be of a substantial nature."). Here, the Court of Appeals has used Klok and Voytko's testimony to overrule part of the Probate Court; now, it is **should** continue to look at the testimony **together with all the evidence**. If the Court of Appeals lets this decision stand, however, then it ought to overrule *Havird v. Schissell* and *Howard v. Nasser*.

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[3] The Opinion in fact states **incorrectly** asserts that Klok only met with Testatrix one time "despite her normal procedure, which consisted of an initial meeting to take down information, and set goals followed by another appointment several weeks later to execute the will." [Opinion at 8 note 5]. Klok actually testified: "Q. Right. [You] Did not follow your normal protocol of several weeks? A. No, that's not correct. I have different protocols. **I have often sometimes clients who want to do it the same day, and I also do that, but I have a different set of protocols when they want to do it the same day.** (emphasis added)." [R.414-415]. Most times her elderly clients do not want to have multiple meetings. [R. 397]. She schedules and tailors her meetings for each individual client. [*Id.*]. Furthermore, the meeting was a long one – about three hours. [*Id.*].

[4] The Supreme Court found nothing untoward that the beneficiary took the testatrix to his personal attorney. *In re Last Will and Testament of Smoak*, 286 S.C. 419, 422, 334 S.E.2d 806, 808 (1985). In *Calhoun v. Calhoun*, 277 S.C. 527, 532, 290 S.E.2d 415, 419 (1982), our Supreme Court also did not find the fact the beneficiary drove the testator to the lawyer's office to be at all probative; neither, apparently, did the Court of Appeals in *Hembree v. Estate of Hembree*, 311 S.C. 192, 195, 428 S.E.2d 3, 4 (Ct. App. 1993). The fact that the will was unsealed is also irrelevant. *Hembree*, *supra*, 311 S.C. at 195, 428 S.E.2d at 4. But for some reason, all of these "circumstances" are found to be compelling enough to be included in this opinion.

Argument 2

The Court of Appeals found that the "record contains sufficient evidence to support the circuit court's finding that the 2013 Will was a product of undue influence." [Opinion, p. 5]. When applying *Wilson v. Dallas*, 403 S.C. 411, 337, 743 S.E.2d 746, 760 (2013), most of these "facts" are either (a) wrong; (b) irrelevant; (c) take place well outside of the testamentary act; or (d) fail to take into consideration the testimony of the only two witnesses to the testamentary act. This amounts to another error.[5]

Wrong Facts

Glenn never cut off visitation or communication. Klok testified that Testatrix told her that if it weren't for Appellant, she would not be able to get out and interact as much – visits to the senior center, doctor's appointments, visit family, etc. [R. 402]. Moreover, Testatrix's brother – Jack Brantley – visited his sister in Charleston after her husband's death and while Appellant was living with his mother: "I probably visited at least three or four times a year, sometimes more often, according to what was going on, and we talked on the telephone at least two, three, four times a week. And if I didn't call her, she would call me." [R. 211-216, 218]. He further testified that spoke to her outside Appellant's presence. [R. 241-242, 244]. Appellant would also bring his mother to visit Mr. Brantley in Waynesboro, Georgia. [R. 214]. On direct examination, Testatrix's "friend," Helen Carroll, testified that after her husband's death, Testatrix lost interest in talking on the telephone but that they would visit at Testatrix's home. [R. 679-680]. Ms. Carroll continued to visit Testatrix after her husband's death – including when Appellant was not there. [R. 679, 681-

[5] Note, Respondent never demonstrated any evidence of threats or force to the Testarix by the Appellant [Resp. Br. p. 14], which is the critical element for finding undue influence based on physical intimidation. *Hairston v. McMillian*, 387 S.C. 439, 446, 692 S.E.2d 549, 553 (Ct. App. 2010). By arguing that threats against the *Respondent or her sister* somehow meets this test, Respondent is arguing against precedent.

682, 704]. In fact, Ms. Carroll visited Testatrix at her home up until the last week of her life. [R. 703]. Appellant never kept Ms. Carroll away from his mother nor did he ever instruct her to leave when she visited Testatrix. [R. 704].

Based on this, it is incredible that the Court of Appeals would allow to stand a factually incorrect statement in the Opinion such as "Brantley … and Carroll … both presented evidence that Glenn restricted Testatrix's communication and visitation." The Testatrix never stopped calling them; Ms. Carroll testified that she met with Testatrix without Glenn being present; Glenn did take Testatrix to Georgia to visit Brantley. A trial judge may weigh the credibility of witnesses and the credibility of evidence, but he cannot be allowed to sift through a witnesses testimony, cherry-picking out the parts that present a false picture of undue influence (finding them credible!) but ignore equally credible testimony – or worse getting it wrong – that shows no undue influence How can this be fair? If this incorrect testimony is removed from the opinion, then most of the Probate Court's "sufficient evidence" of undue influence evaporates.

Irrelevant Facts

The cameras mounted after Arden's death and Glenn moving into the living room ... Glenn failing to notify his sister of their father's failing health ... an email Glenn sent Belinda at his father's death – proves nothing. They do not have anything to do with the testamentary act but are included – why? What does it have to do with whether he committed undue influence? Nothing. The Court of Appeals also mentions a time when Ms. Davis attempted to enter the house to retrieve Arden's death certificate, when Ms. Costa and Testatrix were in the middle of a physical therapy session – which also proves nothing (it took place after Testatrix changed her will).[6]

[6] The Probate Court spoke of this too and gave weight to Ms. Davis' and Respondent's testimony but did not take into consideration the testimony of Ms. Costa (an independent and unbiased witness) – who was there caring for Testatrix. Ms. Costa testified "Ms. Gunnells did not

Take Place Well Outside the Testamentary Act.

The outrageous finding of prescription abuse took place well outside the testamentary act and was discounted by Dr. Chanson. ("Q: So, were you aware of . . . mismanagement of care of mismanagement of medication? A: I was not . . . I did not see anything that would have been concerning."). [R 606]. Respondent failed to illicit *any testimony* from *any witness* that any medication was ever withheld. She failed to call in an independent medical professional, including Testatrix's pharmacist(s), to support this outrageous contention. This is pure conjecture and speculation on behalf of the Respondent and should never have been considered by the Probate Court, let alone affirmed by the Court of Appeals.

The only two witnesses to the testamentary act

Even if the Court of Appeals thinks that Klok and Voytko testimony can be used to find no presumption of undue influence based on Glenn's fiduciary relationship – how can it say the Probate Court's findings of fact point un-mistakenly and convincingly to undue influence" when these facts are "taken together" with Klok and Voytko's testimony? It simply cannot.

Just like the Probate Court couldn't dismiss the finding of Klok and Voytko on the fiduciary relationship question, the Court of Appeals cannot dismiss them on the question of undue influence.

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want to see [Ms. Davis], she was upset." [R. 222]. But when Ms. Costa attempted to tell Ms. Davis the same, "she pushed into the door and pushed me out of the way." [*Id.*] Respondent was in the car during this entire encounter. Once again, the Court of Appeals is fine with Ms. Costa's testimony on whether Glenn rebutted the presumption of undue influence as a fiduciary but then discounts the same testimony on whether there was undue influence at all. How is this testimony being "taken together" to "point un-mistakenly and convincingly to the fact that the mind of the testator was subjected to that of some other person" as required by *Howard v. Nasser*, 364 S.C. 279, 286, 613 S.E.2d 64, 67 (Ct. App. 2005). And ***what*** is the matter with calling the police under these facts? Or even under the facts as recorded in the Opinion?

Argument 3

We then come to Dr. Chanson's testimony. It is uncontroverted that Dr. Chanson is a licensed, reputable and competent physician who has practiced internal medicine in Charleston since 2000. [R. 594-595]. The Respondent offered no testimony that questioned Dr. Chanson's qualifications in any manner, nor any counter medical expert. As with the legal witnesses, the Probate Court never rejected the Dr. Chanson's testimony, nor made a finding that she lacked credibility, nor ruled that Dr. Chanson violated her obligations as a doctor, or acted in any way inappropriately. He never made a finding of fact Dr. Chanson wrong, unseemly or in Glenn's interest and not the Testatrix's. The Probate Court does not offer one iota of evidence sufficient to discount her testimony.

The Testatrix never missed an appointment with Dr. Chanson. [R. 605]. Office visits would usually last between 30 and 50 minutes. [R. 601]. Furthermore, Appellant was never in the room when Dr. Chanson was examining/treating Testatrix – he would wait in the lobby until Chanson needed to speak to him. [R. 606, 615-617]. Dr. Chanson opined that Appellant seemed very attentive towards his mother; he asked appropriate questions about Decedent's health and he would often call the office to ask questions about medications. [R. 605]. "He seemed to be giving appropriate care to his mother." [*Id.*]. Notwithstanding the foregoing, Dr. Chanson noted that Testatrix routinely carried on intelligent conversations during her office visits, she knew exactly who she was and who her family and children were, she had a firm understanding of her surroundings and she made her own decisions. [R. 607, 610].

Significantly, Dr. Chanson saw Testatrix for an appointment on the same day as Testatrix executed the New Will and believed she was of sound mind, albeit depressed at the recent loss of her husband. [R. 612-613, 623-626]. Dr. Chanson believed that Testatrix was competent to make

her own decisions. [R. 610]. She makes it clear that these were experienced over a period of time and were result of Testatrix's husband's recent death – not anything to do her New Will. [R. 613, 614, 623]. Dr. Chanson opined that Testatrix's behavior was appropriate and she did not seem fearful – she saw nothing in Testatrix's demeanor that was concerning or that would lead her to believe Appellant was exercising any influence over Testatrix. [R. 606-608]. Dr. Chanson testified to all these opinions to a reasonable degree of medical certainty most probably. [R. 613-614]. She is an unbiased witness with no reason to favor or discredit one party or the other. She always spent time alone with the Decedent, yet reported no findings of abuse, neglect, force, coercion or domination of Decedent by Appellant.

That's the full testimony of Dr. Chanson. The Court of Appeals lets the Probate Court avoid it in its entirety. However, the Court of Appeals, like the Probate Court, found probative that Mrs. Gunnells was "visibly upset," "crying," and "distraught" in the doctor's office. [Opinion, p. 8, note 5]. The Probate Court, also, relied heavily on Dr. Chanson's assertion that she cannot say whether Testatrix was "unduly influenced." [R. 34-36]. The Court of Appeals likewise relied on Dr. Chanson's testimony again in its footnote 6. [Opinion at 9]. This constitutes an error.

First, as stated above, **the circumstances relied on to show [undue influence] must be such as taken together point un-mistakenly and convincingly to the fact that the mind of the testator was subjected to that of some other person**, so that the will is that of the latter and not of the former. *Howard v. Nasser*, 364 S.C. 279, 286, 613 S.E.2d 64, 67 (Ct. App. 2005). Thus, neither the Probate Court nor the Court of Appeals can cherry pick "good" facts which show undue influence while ignoring "bad" facts that do not. All of the evidence must be viewed together. The Court of Appeals would not violate the trial court's weight or exclusivity of the evidence because here the trial court wholesale ignored it, never making any finding of weight or credibility. The

trial court should not be allowed to find some testimony of a witness fine and credible, but ignore other portions of the same witnesses testimony **without at least making a finding.**. Otherwise, the Court is overruling *Howard v. Nasser* and *Havird v. Schissell*.

Second, the reasonable good health of a testator is considered probative in an undue influence case. *First Citizens Bank v. Inman,* 296 S.C. 8, 370 S.E.2d 99 (1988). Moreover, in case after case, the South Carolina appellate courts have found probative the testimony of the treating physician that the decedent was competent. *See, e.g., Calhoun*, supra, at 431; *Smoak,* supra, at 426. Third, the Court of Appeals has violated its own rule; if it cannot use additional testimony from the record, then how did it use Klok and Voytko to rule against the trial court on the fiduciary relationship? It seems it does when it wants to. It should do it now.[7]

Argument 4

The Court of Appeals and Probate Court accepts the testimony of Ms. Carroll that the Testatrix said she had "no choice" in signing the New Will. This testimony provides no context for why the Testatrix allegedly had "no choice" – what if it was because her daughters' conduct left her no choice? This "no choice" testimony came about from Respondent's counsel asking Ms. Carroll to testify regarding a letter she had allegedly signed, but which she had no knowledge regarding how it was drafted, who drafted it, when it was drafted, when she signed it, or the circumstances under which she signed it. [R. 693-697].

[7] It should be noted that the Respondent ignored the two pages of Appellant's Brief describing Dr. Chanson's testimony. [App. Br. pp. 25-27; Resp. Br. p. 15]. Therefore, Respondent abandoned this issue on appeal and her arguments are not presented for review because they consist of cursory and conclusory statements without citation to authority. *Broom v. Jennifer J.*, 403 S.C. 96, 115, 742 S.E.2d 382, 391 (2013) ("Issues raised in a brief but not supported by authority may be deemed abandoned and not considered on appeal."). The Court of Appeals should not have affirmed Ground Number II.

The Court of Appeals should remember that before she read from the letter, Ms. Carroll testified on direct examination she did not remember any conversation with the Testatrix concerning a will ("Q: Okay. Did [Testatrix] ever talk to you about signing a will or something like that? A: No. Q: Never came – A: No.") [R. 684]. Similarly, on cross-examination after she read the letter, Ms. Carroll did not remember discussing the will with the Testatrix, either. ("Q: So earlier, Mr. Howe had to remind you about . . . a conversation you had about the will with Mrs. Gunnells. Do you remember that conversation? A: No. I don't.") [R. 704-705]. [8]

That is the "the circumstances which unmistakably and convincingly point to the substitution of another person's will" for the Testatrix? The recollection of a 92-year old, ailing woman (who admitted to an extremely close, personal relationship to the Respondent – "like a daughter" and she would do anything the Respondent asked her to do [R. 697-698, 706]) who "recalls" something that she didn't write – and then promptly forgets it ***immediately after she has read it?*** ***That*** is supposed to outweigh the legal and medical testimony?[9]

Argument 5

On May 31, 2016, Appellant submitted his Motion to Alter, Amend and/or Reconsider the Probate Court's 5.12.2016 Order. [R. 97]. Despite Appellant's request for a hearing, the Court issued its decision in an Order on August 26, 2016. [R. 51]. The Motion was denied. The 8.25.16

[8] The Court of Appeals found that Appellant did not preserve his objection. Appellant does not agree; the Objection [R. 247-250] states a "few objections." One of these is to hearsay and one of which is to lack of personal knowledge. [R. 247-248] One also was to the document itself. [R. 249]. It should be further noted that Respondent did raise this as an appeal point. Appellant did not waive it.

[9] Moreover, Respondent failed to address the merits this argument in her brief. "If [a] respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct." *Turner v. South Carolina Dep't Environ. Control*, 377 S.C. 540, 547, 661 S.E.2d 118, 121 (Ct. App. 2008).

Order does not address the legal and factual errors of the Probate Court's prior order. Particularly, the Order is silent on much of the above-argued witness testimony – in particular, the weight and credibility of the witnesses presented and the lack of evidence and testimony to support the Respondent's allegations. The legal and factual conclusions the Probate Court arrived at are simply not supported by the evidence and testimony. The Probate Court simply states that "the record speaks for itself" but gives no legal or factual basis for its conclusions. [R. 57]. This is simply not sufficient in a case where so much testimony and evidence presented rebutted any presumption of undue influence.

Argument 6

In the original Order, the Probate Court looked at four circumstances in finding the New Will was the product of undue influence, which it explained in the Second Order was not meant to be exhaustive of formulaic. To the extent the Court still relies on the first and second prongs, Appellant believes they do not accurately reflect South Carolina law as cited by the Probate Court. [R. 97]. As to susceptibility, the Probate Court did point out recent authority where it came up, but the overwhelming weight of all the testimony (including from the Testatrix's brother and daughter) was that the Testatrix was a formidable woman who knew her own mind and was not susceptible to undue influence.

Argument 7

In previous cases, the Supreme Court of South Carolina found undue influence claims did not exist even though the evidence was more egregious and pervasive than in the present action. In *Russell v. Wachovia Bank, N.A.*, Testator's son and daughter brought an action to set aside testator's will for undue influence and the court entered summary judgment in favor of the will's proponents. The contestants presented the following evidence: (1) at times, the testator did not

know what state he was in and "doubled up" on his medication; (2) the other beneficiaries in the will were disrespectful and frequently yelled at the testator about money; (3) the proponents monitored his telephone, told him how to dress, and would not let the testator adjust his thermostat; (4) the other beneficiaries spent large sums of the testator's money, had unfettered access to his office, and lived in his house; (5) the proponents had frequent contact with the testator's attorney; and (6) testimony from two doctors indicated that the testator may have been susceptible to undue influence. *Id.* 353 S.C. at 215, 578 S.E.2d at 333. While unattractive, such conduct and demeanor did not amount to undue influence nor did it rise to the level of unmistakable and convincing evidence that they utilized their relationship to substitute their will for his. *Id.* In affirming the grant of summary judgment, the court found the testator remained the ultimate decision maker.

In this matter, the Testatrix, while physically infirm, was not mentally infirm – she was very clear and adamant about what she wanted in her New Will. Notably, Testatrix met with her attorney for several hours where she made it absolutely clear what she wanted to do and why she wanted to do it. Attorney Klok testified that she was quick, rational and precise when answering questions about her family, her property and its disposition.

The record is devoid of any evidence that Appellant interfered with the making of the New Will. Appellant did not dictate the will; he was not present when its proposed contents were discussed; nor was he present when the Will was executed. The circumstances surrounding the drafting and execution of the New Will indicate that it was the product of the free and unfettered act of the Testatrix – who all the witnesses conceded was competent, independent and was of sound mind. *See Mock v. Dowling*, 266 S.C. 274, 278, 222 S.E.2d 773, 774 (1976).

CONCLUSION

The mere existence of influence is not enough to void a will as all influences are not unlawful. *Hembree v. Estate of Hembree*, 311 S.C. 192, 196, 428 S.E.2d 3, 5 (Ct. App. 1993). "A mere showing of opportunity and even a showing of motive to exercise undue influence does not justify a submission of that issue to a jury, unless there is additional evidence that such influence was actually utilized." *Smoak,* 286 S.C. at 424, 334 S.E.2d at 809; *Russell,* 353 S.C. at 217, 578 S.E.2d at 333. The maker's exercise of judgment and free choice must be prevented to void a will on the ground of undue influence. *Cumbee,* 333 S.C. at 671, 511 S.E.2d at 394. "A mere showing of opportunity or motive does not create an issue of fact regarding undue influence." *Id.* "[T]he issue of undue influence should be resolved in the light of the proposition that a sane testator has the right to dispose of his property as he chooses." *Harris v. Berry*, 231 S.C. 201, 205, 98 S.E.2d 251, 253 (1957). "The mere influence of affection and attachment, or the mere desire of gratifying the wishes of another, will not vitiate a testamentary act unless that act was the result of coercion or importunity beyond the testator's power to resist." *Id.*

Say that Glenn wanted to influence Testatrix. Fine. Say they were a from a crazy family. Undoubtedly. But do not affirm the finding of the Probate Court based on bits and pieces of testimony to make it seem like Glenn used force and fear over a family member to change her will. When the evidence of Klok, Voytko, Chanson, Wexler and Costa – all the evidence that Glenn produced – is fairly added to the case (and not discounted) then the outcome must be different. Here, when all of the evidence is fairly evaluated – or at least fairly discredited, not just merely ignored– then it becomes clear that almost all the weight of the evidence is on the Appellant's side.

EN BANC REVIEW REQUEST

"The government imposes many restrictions and requirements, but one of the basic rights known to our civilization is the privilege of disposing of property by Will as one elects" *Last Will and Testament of Smoak v. Smoak,* 286 S.C. 419, 427, 334 S.E.2d 806, 811 (1985). Should the trial court be allowed to pick and choose what it wants from Appellant's witnesses, but to ignore the bulk of their testimony even though it states no reason to ignore it? Can the Court of Appeals state that "[n]othing in the record suggests the probate court failed to consider and weigh all of the evidence presented or that the evidence failed to support its finding" when it obviously did so?

How does *Howard v. Nasser,* 364 S.C. 279, 286, 613 S.E.2d 64, 67 (Ct. App. 2005) and *Havird v. Schissell,* 252 S.C. 404, 410–11, 166 S.E.2d 801, 804 (1969) (the circumstances relied on to show [undue influence] must be such as taken together point un-mistakenly and convincingly to the fact that the mind of the testator was subjected to that of some other person") jive with the Court of Appeals rule that probate judge's findings of fact may not be disturbed unless a review of the record discloses there is no evidence to support them, such as in *In re Estate of Anderson?* Can a probate judge blatantly disregard probative facts, received from neutral witnesses (some of whose testimony he has received)? Does the weighing of facts "together" to find undue influence preclude a broken, mismatched, jigsaw of a factual record like the one here?

Appellant submits that this consideration by the full court is necessary to secure or maintain uniformity of its decisions, and that the proceeding involves a question of exceptional importance. Rule 219(a), SCACR.

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April 15, 2020
Mount Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr.
Circuit Court Judge

RECEIVED
Apr 15 2020
SC Court of Appeals

APPELLATE CASE NO. 2017-001131

Glenn Gunnells, Individually and as the Personal Representative
of the Estate of Helen B. Gunnells..... Appellant.

v.

Cathy G. Harkness ..... Respondent

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the ***Appellant's*** **PETITION FOR REHEARING and MOTION FOR EN BANC REVIEW** in the above referenced case has been served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on this date to the following OR BY EMAIL AND EFLEX SYSTEMS IF INDICATED.

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April 15, 2020
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal From Charleston County
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Honorable Roger M. Young, Sr.
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v.

Cathy G. Harkness.....Respondent

RETURN TO APPELLANT'S PETITION FOR REHEARING and MOTION FOR EN BANC REVIEW

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Respondent respectfully submits the following in response to Appellant's Petition for Rehearing or, in the alternative, an En Banc Review of this matter.

STANDARD OF REVIEW

In an action at law such as this one, tried by the Probate Court, the Appellate Court cannot disturb the Probate Court's finding of facts unless there is no evidence in the record to support them. In re Estate of Cumbee, 333 S.C. 664, 670, 511 S.E.2d 390, 393 (Ct. App. 1999).

In its written opinion, the Court of Appeals therefore sets out many facts in the record that supported the decision of the Probate Court. In the various Arguments below, Appellant denies the existence of the facts cited by both the Probate Court and Court of Appeals to make his request for rehearing and en banc review.

Respondent's Reply to Appellant's Argument 1

Appellant contends that the only relevant evidence was that of the lawyer and paralegal whose sole contact with Testatrix was a single office visit. "The case should have been over when Klok [the lawyer] and Voytko testified." (Petition, p. 4). He cites no legal authority supporting this position, however.

Of note is that on page 4 of the Petition, Appellant footnotes this contention as follows: "Reported decisions in South Carolina have given great weight to the testimony of the attorney who drafted the challenged testamentary document…" The term "great weight" is not, however, the same as "conclusive weight." Appellant argues that the testimony of the lawyer is conclusive. As noted by the Probate Court "Respondent asks the Court to isolate as "conclusive" a single detail regarding execution of the Will, to the exclusion of all other circumstances leading up to and immediately following the visit to Attorney Klok's office. The Court can identify no

controlling law indicating that an examination of the events surrounding the drawing and execution of a contested document must be limited solely to whether the alleged influencer was physically present when the testatrix put pen to paper and signed her name." (R. p. 56).

This case has been through two levels of appeal since the Probate Court pointed out that Appellant's legal assertion is unsupported by any legal authority. Appellant has yet to find a single case in support of the legal standard he proposes.

The reason is obvious, particularly in a case like this one, where the lawyer only meets the client one time. Limited exposure in a single setting may not provide the lawyer the same level of understanding that evidence of the broader context does. Such is the case in this matter. A number of specifics of the "broader context" will be addressed below. Suffice it to say, the testimony of the lawyer and her paralegal should not be conclusive evidence as to the Testatrix's intent. This conclusion would be counter to existing South Carolina law and unsupported by the law of every other jurisdiction (as evidenced by Appellant's inability to cite a single case in support of this argument).

Respondent's Reply to Appellant's Argument 2

Appellant next challenges a number of factual findings. Appellant knows that "any evidence" in support of these factual findings means the ruling must be upheld. Appellant therefore repeatedly asserts there is no evidence of various matters in clear contradiction to the record.

A. Wrong Facts . "Glenn never cut off visitation or communication." (Petition, p. 7). This assertion is just not true. Consider the following:

1) Cathy Harkness testified that when she called to speak to her mother, Glenn would laugh and hang the phone up. Further, "On June 11, he called me up after my father was

buried, told me I am no longer to call mother, or he would have me arrested for harassment (R. p. 306, lines 9-12).. Jack Brantley (Testatrix's brother) testified about asking Testatrix to call Cathy Harkness to see how she was doing to which Testatrix replied "I'll ask Glenn." (R. p. 240, line 5). Glenn physically barred his sister Belinda and threatened to call the police when she came to visit her mother. (R. p. 268, lines 20-21/R. p. 307, lines 3-9).

Appellant's contention that there is "no evidence" that Glenn cut off visitation or communication is just not correct. Respondent would submit that the very fact Appellant has asserted this patently false claim is an indication of how weak Appellant's argument is, i.e. Appellant is forced to deny the existence of facts in the record to conjure up a "basis" for his argument.

B. Irrelevant Facts. Here the Appellant cherry picks three specific facts that he argues should have been given no weight as a matter of law.

The first example is the fact that Glenn installed security cameras all over the house and yard of Testatrix's home. Clearly, this action is relevant to the amount of control he was exercising over Testatrix. The weight of this relevant evidence was in the discretion of the probate judge.

The second example is that Glenn failed to notify his sisters that his father was "on death's door" in the hospital and that when they found out, he sent them a bizarre email trying to establish his control over their ability to visit: LET IT BE KNOWN, NOTHING WILL BE SIGNED [or] INITIALIZE[D] TILL I LOOK AT IT!!! SO LET IT BE WRITTEN SO LET IT BE DONE!! ALL [H]AS BEEN [D]ONE AND NOTIFIED!!!!!!!!!!! (R. p. 265, lines 17-21).

Clearly, if Glenn is the type of person who would attempt to control access to his father, he was also likely to do so with his mother. The relevance is plain. The weight is up to the probate court.

Next, Appellant tries to say that there was no relevance to the time Glenn physically pushed his sister, Belinda, out of the front door and threatened to call the police when she attempted to visit her mother. Glenn's explanation is that a physical therapy session was in progress. Whether Glenn's explanation was sufficient to justify his response and, in particular, the intensity and aggressiveness of the response (the assault and threat to call the police) is a classic example of the independent fact finder's role in weighing evidence. Appellant seems to believe that just because he comes up with an explanation, the Court is bound to accept his explanation to the exclusion of all other evidence. This opinion is simply not the law. The Appellate Court is "not at liberty to pass upon the veracity of the witness" and determine how it thinks the evidence should have been weighed by the trial court. Graham v. Whitaker, 282 S.C. 393 at 398, 321 S.E.2d 40 at 41 (S.C. 1984)

C. Take Place Well Outside the Testamentary Act. Under this heading, Appellant first states (wrongly) "Respondent failed to illicit any testimony from any witness that medication was ever withheld."

Consider the following (much of which is set out in footnote 6 of the decision of the Court of Appeals).

a. "She never received the potassium prescription." (R. p. 649, lines 9-10).

b. There were several months that the doctor's notes reflected Testatrix was not getting the Remeron prescribed (R. p. 636, lines 9-19). This fact is highly relevant because

Remeron is for dementia and its absence would enhance Testatrix's dementia and therefore decrease her desire and/or ability to change her Will.

D. The Only Two Witnesses to the Testamentary Act. Here again, Appellant argues that the testimony of Klok and Voytko are both exclusive and conclusive. This opinion is simply not the law (as argued above).

Respondent's Reply to Appellant's Argument 3

Appellant cherry picks a set of statements from Dr. Chanson's direct testimony and then states "That's the full testimony of Dr. Chanson." Appellant ignores the cross-examination of Dr. Chanson in which the following testimony was illicited:

1) The drug potassium was never given as prescribed. (R. p. 649, lines 9-10).

2) There were long and inordinate delays in the administering of the dementia drug, Remeron. (R. p. 636-640).

3) Glenn, to excuse his delays in getting his mother to her appointments, told Dr. Chanson "it's difficult for her son to bring her into the office frequently because of his ongoing work schedule and other responsibilities." (R. p. 637, lines 3-7). This representation was a clear falsehood because Glenn was on disability and thus had no "ongoing work schedule."

Appellant further states it was error for the Court to consider that (in addition to the above) Testatrix was "visibly upset", "crying" and "distraught" at her doctor's visit on July 3, 2013 – the same day she signed the contested Will. (R. p. 623, lines 9-24). It is of note that Appellant gives no basis as to why this was error except that Appellant believes his facts outweigh the relevance of Testatrix's degree of emotional turmoil at the doctor's office. "It is the duty of the trier of fact to evaluate witness testimony and assign to it such weight as he

determines." Estate of Hicks, 327 S.E.2d 345, 284 S.C. 462 (S.C. 1985). Appellant's assertion is without merit.

Next, the Appellant contends that the trial court never made any finding about the weight or credibility of the witnesses. Nothing could be further from the truth. As to the Appellant Gunnells himself, the trial court detailed a number of things that made his testimony incredible, the most egregious (Respondent submits) was his false testimony that he had taken Testatrix to lawyer Klok for two or three visits of 30-40 minutes each prior to the appointment in which she signed this Will. This testimony was completely and blatantly untrue. Respondent refers this Honorable Court to pages 45 and 46 of the Transcript of Record to consider the care in which the trial court examined the testimony of Appellant and obviously concluded that he was untruthful (including "In short, he has not administered the estate in an honest or forthright manner.") (R. p. 45, Item 3).

In the last paragraph of Argument 3, Appellant seems to shift gears and argue that just because he contends Testatrix was in reasonably good health and competent at the time of the execution of the Will, then it is not possible that she could have been subject to undue influence. This opinion is not the law and Appellant has cited no authority in support of this position at any time during this lengthy appellate process.

Respondent's Reply to Appellant's Argument 4

In this argument, Appellant contends that the testimony of Helen Carroll, the long-time best friend of Testatrix, should be ignored. Again, this is just a matter of the weight of the evidence and is clearly in the purview of the finder of fact.

Appellant then asserts that the trial and probate courts gave enormous and, indeed, exclusive weight to the testimony of Ms. Carroll: "That is the circumstances which

unmistakenly and convincingly point to the substitution of another person's "will" for the Testatrix?" (Petition, p. 13). Neither the Probate Court nor Appeals Court has ruled that the testimony of Ms. Carroll solely and conclusively carried such weight. To the contrary, her testimony carried some weight in the context of many other facts which as a whole provided sufficient evidence to support the finding of the probate court under the applicable standard of review. The sum total of these facts set out in the findings of the Probate Court clearly constitute a reasonable factual basis to uphold the ruling.

Respondent's Reply to Appellant's Argument 5

The essence of Argument 5 is that "The probate court simply states that "the record speaks for itself" but gives no legal or factual basis for its conclusion."

First of all, the initial Order of the Probate Court is 17 pages long and the Order Denying Motion to Alter or Amend is 7 pages long. To suggest that the Probate Court failed to review the facts or law is not only misleading but plainly untrue. Secondly, the specific quotation "the record speaks for itself" arises only when the Probate Court is narrowly focused on its response to Appellant's specific assertion that there was "no evidence that anyone was prohibited or restricted from visiting Testatrix." To that point, the Court specifically referenced (R. p.57) several pages of Harkness' Memorandum in Opposition to the Motion to Reconsider in which numerous specific instances of testimony flatly contradicted Appellant Gunnells' contention. To that extent, the record did indeed speak for itself in the particulars referenced by the Court. These pages are found on 124-126 of the Transcript of Record and essentially address the incorrect assertions of no evidence of interference with visitation or mismanagement of prescriptions.

Respondent's Reply to Appellant's Argument 6

It is difficult to discern what the Appellant's point is here. On the one hand, Appellant states that the Probate Court was incorrect in considering evidence of the first "2 prongs" of 4 items of precedence the Court relied on to some extent. Appellant does not discuss why these "prongs" are inappropriate, he just says they "do not accurately reflect South Carolina law." The prongs include 1) an unjust distribution made to a beneficiary and 2) motive and opportunity to influence the Testatrix. Ample cases are supplied in support of these factors and never have been overruled. Appellant's assertion that they do not reflect South Carolina law is simply without merit. See Howard v. Nasser, 364 S.C. 279, 289-90, 613 S.E.2d 64, 69 (Ct. App. 2005) and Byrd v. Byrd, 279 S.C. 425, at 427, 308 S.E.2d 788 at 789 (1983).

Respondent's Reply to Appellant's Argument 7

In this argument, Appellant tries to suggest that because a probate judge ruled against undue influence in Russell v. Wachovia Bank, N.A., 353 S.C.208, 216, 578 S.E.2d 329,333 (2003), then another probate judge must rule with Appellant in this case.

Every case must stand on its own merits and the specific facts presented at trial. The question before this Court was not how much it sounded like the Russell case but whether the particular facts pointed to undue influence. It may be of note that the decedent in Russell was Donald Russell, former Governor of South Carolina and Chief Judge of the 4th Circuit Court of Appeals. Obviously, equating his intellectual depth to that of Helen Gunnells is on its face a false equivalency. Respondent also again asks the Court to isolate as "conclusive" a single detail regarding execution of the Will, to the exclusion of all other circumstances leading up to and immediately following the visit to Attorney Klok's office. This point has been addressed previously. As for Argument 7, suffice it to say that to attempt to equate the case of Helen

Gunnells and her family with that of Donald Russell and his family is just another attempt by Appellant to grasp at straws that do not exist.

Respondent's Reply to Appellant's En Banc Review Request

The essence of Appellant's request for en banc review is that the Probate Judge "blatantly disregard[ed] probative facts." (Petition, p. 17). Respondent would point out that the original Order of the Probate Judge discusses the facts in detail as does the Probate Judge's Denial of the Motion to Alter or Amend Judgment. The Court of Appeals sets out many of these facts and clearly demonstrates that there was substantial evidence from many witnesses to support the factual determination of the Probate Court. The Probate Court never blatantly ignored any facts, it just found that Appellant's version of those facts was refuted and proven to the standard required.

CONCLUSION

Lastly, Respondent submits there is no need for a reconsideration or en banc review. The law is clear and the facts (although Appellant denies they exist) have been thoroughly noted and set out in the decision of the Court of Appeals. For the reasons outlined above, Respondent prays that the Petition for Rehearing and Motion for En Banc Review be denied and that the judgment of the Probate Court be affirmed.

Respectfully submitted,



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CATHY G. HARKNESS

June 17, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal From Charleston County
Court Of Common Pleas

Honorable Roger M. Young, Sr.
Circuit Court Judge

APPELLATE CASE NO. 2017-001131

RECEIVED
Jul 13 2020
SC Court of Appeals

Glenn Gunnells, Individually and as the Personal Representative of The Estate of Helen B. Gunnells.....Appellant

v.

Cathy G. Harkness.....Respondent

CERTIFICATE OF SERVICE

I certify that I have served the Appellant with the Return to Appellant's Petition For Rehearing and Motion for En Banc Review of the Respondent by electronic mail addressed to the following:

Robert B. Varnado, Esquire
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June 17, 2020

Donald H. Howe
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Addressee	Start Time	Time	Prints	Result	Note
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Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF, TEL: RX from TEL, NG: Other Error, CONT: Continue, NO ANS: No Answer, Refuse: Receipt Refused, Busy: Busy, M-Full:Memory Full, LOVR:Receiving length Over, POVR:Receiving page Over, FIL:File Error, DC:Decode Error, MDN:MDN Response Error, DSN:DSN Response Error, PRINT:Compulsory Memory Document Print, DEL:Compulsory Memory Document Delete, SEND:Compulsory Memory Document Send.

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FAX COVER SHEET

DATE: **June 17, 2020**

DELIVER TO: V. Claire Allen, Deputy Clerk
SC Court of Appeals

FAX NUMBER: **803-734-1839**

FROM: **Donald H. Howe**

OPERATOR: **Greta B. Howe**

RE: Glenn Gunnells, Individually and as the Personal Representative of The Estate of Helen B. Gunnells, Appellant v. Cathy G. Harkness, Respondent
Appellate Case No. 2017-001131

NO. OF PAGES: **14, including the cover sheet.**

COMMENTS:

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LAW OFFICES OF DONALD H. HOWE, LLC

Attorneys at Law

June 17, 2020

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BY FAX: 803-734-1839

V. Claire Allen, Deputy Clerk
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Glenn Gunnells, Individually and as the Personal Representative of The Estate of Helen B. Gunnells, Appellant v. Cathy G. Harkness, Respondent
Appellate Case No. 2017-001131

Dear Ms. Allen:

Please find attached Respondent's Return to Appellant's Petition For Rehearing and Motion For En Banc Review along with Proof of Service in the above matter. By copy of this letter to Mr. Rob Varnado, I am serving the Appellant with copies of the same. Please let me know if, for any reason, a copy of this filing should be sent to the Court by mail.

With kindest regards, I am

Yours sincerely,

Donald H. Howe

DHH/gbh
Enclosure
cc: Robert B. Varnado, Esquire
Julie Jackson-Bailey, Esquire
Michelle J. Weil, Esquire

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The South Carolina Court of Appeals

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September 09, 2020

Mr. Robert Bratton Varnado, Esquire
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103 Ronnie Boals Boulevard
Mt. Pleasant SC 29465

Re: Glenn Gunnells v. Cathy G. Harkness
Appellate Case No. 2017-001131

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. *See* Rule 219, SCACR.

Very truly yours,

V Claire Allen

CLERK

cc: Donald Higgins Howe, Esquire
Michelle Jennifer Weil, Esquire
Julie C. Jackson-Bailey, Esquire
Alexis Wimberly McCumber, Esquire
The Honorable Roger M. Young, Sr.

The South Carolina Court of Appeals

Glenn Gunnells, Individually and as the Personal Representative of The Estate of Helen B. Gunnells,
Appellant,

v.

Cathy G. Harkness, Respondent.

Appellate Case No. 2017-001131

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Robert Bratton Varnado, Esquire
Donald Higgins Howe, Esquire
Michelle Jennifer Weil, Esquire
Julie C. Jackson-Bailey, Esquire

Alexis Wimberly McCumber, Esquire
The Honorable Roger M. Young, Sr.

FILED
Sep 09 2020