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SC Court of Appeals

Ward v. Ward

2019-002124

Volume III

Pages 395-568

TRANSCRIPT

Given before The Honorable Judge Irvin Condon, at the Charleston County Probate Court, 84 Broad Street, 2nd Floor, Charleston, South Carolina, on Wednesday, April 18th, 2018, commencing at 9:03 o'clock a.m.

1-843-593-4662

A P P E A R A N C E S

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1 THE COURT: Good morning. Please be seated.

2 Good morning, again. My name is Irvin Condon, I'm a
3 probate judge in Charleston and this is a matter of
4 the estate of Stephen Day Ward, Jr., Charleston
5 Probate case number 2016-ES-10-1631. We're here on
6 petition for omitted spouse. Counselor, ready to
7 proceed?

8 MS. BAILEY: Yes, sir.

9 THE COURT: Okay, and I always ask beforehand
10 if there's any way to settle the matter? Or have
11 y'all had a chance to talk or have mediation or any
12 kind of ultimate dispute resolution would work?

13 MS. MCFADDIN: Your honor, anticipating the
14 Judge's comments, I have approached counsel and I've
15 gotten no response.

16 MS. BAILEY: Your honor, we will need to
17 proceed with the hearing today.

18 THE COURT: Okay. Counselor, would you proceed
19 with opening statements or do you want to go ahead
20 with the witnesses?

21 MS. MCFADDIN: We will present our case first,
22 if it pleases the Court. I'm Jane McFaddin, I
23 represent the petitioner in this case, Mary K. Ward,
24 also known as Mary Kimberly Ward.

25 This is in the matter of the estate of Stephen

1 Day Ward, Jr., decedent. I'd just like to make the
2 outset call to the Court's attention. Certain
3 matters of record that have already been
4 uncontested. Matters that are -- since this case has
5 been pending for many months.

6 This is my client, involved in what began
7 October 11th, 2016, when she received notice of the
8 information to the heirs and devisees from the
9 personal representative of the estate of Stephen Day
10 Ward. She was sent information as the surviving
11 spouse of Stephen Day Ward.

12 In response to that notice of information to
13 heirs, the reviewed Probate Court filed and found
14 that -- the Probate Court actually petitioned for
15 probate had been filed from September 29th, 2016,
16 and that references and includes a will bearing the
17 date of April 21st, 2005. Reporting to be the last
18 will and testament of Stephen Day Ward, Jr.

19 Here after, my client filed on January 19th,
20 2017, a petition for omitted spouse share. And just
21 refer to that petition with attached marriage
22 license and certificate. The marriage license is
23 between my client Mary K. Ward, also known as Mary
24 Kimberly Ward, and the decedent, Stephen Day Ward,
25 Jr. That marriage certificate certifies that the

1 parties were married on September 7th, 2013, that
2 the decedent, Stephen Day Ward, Jr., died on
3 September 16th, 2016, and at that time Mary K. Ward
4 was still married to Stephen Ward, and was in fact
5 his surviving spouse.

6 We filed this petition for omitted spouse
7 share, in that the only will petition to be omitted
8 to probate, and omitted to probate, makes no mention
9 of Mary K. Ward.

10 THE COURT: Counsel?

11 MS. BAILEY: Your Honor, my name is Amanda
12 Bailey, and I'm representing the estate, by and
13 through the co-personal representatives, David Ward,
14 Brian Ward, and Stephanie Ward Cibinic.

15 The estate has denied the petition for the
16 omitted spouse. They have petitioned 28622-301
17 Probate Code. The denial of the petition is on the
18 grounds of the two exceptions specifically set forth
19 in the omitted spouse statute. The two exceptions
20 being: one, it appears in the will that the omission
21 is intentional, and two, that the testator provided
22 for the spouse outside of the will.

23 The language of the will that has been
24 admitted to probate and I believe that it is -- it
25 will be an undisputed fact that the April 21st,

1 2005, is the last will and testament of Stephen
2 Ward. The language of that will itself evidences Mr.
3 Ward's intentional omission of Mary Ward as his
4 subsequent, his forth spouse.

5 In addition, extrinsic facts outside of the
6 will will also evidence that intent. The statute
7 contemplates this court considering those extrinsic
8 facts both in the comment section under comp of the
9 statute, as well as, South Carolina law review
10 articles in case law that supplied that statute,
11 including Ingrid Serona.

12 The testimony that will be presented here
13 today both by the drafter of the will and the mutual
14 agreement of wills for Stephan and Nancy Ward by
15 Brett Bluestein. The testimony of friends of Stephen
16 and Nancy Ward, Trish Omstrum, and a testimony of
17 co-personal representatives of the estate, regarding
18 knowledge of the will and knowledge of the intent of
19 Mr. Ward in drafting the will and his estate
20 planning.

21 Stephen Ward, in his last will and testament,
22 incorporates by reference the agreement for mutual
23 wills, which clearly evidences his intent to omit
24 any future spouse following the death of his first
25 spouse. Nancy Ward ---

1 MS. MCFADDIN: I would just object to the
2 counsel's statements as going beyond the facts of
3 the documents themselves. You should make the
4 argument.

5 MS. BAILEY: It's an opening statement.

6 THE COURT: I understand that. Maybe in
7 closing.

8 MS. BAILEY: The extrinsic evidence will also
9 support this evidence of the intent in the will.
10 Your Honor, based on the face of the will, based on
11 the evidence that will be presented today, we're
12 asking that the omitted spouse be denied. Your
13 Honor, with case law also supports the burden of
14 proof in this case is upon the petitioner to show
15 that the omission is unintentional. Your Honor, it
16 will be our position that the petitioner will not be
17 able to maintain that burden of proof in this case.

18 THE COURT: Thank you. Ms. McFaddin, your first
19 witness?

20 MS. MCFADDIN: Your Honor, we would call Ann
21 Nobel Kiley forward to testify.

22 (Ann Noble-Kiley, being duly sworn, testified
23 as follows:)

24 THE COURT: Our acoustics aren't the best, so
25 I'll have you speak up because the court reporter is

1 trying to get everything down. If you could please
2 state your full name for the record?

3 MS. NOBLE-KILEY: Ann Noble-Kiley.

4 THE COURT: If you could spell that for our
5 court reporter.

6 MS. KYLIE: N-O-B-L-E - K-I-L-E-Y.

7 THE COURT: Thank you. If you'll answer
8 questions for counsel. Ms. McFaddin?

9 DIRECT EXAMINATION BY MS. MCFADDIN:

10 Q. Thank you. Ms. Noble-Kiley, are you the daughter of
11 Mary K. Ward, also known as Mary Kimberly Ward?

12 A. I am.

13 Q. And did you attend the wedding of your mother and
14 Stephen Day Ward, Jr.?

15 A. I did.

16 Q. Was that wedding on August 27th, 2013?

17 A. It could -- I'm -- don't remember the exact date,
18 but I was there. In or around that time.

19 Q. And where did that wedding take place?

20 A. It took place on the porch of my mother's villa on
21 Seabrook Island.

22 Q. And that's in Charleston County?

23 A. Yes.

24 Q. Here in South Carolina?

25 A. Yes.

1 Q. The petition for probate in this court pending has
2 the day of death for Stephen Ward as September 16th,
3 2016.

4 A. Uh-huh.

5 Q. Was your mother still married to Mr. Ward at the
6 time of his death?

7 A. Yes.

8 Q. September 16th, 2016?

9 A. Yes.

10 Q. And sometime subsequent to that were you appointed
11 the conservator for your mother, Mary K. Ward?

12 A. That was in process. I'm not sure if I actually was
13 at that point.

14 Q. I'll rephrase the question. Do you currently serve
15 as conservator for your mother?

16 A. Yes, I do.

17 Q. Is that pursuant to an order from the other branch
18 of this court, Charleston County Probate Court?

19 A. Yes.

20 Q. Thank you. Please answer any questions that counsel
21 may have.

22 A. Thank you.

23 THE COURT: Counsel?

24 CROSS EXAMINATION BY MS. BAILEY:

25 Q. Your mother, Mary Ward, and Stephen Ward were

1 married approximately three years?

2 A. Correct.

3 Q. And at the time of the wedding, your mother was
4 approximately 91 years old; is that correct?

5 A. No. I think she was 88.

6 Q. 88? Was she approximately 20 years older than Mr.
7 Ward?

8 A. Approximately.

9 Q. The marriage to Mr. Ward was not her first marriage?

10 A. No.

11 Q. You testified that their wedding took place on
12 Seabrook Island on the porch of your mother's house?

13 A. Uh-huh.

14 Q. Is that a yes?

15 A. Yes.

16 Q. What's the address of that house?

17 A. 1220 Creek Watch.

18 Q. She owns that house?

19 A. She does.

20 Q. I have no further questions. Thank you.

21 THE COURT: Thank you. Do you have any further
22 questions?

23 MS. MCFADDIN: No, Your Honor.

24 THE COURT: You may step down. Thank you.

25 MS. MCFADDIN: Your Honor, we have no further

1 witnesses.

2 THE COURT: Thank you. Counsel?

3 MS. BAILEY: Your Honor, I may motion for an
4 involuntary non suit at this time. We're going to
5 approve and establish the omitted spousal shares to
6 show that the intention -- that the omission of a
7 spouse under the will that has been submitted for
8 probate on April 21st, 2005. The burden of proof is
9 for the petitioner to show that the omission was
10 unintentional. That is set forth -- if I may
11 approach the Court.

12 THE COURT: You may.

13 MS. BAILEY: I've provided the Court a copy of
14 the omitted spouse statute. Including the comments
15 therein as well as the copy of the case of Green vs.
16 Katrell. In the case of Green vs. Katrell, the Court
17 granted a summary judgment motion on the grounds of
18 the petitioner failed to establish any genuine issue
19 of the material fact, or any facts, that would
20 support the omission of the spouse as unintentional.
21 And Your Honor, the evidence that I'll present in
22 this court, as well as the uncontested will, reflect
23 the intentional omission of a future spouse by Mr.
24 Ward, and no evidence has been presented related to
25 that omission being unintentional. We asked for an

1 involuntary non suit today.

2 THE COURT: Counsel, the will indicated the
3 previous spouse. Does it indicate the current spouse
4 in the will?

5 MS. BAILEY: Your Honor, the will incorporates
6 by reference in agreement for mutual wills. The
7 agreement for mutual wills specifically contemplates
8 the omission of future spouses in the event that one
9 spouse predeceases the other.

10 MS. MCFADDIN: Your Honor, I would like ---

11 THE COURT: Thank you, Counselor.

12 MS. BAILEY: Your Honor, there is the
13 incorporation by reference of that agreement from
14 mutual wills is the ability to incorporate that into
15 this will is well establish in case law in South
16 Carolina. That agreement outside of the will has to
17 incorporate or reference specifically and in terms
18 of that agreements by mutual wills are part of this
19 last will and testament.

20 THE COURT: Yeah, but that was with the spouse
21 at that time, wasn't it? Wasn't with the spouse here
22 today, was it?

23 MS. BAILEY: Correct. But the agreement
24 specifically contemplates the circumstance we're
25 here today, which is the spouse that the agreement

1 was with, which was Nancy ---

2 MS. MCFADDIN: Your Honor ---

3 THE COURT: Counselor.

4 MS. BAILEY: The spouse that the agreement for
5 mutual wills was between Stephen Ward and Nancy
6 Ward. The agreement for mutual wills specifically
7 contemplates the circumstance that we're here today,
8 which is that one spouse predeceases the other, in
9 this case, Nancy Ward predeceased Stephen Ward. And
10 in that circumstance the will became irrevocable
11 under the agreement for mutual wills.

12 In addition, the agreement for mutual wills
13 specifically contemplates a subsequent marriage, and
14 in the event of a subsequent marriage, the parties
15 could not change their wills. And so that subsequent
16 marriage, any intentional omission of a future
17 spouse in that agreement for mutual wills that is
18 incorporated by reference into Mr. Ward's will, is
19 evidence of the intent to omit a spouse. And that
20 statute requires simply the appearance under the
21 will of an intent to omit a spouse. And Your Honor,
22 I believe that the will goes above and beyond the
23 appearance of this intent, and specifically sets
24 forth the intent to omit a future spouse.

25 THE COURT: Let me ask you. The case that you

1 handed up, was that directly on point? I didn't get
2 a chance to read it because it was long. Was it on
3 point?

4 MS. BAILEY: Your Honor, it's similar. The
5 difference being that there is an intentional
6 omission and the issue before that court is whether
7 the omission is intentional. And so that's what the
8 support of that case is being utilized for. The
9 facts are similar, not directly on point, but
10 similar.

11 THE COURT: Counselor?

12 MS. MCFADDIN: Yes, Your Honor. I object to the
13 portion of Counsel's statement that was
14 argumentative and outside what had been presented in
15 the record. Numerous records explained to this
16 agreement, agreement for mutual wills and trusts,
17 and I don't think that's been entered into evidence.

18 The will itself, on it's face, merits common
19 sense and reality. The first page in the
20 introductory part of the will says, "I am married to
21 Nancy L. Ward." The date of the will, presuming this
22 or pending signature of the decedent, is April 21st,
23 2005. As a matter of law and as a matter of common
24 sense and the matter of reality, Stephen Ward could
25 not have anticipated omitting Nancy Ward, his

1 surviving -- excuse me, Mary Ward, his surviving
2 spouse from this will because he's not married to
3 her. He couldn't be married to her because he was
4 already married to Nancy Ward. So the will on itself
5 actually proves exactly the opposite of what Counsel
6 is arguing.

7 And as for her reference to the statute, the
8 exceptions on this 22301. First section, sub section
9 one, referring to, "It appears from the will that
10 the omission was intentional." With the language of
11 that directly refers to the omission for his
12 surviving spouse.

13 There's nothing in this will that indicates
14 any reference, nor could it by law or common sense
15 or fact, make any reference to Mary K. Ward. So the
16 will itself specifically proves the opposite of what
17 counsel is arguing.

18 Your Honor, if I may.

19 THE COURT: Yes.

20 MS. MCFADDIN: I also just want to highlight. I
21 was not been provided with these cases before today.
22 But just on the review, I noticed that at least on
23 the one case, Green vs. Katrell, is distinguished
24 from our case because this case is estate planning
25 where the decedent carries specifically provided for

1 the future spouse or the latest spouse. It did not
2 in the documents, testament or documents, I may --
3 which did not happen in this case.

4 So we would hold in the selections any of the
5 rest of it might be argued to be equivocal that that
6 doesn't -- it's not relevant in this case.

7 MS. BAILEY: If I may, Your Honor. I would just
8 like to point the court to Section 60, 2-2-509 of
9 the South Carolina Probate Code which specifically
10 provides for the incorporation by reference of
11 documents into a will.

12 THE COURT: Anywhere carriers in the trust is
13 incorporated by your reference? Is that trust still
14 around since the earlier spouse of the notion?

15 MS. BAILEY: The agreement for mutual will's in
16 the trust. That's correct, Your Honor.

17 THE COURT: Yeah.

18 MS. BAILEY: The agreement for mutual wills is
19 with the previous spouse. It's a joint will and
20 there's case law in South Carolina including all
21 Wyatt 22, Pruitt vs. Moss, which is a 1978 opinion
22 that those joint wills are enforceable and those
23 joint wills do create a contractual obligation on
24 the party to refrain from disposing of any interest
25 once one of the parties has passed. And that's

1 exactly what they agreed upon in that

2 MS. MCFADDIN: Your Honor ---

3 THE COURT: Means that were agreed upon with
4 the current spouse at that time, not this spouse?

5 MS. BAILEY: That is absolutely correct, Your
6 Honor. Absolutely correct.

7 THE COURT: Okay. Is this spouse not a party to
8 that agreement?

9 MS. BAILEY: That spouse is not a party to that
10 agreement, although contemplated by the decedent at
11 the time of drafting it.

12 THE COURT: Let me ask you this, do you have
13 other evidence to show that the alleged and current
14 spouse was provided for outside the will?

15 MS. BAILEY: Yes, we'll be presenting evidence
16 related to provisions that were provided for outside
17 the will, as well as the intent of the decedent in
18 creating the will.

19 THE COURT: I'm going to show the -- at the
20 earlier motion hearing, no one gave any evidence
21 that was presented at that time; is that true?

22 MS. BAILEY: That's true. It was not. So we
23 were working on the face of the documents at the
24 summary judgment motion hearing, and we were
25 preparing to present additional evidence at this

1 final hearing.

2 THE COURT: Counsel have anything else at this
3 time?

4 MS. MCFADDIN: Your Honor, I would just renew
5 my objection because Counsel keeps referring back to
6 the trust and the appearance of it, testifying about
7 documents other than the will, and I don't believe
8 they are before the Court in this action right now.
9 So if she's going to refer to specific clauses and
10 use those for basis of argument. I would say that
11 can not be done until those are -- if she wants to
12 introduce them. All we have before the Court is the
13 will, death certificate, marriage certificate.

14 THE COURT: Ms. Bailey, I'm denying your motion
15 at this time.

16 MS. MCFADDIN: Thank you, Your Honor.

17 THE COURT: Ms. Bailey?

18 MS. BAILEY: I'm sorry, did the petitioner
19 rest? Are they ---

20 THE COURT: Yes.

21 MS. BAILEY: Your Honor, I would call Brett
22 Bluestein to the stand.

23 THE COURT: Good morning.

24 THE WITNESS: How are you doing?

25 (Brett Bluestein, being duly sworn, testified

1 as follows:)

2 THE COURT: Thank you. Please be seated. If you
3 could state your full name for the record?

4 THE WITNESS: Brett Bluestein.

5 DIRECT EXAMINATION BY MS. BAILEY:

6 Q. Thank you, Mr. Bluestein. Can you tell me where you
7 currently live?

8 A. Sullivan's Island, South Carolina.

9 Q. What do you do for a living?

10 A. Wealth Strategist at US Trust.

11 Q. How long have you been a Wealth Strategist at US
12 Trust?

13 A. Just short of ten years.

14 Q. What did you do prior to that?

15 A. I was an attorney practicing estate planning.

16 Q. How long have you been licensed as an attorney?

17 A. Since 2002.

18 Q. Is that in South Carolina?

19 A. Yes.

20 Q. What does a Wealth Strategist do?

21 A. My role as a Wealth Strategist is to educate,
22 strategize clients on tax strategies, financial
23 planning strategies, wealth transfer strategies,
24 income tax planning, charitable planning, things of
25 that nature.

1 Q. As a practicing attorney, prior to your propositions
2 of wealth strategist, you were primarily focused
3 with estate planning?

4 A. Estate planning and corporate.

5 Q. And how long were you private practice?

6 A. Approximately from 2002 until the end of March of
7 2008.

8 Q. And while you were serving in private practice, did
9 you have an opportunity to provide legal services to
10 Stephen Ward and Nancy Ward?

11 A. I did.

12 MS. BAILEY: Your Honor, I would ask at this
13 time that -- I intend to ask questions of Mr.
14 Bluestein related to legal services he provided to
15 Stephen Ward. Your Honor, the personal
16 representatives of the estate are prepared to waive
17 any attorney-client privilege that Mr. Ward may
18 hold.

19 In addition, Mr. Bluestein will be presenting
20 this testimony and with furtherance of the estate
21 planning documents that he drafted on Mr. Ward's
22 behalf. So I would ask the court to permit testimony
23 related to any attorney-client privilege concerns
24 that Mr. Bluestein may have.

25 THE COURT: Ms. McFaddin?

1 MS. MCFADDIN: Your Honor, I don't know that
2 personal representatives can waive attorney-client
3 privilege. In my view, that is a personal privilege
4 and I don't know that personal representatives can
5 wave that. To the extent ---

6 THE COURT: I believe they can. Correct me if
7 I'm wrong, but if Counsel has something to say here
8 today, he can.

9 MS. MCFADDIN: And is that only in the
10 furtherance of the estate as opposed to their own
11 personal interest? We would argue that the personal
12 representatives are also beneficiaries of every --
13 they have a dual interest in this action.

14 THE COURT: Right. Then we get to the Dead
15 Man's Statute.

16 MS. MCFADDIN: Yes, sir.

17 MS. BAILEY: I'm just talking about with his --
18 put forward requirements. I just want to make sure
19 as a licensed attorney, he's protected relating to
20 this testimony.

21 There is some expert's opinion, advisory
22 opinion, in South Carolina that allows an attorney
23 who reasonably believes that the client has
24 implicitly authorized him to disclose a will in
25 order to carry out the terms of that will, to -- in

1 essence, the attorney-client privilege does not
2 apply in that circumstance when the attorney is
3 testifying on the furtherance of the will.

4 In addition, there is ---

5 THE COURT: I don't need the ethical problem to
6 be an issue. Is there any way you can -- vigorous
7 rebuttal against the Dead Man's Statute?

8 MS. BAILEY: Yes, it is Your Honor. I'll point
9 your -- I just want to make sure that the attorney's
10 protected on his ethical obligations. And so we're
11 asking the Court to permit that testimony so that
12 he's protected.

13 With respect to the Dead Man's Statute, we're
14 in a estate case, and I'll put that up for you. That
15 sets out the specifics exceptions to the Dead Man's
16 Statute. It is -- in fact, there's a couple of
17 cases. The case I'm going to hand up to the Court is
18 Hanahan vs. Simpson.

19 In Hanahan vs. Simpson, I will say that it has
20 some negative treatment on matters unrelated to the
21 Dead Man's Statute, but it sets forth the exceptions
22 to the Dead Man's Statute to specifically include --
23 and bear with me a second while I -- let me get my
24 hands to it. Exceptions to the Dead Man's Statute
25 include those who -- page eight of this opinion,

1 under head notes 14, 15, 16, 17, 18, 19, and 20, it
2 sets forth the second exception to the Dead Man's
3 Statute to include testimony of the attorney of a
4 parent of a will is generally inadmissible on the
5 grounds that the attorney is not an interested
6 person.

7 THE COURT: Ms. McFaddin, anything?

8 MS. MCFADDIN: Yes, Your Honor. Depending on
9 what the testimony Counsel intends to elicit from
10 Mr. Bluestein, our objections will continue and they
11 may bear the Dead Man's Statute or there may be
12 under another objection.

13 If all cases regarding the prohibition of
14 these related interactions or conversations with
15 deceased persons, there is also the Court's very
16 clear note that if it is regarding prepared
17 documents, and the documents are available, they
18 speak better than the testimony that might be in
19 question. So if Counsel intends to elicit testimony
20 from Mr. Bluestein, regarding preparation of
21 testament or documents that are available and
22 presented and that we have been provided with the
23 discovery, we probably have no objection. If she
24 intends to elicit testimony regarding verbal
25 conversations with the decedent, we would have

1 objections to that. And depending on what specific
2 question is -- what this specific testimony she
3 intends to elicit.

4 THE COURT: Ms. Bailey, let me ask you this. It
5 may be dismissed, but Mr. Bluestein, I know your
6 attorney might make an exception so you can testify.
7 And I know the estate has some liquid funds, where
8 are those being held?

9 MS. BAILEY: The liquid funds?

10 THE COURT: Right. Are they with Mr. Bluestein?

11 MS. BAILEY: No, Mr. Bluestein is no longer
12 with the McNair Lawfirm. The exception --

13 THE COURT: Not with US Trust?

14 MS. BAILEY: US Trust does not have the money.

15 THE COURT: Well, why don't we just start and
16 we will listen to the objections as we go?

17 MS. BAILEY: Thank you, Your Honor.

18 Q. Mr. Bluestein, did you bring with you a copy of your
19 original file, relating to the services you provided
20 to Stephen and Nancy Ward, today?

21 A. Yes.

22 Q. And have you reviewed a copy of your original file,
23 regarding the services you provided to Stephen and
24 Nancy Ward, in preparation for your testimony today?

25 A. Yes.

1 Q. Based on your review of the file, can you tell me
2 what are estate planning you prepared for Stephen
3 and Nancy Ward?

4 A. Last will and testament for both the Wards, both
5 trust agreements, both the Ward's with Mrs. Ward's
6 being an amended estate to her prior trust
7 agreement, mutual will agreement ---

8 THE COURT: Let me make sure, when you say,
9 "Mrs. Ward", you're talking about?

10 A. I'm sorry, Nancy Ward. Mutual will agreement for
11 Stephen and Nancy Ward, as well as standard
12 incapacity documents for Stephen and Nancy Ward,
13 healthcare power of attorney, living will, financial
14 power attorney.

15 Q. I'm going to hand you a set of documents, which I
16 have pre-marked as Exhibits 1 through 7. I'm going
17 to ask if you would review that set of documents,
18 pre-marked Exhibit Number 1, being labeled the Last
19 Will and Testament of Stephen D. Ward. Pre-marked
20 Exhibit Number 2, being labeled as Nancy Diemer
21 Trust, dated April 28th, 1998. Pre-marked Exhibit
22 Number 3, being the Last Will and Testament of Nancy
23 Diemer Ward. Pre-marked Exhibit Number 5, being the
24 trust agreement of Stephen D. Ward. Excuse me, that
25 was 4, Exhibit Number 4. Pre-marked Exhibit Number

1 5, being the first amendment and restatement of the
2 trust agreement of Nancy Ward. Pre-marked Exhibit
3 Number 6, being the agreement for mutual wills and
4 trusts. And pre-marked Exhibit Number 7, being the
5 deed of distribution, dated August 24th, 2012. Based
6 on these pre-marked exhibits, are you able to
7 identify what documents are contained in your
8 original file, related to the estate planning
9 preparation for Nancy and Stephen Ward?

10 (Will of Stephen Ward marked as Respondent's
11 Exhibit Number 1 for I.D.)

12 (Nancy Diemer Trust marked as Respondent's
13 Exhibit Number 2 for I.D.)

14 (Will of Nancy Ward marked as Respondent's
15 Exhibit Number 3 for I.D.)

16 (Trust Agreement of Stephen Ward marked as
17 Respondent's Exhibit Number 4 for I.D.)

18 (First Amendment of Trust Agreement marked as
19 Respondent's Exhibit Number 5 for I.D.)

20 (Agreement for Mutual Wills marked as
21 Respondent's Exhibit Number 6 for I.D.)

22 (Deed of Distribution marked as Respondent's
23 Exhibit Number 7 for I.D.)

24 A. Yes.

25 Q. Did you prepare Exhibit Number 1, the will of

1 Stephen Ward?

2 A. Yes.

3 Q. Is Exhibit Number 1 the true and accurate Last Will
4 and Testament of Stephen Ward that you prepared?

5 A. Yes.

6 Q. I would move to admit Exhibit Number 1 into evidence
7 at this time.

8 THE COURT: Counsel, any objection?

9 MS. MCFADDIN: Not if it's conforms to the will
10 that's already been admitted to probate, we have no
11 objection.

12 MS. BAILEY: I've provided her a copy.

13 THE COURT: Okay, counsel ---

14 MS. MCFADDIN: Well, but I've not -- I have not
15 ---

16 THE COURT: Clearly exceptions -- if she's got
17 certain documents that she's pre-marked, I guess,
18 provided to you. Do you have any objection to any of
19 the 7?

20 MS. MCFADDIN: But she's just now provided them
21 to me, Your Honor.

22 THE COURT: Got you.

23 MS. MCFADDIN: I would say if this Last Will
24 and Testament, Exhibit 1, is the same as in the
25 court file, which I've reviewed, I have no object to

1 that. We do have objections to Number 2, Number 3,
2 Number 5, as being irrelevant to the case at hand.
3 We have objection to Number 7. That's not included
4 in the disc that was produced to me. Was not
5 included in the file. And then ---

6 THE COURT: Well, let's take it one at a time.
7 Number 1, Counsel, is it the same as in the court
8 file?

9 MS. BAILEY: Yes, Your Honor.

10 MS. MCFADDIN: There is no objection to that.

11 THE COURT: Number 1 then admitted without
12 objection.

13 MS. BAILEY: Okay.

14 Q. Mr. Bluestein, if you would look then at what has
15 been pre-marked as Exhibit Number 2, which is titled
16 "Nancy Diemer Trust", dated April 28th, 1998. Are
17 you familiar with that document?

18 A. Yes, it's the same document that was in my file.

19 Q. Did you prepare that document?

20 A. No.

21 Q. Was that document provided to you by Nancy or
22 Stephen Ward?

23 A. Yes.

24 MS. BAILEY: Your Honor, I would move to admit
25 Exhibit Number 2 into evidence at this time.

1 THE COURT: Counsel, any objections?

2 MS. MCFADDIN: Yes, we object to that on the
3 grounds of relevance. We would also -- I would like
4 to address a question just regarding the omission to
5 the witness. In response to the questions laying the
6 foundation.

7 THE COURT: Counsel, would you allow a
8 question?

9 MS. MCFADDIN: It's just ---

10 MS. BAILEY: No. No, Your Honor. I mean, she
11 can cross examine him, but she's not permitted to --
12 -

13 THE COURT: Then let us hear this and then I'll
14 mark down for identification, and we'll come back to
15 that so she's got a chance to talk.

16 MS. BAILEY: Very good. And, Your Honor, I
17 would include case summary -- objection related to
18 relevance. I would point to Your Honor, that these
19 documents relate the intent of the testator in
20 drafting the will, which is specifically
21 contemplated as evidence that this court would
22 consider in the omit spousal statute.

23 THE COURT: Yeah.

24 Q. Mr. Bluestein, if you would look at Exhibit Number
25 3, the Last Will and Testament of Nancy Diemer Ward.

1 Is that a document that you drafted as part of the
2 services you provided estate planning to Stephen
3 Ward and Nancy Ward?

4 A. Yes.

5 Q. Is that a true and accurate copy of the document you
6 drafted for Nancy Diemer Ward?

7 A. Yes.

8 Q. I would move to admit Exhibit Number 3 into
9 evidence.

10 MS. MCFADDIN: Objection as to relevance. We
11 would also have an another objection as to the
12 preservation of the file and that sort of thing. "I
13 paid you", and the record with the witness having
14 opportunity to that.

15 THE COURT: Yes, ma'am. I guess, Mr. Bluestein,
16 you've had these records or you've had access to
17 them or got them from your former firm?

18 A. Yes, I received them from the former firm.

19 THE COURT: So you've had them? Somebody's had
20 them in safe keeping. They were never just out
21 there?

22 A. That would be my understanding. I received them
23 recently. It's been ten years.

24 THE COURT: You don't see any changes to what
25 you did when you were their attorney?

1 A. Correct.

2 THE COURT: I'm going to allow 2 and 3 in. I
3 believe they are relevant to show us the entire
4 state of mind.

5 Q. Mr. Bluestein, if you would next look at what's been
6 pre-marked as Exhibit Number 4, which is a trust
7 agreement of Stephen D. Ward. Is Exhibit Number 4 a
8 document that you drafted in providing services of
9 estate planning to Nancy Ward and Stephen Ward?

10 A. Yes.

11 Q. Is that a true and accurate copy of the trust
12 agreement of Stephen Ward, that you prepared for his
13 estate planning?

14 A. Yes.

15 Q. We would move to admit Exhibit Number 3 into
16 evidence at this time. Excuse me, Exhibit 4.

17 THE COURT: Counsel, I guess, same objection or
18 ---

19 MS. MCFADDIN: Yes, Your Honor.

20 THE COURT: Okay.

21 MS. MCFADDIN: Just -- yes, Your Honor, same
22 objections.

23 THE COURT: The court's allowing Exhibit Number
24 4 into evidence.

25 Q. Mr. Bluestein, if you would next look into Exhibit

1 Number 5, which is pre-marked as Exhibit 5, and it's
2 labeled, First Amendment and Restatement of Trust
3 Agreement of Nancy L. Ward. Is this the document
4 that's in your original file related to the estate
5 planning services that you provided to Stephen Ward
6 and Nancy Ward?

7 A. Yes.

8 Q. Did you draft this document on behalf of Nancy Ward
9 in her estate planning?

10 A. Yes.

11 Q. Is Exhibit Number 5 a true and accurate copy of the
12 first amendment and restatement of trust agreement
13 of Nancy L. Ward that you drafted in the service of
14 estate planning for Stephen and Nancy Ward?

15 A. Yes.

16 Q. I would move to admit Exhibit Number 5 into evidence
17 at this time.

18 THE COURT: Ms. McFaddin?

19 MS. MCFADDIN: Your Honor, I'm continuing the
20 objection as to relevance.

21 THE COURT: Okay. The Court will overrule that
22 objection and allow this into evidence.

23 Q. Mr. Bluestein, if you would next work at Exhibit
24 Number 6, which has been pre-marked as Exhibit
25 Number 6, it's labeled, The Agreement for Mutual

1 Wills and Trusts, is this the document that's
2 contained in your original file, and your estate
3 planning services that you provided to Stephen and
4 Nancy Ward?

5 A. Yes.

6 Q. Did you draft this document on behalf of Stephen and
7 Nancy Ward in service of their estate?

8 A. Yes.

9 Q. Is what's been pre-marked as Exhibit Number 6, a
10 true and accurate copy of the Agreement for Mutual
11 Wills and Trusts?

12 A. Yes.

13 Q. I move to admit Exhibit Number 6 into evidence at
14 this time.

15 THE COURT: Counsel, the same objection?

16 MS. MCFADDIN: Your Honor, I have no objection
17 to that as it pertains to Stephen Ward.

18 THE COURT: The Court will allow the entire
19 document in, and consider it evidence.

20 MS. BAILEY: Your Honor, with respect to
21 Exhibit Number 7, I would ask that the court admit
22 that as it's a public record. Without testimony
23 itself authenticating -- Exhibit Number 7 is a deed
24 of distribution, which has been reported with the
25 probate court and with the register means and

1 conveyances in Charleston County.

2 THE COURT: And refresh me this, the deed from
3 the estate, related to real estate?

4 MS. BAILEY: Yes, Your Honor. This is the deed
5 of distribution from the estate of Nancy Ward, to
6 the will and trust, to Nancy Ward's will and trust
7 under the first amendment and restatement of trust
8 agreement of Nancy Ward. Over one half interest of
9 the real estate.

10 THE COURT: Okay, this is from the estate of
11 Nancy Ward?

12 MS. BAILEY: Yes, Your Honor, and I would also
13 note that the estate of Nancy Ward was programmed
14 in, and registered in this probate court under Case
15 Number 2011-ES-10-965.

16 THE COURT: Counsel McFadden, do you have any
17 objections?

18 MS. MCFADDIN: Your Honor, we have no objection
19 to that. Also, just acknowledging though, that Mr.
20 Bluestein had nothing to do with this deed of
21 distribution, but we have no objection.

22 THE COURT: Exhibit Number 7 has been allowed
23 into evidence.

24 Q. In addition to the agreement for mutual wills, the
25 trust agreement for Stephen Ward, the first

1 amendment and restatement of trust agreement for
2 Nancy Ward, and the last will and testament for
3 Stephen and Nancy Ward, did you also prepare powers
4 of attorney for Stephen and Nancy Ward?

5 A. Yes.

6 Q. What type of powers of attorney did you prepare?

7 A. Financial powers of attorney, healthcare powers of
8 attorney, and also prepared a living will and
9 declaration of desire for nature death.

10 Q. Mr. Bluestein, Exhibit Number 6 is the agreement for
11 mutual wills and trusts. Can you tell me and the
12 court what an Agreement for Mutual Wills is?

13 A. An Agreement for Mutual Wills and Trusts was one
14 that I used to practice in very limited
15 circumstances. As a general theme, the only time
16 that was used was in a situation where there's a
17 husband and wife, often times, an older couple, and
18 always a couple with children from a prior marriage
19 -- prior marriage and so forth, where the ultimate
20 concern was what was going to happen after the death
21 of the first spouse, in respect to individual
22 husband and wife's collective assets. So it was used
23 in very rare circumstances. Also, my practice in a
24 situation where they were concerned, they would
25 protect their assets with the ultimate distribution

1 based on what was provided in their last will and
2 testament or mutual trust.

3 Q. Did this agreement for mutual wills and trust
4 between Stephen and Nancy Ward, did it contemplate
5 that intent that you would generally utilize an
6 agreement for mutual wills and trusts for?

7 MS. MCFADDIN: Objection, Your Honor, to the
8 form of the question. It calls for speculation on
9 part of the witness. She's asking, you know, three
10 step connection whether he knows anything about
11 intent and whether a document anticipated intent. I
12 would object.

13 THE COURT: Ms. Bailey, I'll just ask you to
14 rephrase and take it one at a time.

15 MS. BAILEY: Sure.

16 Q. Did you draft the agreement for mutual wills and
17 trusts based on your clients, Stephen and Nancy
18 Ward's, intent related to their estate planning?

19 MS. MCFADDIN: We object, Your Honor, also
20 connects questions.

21 THE COURT: Your objection to the question is
22 what?

23 MS. MCFADDIN: Is that it calls for
24 speculation. It calls for a response outside the
25 knowledge of this witness.

1 THE COURT: He may have the knowledge. Ms.
2 Bailey, just ask a more direct question.

3 MS. BAILEY: Sure.

4 Q. What was Stephen Ward's desire related to his estate
5 planning? And Nancy Ward's desire related to their
6 estate planning, that lead you to prepare these
7 documents in your file that you brought with you
8 today?

9 MS. MCFADDIN: Objection, Your Honor, calls for
10 speculation on part of the witness.

11 THE COURT: Okay. I overrule it and allow the
12 question. Go ahead.

13 A. I want to make sure that, I guess, it's -- it's okay
14 for me based in attorney-client privilege today.
15 You're okay with that?

16 THE COURT: My understanding -- well, the Court
17 here is fine with it. You've got -- that's between
18 you and your clients. And your client at that time
19 was Stephen Ward and Mary Ward. I take that back ---

20 MS. BAILEY: Nancy Ward.

21 THE COURT: Nancy Ward, excuse me. And personal
22 representatives. Under my understanding is that
23 they're going to wave that attorney-client
24 privilege. If you've got their okay, then I think
25 you're protected, but I'm not the ethic's counsel

1 either. I would be there to support you.

2 MS. BAILEY: Your Honor, if I may, I would have
3 the personal representatives of the estate stand up
4 and assert for the record that they waive their ---

5 MS. MCFADDIN: No, Your Honor, they can't
6 testify from behind the bar.

7 MS. BAILEY: I just want Mr. Bluestein to be
8 comfortable with his testimony, Your Honor.

9 THE COURT: Mr. Bluestein, I think you're fine.
10 As long as you're approved, I'm okay with it.

11 A. Okay.

12 THE COURT: I approve, but I'm not the ethics
13 counsel and that's -- the only person that's going
14 to complain would be the clients. And if you've met
15 with them before, and you got their assurance, then
16 you're fine.

17 A. Can you ask the question one more time?

18 Q. Certainly. Did you meet with Stephen Ward and Nancy
19 Ward in preparation of the estate planning documents
20 that you prepared for them, on their behalf?

21 A. Yes.

22 Q. What did they express to you they desired to do,
23 related to their estate plan and contemplation of
24 the documents, that you prepared on their behalf?

25 MS. MCFADDIN: Objection, Your Honor, as to

1 hearsay. It's specifically provided by the Dead
2 Man's Statute and it intends to testify as to
3 utterances from the decedent, or the deceased for
4 the spouse.

5 MS. BAILEY: Your Honor, the Dead Man's Statute
6 specifically accepts testimony from the drafter of
7 the will. In addition, Rule 8033 of the South
8 Carolina Rules of Evidence permits the same type of
9 testimony, as an exception to the hearsay rule.

10 THE COURT: Counsel, Ms. McFadden, she's cited
11 this one case, Hanahan vs. Simpson. In the case,
12 testimony of the attorney preparing the will is
13 generally held admissible on the grounds that the
14 attorney is not an interested person.

15 MS. MCFADDIN: Well, Your Honor, I would also
16 object as to grounds of relevance. As it has to do
17 with the issue at hand. This witness has testified -
18 - well, I would have to ask further questions about
19 that, but in his limited testimony, he's not
20 established a basis of relevance to the issue at
21 hand, which is the omitted spouse, Mary Ward, and
22 the decedent's death in 2016.

23 THE COURT: I understand. Counsel, proceed.

24 MS. BAILEY: Thank you, Your Honor.

25 Q. I'm sorry, do I need to restate the question?

1 A. Sure. One more time.

2 Q. Did Mr. Ward, Stephen Ward, did he attempt to
3 express his desire relating to the documents that
4 you drafted, that you brought here today, including
5 the agreement for mutual wills and trusts?

6 A. I would not have drafted mutual will and trust
7 agreement, nor offered it up to my clients, unless
8 it was crystal clear that their intent was to have
9 that be enforced, and the wills that handled both
10 trust agreements, enforced. I wouldn't even
11 suggested that mutual will agreement, except at a
12 variable length situation where a client's adamant
13 that they were very concerned about a whole host of
14 situations after the first spouse dies.

15 Q. And that whole host of situations, would that have
16 been included a subsequent marriage by the surviving
17 spouse?

18 A. Yes.

19 Q. And the intent of the Agreement for Mutual Wills and
20 Trusts that you drafted, was in part to address the
21 concern of the Wards, related to the circumstance of
22 the death of one of them, and subsequent remarriage
23 of the surviving spouse?

24 MS. MCFADDIN: Objection, Your Honor. Leading a
25 question. She's only read examination in years.

1 She's giving the answer to the witness.

2 THE COURT: Sustained.

3 MS. BAILEY: I can rephrase, Your Honor.

4 THE COURT: Thank you.

5 Q. Did the Agreement for Mutual Wills address the
6 circumstance in which there would be a surviving
7 spouse and subsequent remarriage?

8 A. Yes.

9 Q. How did that Agreement for Mutual Wills address that
10 circumstance? And I'll refer you to Exhibit Number
11 5.

12 MS. MCFADDIN: Your Honor, we would continue
13 the objection on leading questions.

14 THE COURT: Let me ask, Counsel. I don't
15 believe that you disagree on the facts; do you?

16 MS. BAILEY: No, Your Honor.

17 MS. MCFADDIN: Like I said, I had no objection
18 to just presenting and to introduce the documents
19 here. No objection to that. We have objection as to
20 going beyond that.

21 THE COURT: Exhibit 6, you mean? As opposed to
22 Exhibit 5?

23 MS. BAILEY: Yes.

24 Q. With respect to Mr. Ward's desires, related to his
25 will, what is the effect upon one spouse's death?

1 Based on the agreement for mutual wills in Exhibit
2 Number 5.

3 A. A particular provision you were referencing?

4 Q. Certainly. We're looking at Exhibit Number 6, excuse
5 me. If you look specifically at Section 2.6.

6 A. Can you read -- can you ask your question again,
7 please?

8 Q. Sure. The Agreement for Mutual Wills, was it
9 intended to reflect Mr. Ward's and Mrs. Ward's
10 intent, related to their desires after a spouse, one
11 of them, died?

12 A. Yes.

13 Q. What does Section 2.6 of the agreement for mutual
14 wills provide?

15 A. It's provides that the mutual will agreement will
16 not be altered by acts subsequent to entered into
17 the mutual will agreement, except what's agreed upon
18 between both the parties.

19 Q. And was that consistent with the intent of Mr.
20 Ward's, Stephen Ward, and Nancy Ward, in creating
21 their estate planning documents?

22 A. Yes.

23 Q. With respect to the intent that Stephen Ward and
24 Nancy Ward pressed you into creating their estate
25 planning documents, did they express any desire,

1 related to protection of their assets, following the
2 death of one of the spouses?

3 A. Again, I would not have offered this agreement to
4 mutual clients unless that was exactly what they
5 were wanting to do. Protecting against distribution
6 of their assets after the death of the first spouse.

7 Q. Pursuant to the estate planning documents that you
8 prepared, how were the assets to transfer in the
9 event that Nancy predeceased Stephen?

10 A. In the event that Nancy predeceased Stephen, that
11 there was a distribution of a financial account to
12 her two children, and the balance of the assets went
13 to a family trust under her amended trust agreement.

14 Q. Pursuant to the estate planning documents, how were
15 the assets to transfer in the event Stephen
16 predeceased Nancy?

17 A. If Stephen predeceased Nancy, then he also had a
18 financial account, separate financial account, that
19 was going to go to his three oldest children, and
20 the balance of the estate was going to go into a --
21 well, into a family trust. Potentially a marital
22 trust, but based on, I'm assuming, beside the
23 estate, as state tax law would have applied, it
24 would have gone just to the family trust. Not a
25 martial trust provision.

1 Q. Pursuant to the agreement for mutual wills and
2 trusts in Exhibit Number 6, if you would look at
3 Section 3, on page two of that agreement. It says
4 that, "The parties mutually covenant with each other
5 and agree that", Section 3.1, "While both Husband
6 and Wife are living, except by amendment,
7 modification or revocation of this Agreement as
8 hereinafter provided, neither he nor she shall in
9 any manner amend," excuse me, "alter, amend, or
10 revocation his or her Will or Trust, including
11 amendment by codicil, alteration by defacement, or
12 revocation by destruction." Do you see that?

13 A. Yes.

14 Q. And is that provision consistent with the intent of
15 Stephen Ward and Nancy Ward, as expressed to you?

16 A. Yes, and again, I would not have recommended this
17 mutual will agreement unless it was crystal clear
18 that their intent, that neither spouse amend their
19 documents, in the event of death of the first
20 spouse.

21 Q. And that would be the same for Section 3.2? 3.2
22 reads, "Upon the Predecessor's death, this Agreement
23 and the Survivor's Will and Trust shall become
24 irrevocable and the Survivor shall have no right or
25 power to thereafter alter, amend or revoke this

1 Agreement or his or her Will or Trust."

2 A. Yes.

3 Q. At any point in time, did either Stephen Ward or
4 Nancy Ward come back to you to amend, modify, or
5 alter any of these estate planning documents?

6 A. No.

7 Q. If you would look on page three of the agreement for
8 mutual wills, it says, "Negative Covenants", do you
9 see that?

10 A. Yes.

11 Q. And Section 5.1, excuse me, it reads, "The Parties
12 mutually covenant with each other and agree that if
13 he or she is the survivor of them, he or she will to
14 create, commit, permit, or suffer to exist", in
15 Section 5.1, "Any condition that would alter the
16 plan of distribution contained in his or her Will or
17 Trust annexed hereto", you see that?

18 A. Yes.

19 Q. And was that consistent with the intent of Stephen
20 Ward and Nancy Ward in your prepping of these estate
21 planning documents on their behalf?

22 A. Yes, once again, I would not have suggested this as
23 a document to clients unless they have clear
24 intention.

25 Q. If you would then turn to the last will and

1 testament of Stephen D. Ward, which is Exhibit
2 Number 1.

3 A. There.

4 Q. Okay. And Exhibit Number 1 lists Stephen Ward's five
5 living children: Stephanie L. Ward, David D. Ward,
6 Brian C. Ward, Stephanie A., excuse me, Stephen A.
7 Ward, and Jeremy W. Ward. Was that consistent with
8 the children that Mr. Ward provided you, no other
9 settlement in preparation of these documents?

10 A. Yes, that would come from Stephen and Nancy Ward,
11 yes.

12 Q. Looking on that last little testament, it lists two
13 living step children, Elizabeth Diemer and Garrett
14 Diemer; is that correct?

15 A. Yes, that would also be given to me by Stephen and
16 Nancy Ward.

17 Q. Based on this last will and testament, what happens
18 with the personal and household effects of Stephen
19 Ward, upon his death?

20 A. It first provides for the personal property, the --
21 to dispose of the property. Pursuant probate code,
22 and in default on the code, it provides for property
23 to go to the surviving spouse, if she survives. If
24 surviving spouse, Nancy Ward, did not survive, then
25 it's split a couple ways depending on whether the

1 personal property was acquired prior to the
2 marriage, or acquired during Stephen and Nancy's
3 marriage.

4 If it's acquired prior to marriage, any of
5 Stephen's property would go to his oldest children.
6 If it was acquired during the marriage, it would go
7 to Stephen's three oldest children and Nancy's two
8 children.

9 Q. What happens to the assets other than what's
10 provided for? I'll refer you to the last will and
11 trust.

12 A. Yes. They formed wills that cross over to Mr. Ward's
13 revokable trust agreement.

14 Q. Do you know what the revokable trust agreement
15 provided for, with respect to Mr. Ward's assests?
16 That's Exhibit Number 4.

17 A. Yes. Would you like me to recite the what they
18 provide for?

19 Q. Who is the settler under Exhibit Number 4? For
20 Stephen's will, excuse me, Stephen's trust
21 agreement?

22 A. Stephen would be the settler in his own trust.

23 Q. Under that trust agreement, did Stephen have the
24 right to amend it during his lifetime?

25 A. Yes.

1 Q. What happens after Stephen passes away, with respect
2 to this trust agreement?

3 A. Well, let me clarify my earlier statement. Stephen
4 had the ability to omit a revokable trust as would
5 be typical, however, it is subject to the agreement
6 for mutual wills and trusts, as provided in Article
7 V, as well as incorporated by reference in Article
8 XXV.

9 At his death, the property, based on fact that
10 he survived Nancy Ward, is a Charles Schwab account
11 that was to go outright to his three oldest
12 children. Then the balance of his estate, if he
13 survived Nancy, was to go to the family trust, which
14 was then to distribute out to Stephen's three oldest
15 children, and Nancy's two children.

16 Q. If you then look at Exhibit Number 5, which is the
17 first amendment and restatement of trust agreement
18 of Nancy Ward. Who is the settler of that trust
19 agreement?

20 A. Nancy Ward.

21 Q. Did Nancy have the right to amend this first
22 amendment and restatement of trust agreement during
23 her lifetime?

24 A. Once again, Article -- similar to Mr. -- Mr. Ward,
25 Article V and Article XIII, you're allowed to amend

1 subject to those two articles, which discuss and
2 incorporates prior to that agreement for mutual
3 wills and trusts.

4 Q. What would occur on the trust agreement if -- Nancy
5 Ward upon her death?

6 A. Since she -- she predeceased Mr. Ward, she had
7 specific distribution of a Charles Schwab account as
8 going to go to her children, her two children in
9 equal shares. Balance of her estate provided for the
10 creation of any marital trust and a family trust,
11 based on her assets, based on tax law in effect at
12 that point. Martial trust, specifically not funded.
13 Family trust would have been funded. Family trust
14 provided all income to the husband, Mr. Ward.
15 Discretionary payments to the principle for Mr.
16 Ward, and then at Mr. Ward's death, survivor of Mr.
17 Stephen Ward, the family trust gets divided and
18 distributed outright, free of trust, to Mr. Ward's
19 three oldest children and Mrs. Ward's two children.

20 Q. If you would turn to Exhibit Number 7, which is the
21 Deed of Distribution from Stephen D. Ward, trustee
22 of the Nancy L. Ward, excuse me, Stephen D. Ward as
23 personal representative to Stephen D. Ward as
24 trustee of the Nancy L. Ward family trust, under the
25 first amendment and restatement of trust agreement

1 of Nancy L. Ward. Was that Deed of Distribution
2 consistent with the terms of the Amended Trust
3 agreement of Nancy Ward, Exhibit 5?

4 A. I didn't prepare Exhibit Number 7. I was no longer
5 an attorney at that point, so that was prepared by
6 somebody else. I haven't reviewed it to see if it --

7 -

8 MS. MCFADDIN: Your Honor, we would object to
9 the testimony ---

10 THE COURT: Sustained, Ms. McFaddin.

11 Q. Was it Stephen Ward and Nancy Ward's intent in
12 drafting the Agreement for Mutual Wills, their last
13 Wills and Testament, and their trust agreements that
14 you prepared on their behalf, to omit any subsequent
15 spouse from inheriting from the surviving spouse's
16 estate?

17 MS. MCFADDIN: We would renew our objection,
18 Your Honor. It calls for speculation on part of the
19 witness. All of these documents speak for
20 themselves. The testimony is not required.
21 Therefore, is beyond the prope of this witness.

22 THE COURT: Overruled. I'm going to allow the
23 question. You may answer.

24 A. Once again, I would not have suggested this document
25 and would not have offered it up to the clients

1 unless they were crystal clear in that being their -
2 what their intention wanting to -- such as that.

3 Q. If you would bear with my just one moment and look
4 at the Exhibit Number 1, which is the Will of
5 Stephen Ward. Specifically at Item XIII. What does
6 Item XIII provide for in the Will of Stephen Ward?

7 A. It provides that the Agreement for Mutual Wills and
8 Trusts with Stephen and Nancy Ward was incorporated
9 by reference into this Last Will and Testament.

10 Q. Then if you would look for me on Exhibit Number 3,
11 which is the Last Will and Testament of Nancy Ward,
12 and also look at Item XIII of Exhibit Number 3, and
13 tell me what that provides for?

14 A. It provides the Agreement for Mutual Wills and
15 Trusts between Stephen and Nancy Ward was
16 incorporated by reference into Mrs. Ward's Last Will
17 and Testament.

18 Q. Are you aware of any amendments, modifications, or
19 ramifications of any of the estate planning
20 documents that you prepared for Stephen and Nancy
21 Ward, which have been marked as Exhibits 1, 3, 4, 5,
22 and 6, into evidence?

23 A. I am not aware of any amendments.

24 MS. BAILEY: Your Honor, nothing further at
25 this time.

1 THE COURT: Thank you. Counsel woman, you can
2 question at this time.

3 CROSS EXAMINATION BY MS. MCFADDIN:

4 Q. Mr. Bluestein, thank you very much for your time
5 here today. So all of these documents that have been
6 marked as Exhibits 1 through 6 -- do you have a copy
7 there with you?

8 A. Yes, I do.

9 Q. All right. So all of these, 1 through 6, you
10 prepared; is that correct? While you were practicing
11 as an attorney?

12 A. I prepared Exhibit 1, Exhibit 3, Exhibit 4, Exhibit
13 5, and Exhibit 6.

14 Q. The dates on all -- the Will that was submitted for
15 probate is dated April 21st, 2005. So were all of
16 these documents prepared around that time same time?
17 April of 2005? The ones that you prepared, 1, 3, 4,
18 5, and 6?

19 A. Yes.

20 Q. I believe you said in response to -- in your
21 testimony that at some time subsequent to 2005, you
22 left the active practice of law; is that correct?

23 A. Correct.

24 Q. When would that be?

25 A. My last day as an active lawyer was March 30th,

1 2008.

2 Q. So between April 2005 and March 30th, 2008, did you
3 have occasion to meet, as a lawyer, again with
4 Stephen Ward?

5 A. I do not believe so.

6 Q. Is there sufficient question that you would need to
7 consol any notes or any other information to confirm
8 that?

9 A. Based on my file that I received recently and
10 reviewed, there were no substitute meetings.

11 Q. What firm were you working at in 2005 when you
12 prepared these?

13 A. McNair Law Firm.

14 Q. Did you remain with McNair Law Firm until you left
15 the active practice in March of 2008?

16 A. Yes.

17 Q. So when you say the file that you received, that's
18 your file while you were working at the McNair Law
19 Firm?

20 A. Yes.

21 Q. To your knowledge, until the time you left in March
22 of 2008, was there no further contact with Stephen
23 Ward, as an attorney?

24 A. Correct.

25 Q. After you left the McNair firm in 2008, what

1 happened to Stephen Ward's file?

2 A. All my files, when I left the McNair Law Firm, were
3 given to the managing partner to file according to
4 their sources.

5 Q. So is it your understanding that Stephen Ward's file
6 was put in storage and was not being actively
7 managed by another attorney at the McNair Law Firm?

8 MS. BAILEY: Object to the form. He wouldn't
9 know what happened in the firm after he left.

10 THE COURT: Sustained. You can ask another way.

11 Q. Do you know what happened to the file after you left
12 in 2008?

13 A. As I just said, I had given all my files to the
14 managing partner. I was not going on to practice law
15 in another firm or on my own, so there would have
16 been no reason for me -- other than to turn them
17 over to the managing partner to maintain them as
18 they do with other clients.

19 Q. Did you have any ongoing clients at that time that
20 were transferred to any other practicing attorneys
21 with the McNair Law Firm? Other than giving
22 everything to the managing partner? Did you give any
23 cases or clients that would have been transferred to
24 a specific lawyer at the McNair firm?

25 A. I did my best over the last -- I gave adequate

1 notice. I did my best to close as many files as
2 possible. I believe there were maybe a couple of
3 files that were still ongoing.

4 Q. But this, Stephen Ward, you did not -- did you
5 consider him to be an active client at that time?
6 Was he still ongoing?

7 A. Not at the time. I left the firm in 2008. No.

8 Q. At any time, from the time you left the firm until
9 Mr. Ward's death in September of 2016, did Stephen
10 Ward contact you for any reason regarding legal
11 advising or legal work from his file with the McNair
12 firm?

13 A. Not to my knowledge.

14 Q. Did anyone at the McNair firm, before this action,
15 subpoenaed you to testify here today, contact you
16 prior to September 16th, 2016, regarding Stephen
17 Ward and Mrs. Ward?

18 A. No.

19 Q. With my continuing objection, Mr. Bluestein, you
20 testified several times regarding these documents.
21 Several times -- that you prepared -- that it was
22 crystal clear to you the intent of Stephen Ward.
23 Stephen Ward's intent was crystal clear to you when
24 you were preparing these documents for him; is that
25 correct?

1 A. Correct.

2 Q. Would it be correct to assume that you came to that
3 conclusion, one that was crystal clear to you, by
4 conversations with Mr. Ward, prior to his signing of
5 it?

6 A. That's correct.

7 Q. Did any time after he signed them, did you have any
8 discussions or consultations with Mr. Ward regarding
9 questions? Or did anything else come up with those
10 documents after the whole group of them were
11 executed?

12 A. Not to my knowledge, no. Not that I recall.

13 Q. So it would have been your practice at that time
14 that you would not have drafted any kind of
15 documents unless you were crystal clear as to the
16 intent of the clients sitting before you? So I'm
17 assuming from that, you felt comfortable that you
18 went over all the details supplied to you. They're
19 just here in these documents. You went over the
20 details in this with your clients, with Stephen
21 Ward?

22 A. Yes.

23 Q. I want to ask you to -- continuing our objection --
24 -- well, before I get to that. Did you know when
25 Nancy Ward died?

1 A. No.

2 Q. So you weren't aware of her death?

3 A. That's correct.

4 Q. Were you aware of Stephen Ward's remarriage to Mary
5 K. Ward?

6 A. No.

7 Q. Were you aware of Stephen Ward's death subsequently?

8 A. No.

9 Q. As I said, subject to our continuing objection, I'd
10 ask you to look to what Counsel has presented as
11 Exhibit 6. It's labeled, "Agreement for Mutual Wills
12 and Trusts", page two, Section 4.2. I'd ask if you
13 would read Section 4.2, 4.2.1, and 4.2.2, if you
14 would read it for the record, please?

15 A. "If he or she remarries after the death of the
16 Predecessor, he or she will: Thereafter ratify his
17 or her Will and Trust in the form and with the
18 provisions contained in his or her Will and Trust
19 annexed hereto; and As a condition of such re-
20 marriage, require any person he or she re-marries to
21 legally and unconditionally waive his or her right
22 to an Elective Share in the Property provided to
23 them under S.C. Code Ann. Section 62-2-201 (1976, as
24 amended from time to time)."

25 Q. Did you provide and prepare any such gratification

1 or waiver for Stephen Ward after 2005?

2 A. No.

3 Q. I'd also ask you to look on page three, Section VI,
4 subsection 7.1, if you would read that, please? This
5 will be in Exhibit 6. Provision 7.1.

6 A. "Governing Law. This Agreement is made and shall be
7 construed under and in accordance with the laws of
8 the State of South Carolina."

9 Q. So those two provisions, 4.2 and 7.1, those
10 provisions would have been included in all of these
11 documents and all of these provisions that you went
12 over with Stephen Ward? And which consultation lead
13 to the clear opinion in your mind as a practicing
14 lawyer -- you were crystal clear of the intent
15 before he signed these documents?

16 A. That's correct.

17 Q. Specifically as to that provision, 7.1 ---

18 THE COURT: Counsel, I'm sure you have an extra
19 copy for the Court?

20 MS. MCFADDIN: Oh, I thought Counsel had given
21 you the Exhibits.

22 MS. BAILEY: He's got the copy of the Exhibit,
23 the marked Exhibits. Your Honor, I think he may have
24 your copy.

25 A. I've got a separate copy as well.

1 THE COURT: Thank you.

2 Q. I'm going to refer you to Exhibit 6, Agreement for
3 Mutual Wills and Trust, Provision 7.1, which you
4 just read for the record. "This Agreement is made
5 and shall be construed under and in accordance with
6 the laws of the State of South Carolina." So, does
7 that mean that the same thing in the laws of the
8 State of South Carolina that conflicts or prohibits
9 or modified or restricts anything at all in these
10 documents that acknowledges that South Carolina law
11 it's in accordance with; is that correct?

12 MS. BAILEY: Object to the question. It calls
13 for a legal opinion. This is the courts decision.

14 MS. MCFADDIN: He's the lawyer.

15 THE COURT: Overruled, and I'll allow your
16 question.

17 A. It's been a long time since I've practiced law, and
18 I did not research any case laws surrounding this
19 hearing today.

20 Q. No, I'm not asking you about right now. I'm asking
21 at the time when Stephen Ward signed this document,
22 that you prepared for him in 2005, when you were
23 crystal clear, going over with him, as to his
24 intent. Is that meaning that he signed and agreed to
25 the South Carolina law governance in these

1 documents?

2 A. Yes, the South Carolina law -- clearly says here
3 South Carolina law would go in the documents. The
4 intent was put in the documents.

5 MS. MCFADDIN: Your Honor, may I have just a
6 moment, please?

7 THE COURT: Sure. Take your time. Counsel, want
8 to take a short break or continue on?

9 MS. BAILEY: If you don't mind, we want to see
10 if we can go ahead and finish this witness.

11 THE COURT: Okay.

12 Q. Mr. Bluestein, we spoke yesterday regarding your
13 testimony today, when I called you; is that correct?

14 A. Briefly.

15 Q. Yes. At that time I believe when I asked you about -
16

17 MS. BAILEY: Your Honor, she can ask the
18 questions, she can't talk about what they discussed
19 yesterday.

20 THE COURT: Yes, Ms. McFaddin, let's go ahead
21 and ask. Do you have a question?

22 MS. MCFADDIN: Yes, Your Honor.

23 Q. Mr. Bluestein, are you stating today that -- well,
24 let me ask a question. When did you -- you already
25 testified you did not have Stephen Ward's file after

1 2008, but then you stated today that you'd reviewed
2 your formal file of Stephen Ward. So my question is,
3 when did you obtain, and how did you obtain, Stephen
4 Ward's file?

5 A. I don't know that my testimony was that I did not
6 have the file after that date. I think I did take it
7 with me after I left the practice of law, so I have
8 had it after that date, but it was provided to me
9 recently and I've reviewed it. I received it, I
10 believe, two weeks ago.

11 Q. Oh, all right. So from that time, two weeks ago from
12 today, from 2008 until that time when you reviewed
13 the filings, did you have them?

14 A. No.

15 Q. And during that interim time, to your knowledge, was
16 it maintained by your previous law firm, McNair Law
17 Firm?

18 A. That's correct.

19 Q. By the terms of the agreement here in the testament
20 documents that you drafted for Stephen Ward, if his
21 wife at that time, who was doing mutual agreements,
22 Nancy Ward, dies first, and he was to re-marry, do
23 these documents require him to ratify his previous
24 Will upon his marriage to a subsequent wife?

25 A. Section 4.2.1 of the Mutual Will Agreement provides

1 survival of ratifying the document, yes.

2 Q. And that's not a voluntary thing? The language in
3 4.2, it says, "he or she will"; is that correct?

4 A. That is correct.

5 Q. And so that's a mandatory thing to continue the
6 effectiveness of this Will?

7 MS. BAILEY: Object to the form.

8 THE COURT: Overruled.

9 MS. BAILEY: Your Honor, misstating the
10 contents of the document, that's my objection.

11 THE COURT: Okay. Ms. McFaddin, can you please
12 restate your question?

13 MS. MCFADDIN: The only thing I stated from the
14 document is that actual language, quoting "he or she
15 will", and I asked Mr. Bluestein, as the attorney
16 preparing these documents, would that mean that
17 4.2.1 and 4.2.2, are required by the surviving of
18 these two spouses, Nancy Ward and Stephen Ward, from
19 the re-marriage of either of them to continue the
20 effectiveness of these agreements.

21 MS. BAILEY: Your Honor, same objection.
22 There's nothing in these covenants that effects the
23 effectiveness of the agreements. It's whether or not
24 there was either a breach or not, and so there's a
25 misstatement of what the agreement provides for in

1 that question, and that's my objection.

2 THE COURT: Noted. I'm allowing the question.

3 A. Can you repeat the question?

4 Q. Yes. 4.2, the language, "he or she will", is that
5 provided that your drafting of these documents for
6 your clients, Stephen Ward, was that mandatory as
7 opposed to voluntary? This agreement to do upon this
8 re-marriage if he survived Nancy Ward?

9 A. Yes. As stated here, it says that the survivor will,
10 "ratify his or her Will and Trust", 4.2.1.

11 Q. Thank you.

12 MS. MCFADDIN: We have no further questions,
13 Your Honor.

14 THE COURT: Thank you. Counsel, any further
15 questions?

16 MS. BAILEY: Yes, just a couple re-direct.

17 RE-DIRECT EXAMINATION BY MS. BAILEY:

18 Q. Was the file you obtained, your original file for
19 Stephen Ward and Nancy Ward, when you received it
20 within the last two or three weeks, had it been
21 altered, amended, modified, in any way, shape, or
22 form?

23 A. Not to my knowledge.

24 Q. With respect to the Agreement for Mutual Wills,
25 Section IV, provides for the survivor's affirmative

1 covenants. Is there a similar section that provides
2 for negative covenants by the parties?

3 A. Yes, there is in IV, affirmative covenants, as past
4 counsel just -- just inquired, just want to clarify
5 that.

6 It does require ratification, but my answer
7 had nothing to do with the effectiveness of the
8 document based on whether or not it was ratified.
9 Just wanted to make sure that's clear. The answer to
10 my question. Part one, what I answered to that based
11 on this Agreement it had to be ratified. It didn't
12 have to be for the effectiveness.

13 So yes, there is negative covenants in Section
14 V.

15 Q. The negative covenants, do the negative covenants
16 require affirmative action by either Nancy Ward or
17 Stephen Ward?

18 A. Yes, as far as agreeing not to take certain actions.

19 Q. And so, with respect to the affirmative covenants,
20 there's an agreement to take certain actions, and
21 with respect to the negative covenants, there's an
22 agreement not to take certain actions; correct?

23 A. Correct.

24 Q. If you look at Section 7.4, in the Agreement for
25 Mutual Wills, would you tell me what 7.4 provides

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for?

A. "Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if such exhibit were set forth in full and at length every time it is referred to or otherwise mentioned." It's referring to the exhibits.

MS. BAILEY: Thank you, Your Honor. Nothing further.

THE COURT: Ms. McFaddin, anything else?

MS. MCFADDIN: Just one, Your Honor.

RE-CROSS EXAMINATION BY MS. MCFADDIN:

Q. Mr. Bluestein, was Mary K. Ward a party to any of these documents that you drafted for Stephen Ward?

MS. BAILEY: Your Honor, that's outside of the scope.

THE COURT: Sustained.

MS. BAILEY: Thank you.

THE COURT: Anything else?

MS. MCFADDIN: No, we have nothing further,

1 Your Honor, for this witness.

2 THE COURT: Ms. Bailey, anything else?

3 MS. BAILEY: Thank you, Your Honor. No, I would
4 ask for Mr. Bluestein to be released from his
5 subpoena at this time.

6 THE COURT: Okay.

7 MS. MCFADDIN: No objection, Your Honor.

8 THE COURT: Thank you, Mr. Bluestein. You may
9 step down.

10 MS. BAILEY: I would call Trish -- do you want
11 to take a quick break, Your Honor?

12 THE COURT: Yeah, I think it's probably good to
13 give everyone a five to ten minute break.

14 (Hearing went off the record for a brief
15 period of time.)

16 THE COURT: Counsel, you ready to continue with
17 the next witness?

18 MS. BAILEY: Your Honor, I call Trish Ernstrom
19 to the stand.

20 THE COURT: Counsel, let me make sure. This is
21 testimony related to, I guess, evidence outside the
22 Will?

23 MS. BAILEY: That's correct, Your Honor. That's
24 correct.

25 THE COURT: And this relates to, I guess, the

1 first spouse, which is Nancy?

2 MS. BAILEY: It also relates to Mary. This will
3 give us a little background.

4 THE COURT: Okay. Thank you. Please come
5 forward. Good morning.

6 THE WITNESS: Good morning.

7 THE COURT: You can walk right around here,
8 this side. If you'll place your left hand on the
9 Bible, and raise your right hand.

10 (Trisha Ernstrom, being duly sworn, testified
11 as follows:)

12 THE COURT: Thank you. Please be seated. If you
13 could state your full name for the record?

14 THE WITNESS: Trisha Ernstrom.

15 THE COURT: Ms. Ernstrom, please answer the
16 questions of Counsel. Ms. Bailey?

17 DIRECT EXAMINATION BY MS. BAILEY:

18 Q. Ms. Ernstrom, you also go by Trish?

19 A. I do.

20 Q. Tell me where you live.

21 A. I live on Seabrook Island.

22 Q. And what's your address?

23 A. 1905 Longbend Drive.

24 Q. How long have you lived on Seabrook Island?

25 A. About 20 years.

1 Q. Ms. Ernststrom, were you friends with Stephen Ward
2 during his lifetime?

3 A. Oh, yes, I was.

4 Q. When did you first become friends with Mr. Ward?

5 A. Well, he lived in 19 -- the whole time, 1999. And I
6 was introduced to Stephen and Nancy. We went to a
7 couple movies together through the island. Got to
8 know them very well and became very good friends.

9 Q. How was Stephen and Nancy's relationship?

10 A. Very close. They were -- yeah. They were always
11 together and socialized a lot. They were very, very
12 active in the community there. So were we, so we did
13 a lot of things together.

14 Q. Were you familiar with Stephen's children and
15 Nancy's children?

16 A. I had heard about them. He talked about the children
17 from time to time and the children came to visit
18 back and forth sometimes, you know how families are.
19 We discussed them and my children. We were close
20 friends, so we talked about the kids, yes.

21 Q. Were you aware of any previous marriages by Stephen,
22 prior to his marriage with Nancy Ward?

23 A. Yes, I understand he was -- he was married once or
24 twice before his marriage to Nancy.

25 Q. How many children did Stephen have, prior to his

1 marriage with Nancy, if you know?

2 A. Yeah, he had his three oldest children and then
3 subsequently he had two other, I believe, adopted
4 children with his second wife.

5 Q. How many children did Nancy have?

6 A. She had two children.

7 Q. And those were prior to her marriage with Stephen?

8 A. That is correct.

9 Q. And so, collectively Stephen had three biological
10 children and Nancy has two children prior?

11 A. Yes.

12 Q. Do you know how long Stephen and Nancy were married?

13 A. Oh gee, I don't remember exactly, but I know it was
14 more than 15 years because we knew them when we got
15 to the island. I'm not really sure.

16 Q. Were you there, or were you with Stephen and Nancy,
17 when Nancy started to fall ill?

18 A. Yes. Yes, we were. Nancy was sick -- very sick
19 twice. She had -- she had cancer and I was with her
20 all the time during that first period. And then she
21 got very sick and was in the hospital or at home.
22 And then she went through remission and was fine.
23 Then it occurred again. The second time it was
24 pretty serious.

25 Q. Did you ever have any opportunity to discuss with

1 Stephen or Nancy their estate plans?

2 MS. MCFADDIN: Objection, Your Honor. Dead
3 Man's Statute. This witness is not qualified to
4 testify.

5 MS. MCFADDIN: Your Honor ---

6 THE COURT: I believe she just asked if she had
7 any discussions. I'm going to allow the question.

8 A. Yes, when Nancy got sick we talked about, you know,
9 "Hey, what's -- what's going to happen when I'm not
10 here anymore" ---

11 MS. MCFADDIN: Objection, Your Honor, she's
12 having a conversation.

13 MS. BAILEY: She's not an interested party with
14 this Will, or in this dispute. She's a competence
15 witness, and with the Dead Man's Statute ---

16 MS. MCFADDIN: Yes, Your Honor, I believe that
17 the Dead Man's Statute actually applies. This
18 witness is an interested party in the terms of the
19 Dead Man's Statute.

20 THE COURT: Why would she be interested?

21 MS. MCFADDIN: She currently has the property
22 of the estate listed for sale. She could lose the
23 client. And so she has a contract with the personal
24 representatives and the beneficiary's of the estate.

25 MS. BAILEY: Your Honor, her interest, if any

1 thing, would be contingent and contingent interest
2 related to the outcome of this proceeding. I'm not
3 even conceding that her interest is contingent, but
4 her interest is unrelated to the outcome of this
5 proceeding. At least the heirs do not have the
6 authority to contract for this house and her
7 contract is not implicated.

8 She's not interested in the outcome of this
9 estate. There is other exceptions under the Dead
10 Man's Statute, specifically related. First off,
11 she's not a party to the proceeding. She does not
12 have an interest in what may be effected by the
13 outcome of the proceeding. She has never had an
14 interest with respect to the assets of this estate.

15 MS. MCFADDIN: Your Honor, that's exactly what
16 we disagree with. That she does on both of those
17 accounts have an interest and it will be effected by
18 the outcome of this proceeding, and in the estate
19 assets. She has leased since January of 2017 and
20 continues to this day.

21 THE COURT: Let me ask you this, how is she
22 effected if your client prevails? You get 50% of the
23 estate?

24 MS. MCFADDIN: Yes, Your Honor. We would assume
25 that the personal representatives are acting

1 honorably as personal representatives, but on behalf
2 of the beneficiaries, which are themselves. They're
3 in contract with this witness. It is to her
4 advantage to continue to be in good contractual
5 relations with both the beneficiaries and the
6 personal representatives, if there is another
7 beneficiary who may have 50% interest in this
8 property, there may be some question about the sales
9 to happen. Or even if it's sold, that would not be a
10 permanently exclusive right of these beneficiaries,
11 and in current contract that this witness has.

12 MS. BAILEY: Your Honor, that's not an
13 interested party as contemplated by the Dead Man's
14 Statute. That does not make her testimony
15 incompetent. She certainly can use that to show any
16 bias of the witness, but it does not conclude the
17 testimony into the Dead Man's Statute as incompetent
18 testimony, not in the interest contemplated by the
19 Statute.

20 Your Honor, there's a couple other exceptions
21 that would apply. The testimony is not offered
22 against the estate. It's offered on behalf of the
23 estate. The Statute does not apply if the testimony
24 is not offered against the estate. Transactions
25 between the estate are not precluded by the Dead

1 Man's Statute.

2 THE COURT: Counsel, I'm going to overrule the
3 objection of reading in the stand in the case that
4 the person is only disqualified if he or she has a
5 certain or vested legal or equitable interest that
6 will be effected by the direct legal operation of
7 the Dead Man. Do your people have a contract with
8 the personal representatives themselves?

9 MS. MCFADDIN: Yes, Your Honor. And I would
10 argue that she does have a direct financial
11 repudiary interest in the outcome because her
12 contract is with the personal representatives, who
13 are also the beneficiaries. Not with the heir at
14 law, the next of kin, or survivor which is my
15 client. And if my client is involved in this, this
16 witness may or may not have her current financial
17 position -- may not continue.

18 MS. MCFADDIN: Your Honor ---

19 THE COURT: Ms. McFaddin, let me ask you this,
20 your client only has the right to receive a
21 percentage of the estate, but she doesn't have a
22 right to remove a personal representative, does she?

23 MS. MCFADDIN: Well, Your Honor, in the part of
24 determining how the omitted spouse share is
25 determined, she may have a right to receive in kind,

1 rather than sale proceeds. It's his real estate she
2 may not - it's my understanding that's the second
3 part of it.

4 She can determine -- the court -- she has the
5 right to have an input as to how that spouse's share
6 is apportioned, and where it comes from as to the
7 assets of the estate. We do not have a full
8 exhaustive point at this hearing. We've not gotten
9 into, fully, what are the assets of the estate, and
10 what is their nature. We know that this real estate
11 is one of the assets of the estate.

12 MS. BAILEY: Your Honor, there is nothing in
13 the omitted spouse statute that provides that she
14 has the authority to step in as personal
15 representative, direct the personal representative
16 how to satisfy the administered spouse's share, or
17 any of the such. She would not be entitled as an
18 omitted spouse to direct how the share is satisfied,
19 if and when, they are successful, which of course we
20 dispute.

21 MS. MCFADDIN: Your Honor, I would direct an
22 argument that the case law is very clear. That's
23 what normally the hearings are about. Once the right
24 to share is determined, then how that share will be
25 satisfied is definitely -- we would be prepared to

1 have a say and that's for the court to decide with
2 all parties having an input. The case law bears that

3 ---

4 MS. BAILEY: Your Honor, at most, under the
5 estate -- first off, Your Honor, I go back to my
6 original argument. I think we're getting into the
7 weeds here because I don't think any of it matters.

8 But my original argument is that there is no
9 direct interest related to this estate. This is not
10 the interest that's contemplated under the Dead
11 Man's Statute. She has no interest under the Will,
12 she has no interest under any of the estate planning
13 documents.

14 With that being said, there is a home, at the
15 very most, the estate may owe 50% of that home.
16 Because 50% of that home has already passed.
17 Pursuant to the Agreement for Mutual Wills, the Will
18 of Nancy Ward, and the Trust Agreement for Nancy
19 Ward, to a family trust. So it is a highly
20 contingent interest, it is not an interest that
21 would be effected by this estate, or the Will, or
22 the Trust Agreement. It's just simply not one that
23 is contemplated.

24 MS. MCFADDIN: Your Honor, I would disagree.
25 There's no contingency about it at all. There's

1
2 already a contract in place. This witness is a party
3 to a contract with the estate, and its personal
4 representatives that are bound by the contract, and
5 actions have been taken, which my client has not
6 been involved at all. And she certainly -- that's
7 the whole point of this action is to determine if
8 she has a beneficial interest, and then assuming the
9 court determines that she does, how that beneficial
10 interest is determined, and how it's apportioned
11 amongst the assets of the estate.

12 MS. BAILEY: There is no ---

13 THE COURT: Ms. McFaddin, let me ask you this.
14 The outcome here is not going to effect that
15 contract between the real estate agent and the
16 personal representative, how would it effect that?

17 MS. MCFADDIN: Well, Your Honor, I haven't seen
18 the contract. We have limited information. All I
19 know is that this witness is currently the listing
20 agent since January of 2018, and the property has
21 been listed since January of 2017. I don't know if
22 there have been multiple contracts, I don't know
23 when the current listing contract ends, or if it's
24 ended, we have not been provided with any of that
25 information.

1 And I think that all the information that we
2 have certainly -- and it doesn't matter what the
3 value of the asset, or what the value of the
4 interest, or what the Dead Man's Statute says, if
5 they have -- if he has a legal or ethical interest,
6 which may be effected, and certainly this comes
7 within that purview, such as to rule out the
8 competency or testify as to any conversations or
9 transactions with the deceased.

10 THE COURT: I still don't see how it's going to
11 be effected, the outcome. If you prevail, that
12 contract would have to honored between the PR and
13 the real estate agent.

14 MS. MCFADDIN: Unless we contest that, Your
15 Honor. Or unless ---

16 MS. BAILEY: That's not the court's ---

17 MS. MCFADDIN: Or unless the contract ended
18 today or yesterday or tomorrow. We don't know any of
19 that. Or, and not only that, but certainly when
20 decisions are made, if and when, any offers are made
21 or received, the real estate commission is a
22 percentage that's based on the sales price, all that
23 enters into decisions that these parties have to
24 make in the future.

25 THE COURT: Right, but your argument is that

1 you're entitled to 50% of what the gross estate is
2 at the date of death?

3 MS. MCFADDIN: Yes, Your Honor.

4 THE COURT: I'm overruling your objection and
5 allowing the testimony.

6 Q. Ms. Ernstrom, can you tell me what you discussed
7 with Nancy and Stephen Ward regarding their estate
8 plans?

9 MS. MCFADDIN: Your Honor, we will object any
10 questions regarding Nancy Ward, as being irrelevant
11 to the action at hand.

12 MS. BAILEY: Your Honor ---

13 THE COURT: Counsel ---

14 MS. BAILEY: Your Honor, the documents that
15 have already been admitted into evidence reflect
16 that there are joint Wills, and they both went to
17 see the same lawyers to perpetuate mirror images of
18 their joint Wills. So the intent of the parties is
19 reflected in the documents. The intent of the
20 parties is reflected in their communications with
21 third parties, which they convened.

22 THE COURT: I don't think Ms. McFaddin is
23 disputing that. They did Mutual Wills, that's the
24 not the issue. Is it?

25 MS. MCFADDIN: Right, Your Honor, I would --

1 the documents speak for themselves. What we object
2 to is any testimony that might be intended to elicit
3 testimony about the intent, or anything to do with
4 Nancy Ward. That is irrelevant to the case at hand.

5 THE COURT: Counsel, is that relevant to the
6 entire estate plan?

7 MS. BAILEY: I can rephrase the question, Your
8 Honor.

9 Q. Did you have communications with Stephen Ward
10 related to his estate plans?

11 A. Yes, we had discussed it with Nancy. We had talked
12 about it. She said -- both of them reiterated that
13 they had an attorney and they had made proper
14 preparations so the children would inherit the house
15 and all their assets. That's how they wanted it and
16 that's what they came up with.

17 Q. During your conversations with Stephen Ward, he had
18 mentioned he had went to an attorney for purposes of
19 his estate?

20 A. Yes, and a very good attorney, he told me. As a
21 matter of fact.

22 Q. And were these discussions that occurred, were they
23 made in context of Nancy being sick?

24 A. They were, yes.

25 Q. What did -- other than identifying that they

1 intended to provide for their children in the estate
2 planning, did you have any discussions, at that
3 time, related to their estate planning?

4 A. Well, Nancy said ---

5 MS. MCFADDIN: Objection, Your Honor.

6 THE COURT: Counsel, relevance?

7 MS. BAILEY: Yeah, I can clarify because the
8 conversations occurred with both Nancy and Stephen
9 Ward.

10 MS. MCFADDIN: Both of them?

11 THE COURT: Just relate it to Stephen then.

12 MS. BAILEY: Yes, Your Honor.

13 THE COURT: Thank you.

14 Q. So with respect to your conversations with Stephen
15 Ward, other than communicating that he and Nancy
16 intended to provide for their five collective
17 children, were there any other conversations during
18 Nancy's illness about his estate planning?

19 A. Just -- just what I stated, that they -- they had
20 met with an attorney and everything was in order.
21 And nothing would be -- they would be fine. Their
22 children were guardians and heirs. That they would
23 be -- they would be their heirs on their estate.

24 Q. Do you know approximately what time period this
25 conversation took place?

1 A. When Nancy was sick. It must have been -- I don't
2 know if it was the first time she got sick or the
3 second time she got sick. But we had discussed it
4 numerous times. I don't know. I don't remember the
5 times exactly.

6 Q. Could it been after 2005?

7 A. Oh, yes.

8 Q. Did you remain friends with Stephen Ward after
9 Nancy's passing?

10 A. Yes, we did. As a matter of fact, Stephen asked me
11 to come to the hospital when Nancy was sick, and he
12 was -- I was -- I was -- that was right when Nancy
13 passed. We felt very badly about it all. We're very
14 fond of Nancy. Yes, we remained friends after --
15 stayed friends afterwards. Yes, yes, we did.
16 Subsequently, he met Mary. And -- and they got
17 married as well.

18 Q. Do you have any conversations with Stephen Ward with
19 respect to his relationship with Mary?

20 A. Yes, absolutely. Stephen was very depressed after
21 Nancy died.

22 MS. MCFADDIN: Objection, Your Honor, calls for
23 speculation on part of the witness.

24 THE COURT: Overruled. You may continue.

25 A. Stephen was very depressed after Mary passed --

1 after Nancy passed away. And basically looking for
2 some companion to do things with and have fun with.
3 Mary was available and they became very -- very good
4 friends, and were together a lot of the time.

5 There came a time during this relationship,
6 when Stephen came to me and asked me, discussed with
7 me, the possibility of he and Mary getting married,
8 what did I think? And I said, "I don't think it's a
9 good idea, Stephen. I -- I think probably, you know,
10 with your age and Mary's age, why don't you just
11 stay friends? You know, remain friends." And he
12 said, "Well, Mary wants -- wants to get married",
13 and I said, "Well, why don't you just have Mary",
14 Mary had her own home on Seabrook, and he had his
15 home on Seabrook, and so I said, "Why don't you just
16 have Mary move in with you if she wants
17 companionship?" He said, "Well, Mary -- Mary will
18 not move in unless I marry her." "I really don't
19 think it's a good idea", I said.

20 I had no idea about any legality involving
21 this, but I said, "Are you sure it's going to be
22 okay as far as your estate's concerned?" He said,
23 "Oh, yeah. That's a non-issue. That's -- nothing's
24 changing that. It's -- it's staying the way it is.
25 It's locked in. When I went to the attorney, how I -

1 - when we made the Wills up, it was -- it was a
2 definite thing and we were not going to -- you know,
3 that does not effect it." I said, "Well, if you're
4 sure", you know, I didn't really know what the state
5 laws were or what other laws were. I did not know
6 about that before this relationship, but I did
7 discourage it, but they went ahead and got married
8 anyway.

9 Q. How many times did you have a conversation with
10 Stephen Ward, before he got married, about his
11 estate plan?

12 A. Well, only in relationship -- when he married Mary,
13 was probably -- I would say at least three times.

14 Q. During those at least three occasions, what did
15 Stephen Ward express to you, related to the impact
16 of this marriage on his existing estate plan?

17 A. He insisted that it would have no ---

18 MS. MCFADDIN: We would continue our objection,
19 Your Honor.

20 THE COURT: Overruled. Go ahead.

21 A. He was -- he insisted to me that there would be no
22 change, and that everything was going to stay as he
23 and Nancy had planned.

24 Q. After Mr. Ward and Mary were married, did Mary
25 maintain her -- continued to have her own home on

1 Seabrook?

2 MS. MCFADDIN: Objection, Your Honor. Outside
3 the knowledge of this witness. This calls for
4 speculation.

5 THE COURT: Overruled.

6 A. Yes, she did. She continued to have her own home.
7 But she did move in with Stephen.

8 MS. BAILEY: Your Honor, nothing further from
9 this witness.

10 THE COURT: Thank you, Ms. Bailey. Ms.
11 McFaddin?

12 MS. MCFADDIN: Thank you.

13 CROSS EXAMINATION BY MS. MCFADDIN:

14 Q. Ms. Ernststrom, are you currently a realtor with Sea
15 Island Real Estate?

16 A. Seabrook Island.

17 Q. Seabrook Island Real Estate?

18 A. Yes, right.

19 Q. And do you currently have the property at 2412 High
20 Hammock Road on Seabrook under a listing contract?

21 A. Yes.

22 Q. How long have you had it under listing contract?

23 A. A year in January. A year and a half in June.

24 Q. How long will your current listing contract go?

25 A. Until June.

1 Q. June of this year?

2 A. That's right.

3 Q. 2018?

4 A. Yes.

5 Q. Do you know if any other realtors have listed that
6 property since Stephen Ward's death?

7 A. No.

8 Q. So you've been the only one?

9 A. I have.

10 Q. Has anyone else on that listing with you, as a
11 listing agent?

12 A. No. No.

13 Q. Is your husband on that?

14 A. Well, the listing contract was signed by me.

15 Q. But is your husband ---

16 A. He's in the office, but he's not -- he's not on the
17 listing contract.

18 Q. Is he a realtor also?

19 A. Yes.

20 Q. And have there been changes in the listed price, the
21 offering price?

22 A. There has been, yes.

23 Q. And who makes those changes?

24 A. We discuss it with the three children of the family.

25 And we --

1 Q. What do you mean by, "we"?

2 A. -- sign the contract -- I'm sorry?

3 Q. What do you mean by, "we"?

4 A. Well, myself and the children. Stephen's children.

5 Q. But you said, "we discuss it with" ----

6 THE COURT: Ms. McFaddin, I'm not sure the
7 relevance to this?

8 MS. MCFADDIN: Your Honor, I know the Court has
9 already ruled that this is -- I just want to get it
10 confirmed what -- as far as what the information was
11 on the record, rather than my affirmations of it.

12 THE COURT: Okay.

13 Q. Ms. Ernstrom, you said, "we discussed it with the
14 children", did you mean you and your husband?

15 A. Sometimes he would come and be a part of the
16 conversations, but I always ---

17 Q. Anyone else, other than Stephen Ward's children?

18 A. No.

19 Q. Did you attend the wedding of Mary and Stephen?

20 A. I did, yes.

21 Q. And who else was at the wedding?

22 A. There was people of the community.

23 Q. Were Stephen's children there?

24 A. Yes, they were.

25 Q. All of them?

1 A. Maybe I'm confusing it with -- with Nancy's -- you
2 know, I don't remember that. I -- I may be confusing
3 it with Nancy's wake. I'm not sure. We were all at
4 the house. I don't know if I attended their wedding.
5 I don't remember that. I don't think I did, come to
6 think of it.

7 Q. So you're thinking that -- you don't believe you
8 attended Stephen and Mary's wedding?

9 A. No, I don't really remember. I don't think I did
10 though. I don't even know where it was held.

11 MS. MCFADDIN: May I have a moment, Your Honor?

12 THE COURT: Yes.

13 MS. MCFADDIN: We have no further questions for
14 this witness.

15 MS. BAILEY: Your Honor, I have nothing
16 further. And Ms. Ernstrom and Mr. Ernstrom, who's
17 out in the hallway, are under subpoena. I would ask
18 that they be released at this time.

19 THE COURT: Okay. Let me ask one question.

20 MS. BAILEY: Certainly.

21 THE COURT: Do you know if Mr. Ward provided
22 for Mary Ward outside of his Will?

23 THE WITNESS: You know, we never got into the
24 discussion. I didn't, you know, we talked about the
25 estate, and who he married, but I never really asked

1 about how he provided for Mary or anything of that
2 nature.

3 THE COURT: Okay. Thank you. Counsel, are there
4 any other questions for this witness?

5 MS. MCFADDIN: No, Your Honor.

6 THE COURT: You may step down. Thank you.

7 MS. BAILEY: May I let Mr. Ernstom know that
8 he's released?

9 THE COURT: Yes.

10 MS. BAILEY: Thank you.

11 THE COURT: Any objections?

12 MS. MCFADDIN: No objections, Your Honor.

13 THE COURT: Thank you. Counsel, any other
14 witnesses?

15 MS. BAILEY: Your Honor, I call Brian Ward to
16 the stand.

17 THE COURT: Good morning.

18 THE WITNESS: Good morning.

19 THE COURT: If you'll place your left hand on
20 the Bible and raise your right hand.

21 (Brian Ward, duly sworn, testified as
22 follows:)

23 THE COURT: Thank you, please be seated. If you
24 could state your full name for the record?

25 THE WITNESS: Brian Christopher Ward.

1 THE COURT: Please answer the questions of
2 Counsel. Ms. Bailey?

3 DIRECT EXAMINATION BY MS. BAILEY:

4 Q. Mr. Ward, where do you live?

5 A. In Castlecourt (ph), Florida.

6 Q. What do you do for a living?

7 A. I just started a consulting business in the railroad
8 industry.

9 Q. You were one of Stephen Ward's children?

10 A. I am.

11 Q. Your three biological sibling, excuse me, your two
12 biological sibling, who are they?

13 A. Stephanie Cibinic and David Ward.

14 Q. Are you a personal representative of Mr. Ward's
15 estate?

16 A. Yes, one of them. Co.

17 Q. Do you know under power you became appointed the co-
18 personal representative of Mr. Ward's estate?

19 A. Yeah, based on the Will that outlined that if my dad
20 passed away, Nancy Ward represented a personal
21 representative or she died, then his brother Michael
22 Ward. He had also previously deceased my father. So
23 it was left to my brother, sister, and me.

24 Q. And the Will you're referring to is Exhibit Number
25 1, for the record?

1 A. Correct.

2 Q. Tell me about your father during his lifetime. What
3 did he do for a living?

4 A. He worked for his whole life with a company called
5 Cargo (ph) Incorporated. It was a grain trading
6 company it was out of Southern -- he was a grain
7 trader for most of that career. All of our lives.

8 Q. Did he have any education after high school?

9 A. He did. He attended Wake Forrest College, and
10 graduated in 1966. He also attended Phoenix, Arizona
11 Thunderbird School of Management where he received a
12 Master's Degree.

13 Q. Did he retire from Cargo as a grain trader?

14 A. Yes, he retired - he retired as a -- as a grain
15 trader from Cargo around 1999, 2000.

16 Q. Did his job require him to travel a lot?

17 A. He did. He traveled quite a bit. Most of his career
18 was overseas so he spent the majority of his 33
19 years or so with Cargo living in Europe and Asia.

20 Q. Did he own real property during his lifetime?

21 A. He did. He owned, when we were living overseas, my
22 mother, his first wife, they bought property on
23 Seabrook Island. They also bought property in New
24 Mexico as well.

25 Q. He's owned property on Seabrook Island since the

1 '70s?

2 A. Correct.

3 Q. I understand from previous testimony that your
4 father was married a couple of times?

5 A. That's correct.

6 Q. Can you go through his spouses?

7 A. Sure. He was first married in 1966 to my mother,
8 Linda Ward. They were married until 1986. He re-
9 married Sally -- married Sally Ward in 1987. They
10 were separated in 1996 and the divorce was probably
11 final around 1997. He married Nancy Ward shortly
12 thereafter in 1998. He was married to her until her
13 death. Then married Mary Ward.

14 Q. Your father passed away in December of 2016?

15 A. Correct.

16 Q. Your mother, Linda Ward, between Linda and your
17 father, the children are Stephanie, you, and David?

18 A. Correct.

19 Q. And Sally Ward, did she have any children with your
20 father?

21 A. Yeah, they adopted two boys, who were born in 1990.

22 Q. How about Nancy Ward? Did Nancy Ward and your father
23 have any children together?

24 A. They did not.

25 Q. Did Nancy Ward have any children prior to her

1 marriage with your dad?

2 A. Yes, she did. She had two children.

3 Q. Is that Elizabeth Diemer and Garrett Diemer?

4 A. That's correct.

5 Q. How about Mary Ward, I understand based on age it
6 may be impossible, but did they have any children
7 together?

8 A. No.

9 Q. And they were later in age when they got married;
10 correct?

11 A. Correct.

12 Q. Did Mary Ward have children prior to their marriage?

13 A. Yes.

14 Q. Do you know how many?

15 A. I don't. I'm not sure. I'm aware of at least three
16 children. Two daughters and a son.

17 Q. Tell me about your childhood with your father. Did
18 you grow up with him? Was he involved in your life?

19 A. Yes. As I mentioned, we lived overseas. I was born
20 in Korea. Spent the first ten years of my life in
21 Korea, Singapore, Thailand, and Switzerland. When I
22 was ten years old we moved to Minnesota. In the
23 states for the first time. That would have been
24 1984, and my parents were divorced in '86.
25 Afterwards I stayed with my mother and we lived in

1 Minnesota.

2 Q. During your childhood, or during his lifetime, did
3 you have opportunities to go over to the property at
4 Seabrook Island?

5 A. Many times. We went to -- they owned a beach house
6 on Seabrook, as I said, from the 1970s. So when we
7 would come home on summer leave we would spend a lot
8 of that time at Seabrook. So every summer between
9 the late '70s and -- gosh, the 90's, during the
10 summer.

11 Q. During Stephen's lifetime, did he provide you copies
12 of any of his estate planning documents?

13 A. Yes, he did. He provided a copy of the -- the estate
14 planning documents for my dad and Nancy Ward. He
15 provided that to -- to me, just to make sure I had a
16 copy and be aware, generally, of what was in it. So
17 that should anything happen to him, I was aware of
18 it.

19 Q. And you brought with you a copy today of the set of
20 estate planning documents that your father provided
21 to you during his lifetime?

22 A. Yes, ma'am.

23 Q. Can I see it?

24 A. Sure.

25 MS. BAILEY: Your Honor, I'm going to mark this

1 as Exhibit Number 8.

2 (Copy of Estate Planning Documents marked as
3 Respondent's Exhibit Number 8 for I.D.)

4 MS. MCFADDIN: The whole thing?

5 MS. BAILEY: Yes.

6 MS. MCFADDIN: Your Honor, I do not want to
7 take the Court's time to look through all this. May
8 I be given some time to satisfy whether these -- if
9 they conform to the previous exhibits?

10 MS. BAILEY: Your Honor, these are the
11 documents that he's provided during his lifetime and
12 that's why I did it.

13 THE COURT: And they're some of the estate
14 documents that attorney Bluestein had prepared?

15 MS. BAILEY: Yes, Your Honor.

16 THE COURT: And you're representing they're
17 basically the same?

18 MS. BAILEY: Yes, but there's additional
19 documents in the set that he was provided. That is
20 what is different. The additional documents are what
21 Mr. Bluestein referenced, but hadn't previously
22 marked, which are the financial power of attorney
23 for Stephen Ward, Nancy Ward, healthcare power of
24 attorney for Stephen Ward, Nancy, and the
25 declaration of desire for natural death proposal.

1 THE COURT: Okay.

2 MS. MCFADDIN: Are you going to refer to him
3 anything in particular?

4 MS. BAILEY: I'm going to ask that they be
5 admitted into evidence so that we may refer to them
6 in the course of the testimony.

7 MS. MCFADDIN: Well, Your Honor, I'd like have
8 a copy and I'd like to have a chance to review. Just
9 for the fact that his father provided we have no
10 objection if they are offered to say this is what
11 his father provided and they're the same as those
12 estate planning documents. If there's any difference
13 or if they're going to ask anything about other
14 ones, I would like to have a chance to review them.
15 We've not been provided them before or in response
16 to any Discovery.

17 MS. BAILEY: Your Honor, there is no
18 difference, and to the extent that the power of
19 attorneys are contained in this set of documents and
20 not in the previous set of documents. My only
21 purpose in admitting this is this the set of
22 documents that he was provided.

23 THE COURT: If you need time to look at it and
24 go over it then we will take the time to do that,
25 okay? But if these are the same documents that Mr.

1 Bluestein ---

2 MS. MCFADDIN: We have no objection to these
3 documents for the purposes of confirming what the
4 witness has testified, that these were provided to
5 him by his father, and Counsel's statement that they
6 are the same as what has already been marked as
7 exhibits.

8 MS. BAILEY: With the exceptions that I just
9 noted?

10 THE COURT: Which, I guess, is financial power
11 of attorney, healthcare, and natural death?

12 MS. BAILEY: Correct.

13 MS. MCFADDIN: Your Honor, we would reserve
14 that if they refer to the detail, we would like to
15 review it, and respond to it at that time.

16 THE COURT: And that's just with Exhibit Number
17 8.

18 MS. MCFADDIN: I'm sorry?

19 THE COURT: This is Exhibit Number 8 then? Or
20 Respondent's Exhibit Number 8?

21 MS. BAILEY: Yes, this is going to be Exhibit
22 Number 8. I just need the court reporter to mark it.

23 THE COURT: Okay, let's give the court reporter
24 a second.

25 MS. MCFADDIN: Your Honor, once it's marked,

1 can I have a few moments ---

2 MS. BAILEY: I have no problem with that.

3 THE COURT: Counselwoman McFaddin, do you want
4 them to continue with the questioning or do you want
5 to ---

6 MS. MCFADDIN: We'll just -- well, I think they
7 can continue and if they get to a question -- I'd
8 just like to repeat again, if anything comes up ---

9 THE COURT: Okay. Or you can hold on to them, I
10 guess, for the cross?

11 Q. Mr. Ward, during what time period did your father
12 provide you a copy of Exhibit Number 8?

13 A. I don't remember exactly the day. Maybe Christmas,
14 2005, or early 2006?

15 Q. Was anybody else present when the copy of Exhibit
16 Number 8 were provided to you?

17 A. I don't recall.

18 Q. After the copy of Exhibit Number 8 were provided to
19 you, did you review those documents?

20 A. I did not read the whole thing but reviewed some of
21 the key components. Just hit the highlights, if you
22 will.

23 Q. What were some of the key components that you
24 reviewed at the time when you originally received
25 the Will? The Will from your father?

1 A. Sure. A couple things to that. One, that the two
2 half brothers, Stephen Ward and Jeremy Ward, from my
3 dad's second wife, were specifically omitted. Of
4 course, that stood out. And then also, that with the
5 villa in the Charles Schwab account, related to the
6 beach house that my parents had bought in the 1970s
7 was subsequently sold in the early 2000s. But my dad
8 was adamant about assuring Stephanie, David, and me
9 that the proceeds from the villa account would be
10 ours. You know, we had spent so much time there and
11 it was an important property and he felt he needed
12 to sell it and put the proceeds in a specific
13 account with Charles Schwab.

14 Q. That was something that was set forth in the Will
15 that you identified?

16 A. That's correct.

17 Q. Did you have an opportunity, during your father's
18 lifetime, to discuss the estate planning documents
19 in Exhibit Number 8 with him?

20 A. During his life, yes. I was talking with him about
21 it when I first received it. We had some quick
22 discussions about it. He brought it up one more time
23 that I can recall in August of 2013, prior to his
24 marriage to Mary Ward. He called and said he was
25 getting married, he made

1 MS. MCFADDIN: Objection, Your Honor. He's
2 going to say what the deceased said. Clearly he's a
3 party of interest and this could effect his
4 interest.

5 THE COURT: Ms. Bailey, any other way you could
6 direct the questions?

7 MS. BAILEY: Your Honor, I would like to
8 proffer the testimony. It is an exception of the
9 Dead Man's Statute related to -- the statute does
10 not apply if it's offered against the estate. The
11 testimony is not offered against the estate -- this
12 testimony is not offered against the estate, it's
13 testimony in favor of the estate and in favor of the
14 Will that is being probated. That's *Exparte*
15 *Cleveland, Red vs. Graniteville, Lanter vs. Southern*
16 *States*. And so, Your Honor, I would proffer that
17 testimony.

18 THE COURT: Counsel, any objection?

19 MS. MCFADDIN: Yes, Your Honor. Yes, Your
20 Honor. We do have continuing objections. I think
21 Counsel is reaching far and wide in the definition
22 of the estate. My client is a beneficiary of the
23 estate that we are contesting. The application of
24 this Will ---

25 THE COURT: Does this apply to this witness?

1 MS. MCFADDIN: Yes, as to witness. This witness
2 is both a personal representative and a beneficiary
3 of the estate. This witness is a party of this
4 action in one capacity but that can not be divorced
5 from the dual capacity of this witness.

6 THE COURT: Counsel, will you explain what
7 you're planning to do?

8 MS. BAILEY: Yes, Your Honor. There's an
9 exception to -- there's a requirement for
10 disqualification of the Dead Man's Statute that the
11 testimony must be offered against the representative
12 of the estate.

13 In this case, this is the representative of
14 the estate. He is a co-personal representative of
15 the estate. It is being offered in favor of the
16 representative of the estate, which is the personal
17 representative, and he's co-personal representative
18 that has denied the omitted spouse share.

19 So the case law that is in support of this
20 requirement, and it's exception, is Long vs. Convoy,
21 Expartee vs. Cleveland, or excuse me, Expartee
22 Cleveland, Wright vs. Graniteville, and Lanter vs.
23 Southern States. I'm reviewing this from the South
24 Carolina Evidence Book, which is Danny Collins,
25 Second Edition. It says that statute does not apply

1 if the testimony is not offered against the estate.
2 Hence, testimony in favor of the estate, or
3 testimony against a party other than the
4 representative of the estate, is not excluded.

5 THE COURT: I don't know how you get around him
6 being an interested person.

7 MS. BAILEY: Your Honor, that's just one of the
8 requirements for the Dead Man's Statute to apply. If
9 you're an interested person then the Dead Man's
10 Statute applies, but this is an exception under the
11 Dead Man's Statute. What I'm reading from
12 specifically identifies it as an exception to the
13 Dead Man's Statute. So he may be an interested party
14 by being a beneficiary, but this is an exception
15 because it's being offered ---

16 THE COURT: Do you have those cases?

17 MS. BAILEY: I don't have them printed, but I'm
18 happy to provide them to you. Also, provide up a
19 copy of what I'm reading from.

20 MS. MCFADDIN: Well, that is the secondary
21 evidence, Your Honor. I've got a case law in the
22 statute itself. It directly contradicts Counsel's
23 interpretation.

24 Let's go back to -- she's been citing Hanahan
25 vs. Simpson which quotes the Dead Man's Statute,

1 which is Section 19-11-20 (1985). Of course, Hanahan
2 vs. Simpson is 326 South Carolina 140. In quoting
3 the Statute, "No person who has a legal or equitable
4 interest which may be effected by the action", which
5 is that of the witness, "shall be examined in regard
6 to any transaction or communication between such
7 witness and a person (now) deceased", which is
8 definitely the case regarding Stephen Ward, "as a
9 witness against a party prosecuting or defending the
10 action as executor, administrator, heir-at-law, next
11 of kin, assignee, legatee, devisee or survivor of
12 such deceased person."

13 Those are all the ultimate categories and
14 certainly my client fits in at least two of those.
15 It's not just one category. "Such examination or any
16 judgement in such action can affect the interest of
17 such witness." So it's clearly within the case law
18 provides for it, and any other interpretation would
19 be deemed invoking the Dead Man's Statute.

20 MS. BAILEY: Your Honor, the case that is cited
21 is Long vs. Convoy. I'll provide a copy of the case
22 after the hearing. Long vs. Convoy, 246 South
23 Carolina 225, it provides four elements to invoke
24 the Dead Man's Statute. One, the witness must be
25 within the class of witnesses who may be

1 disqualified from the statute. We don't dispute
2 that. He is an interested party. Two, the witness
3 offers testimony about a transaction with the
4 deceased, we do dispute that. Three, the testimony
5 is offered against the representative of the estate.
6 That's the element with my position is that they
7 cannot meet. And four, a present or previous
8 interest of the witness could be effected by the
9 testimony.

10 THE COURT: Counsel, I'm going to go ahead and
11 sustain the objection.

12 MS. BAILEY: Your Honor, I would like to
13 proffer the testimony.

14 THE COURT: Okay. Counsel, any objection?

15 MS. MCFADDIN: Your Honor, I'm not sure -- I
16 mean, it's up to the Court. I'm not sure whether it
17 needs to be done without the witnesses here, or if
18 it needs to be done in writing or -- I don't know.
19 I'm not sure. The statute does not show how to best
20 to ---

21 MS. BAILEY: Your Honor, I would just like to
22 proffer the testimony before the trial.

23 THE COURT: I'm going to go ahead and allow her
24 to proffer the testimony.

25 Q. During his lifetime, did you have an opportunity to

1 discuss with your father the estate plan that he
2 provided to you in Exhibit Number 8?

3 A. Yes. I was able before -- when he gave out the Will
4 and estate documents that were given to me. We
5 discussed it at that time, and it was brought up
6 again when he called me to say that he was going to
7 get married to Mary Ward, but that it did not effect
8 his Will. It did not effect anything in the Will. He
9 wanted to make sure I was comfortable with that. He
10 said that he certainly didn't expect me to attend
11 the wedding. As he stated, it's very strange for a
12 man's performance -- he did not command me to be
13 there, if you will. And that was the conversation.

14 Q. What did your dad testify, excuse me, what did your
15 dad say to you specifically related to his estate
16 plan in 2013?

17 A. That it would remain unchanged from 2005, the Will
18 of 2005, stood.

19 Q. And that was in contemplation of his marriage to
20 Mary?

21 A. Yes, it was in contemplation of his marriage to
22 anyone.

23 Q. But that conversation that you had in 2013, that was
24 in contemplation to his marriage to Mary?

25 A. Correct, specifically.

1 Q. Okay. Did your father, at any point in time, tell
2 you that he had revoked, amended, or modified any of
3 the estate planning documents in Exhibit Number 8?

4 A. No.

5 MS. MCFADDIN: Your Honor, just to clarify, are
6 we still under proffer testimony?

7 MS. BAILEY: I am trying to get it all in under
8 one proffer, Your Honor.

9 THE COURT: Yes.

10 MS. BAILEY: And then I can go back.

11 MS. MCFADDIN: I just want to continue my
12 objections.

13 MS. BAILEY: Your Honor, for the record, I just
14 intend to ask him about his discussions with his
15 father during the proffer.

16 THE COURT: Okay.

17 Q. During his lifetime, did you discuss with your
18 father whether or not he intended to revoke, amend,
19 or modify any of the documents in Exhibit Number 8?

20 A. No, the conversation in August of 2013, he was
21 saying nothing will change, in regards to the Will.

22 Q. In your conversation in 2013, with your father,
23 where he said nothing would change, was it in
24 regards to the estate documents in Exhibit Number 8?

25 A. Correct.

1 Q. And nothing would change as a result of his
2 marriage?

3 A. Correct. To Mary.

4 Q. To Mary? Okay.

5 MS. BAILEY: Your Honor, would we want to allow
6 cross examination under this proffer, while we're
7 still under proffer? Specifically related to the
8 communications?

9 THE COURT: That way we can hear objections if
10 you want.

11 MS. MCFADDIN: I do have a cross examination
12 for this witness, but it's not limited to the
13 proffer testimony. I don't think I need to. Unless
14 Counsel's finished, I'll be able to go forward.

15 MS. BAILEY: I'm just finished with the
16 proffer. I want to make sure she has no questions
17 related to the proffer.

18 MS. MCFADDIN: Well, I do have some questions,
19 but I'd rather not have it separate. I'll just do
20 all the questions at once. I think we can do that. I
21 can just say we continue subject to my continuing
22 objections.

23 THE COURT: When we get to your cross?

24 MS. MCFADDIN: Yes, sir.

25 THE COURT: Any objections?

1 MS. BAILEY: I will have to reserve the right
2 to re-proffer the witness in cross examination. I
3 just wanted to make sure that we were all protected
4 for the record.

5 THE COURT: Okay.

6 MS. BAILEY: Your Honor, at this time I would
7 move to admit the evidence that's just been
8 proffered on the same grounds that we asserted
9 earlier. It's not being offered against the estate
10 under the exceptions that we set forth. In addition,
11 it's cumulative to testimony that has already been
12 presented. There is a cumulative exception under the
13 Dead Man's Statute as well. So we would ask that it
14 be admitted.

15 THE COURT: Counselor, I know ---

16 MS. MCFADDIN: We do still object. I think it's
17 clearly within the Dead Man's Statute, the
18 application of Hanahan vs. Simpson case, that's here
19 within. It's not cumulative. There's been no other
20 testimony of specific conversations involving 2013.
21 The first that it's cumulative, doesn't come into it
22 at all.

23 Definitely Mr. Ward is dual, if not, multiple
24 status, as an interested party with the decedent,
25 and this is exactly what the Dead Man's Statute was

1 intended to -- there's no way for my client to cross
2 examine Mr. Ward, or anybody else that was there.
3 The documents speak for themselves, the captions
4 speak for themselves, this testimony should not be
5 allowed in. It's against all fairness.

6 THE COURT: Thank you. The Court sustains the
7 objection. You can continue on.

8 MS. BAILEY: Certainly.

9 Q. How did you become aware that ---

10 MS. BAILEY: This is not under proffer, Your
11 Honor.

12 THE COURT: I understand.

13 MS. BAILEY: Thank you.

14 Q. How did you become aware that your father and Mary
15 were dating? Or seeing one another?

16 A. The first I heard was actually from my siblings that
17 he had started to be involved with a woman in the
18 summer of 2011.

19 Q. Did you meet Mary during that time in 2011?

20 A. No, the first time that I met Mary was when I came
21 up with my son for a Cub Scout event. I don't
22 remember, but I think it was January of 2013. I came
23 up and we had brunch with my dad and Mary.

24 Q. That was the first time you met Mary in person?

25 A. Correct.

1 Q. I understand that your father and Mary have an age
2 difference?

3 A. Correct.

4 Q. Do you know what their age difference was?

5 A. 19 years.

6 Q. Okay, they were 19 years apart?

7 A. Correct.

8 Q. How old was your dad when they met?

9 A. When they met?

10 Q. In 2011.

11 A. 66. 67?

12 Q. And so that would put Mary around 85 years old?

13 A. No, she was born in 1925, so in 2011, she was 86.

14 Q. 86? Okay, very good. When your father and Mary first
15 met, did you have any -- were you able to observe
16 your father's mental capacity?

17 A. No, not when they first met. I had seen him a little
18 portion at the funeral for Nancy, but didn't see him
19 again until December of that year when he came for
20 Christmas at our house.

21 Q. In December of that year, that would be 2011?

22 A. Correct.

23 Q. Was he able to make his own decisions?

24 A. Yes.

25 Q. Was he able to drive?

1 A. Yes.

2 Q. Was he able to maintain his finances?

3 A. Absolutely.

4 Q. Was he able to communicate freely?

5 A. Yes.

6 Q. At any point in time, from the time that your father
7 started dating Mary, and when you observed him in
8 2011, until his death, did you observe any concerns
9 related to his ability to make his own decisions?

10 A. No.

11 Q. Did you have any concerns during that time, until he
12 passed away, about his ability to drive,
13 communicate, balance his checkbook, anything to that
14 effect?

15 A. No.

16 Q. How did you learn that your father and Mary were to
17 be married?

18 A. When he called me in August 2013, which was about a
19 month before the wedding. He called and said that he
20 was getting married.

21 Q. What was your discussion with your dad about that
22 marriage?

23 MS. MCFADDIN: Objection, Your Honor. As far as
24 anything such as communication or transaction with
25 the deceased.

1 THE COURT: Counsel ---

2 MS. BAILEY: Your Honor, he's already testified
3 pretty significantly about his communications with
4 the deceased so it has now opened the door. In
5 addition, it's just communications related to his
6 marriage to Mary. It's not in interest of the estate
7 that's effected by the Dead Man's Statute. I'm just
8 asking him about what he knew about the marriage.

9 THE COURT: Okay.

10 MS. MCFADDIN: Your Honor, Counsel ---

11 THE COURT: I know your objections, but I'm
12 going to allow that question. Please continue.

13 MS. BAILEY: Thank you.

14 A. Yeah, he is -- although, he'd been married three
15 times at that point, in that stage of his life, he
16 wasn't necessarily interested in getting married
17 again. He enjoyed the companionship with Mary. That
18 was important. And he stated that she wanted to get
19 married. So he said that'd be fine. But, I wouldn't
20 qualify it as something more than, in my opinion, as
21 having a good friend who wanted to do something at a
22 delayed age and he said that was fine. But again,
23 that was the same conversation where you all heard
24 about that. That didn't effect anything relating to
25 the Will.

1 Q. So with respect to your father's marriage to Mary,
2 do you know, after they married, did they move in
3 with one another?

4 A. They did.

5 Q. Did you have any knowledge at that time as to
6 whether or not Mary had any of her own assets?

7 A. Only that she had a place on Seabrook Island of her
8 own.

9 Q. After the marriage, did Mary move in with your
10 father to his home?

11 A. Yes.

12 Q. Did you have any knowledge as to what occurred to
13 Mary's house at the time that they got married?

14 A. No.

15 Q. Are you familiar at all with the administration of
16 Nancy Ward's estate?

17 A. No.

18 Q. Now, I understand your father passed away in
19 September, excuse me, September of December of 2016?

20 A. September of '16.

21 Q. September of '16, thank you.

22 A. Yeah.

23 Q. I think I misdated the date once before. September
24 16th, 2016?

25 A. That's correct.

1 Q. Was his death a surprise or has his health been
2 failing?

3 A. Well, he'd had a sudden heart attack four weeks
4 prior to his death. From his heart attack, he was
5 admitted to the ICU, and during those four weeks he
6 was in the ICU for most of that. Sometimes different
7 floors of the hospital. He was released to a rehab
8 facility for a few days, but then they sent him back
9 to the ICU. So really from the heart attack until
10 his death, he was hospitalized.

11 Q. How about prior to his heart attack? How was his
12 health prior to that?

13 A. It was okay. There was a little vertigo with a leg,
14 so long walks were not possible.

15 Q. He was able to care for himself prior to his heart
16 attack?

17 A. Yes.

18 Q. When did you first meet Mary's daughter, Ann?

19 A. We first talked on the phone when he was in the
20 hospital. We -- we got in contact with each other
21 just to discuss what was going on. At the time Mary
22 was in a rehab facility at the time. They were both
23 simultaneously not doing great.

24 Q. Do you know what Mary was in a rehab facility for at
25 the time?

1 A. I believe it was for a broken leg.

2 Q. Do you know how long Mary had been in that rehab
3 facility at that time?

4 A. I don't. I think it had been at least a couple
5 months.

6 Q. During that telephone call with Ann, what did you
7 guys discuss?

8 MS. MCFADDIN: Objection, Your Honor, here say.

9 MS. BAILEY: She's a party.

10 MS. MCFADDIN: Well, it's not a declaration of
11 Ann's interest. She's not a party individually,
12 she's here as a conservative for Mary Ward, who's
13 the party.

14 THE COURT: Counsel, I'm not sure of the
15 relevance?

16 MS. BAILEY: Your Honor, with respect to
17 communications with Ann, it goes into how the estate
18 was -- upon Stephen's death, the co-personal
19 representatives began to oversee the assets of the
20 estate. Ann was living with the party at the time,
21 and it's going towards the background related to the
22 identifications of the assets of the estate.

23 THE COURT: I'm not sure if we're here for that
24 today, are we?

25 MS. BAILEY: No, other than -- as far as what

1 was identified as having been transferred to Mary
2 during her lifetime -- with respect to during
3 Stephen's lifetime.

4 THE COURT: Okay, that would be relevant.

5 MS. MCFADDIN: But Your Honor, that goes
6 exactly to the here say. If she is trying to elicit
7 testimony upon a conversation with Ann Nobel-Kiley,
8 to prove the point of transfer of any kind, that's
9 the record that indicates here say prohibition.

10 MS. BAILEY: I'm not there yet, Your Honor.

11 MS. MCFADDIN: Regardless, she's asking for a
12 conversation with a third party -- a third person.

13 MS. BAILEY: It's not ---

14 THE COURT: I think we need to see where it
15 goes. We will take it just one question at a time.

16 Q. I'm sorry. We were at, while your father was in the
17 hospital, and you first talked on the phone with
18 Ann, what did you guys discuss?

19 MS. MCFADDIN: We would continue the objection.
20 This is hearsay.

21 THE COURT: Overruled. She's just asking
22 generally what they discussed.

23 A. We were essentially exchanging contact information
24 to make sure, you know, she was aware of all that
25 was happening with my father. It was just a kick off

1 of, you know, we were both -- she had her mother,
2 now our dad was in the hospital so that was our
3 discussions.

4 Q. At that time, do you know what rehab facility Mary
5 Ward was at?

6 A. I can't remember the name. It's in West Ashley.

7 Q. When your father passed away on September 16th,
8 2016, did you make any efforts to locate his Will or
9 anything in regard to his personal effects?

10 A. Yes. We had this Will.

11 Q. Exhibit 8?

12 A. What?

13 Q. Exhibit 8?

14 A. Exhibit -- yes. And then after he died, it was on a
15 Friday, by Saturday, my brother, sister, and I were
16 in Charleston and actually spent time at the house
17 going through their office and documentation, things
18 like that.

19 Q. Do you know where Ann was living at the time that
20 your father passed away?

21 A. In Massachusetts.

22 Q. Had anybody else, other than your father and Mary,
23 stayed at the house on Seabrook around the time that
24 your father passed away?

25 A. I think Ann stayed there from time to time, but I'm

1 not sure on that.

2 Q. Do you know if at the time your father passed away
3 whether Ann had been appointed a conservator for
4 Mary?

5 A. She had mentioned that she had made calls and was
6 pursuing that. That she had contacted a lawyer to
7 gain guardianship, but that had not gone through at
8 that point.

9 Q. At the time that your father passed away, did Mary
10 or Ann through conservatorship, did either one of
11 them have access to the financial documents and
12 account information of your dad or Mary?

13 A. Yeah, I mean, they -- Mary was at a rehab facility.
14 Ann had a key to the house. So whoever had access
15 that had access to the same documents we were
16 looking at.

17 Q. And once you were appointed co-personal
18 representatives, did you review your father's
19 finances, in your roles as co-personal
20 representatives?

21 A. We did. We went through to locate different
22 accounts. There were -- we located tax returns. We
23 went through the tax returns to kind of help figure
24 out where some income had been coming from.
25 Financial insurance for the home at Charles Schwab.

1 There was a joint checking account where -- from
2 BB&T bank, where all his income was going to. So his
3 pension and Social Security were going to the BB&T
4 account. It appeared that's where most of the
5 general expenses were being paid from.

6 Q. For the house that your father owned?

7 A. Correct. For his house.

8 Q. Based on your review of your father's finances,
9 including the tax returns, were you able to identify
10 whether Mary and your father maintained separate
11 finances during their marriage?

12 A. Yes. It appeared that way in the tax returns from
13 2014 and 2015. They were for joint tax returns. Mary
14 had a Social Security end column. That was not going
15 into this BB&T account, where they paid living
16 expenses from. There was also a pay out of a Life
17 Insurance policy for Mary and there was also a
18 Schwab account listed. Neither of the tax returns --
19 Mary's -- we don't know. I don't know what's in it.
20 We just know it was there. When we contacted Schwab
21 to maintain the estate assets, we had this third
22 number, and they just said, "That's not his."

23 Q. Were you aware that Mary had her own home? In
24 addition to the home that they resided in together?

25 A. Yes.

1 Q. Was that identified on any financial records as
2 belonging to both her and your father? Or were you
3 able to identify how that was maintained?

4 A. We found one documentation in the bills where there
5 was a property tax bill addressed to Mary on the
6 house in Creek Watch. It was a delinquent property
7 tax bill that ended up getting paid for from the
8 BB&T account, while my father was still alive. But
9 that's the only record we have regarding the house.

10 Q. The Social Security income that you identified on
11 the tax returns, that was Mary's Social Security
12 income, that did not go into the BB&T accounts that
13 ---

14 A. Not based on the records that we saw on the
15 statements. The money that went in there was from
16 only my father's pension and his Social Security.

17 Q. At the time that your father passed away, did you
18 know what the value of that BB&T account was?

19 A. The last statement we had that had closed about ten
20 days after his death, the balance at the end of
21 September, 2016, was around \$4,000.

22 Q. \$4,000?

23 A. Uh-huh.

24 Q. You had mentioned that there was a delinquent tax
25 bill for Mary's property. That was paid through that

1 BB&T account?

2 A. Correct.

3 Q. That amount was how much?

4 A. About \$1,600.

5 Q. Was there anything else that you identified upon
6 your review of the finances, in your role as co-
7 personal representative, that your father paid for
8 the benefit of Mary during his lifetime?

9 A. Well, we -- he had the credit cards just in his
10 name. We pulled the statements in 2017, in
11 preparation of taxes. From that credit card
12 statement, there were about \$7,500 in total
13 healthcare in costs because of Mary's leg. She
14 needed somebody to come and assist. In addition, we
15 found documentation they also had a timeshare in Los
16 Vegas, they had purchased together right after they
17 got married. They had a short honeymoon there.

18 Q. When they purchased together, did that provide
19 rights of survivorship to Mary?

20 A. It did.

21 Q. Were you able to identify any other purchases or
22 assets that provided full rights of survivorship to
23 Mary?

24 A. There was a Toyota Camry on lease that was in both
25 of their names.

1 Q. Anything else to your knowledge?

2 A. No.

3 Q. Were you able to -- did the estate receive any
4 incomes, or any kind of refund, related to a club
5 membership?

6 A. No, I contacted the club about the club membership.
7 There's a capitol percentage that, as a property
8 owner, you have -- the club advised us that it was
9 worth about \$17,000, but that goes to the surviving
10 spouse.

11 Q. So that has not been paid to the estate?

12 A. No. No. It wasn't ours to pursue so we didn't pursue
13 it.

14 Q. Based on your review of these financial records, did
15 your father use his income to provide for Mary
16 during his lifetime?

17 A. He did from what we could tell. Based on the BB&T
18 account, deposits into that account were more him
19 and those were paying for the general living
20 expenses that they had together. We didn't see
21 anything related back to the house on Creek Watch
22 and so that was kind of separate. Also, with the tax
23 returns, there was no income of any financial assets
24 that may have come from the Schwab account that was
25 not my father's. And so, that income was kept

1 separately as well. So the general expenses he paid
2 for while they were at the house on High Hammock.
3 Everything else was left alone.

4 Q. Did you identify anything from Mary's that was used
5 to provide for their general living expenses?

6 A. Did not.

7 Q. After your father was married to Mary, did you
8 receive any documentation that he amended, revoked,
9 modified any of the estate planning documents in
10 Exhibit Number 8?

11 A. No.

12 Q. To your knowledge, was there anything, other than
13 what's in the terms of the documents themselves,
14 that would have prevented your father from amending,
15 revoking, altering, or modifying the estate
16 documents in Exhibit Number 8?

17 A. No.

18 MS. BAILEY: Nothing further from this witness.
19 Thank you.

20 THE COURT: Thank you, Counsel. Ms. McFaddin?
21 And let me just make sure. About how many witnesses
22 do you have? Just for scheduling purposes?

23 MS. BAILEY: Your Honor, I have two more
24 witnesses. We will have to proffer their testimony
25 as well.

1 THE COURT: I'm just trying to figure out, do
2 y'all want to break for lunch?

3 MS. BAILEY: For scheduling purposes, this
4 would be my longest of my remaining witnesses.

5 THE COURT: Okay.

6 MS. MCFADDIN: Your Honor, we're fine to
7 continue. If the court wishes to.

8 THE COURT: Okay. We'll continue.

9 CROSS EXAMINATION BY MS. MCFADDIN:

10 Q. Mr. Ward, we have not met. I'm Jane McFaddin. I
11 represent Mary Ward in this action. You are one of
12 the three personal representatives in your father's
13 estate; is that correct?

14 A. That's correct.

15 Q. I noticed from the probate court documents, and
16 inventory, and the first interim accounting, that
17 you seem to have prepared those. So are you taking
18 the lead as far as signing the documents?

19 A. Yes, I handle the account, yes.

20 Q. You just decided that you would like to do that? You
21 have time to do that or ---

22 A. I was laid off last year so I have all the time in
23 the world.

24 Q. I'm sorry for that.

25 A. No, no, it's okay.

1 Q. We appreciate the work that you've done.

2 A. It's good, it worked out.

3 Q. This can certainly take up some time, especially on
4 this. Let me ask, just in response, we objected to
5 your testimony regarding conversations with your
6 father because of state laws, statutes, and case law
7 here in South Carolina. We believe that testimony is
8 not allowed. So I objected to that, but subject to
9 those objections, I may ask you a couple of
10 questions about that. You mentioned that your father
11 called you in August of 2013, prior to marrying Mary
12 Ward, to tell you of his plans to marry Mary; is
13 that correct?

14 A. Correct.

15 Q. And then to -- did he first bring up about the
16 estate plan in 2005, or did you ask about it?

17 A. He brought it up. It was important to him that we
18 didn't view this as anything more than companionship
19 that he enjoyed. He -- he came out in conversations
20 and said that, "this has nothing to do with the
21 Will. The estate is already planned out."

22 Q. I think you also testified that you did not attend
23 this wedding to Mary Ward; is that correct?

24 A. That's correct, I didn't.

25 Q. Did any of the siblings attend the wedding?

1 A. No.

2 Q. Do you know who did attend the wedding?

3 A. I don't.

4 Q. Did you get any pictures? Or did your dad send you
5 any pictures or anything afterwards?

6 A. I don't recall.

7 Q. And I think you testified your mother was your
8 father's first wife?

9 A. Correct.

10 Q. But they divorced and he married three more times,
11 including Mary Ward, his surviving spouse?

12 A. Correct.

13 Q. Is that correct? Did you attend the weddings for
14 Nancy Ward and ---

15 A. Sally Ward?

16 Q. And Sally Ward?

17 A. Yes.

18 Q. Your father and Nancy Ward were living on Seabrook
19 Island when she died; is that correct?

20 A. Yes.

21 Q. And after her death, from then until your father's
22 death, how often did you visit with your father at
23 Seabrook?

24 A. At Seabrook? Once a year, maybe a year and half?

25 Q. And he visited you at your home?

1 A. A couple times.

2 Q. A couple times during that whole period or a couple
3 times a year?

4 A. A couple times during that whole period.

5 Q. So in August of 2013, this is just confirming what
6 you've already testified, when you talked to your
7 father on the telephone, and during the time prior
8 to that when you'd seen him, either at your house or
9 at Seabrook, you had no reason to believe that he
10 was incapacitated, did you?

11 A. No.

12 Q. And in fact, up until the time of his death, he was
13 never determined to be incapacitated?

14 A. Correct.

15 Q. When you were looking through the financial
16 information, and prior to your father's death, that
17 weekend after his death, you and your siblings were
18 at his house, going through his documents, did you
19 have, other than any state documents he sent you,
20 any information about his day to day financial
21 affairs? Statements that he was getting, what he was
22 investing in, where he was eating, any of that
23 information?

24 A. No. I meant to say just the villa account was held
25 sort of in a lockbox, if you will, and the Schwab.

1 But in terms of day to day expenses, no.

2 Q. Did you receive statements from Schwab?

3 A. No.

4 Q. You didn't have the details of his financials at the
5 time of his death; is that correct?

6 A. That's correct.

7 Q. Subsequent to that is that you are the PR of the
8 estate, the one that's preparing inventory and
9 accounting and who's doing the investigating. In
10 your investigation, how would you compare the income
11 and assets, at the time of his death, of your father
12 and Mary Ward?

13 A. Well, he had, from what we could see from the tax
14 documents, he had a pension and the two investment
15 accounts that we can see. What we could see from the
16 tax documents was Mary's Social Security income.
17 With Social Security income, they were comparable.
18 But there was no record of selling -- whatever it
19 was in that other financial account we didn't have
20 access to. So I don't know. I don't -- I don't know
21 what she had.

22 Q. So from the information you have had though, and I
23 guess, you take that information in put it on the
24 inventory. From that information as to the overall,
25 you can say estimate -- well, you've done more than

1 estimate, you put your best information on the
2 inventory?

3 A. Yeah.

4 Q. As to the size of his estate versus the assets of
5 Mary at the time ---

6 MS. BAILEY: Object to the form. He just said
7 he didn't know what Mary's assets were.

8 MS. MCFADDIN: Your Honor, he said he didn't
9 know what one account was.

10 THE COURT: Just take them one at time. I think
11 it's clear he didn't know that one account, but did
12 he know others?

13 MS. BAILEY: With respect to Mary. I'm sorry.

14 Q. From the information you had, did you have any idea
15 as to the relative size?

16 A. No, I do not know what she had on that account. She
17 might have - I knew one side of that, so I can't
18 compare two things from only one side.

19 Q. Not counting the assets, would you say you didn't
20 have complete information? What about the income,
21 which would have been reflected on the tax returns?

22 A. Yeah, because of the -- there was more to my
23 father's.

24 Q. How much more?

25 A. I would have to look at the tax to see, but maybe --

1 maybe four times more?

2 Q. And so you also testified from your information this
3 joint account at BB&T basically was used to cover
4 house hold expenses?

5 A. As best I could tell, yeah.

6 Q. So basically both names were on that account?

7 A. That's correct.

8 Q. So that would categorize it as the marital,
9 household account?

10 MS. BAILEY: Object to the form.

11 MS. MCFADDIN: I'll withdrawal that question.

12 Q. Both names were on that account, from your
13 investigations?

14 A. Yes.

15 Q. And you did see the expenses from that account were
16 for household expenses? Joint expenses?

17 A. Yes.

18 MS. BAILEY: I'm sorry, objection. Your Honor,
19 I don't think that that characterizes what he's
20 previously testified.

21 MS. MCFADDIN: I made a note right here.

22 "Basically ---

23 THE COURT: Why don't you just ask him straight
24 up? Ask him again.

25 Q. From what you looked at in the BB&T account, with

1 both names on it, would you characterize that as the
2 household account paid for joint expenses of the
3 household?

4 A. I would say it paid for general living expenses of
5 the household, yes.

6 Q. "General living", what do you mean? Is that
7 different from household expenses, like food, and
8 utilities?

9 A. No, same thing.

10 Q. Your father and his wife, Mary's, age was roughly 88
11 and 68. Did they have a cook that came in to cook
12 for them?

13 A. No.

14 Q. Did they go out to eat?

15 A. They did.

16 Q. Did those expenses come from that BB&T account?

17 A. Yes, either that or his credit card paid for a lot
18 of meals, and then that was paid out of the BB&T
19 account.

20 Q. And so there's a credit card that was paid for out
21 of the BB&T account?

22 A. Right.

23 Q. Let's switch gears just a little bit. The inventory,
24 and we may get into this later but since Counsel has
25 gotten into it a little bit already, the inventory

1 in your father's estate, and the first interim
2 accounting, his estate, which was February 18th. I
3 want to show you this accounting and ask if you'll
4 refer -- well, first of all, I just ask you confirm
5 that you were the one who prepared this and signed
6 that that was the true accounting for the estate.

7 MS. BAILEY: Can I have a copy of that? If I
8 knew I needed a copy of that --

9 MS. MCFADDIN: Yes.

10 THE COURT: Yes, Ms. Bailey. Ms. McFaddin, the
11 relevance of this?

12 MS. MCFADDIN: Yes, Your Honor, since there was
13 information about the assets and things that
14 happened after the death of Stephen, I just wanted
15 to clarify a couple of things.

16 THE COURT: How is relevant to the omitted
17 spouse?

18 MS. MCFADDIN: It's relevant to the amount of
19 the spouse's share.

20 MS. BAILEY: Your Honor ---

21 MS. MCFADDIN: And I also want to conserve that
22 until that hearing.

23 MS. BAILEY: I'm am not arguing today what the
24 percentage of the amount is. Nor am I prepared to
25 argue today what the percentage of the amount is,

1 excuse me, how to value the estate for purposes of
2 determining the percentage to get omitted spouse's
3 share. We're just here to determine whether or not
4 she has a right to a omitted spouse share. So ---

5 MS. MCFADDIN: Your Honor, the questions that I
6 have will just be brief. I won't go into detail, but
7 there are a couple of things that need to be cleared
8 up.

9 THE COURT: Okay.

10 Q. On this accounting, Mr. Ward, you made a notation as
11 far as the expenses that the estate had paid. Some
12 expenses, for the house at Seabrook that was in your
13 father's name, made notation, did you not, that the
14 original schedule, paid on the inventory, was
15 different than how the expenses are noted on the
16 accounting?

17 A. Correct.

18 Q. Can you explain that?

19 A. Sure. When I sent the original accounting, probably
20 late 2016, around November or December, something
21 like that ---

22 Q. You mean the inventory that lists out the assets?

23 A. Correct. The original inventory.

24 Q. Right, yes.

25 A. I had listed 100% of the mortgage due on the house,

1 but because half of the house is in the Trust for
2 Nancy Ward, when I did the updated accounting, I
3 corrected for that.

4 Q. And so have you also -- or do you planning to file
5 an amended inventory? Two different documents?
6 Inventory and the accounting?

7 MS. BAILEY: Objection, Your Honor, on
8 relevance.

9 THE COURT: Counsel, I think she's indicated
10 we're not doing that today. Is that your
11 understanding too?

12 MS. MCFADDIN: Well, Your Honor, there's been a
13 lot of testimony about what assets went into the
14 Trust, and the Deed of Distribution, and all that.
15 And I would have objected to it so I'm just
16 following up on it. If they want bring in all about
17 what Nancy Ward's Trust has in it, we just need to
18 make sure that they're consistent in their
19 presentations to the court. The Deed of Distribution
20 was one of the parts of the Exhibit.

21 THE COURT: Okay. We'll continue on.

22 Q. Just to clarify, so the inventory, which is now in
23 the court's file, is 100% of the mortgage, but it
24 should be 50% of the mortgage that's in the heir's
25 estate; is that correct?

1 A. Correct.

2 Q. And 50% of the value of the house; is that correct?

3 A. Correct.

4 Q. Now on the accounting, when you list the expenses of
5 the estate, two questions. One, when the accounting
6 as far as the expenses for the house that had been
7 paid after your father's death, basically an estate
8 expense, do you agree that only half of the expenses
9 for the house should be estate expenses? Property
10 taxes, insurance?

11 MS. BAILEY: Your Honor ---

12 THE COURT: I don't ---

13 MS. BAILEY: I'm going to continue my objection
14 on this. If we get to the point where we have to
15 dispute the interim accounting, that is way off
16 topic as to whether or not we've got an omitted
17 spouse's share. And it's not a final accounting,
18 it's an interim.

19 THE COURT: Ms. McFaddin?

20 MS. MCFADDIN: Well, Your Honor, I'm just
21 trying to follow up with talking about what assets
22 and what's happening with the documents that have
23 been put into play, it's confusing ---

24 THE COURT: But you're talking about the
25 accounting there.

1 MS. MCFADDIN: Only as it pertains to the Trust
2 of Nancy Ward, which they say owns half of the
3 house.

4 THE COURT: Right. Right.

5 MS. MCFADDIN: The estate is making expenses
6 for the Trust of Nancy Ward.

7 THE COURT: Right, and that will be in the
8 accounting hearing issued for later on. We're not
9 here for the inventory appraisal. We're here for the
10 omitted spouse's share.

11 MS. MCFADDIN: Yes, sir. Okay.

12 Q. Mr. Ward, when you were going through your father's
13 financial statements and those things, prior to his
14 death, did he pay expenses for any assets that were
15 on Nancy Ward's Trust?

16 A. I don't know.

17 Q. Did you find in your records about what the expenses
18 he paid on the house? The house at 2412 High Hammock
19 Road, prior to his death? Any reference to expenses?
20 Property insurance, property taxes?

21 A. I don't recall seeing those. I'm sure they were
22 there. As you asked me before, I wasn't involved in
23 his finances prior to his death, so ---

24 Q. Right. I'm talking about after his death, when you'd
25 go back and saw ---

1 A. I wasn't looking for that kind of thing, so it's not
2 relevant.

3 Q. Looking at the financial information, did you find
4 that during the years of their marriage, up until
5 his death, your father and Mary Ward filed joint tax
6 returns?

7 A. Yes. At least for 2014 and 2015.

8 Q. And 2016 had not been filed?

9 A. No, they had not filed at that point.

10 Q. How did you handle 2016?

11 A. We filed separately.

12 Q. Mr. Ward, when your father gave you these documents,
13 and then confirmed, subject my continuing objection,
14 this conversation with you and your father of 2013,
15 confirmed with you that this was going to continue
16 to be the estate plan, as it's reflected in these
17 documents; is that correct?

18 A. That's correct.

19 Q. And you said you glanced through them, or reviewed
20 them, to notice some particular things in them, that
21 were brought to your attention?

22 A. Correct.

23 Q. Now, I'll refer you to Sub-Section V, Agreement for
24 Mutual Wills and Trust, page two, Section 4.2.2, and
25 ask if you would refer to that.

1 A. Okay.

2 Q. When your dad had talked to you in August of 2013,
3 did he say, "Don't worry, nothing's going to change,
4 we have it all under control"? Did he say anything
5 about that filing, in those documents, after he
6 married Mary Ward, or in anticipation of his
7 marriage to Mary Ward?

8 A. No.

9 Q. Did he say anything to you about getting Mary Ward
10 to sign a written waiver or waving any spouse's
11 share she might have, which is reflected in 4.2.2?

12 MS. MCFADDIN: Your Honor, I'm going to object
13 to that, with respect to the elective share. We're
14 not here on a petition for an elective share and
15 that's what I want to object.

16 THE COURT: Overruled. I'm allowing the
17 question. Go ahead.

18 A. Can you repeat it? I'm sorry.

19 Q. I've asked you to refer to 4.2.1, as it stands, and
20 4.2.2.

21 A. Right.

22 Q. Did your father ever have conversation, in August of
23 2013, telling you about his marriage to Mary, saying
24 that he had, or had anticipated, getting any sort of
25 document, or waiver, or agreement signed by Mary,

1 that would make sure nothing was changed in those
2 documents?

3 A. No.

4 MS. MCFADDIN: Objection, same grounds.

5 THE COURT: Overruled.

6 A. No, he just stated that he didn't think he needed --
7 that this would stand and that he wanted to get
8 married for companionship and -- and it was sort of
9 informal. That marriage. In his mind, Section 4.2 --
10 I mean, he did not quote that to me on the phone.

11 Q. You started to say, "in his mind", and he didn't
12 tell you that 4.2 didn't apply, did he?

13 A. No.

14 Q. Did he say anything at that time about going back to
15 his lawyer or anybody at the McNair firm about
16 making sure that everything would be the same?

17 A. No.

18 Q. And Mr. Ward, you mentioned a couple times that Mary
19 wanted to get married. Did your dad not want to get
20 married?

21 A. He had said after Nancy died -- there was a
22 subsequent year or so since her passing, that he was
23 not interested in getting married again, that Nancy
24 was, in his mind, his -- I'll say, best spouse he
25 ever had. He wanted to leave on that note, if you

1 will. And so he was not interested in getting
2 married again.

3 Q. In August of 2013, he told you he was getting
4 married.

5 A. Uh-huh.

6 Q. He indicated to you, subject to my continuing
7 objection, did Mary hold a gun to his head about
8 getting married?

9 A. No.

10 Q. Was your father one who was easily intimidated?

11 A. No.

12 Q. And in fact, the woman he was marrying was 20 years
13 his senior; is that correct?

14 A. Correct.

15 Q. When you saw them together, was your father
16 intimidated by Mary Ward?

17 A. No.

18 Q. Thank you.

19 MS. MCFADDIN: We have no further questions,
20 Your Honor.

21 THE COURT: Thank you, Ms. McFaddin. Counsel?

22 RE-DIRECT EXAMINATION BY MS. BAILEY:

23 Q. Couple of follow up questions. Ms. McFaddin asked
24 questions related to villa accounts, that's
25 referenced in the Will. Can you tell me about the

1 villa account in reference to your dad's Will?

2 A. Sure. The villa account is held in Schwab. It was
3 the proceeds for the sale of the beach house villa
4 on Seabrook Island that my mother and father had
5 bought together in the mid '70s.

6 For as long as I've been alive, that villa was
7 going to be handed down in succession, if you will,
8 to my brother, and sister, and me, but in the early
9 2000s, my dad sold it, but he called to say, "Hey,
10 I'm selling the house. I know it's disappointing.
11 I'm holding the money in this account", and it's
12 related specifically to the villa account. Only to
13 use if he needed it at some point during his
14 lifetime. Essentially, if he didn't need it, that
15 would be inherited by my brother, sister, and me.

16 Q. So that villa account was intended to go to you and
17 your two siblings, Stephanie and David?

18 A. Correct, yes.

19 Q. Upon your review of the financial records, after you
20 were appointed co-personal representative, your
21 testimony was, you did not look for financial
22 affairs of Mary, did you?

23 A. Correct.

24 Q. And you didn't know what assets she owned
25 individually, did you?

1 A. No.

2 Q. You didn't know about how she owns the house that
3 she had on Seabrook?

4 A. No.

5 Q. Did your father have an ownership interest in her
6 house on Seabrook?

7 A. Not that I'm aware of.

8 Q. And that house that he had on Seabrook, that was
9 held, he was the lifetime beneficiary on that house
10 under the terms of Nancy's Trust; correct?

11 A. Correct.

12 Q. And he was also the beneficiary? Or excuse me, he
13 was also the Trustee?

14 A. Yes.

15 Q. When you were asked about whether your father said
16 anything to you specifically about Section 4.2 of
17 the Mutual Agreement of Wills during your
18 conversation in 2013, he didn't reference the
19 Agreement for Mutual Wills during that conversation,
20 did he?

21 A. No.

22 Q. He just simply stated that the documents that you
23 had in Exhibit 8 were going to be unchanged by that
24 marriage?

25 A. Correct.

1 Q. To your knowledge, the home that was owned by Mary
2 did not come into your father's estate, it's not be
3 asseted for your father's estate; correct?

4 A. Correct.

5 MS. BAILEY: Nothing further for this witness.

6 THE COURT: All right. Thank you. Anything
7 else, Counsel?

8 MS. MCFADDIN: No, Your Honor. We have nothing
9 further.

10 THE COURT: You may step down. Thank you. We're
11 going to take a short break, a lunch break, or what?

12 MS. MCFADDIN: If the next witness is a short
13 one, we would prefer to continue on.

14 MS. BAILEY: I'm happy to do that. The next
15 witnesses are short.

16 THE COURT: All right. We will come back right
17 at one and try to finish this up.

18 (Hearing went off the record for a brief
19 period of time.)

20 MS. MCFADDIN: Your Honor, before we proceed
21 with the proceedings, my client has airplane
22 reservations back to Massachusetts, and with all the
23 heavy traffic and all at the airport, I'm afraid
24 that she may need to leave before we finish hearing
25 those ---

1 THE COURT: That's fine. When you need to
2 leave, just get up and go. That traffic is bad, I
3 know. You're fine. Counsel, ready to proceed?

4 MS. BAILEY: Yes. Yes, Your Honor. I call David
5 Ward to the stand.

6 THE COURT: Mr. Ward, good afternoon.

7 THE WITNESS: Good afternoon.

8 THE COURT: Please place your left hand on the
9 Bible there, raise your right hand.

10 (David Ward, being duly sworn, testified as
11 follows:)

12 THE COURT: Thank you, please be seated. And
13 please state your full name for the record.

14 THE WITNESS: David Ward.

15 THE COURT: Okay Mr. Ward, please answer the
16 questions of Counsel. Ms. Bailey?

17 DIRECT EXAMINATION BY MS. BAILEY:

18 Q. Mr. Ward, where do you live?

19 A. Ridgefield, Connecticut.

20 Q. How long have you lived in Connecticut?

21 A. Seven years.

22 Q. And are you the co-personal representative of
23 Stephen Ward's estate?

24 A. Yes, I am.

25 Q. You serve together with your sister Stephanie, and

1 your brother, Brian?

2 A. I do.

3 Q. And your father, Stephen Ward, was married to your
4 mother, Linda Ward. Was that his first marriage?

5 A. That's correct.

6 Q. Can you tell me a little bit about your childhood
7 growing up with your father and your mother?

8 A. Yeah. So we grew up overseas, as you've heard. I was
9 born in Korea, but we came back to the US every
10 year. When we did that, we would come to Seabrook
11 Island. We would stay at the villa. Sometimes we'd
12 go visit family, but most of the time they would
13 come and see us. That was sort of my life growing
14 up. It was overseas, with usually a four week stay
15 in the summer.

16 Q. At Seabrook?

17 A. At Seabrook, yeah.

18 Q. And Exhibit Number 8, did your father provide you a
19 copy of Exhibit Number 8?

20 A. Yes, he did.

21 Q. And can you tell me approximately when your father
22 provided you with a copy of Exhibit Number 8?

23 A. I don't remember exactly, but it would have been
24 probably -- best I can remember would be late in
25 2006, but I want to say it was possibly around

1 Christmas time. It was at a gathering where it
2 wasn't just me and my wife. I seem to recall other
3 people, you know, maybe my brother and sister. But
4 yeah, somewhere near Christmas 2006.

5 Q. And he provided you a copy of it at a gathering?

6 A. I just remember it being handed out and feeling a
7 little bit awkward about it. So that's the
8 recollection. It's more of an emotional recollection
9 than personal one.

10 Q. Do you know if Nancy was present at the time and
11 knew of that?

12 A. Yes.

13 Q. And at the time that he handed you a copy of Exhibit
14 Number 8, did you have an opportunity to look at it
15 or review it at that time?

16 A. Yeah, again I -- to me, what was in it didn't
17 particularly matter at that time, right? It didn't
18 feel like it was anything that was imminent. I
19 understood that they, you know, wanted to make sure
20 that we understood that we were being provided for
21 in one way, shape, or form, so I kind of got that
22 impression, but that I didn't need to read it in
23 detail. It was also a fairly, I mean, I realize it's
24 not large compared to, say, the binder on your desk,
25 but it's a fairly intimidating document. I was

1 thinking a Will might be a page or two, so when I
2 was handed this sort of bound copy with tabs and,
3 you know, it wasn't something I was ready to sift
4 through.

5 Q. And the copy that you were handed would be an
6 identical copy, identical to Exhibit Number 8, that
7 has been admitted today?

8 A. That's right.

9 Q. At any time after you were provided a copy of
10 Exhibit Number 8, did you learn that Exhibit Number
11 8 was amended, ratified, modified, or revoked?

12 A. No.

13 Q. And during your father's lifetime, did you have an
14 opportunity to communicate with him, related to
15 Exhibit Number 8?

16 A. Yeah. So there was probably two occasions that I
17 remember having the conversation about the Will.

18 Q. Okay, tell me about the first one.

19 A. So the first one was, he had called sometimes in the
20 summer of 2011. It was not that long after, you
21 know, Nancy's passing, to share that he had met
22 somebody over the Fourth of July, and he was, at
23 that point -- I don't know that appropriate word to
24 use. He was seeing her, dating her, that they were
25 friends, and that he was, you know, happy to have

1 met somebody who came from a -- similar
2 circumstances, who was widowed. So he mentioned that
3 and then he just made it a point to note that he
4 wasn't planning on getting married again.

5 MS. MCFADDIN: Objection, Your Honor. Same
6 thing, Dead Man's Statute.

7 MS. BAILEY: Your Honor, the testimony that's
8 being elicited is simply related to the marriage.
9 It's not related to the -- what he just testified
10 specifically. In addition, we maintain our
11 continuing position related to the inactability of
12 the Dead Man's Statute as a result of ---

13 THE COURT: I'm going to sustain the objection.
14 If you want to proffer this testimony, you may.

15 MS. BAILEY: Very good. All right.

16 Q. So tell me specifically what you discussed with your
17 father, related to Exhibit Number 8, in 2011.

18 A. Yeah, he wouldn't have referred to it as his Will,
19 but he just wanted to assure that, you know, no
20 matter what, that we were taken care of and that
21 everything that was in the document he had given us
22 years ago still stood.

23 Q. And that was a result of -- in 2011, that was a
24 result of him meeting Mary Ward?

25 A. Yeah, it just ended up being part of the

1 conversation. He knew that we were, I'll say
2 sensitive, about the adopted Will. That it's
3 actually right. So I think he wanted to, you know,
4 my impression was that he wanted to make that clear.

5 Q. And do you recall a second conversation specifically
6 related to his estate planning in Exhibit Number 8?
7 When did that occur?

8 A. So that was probably the same time that Brian
9 mentioned, August of 2013. It was, you know, just
10 before they got married, Dad and Mary. If was when
11 he called to say they were getting married.

12 Q. And so that was by telephone?

13 A. Yes.

14 Q. And what did he tell you by telephone, related to
15 him getting married to Mary?

16 A. Yeah, he said that he liked Mary, and they were very
17 happy together. That he didn't think he would get
18 married again, but in this case, you know, Mary
19 needed to get married. I wasn't sure if it was, you
20 know, what the reason was. If it was a morality or
21 religious reason, but he seemed to indicate that was
22 her decision, and if she wanted to get married, he
23 wanted to respect that decision. So that's what they
24 needed to do. But also told me, they hadn't set the
25 date yet and they didn't expect anyone to come. That

1 they were going to get married, but that it would be
2 a small service that'd probably just be right on the
3 island, and that they weren't expecting us there.

4 Q. And during that telephone conversation, did he
5 discuss with you his estate plan and the impact of
6 his impending marriage?

7 A. No, he said that everything was done before was
8 still in effect. He said that this marriage doesn't
9 effect the estate planning because that's been taken
10 care of already, and you guys have all those
11 documents.

12 MS. BAILEY: That concluded my proffer, Your
13 Honor.

14 THE COURT: All right. Thank you.

15 Q. Following your father's marriage to Mary, did you --
16 when was the first time you met Mary?

17 A. The first time I met Mary was late 2012. It was at
18 my home on Seabrook.

19 Q. And did you have any feelings related to Mary? Did
20 you like her? Did you dislike her?

21 A. I didn't know Mary. I liked her. I liked the fact
22 that my father was happy being married to her. So
23 that was great, but I didn't really know her. She
24 was my dad's fourth wife. You know, I didn't make an
25 effort to try to get to know her that well either, I

1 would say. But no, I didn't have anything against
2 her. Again, I was happy that -- I thought it was odd
3 they were getting married, but I was happy that they
4 had each other.

5 Q. Did you talk with your father often?

6 A. Probably about once a month.

7 Q. When your father had his heart attack, was that the
8 first time that you had communicated, or met Mary's
9 daughter, Ann?

10 A. Actually, no. I didn't meet Ann, that I recall. The
11 only time meeting Ann was, in fact, was after he
12 died. And I had not met her prior to that, so I
13 didn't believe she didn't meet my brother and talk
14 to him, or my sister, and not say anything.

15 Q. And did you have any conversations with Ann, related
16 to the estate, of your father's estate, after he
17 passed?

18 A. No.

19 MS. BAILEY: All right, Your Honor, I think
20 we're over.

21 THE COURT: Ms. McFaddin?

22 CROSS EXAMINATION BY MS. MCFADDIN:

23 Q. Mr. Ward, how do you come in the ---

24 A. I'm in the middle.

25 Q. You're in the middle?

1 A. I'm the middle child, yeah.

2 Q. And your brother, Brian, is he the elder?

3 A. No, no. He's the young one.

4 Q. Okay, who's the oldest one?

5 A. My sister, Stephanie.

6 Q. All right.

7 A. She's just the best looking so ---

8 Q. You mentioned in your testimony that, subject to my
9 continuing objection, your father -- that in August
10 of 2013, when you talked to him and he expressed his
11 intentions for he and Marry to get married, you said
12 you were, I don't know whether you said, "they were
13 very happy together", or, "he said they were very
14 happy together," or you were, "glad they were happy
15 together"?

16 A. Well, I said I was glad that they were happy
17 together, and he was happy to be with Mary.

18 Q. Right. And I think you did say that he really liked
19 Mary, but didn't he say that the loved Mary?

20 A. I'm sure he did. I, you know, I don't -- I really
21 don't know. I don't remember the exact words he
22 used.

23 Q. How would you describe your father, as far as his
24 normal pattern of taking care of his affairs, was
25 Mary in charge?

1 MS. BAILEY: Objection. That's vague.

2 THE COURT: Let's see if he can answer it. Go
3 ahead.

4 A. I guess I don't really understand the question.

5 Q. Did your father -- you said he sent you, or
6 presented you, at a family gathering along with your
7 siblings, some -- you thought 2006. I think your
8 brother said maybe 2005 -- these documents. After
9 that time, did he discuss with you any of his
10 intentions other than that of his intention to marry
11 Mary? His intentions regarding his property, or
12 financial, or investment affairs?

13 A. Only to say that his intent was to, you know, keep
14 them as they were written out in that Will.

15 Q. In general. Any specifics involved in that?

16 A. No.

17 Q. During those years, probably ten years, did he ever
18 call you for advice, as far as investments, or
19 should he buy this, or sell this?

20 A. No.

21 Q. And in fact, I think you and your brother talked
22 about the house that was sold on Seabrook.

23 A. Correct.

24 Q. Did you know about it? Did he ask you about it, your
25 opinion about it before he sold it, or did you just

1 find out about it afterwards?

2 A. You know, I don't remember. He wouldn't have asked
3 our opinion. I can't remember if he would have -- I
4 can't remember if he told us ahead of time, "I'm
5 intending on selling it." I don't recall that. I
6 remember knowing that it was sold. I don't remember
7 if I knew ahead of time that he was intending to. He
8 certainly would not asked whether he should or not.

9 Q. And I think your brother has testified about your
10 father's working career. That he was with this
11 company, Cargo, and he went all across -- all around
12 the world on ---

13 A. Yes.

14 Q. So he was in upper level management when he finished
15 working there; is that correct?

16 A. That's correct, yes.

17 Q. So is it safe to say he is a man who made his own
18 decisions?

19 MS. BAILEY: Objection.

20 THE COURT: Overruled. Go ahead.

21 Q. Is it safe to say that he was a man who made his own
22 decisions?

23 A. So I would say he made his own decisions, but he
24 also wasn't averse to being consultative, etc. It
25 wasn't necessarily about something that had to with

1 say, his thing with the villa, right? But that
2 wouldn't have been unusual either.

3 Q. Did you know who his investment advisors, or CPA, or
4 attorney were?

5 A. No.

6 Q. Or anyone else? Did you know the names of anyone
7 else he may have consulted for professional advice,
8 as to his financial and property affairs, while he
9 was here in Charleston?

10 A. Well, you know, we got the Will. So we knew of, at
11 that point, McNair Law Firm. So we know he consulted
12 with them. I believe there were accounts with
13 Charles Schwab, and chief investments, which were
14 somehow or another linked to those accounts, right?
15 But no, I don't know any personal names, etc.

16 Q. And that information only came to you through the
17 documents that your father gave you a copy of at the
18 family gathering?

19 A. As best as I can recall. I don't recall having a
20 conversation otherwise.

21 Q. Thank you.

22 MS. MCFADDIN: Your Honor, I have no further
23 questions.

24 THE COURT: Thank you. Anything else?

25 MS. BAILEY: Nothing further.

1 THE COURT: You may step down, Mr. Ward.
2 Counsel, your next witness?

3 MS. BAILEY: Your Honor, I call Stephanie
4 Cibinic.

5 THE COURT: Good morning -- good afternoon,
6 what am I saying? Place your left hand on the Bible,
7 raise your right hand.

8 (Stephanie Cibinic, being duly sworn,
9 testified as follows:)

10 THE COURT: Thank you. Please be seated. And if
11 you could state your full name for the record?

12 THE WITNESS: Sure. Stephanie Ward Cibinic.

13 THE COURT: And maybe spell the last name for
14 our court reporter?

15 THE WITNESS: Sure. C-I-B-I-N-I-C.

16 THE COURT: Thanks. Answer the questions of the
17 counsel. Ms. Bailey?

18 DIRECT EXAMINATION BY MS. BAILEY:

19 Q. Stephanie, where do you live?

20 A. Arlington, Virginia.

21 Q. And what do you do for a living?

22 A. I am a regulatory attorney in the federal
23 government.

24 Q. We have heard from your two siblings today. We just
25 learned that you are the oldest of the three

1 siblings; correct?

2 A. Correct.

3 Q. Can you tell me a little bit about your childhood?
4 Growing up with your father?

5 A. Yes, we -- I wasn't born in Korea. I was born in
6 Delaware, but the first place we moved was Korea
7 with my dad's job, so we, you know, had a life
8 growing up overseas. Mostly in Asia, Switzerland,
9 Japan. Then we moved to Minnesota when I was 16.

10 Q. And related to your mother, Linda, how long was your
11 mother and your father married?

12 A. About 20 years.

13 Q. Were you familiar with Nancy? When your father was
14 married to Nancy?

15 A. Yeah.

16 Q. And they were married at least 15 years; correct?

17 A. Yeah.

18 Q. And how would you describe the relationship your dad
19 had with Nancy?

20 MS. MCFADDIN: Objection, Your Honor.
21 Relevance?

22 THE COURT: Counsel?

23 MS. BAILEY: It's background testimony. It's
24 really -- it's background.

25 THE COURT: Let's just go for it. Go ahead.

1 Overruled.

2 MS. MCFADDIN: And we would also object that it
3 calls for speculation on the part of this witness. I
4 mean ---

5 THE COURT: Let's see where the question ---

6 Q. How would you describe your father's relationship
7 with Nancy?

8 A. I thought it was a good relationship. I mean, they
9 seemed very close. You know, she seemed good for
10 him. He seemed good for her. It seemed like a good
11 relationship.

12 Q. Were you involved in his life when Nancy became ill
13 and eventually passed away?

14 A. Not, you know, I guess not to the extent where I was
15 down here, like, during hospital visits. But I knew
16 when she was sick, and that she had cancer, went
17 into remission, and then it came back.

18 Q. And Nancy passed away in 2011?

19 A. Yes.

20 Q. How did you then learn that your father was in a
21 relationship with Mary Ward?

22 A. He told me on a phone call that he had met -- and
23 this must have been like ---

24 MS. MCFADDIN: Objection, Your Honor. As far as
25 the Dead's Man's Statute. Also, "in a relationship"

1 ---

2 THE COURT: I think ---

3 MS. MCFADDIN: She's testifying to
4 communications or transactions with the deceased.

5 THE COURT: I think this is just background
6 right now. Let's see where it goes. Or do you want
7 to proffer this? Go ahead.

8 A. He told me about Mary on a phone call. That he had
9 met someone at a July 4th party, and that they had
10 things in common, and that he liked her.

11 Q. Were you -- did your father provide you a copy of
12 Exhibit Number 8?

13 A. Yes.

14 Q. During his lifetime?

15 A. I brought my copy with me.

16 Q. And the copy that you brought with you, is that an
17 identical copy to Exhibit Number 8?

18 A. Yes.

19 Q. And approximately when did your father provide you a
20 copy of Exhibit Number 8?

21 A. It was either late 2005 or 2006. I don't really
22 remember.

23 Q. Do you recall what event prompted him providing you
24 a copy?

25 A. Yeah, it was a time when I was down in Seabrook, and

1 again, I -- it was like a gathering. There were
2 other people there. It wasn't just me. I don't know
3 if it was back when Gary, or Nancy's kids, were
4 there because I spent time -- Christmases with them
5 a lot when they were down. You know, if they were
6 visiting Nancy and my dad, and I was. So I don't
7 really remember the time period that other people
8 were there, but it was, I think, sometime soon after
9 this was written.

10 Q. Okay, and did you have an opportunity to review
11 Exhibit Number 8 at the time that your father
12 provided a copy of it to you?

13 A. I did not take the opportunity to review it.

14 Q. How about time thereafter?

15 A. I didn't until he was in the hospital and, you know,
16 and then died.

17 Q. During his lifetime, did you have an opportunity to
18 discuss with your father his estate plans in Exhibit
19 Number 8?

20 A. I don't remember discussing anything specific about
21 the Will. He did call me about the villa, that that
22 would be held for me and my brothers, but I don't
23 remember anything very specific to the Will.

24 Q. How about in relation to his anticipation of getting
25 married to Mary?

1 A. He called me in August to say that he was going to
2 gt married, and he said, "this does not impact the
3 Will", and he didn't say anything more specific, but
4 he was pretty clear that this did not impact the
5 Will.

6 Q. And did you understand that to be in reference to
7 the Exhibit Number 8 document?

8 A. Yes.

9 Q. After your father was married -- after your father
10 told you about his relationship with Mary, did you
11 have an opportunity to meet her?

12 A. I did. So I was down at Seabrook in August, but I
13 didn't meet her then. But he talked more about her
14 in August of 2011. And then he and Mary came up to
15 visit me and my husband in Arlington in October of
16 2012. So that was when I met her.

17 Q. What was your impression of Mary?

18 A. You know, she's an interesting woman

19 MS. MCFADDIN: Objection, Your Honor. Relevance
20 and calls for speculation on the part of this
21 witness. If she's emphatic with her impressions of
22 someone -- I don't know if testimony that -- we
23 object to.

24 THE COURT: What is the relevance?

25 MS. BAILEY: Your Honor, on cross examination,

1 the petitioner made a point to ask about whether or
2 not they attended their wedding. I'm just asking
3 questions about whether or not they had any
4 objection to the marriage.

5 MS. MCFADDIN: We haven't cross examined this
6 witness.

7 MS. BAILEY: Cross examination of the other
8 witnesses, and so I'm asking questions related to --

9 -

10 THE COURT: I don't think it applied to this
11 witness, and I'm not sure what the relevance is.

12 MS. BAILEY: Okay, Your Honor. I'll address it
13 and redirect it. I have no problem with that.

14 Q. Did you get to meet Mary during her lifetime?

15 A. Yes.

16 Q. Excuse me, during your father's lifetime? During
17 their marriage?

18 A. Yes.

19 Q. And were you aware of any of the assets that Mary
20 had, prior to their marriage?

21 A. I was aware that she owned a home on Seabrook.

22 Q. And when you came to Seabrook Island to visit your
23 father and Mary, did you go to that home?

24 A. Yes, she actually toured us around the home.

25 Q. Did you stay at the home?

1 A. No, we did not stay there, at her house. We were
2 staying at my dad's, and that's where she was
3 living, since after they were married.

4 Q. After your father passed away on September 16th,
5 2016, did you also undertake efforts to locate any
6 wills, documents, related to the estate?

7 A. Yes, we had to go through, I mean, we're required to
8 as there's a Will, to figure out what was on it.

9 Q. And did you located any memorandum regarding his
10 personal effects?

11 A. No.

12 Q. Did you locate any document revoking, amending,
13 modifying, or altering the documents contained in
14 Exhibit Number 8?

15 A. No.

16 Q. Did you have any other conversations with your
17 father regarding Exhibit Number 8 and the documents
18 contained therein?

19 A. Not that I recall.

20 Q. And when did the conversation occur where he called
21 you on the telephone? Was that approximately August
22 of 2013?

23 A. August of 2013.

24 Q. And other than that conversation, did you have any
25 conversations with your father where he told you

1 that he was revoking, modifying, or amending Exhibit
2 Number 8?

3 A. No. I mean, the only conversation I recall is the
4 one from August 2013 where he said clearly, this
5 does not impact the Will.

6 Q. And that being his impending marriage to Mary?

7 A. Right.

8 MS. BAILEY: I have no further questions, Your
9 Honor.

10 THE COURT: Ms. McFaddin?

11 CROSS EXAMINATION BY MS. MCFADDIN:

12 Q. Is it Cibinic?

13 A. Cibinic.

14 Q. Cibinic?

15 A. Yes.

16 Q. Now, Ms. Cibinic, you are one of the appointed co-
17 personal representatives for your father's estate?

18 A. Yes.

19 Q. And you've been represented throughout this
20 proceeding by the McNair Law Firm. Mr. Morrison, and
21 now Ms. Bailey. It's always been the McNair firm
22 even though there have been previous attorneys; is
23 that correct?

24 A. Yes.

25 Q. There have been other attorneys, other than the two

1 counselors in the court today?

2 A. No.

3 Q. I think there was another colleague of Mr.
4 Morrison's initially.

5 A. Oh, Josh Simpson.

6 Q. But all within the same firm? The McNair firm?

7 A. Yes.

8 Q. So are you aware of certain Discovery requirest that
9 have gone back and forth between your lawyers and my
10 office here?

11 MS. BAILEY: Your Honor, objection.

12 THE COURT: What is the relevance of that?

13 MS. MCFADDIN: Well, Your Honor, we're just
14 trying to clarify and to see if they confirm some of
15 the answer I've gotten in response to this
16 discussion.

17 MS. BAILEY: She needs to ask a direct
18 question.

19 THE COURT: You're going to have to ask the
20 direct question.

21 MS. MCFADDIN: Thank you.

22 Q. Ms. Cibinic, what evidence do you have that your
23 father took an action to ratify his 2005 Will and
24 Testament after his marriage to Mary Ward in 2013?

25 MS. BAILEY: Your Honor, objection. The

1 evidence has been presented today regarding the
2 ratification. She's not a qualified witness to
3 testify as to what the evidence has been presented
4 today. She can testify as to what ---

5 THE COURT: Overruled. I'm allowing the
6 question.

7 MS. MCFADDIN: Thank you.

8 Q. Do you want me to repeat it?

9 A. Yeah, please do.

10 Q. What evidence do you have that your father took no
11 action to ratify his -- no, excuse me. What evidence
12 do you have that your father took action to ratify
13 his 2005, last Will and Testament after his marriage
14 to Mary Ward in 2013?

15 A. I didn't find anything.

16 Q. Thank you.

17 MS. MCFADDIN: No further questions, Your
18 Honor.

19 RE-DIRECT EXAMINATION BY MS. BAILEY:

20 A. Did you find any written document that your father
21 ratified his last Will and Testament?

22 Q. I didn't find anything.

23 A. Other than the written document, did your father do
24 anything to amend, revoke, modify, or alter, in any
25 written document, his last Will and Testament?

1 Q. Not that I'm aware of.

2 A. And did your father tell you that his last Will and
3 Testament would be unaffected by his marriage to
4 Mary?

5 Q. Yes.

6 MS. MCFADDIN: Objection, Your Honor.

7 MS. BAILEY: Your Honor ---

8 THE COURT: Your objection was the Dead Man's
9 Statute?

10 MS. MCFADDIN: Yes, Your Honor.

11 MS. BAILEY: Your Honor, she opened the door.
12 She asked what evidence she specifically asked this
13 witness what evidence does she have of ratification.
14 And that is evidence as to ratification, so she
15 opened the door to this testimony.

16 MS. MCFADDIN: No, that is not -- the Counsel
17 is misstating my question. Ratification is a written
18 document and that's what the question was.

19 MS. BAILEY: Your Honor, ratification -- the
20 case law related to ratification specifically
21 regarding the Will provides for ratification simply
22 by the passage of time.

23 THE COURT: I think you've already made your
24 point. I think I'm going to go ahead and allow it,
25 but I think you're remade the point ---

1 MS. BAILEY: Thank you.

2 THE COURT: Any other questions for this
3 witness?

4 MS. BAILEY: Your Honor, the Respondent rests.

5 THE COURT: Ms. Cibinic, you may step down.
6 Thank you.

7 MS. BAILEY: Your Honor, I would propose that,
8 in lieu of closing statements, that we can submit
9 proposed orders, if that's acceptable. That way we
10 can provide the court with all the documents.

11 THE COURT: Okay. Ms. McFaddin, is that
12 acceptable?

13 MS. MCFADDIN: Yes, Your Honor. That would be
14 fine with me, as long as we -- and I'd just like,
15 for clarification, that -- normally, for it is
16 possible in previous cases where have done an
17 omitted spouse, we had both parts, both the right to
18 the omitted spouse, and how that's to be determined,
19 but we are -- and of course, that's what we've
20 asked, that you determine in our petition. But my
21 understanding is that today's hearing is just doing
22 the first part of the right to the omitted spouse
23 share?

24 THE COURT: You tell me what y'all want to
25 agree to do with --

1 MS. MCFADDIN: Well, I ---

2 THE COURT: -- this file.

3 MS. MCFADDIN: Right. And it's obvious I have
4 questions about that, so I don't want to waive -- I
5 have questions about that, and then not accepting
6 that, that is truly what's been filed is a true and
7 accurate statement of the probate ---

8 MS. BAILEY: I think that's a whole other
9 petition. That is not the petition for an omitted
10 spouse.

11 MS. MCFADDIN: It's not a whole other petition,
12 but I'm glad ---

13 THE COURT: Maybe we can have it at another
14 hearing. If you want to do that.

15 MS. BAILEY: Yes, Your Honor. I would ask too,
16 that the proposed orders need to be copied to
17 Counsel when they're submitted to the judge, and so
18 I would request that as well.

19 THE COURT: How much time would you like?

20 MS. MCFADDIN: Today's the 18th. I've got a
21 couple of matters next week. If we could say Monday,
22 week. Next Monday, week.

23 THE COURT: Okay.

24 MS. BAILEY: I was going to ask for 15 days,
25 Your Honor.

1 THE COURT: That's fine. We'll do 15 days. Too
2 bad the client's already left, but it's whatever.
3 This court rules, then probably going to appeal it.
4 Then it's going to be at another court, so y'all
5 have to go -- wish you would have said something
6 before the client left -- considerations have been
7 settled -- expenses are going to be -- whichever way
8 this court decides, it's probably going to be
9 appealed, then you've got to go to circuit court,
10 court of appeals, and on up. Think about it. So two
11 weeks, but look for the proposed orders and --
12 anything else for today?

13 MS. MCFADDIN: Your Honor, we want to just
14 clarify a date. So are we counting the weekends? Do
15 we want to say May 2nd, which is a Wednesday, or May
16 4th, which is a Friday, or the following Monday?

17 THE COURT: Let's go with the following Monday.

18 MS. MCFADDIN: So May 7th?

19 THE COURT: May 7th, sound good?

20 MS. BAILEY: That sounds great. Thank you.

21 THE COURT: Or you want me to put it on a
22 Friday so you're not working on it that weekend?

23 MS. BAILEY: Weekend. Give me the weekend.

24 THE COURT: Okay. We'll go with -- or do you
25 want to make it Tuesday?

1 MS. MCFADDIN: I think by 5 o'clock Monday will
2 be fine.

3 THE COURT: Okay. 5 o'clock Monday, and copy
4 each other. Anything else for today?

5 MS. BAILEY: No. Thank you, Your Honor.

6 MS. MCFADDIN: Thank you, Judge.

7 (Proceedings concluded at 1:30 o'clock p.m.)
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1 STATE OF SOUTH CAROLINA)
2 : C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF BERKELEY)

4 I, Samantha Flinn, Court Reporter and Notary Public,
5 certify that I did appear at 9:03 o'clock a.m. on Wednesday,
6 April 18th, 2018 at the Charleston County Probate Court, 84
7 Broad Street, 2nd Floor, Charleston, South Carolina; that the
8 witnesses were sworn and cautioned to tell the truth, the
9 pages constitute a true and accurate transcript of the
10 testimony given at that time and place.

11 I further certify that I am not of counsel or kin to any of
12 the parties to this cause of action, nor am I interested in
13 any manner in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set my hand and seal
15 this the 4th day of April, 2018.

16
17
18
19
20 _____
 Samantha Flinn

21 Notary Public for South Carolina

22 My Commission Expires: January 23rd, 2028
23
24
25