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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

In the Courts of Common Pleas of Beaufort and Florence Counties
Trial Court Case Nos. 2016-ES-07-00302, 2016-CP-21-01435, and 2015-ES-21-00778

The Honorable Kenneth E. Fulp, Jr. and
The Honorable Roger L. Couch

Appellate Case No. 2017-002290

Deborah B. Harwell Respondent/Appellant

v.

Robert Bryan Harwell, individually and as the Personal
Representative of the Estate of David W. Harwell; and the South
Carolina Department of Health and Environmental Control,
Division of Vital Records

Of Whom: Robert Bryan Harwell, individually and as the Personal
Representative of the Estate of David W. Harwell is the Respondent/Appellant

And the South Carolina Department of Health and Environmental
Control, Division of Vital Records is the.....Respondent

v.

Law Office of Deidre W. Edmunds, P.A. and Deidre W. Edmunds,
individually Appellants/Respondents

CORRECTED RECORD ON APPEAL – VOLUME 2 of 2

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This record on appeal does not include the following two items designated by Respondent/Appellant Deborah Harwell, which are the subject of Respondent/Appellant R. Bryan Harwell's Motion to Strike Certain Items from the Record on the grounds that they were not presented to the trial court in this matter:

- 11. September 14, 2016 Family Court Transcript
- 15. Last Will and Testament of David Harwell, July 22, 2015

4. During that call, Kevin said that David had called him and asked Kevin to tell me David wanted a separation. I thought it was a joke. David had been ill for several years and knew that his time was limited
5. I was unable to reach David for several days after that call. When I did finally reach him, he told me that he was doing what Bryan wanted him to do, and that I just needed to play along so Bryan would leave us alone.
6. I then received pleadings filed by Kevin Barth in mid- June 2015, even though they had been filed much earlier on March 20, 2015. Those pleadings sought separate maintenance and support as well as a determination that the prenuptial agreement I had signed the day of my marriage to David was valid.
7. I tried desperately to find legal counsel to assist me, but no one would take my case. Every time I would find a lawyer, they backed out, even though I had signed contracts and given them money. I finally ended up hiring Julaan Derrick, who I thought was fully representing my interests. She accepted service of the separation papers in June.
8. Even so, David and I continued to see and talk to each other. David assured me that the domestic action was brought simply to satisfy Bryan. David continued to tell me that Bryan was concerned that the prenuptial agreement would interfere with his inheritance if a property settlement agreement was not finished before David died. David and I both knew his death was not far off. I agreed to attend the mediation only because David assured me it was merely paperwork to make Bryan happy, that it meant nothing as far as he and I were concerned, and that we would still be husband and wife.

9. During the mediation, the mediator kept saying a "third party" was very angry at me and was pushing back. The mediator also kept asking me why Bryan hated me so much. The day after the Mediation, Ms. Derrick said that Bryan was participating in the mediation from his truck sitting in front of the Conway Courthouse.
10. At mediation, Ms. Derrick had me sign documents that were not explained to me and which I did not understand. She would not let me attend the family court hearing, which she said was to be held the very next day, and asked me to sign something saying I did not want to appear at the hearing. I did want to appear, but Ms. Derrick and the mediator told me that I could not attend because there was "push-back" from a third party.
11. I was later shocked when I saw on the courthouse internet records the words FINAL DECREE and DIVORCE. Eventually, I notified the Clerk of Court by letter. The clerk called me and apologized repeatedly, and could not explain how the mistake had happened. The records were changed to reflect Separation.
12. After the mediated settlement, David and I continued to stay in touch and communicate, but he would not spend the night at any of our houses with me because he didn't want Bryan to find out.
13. David was hospitalized just before he died, in September, 2015. His family members called me and said to get to the hospital in a hurry, that he would want me to be by his side, and that is where I should be at such a time.
14. But Bryan had been so disruptive to our relationship that I called an attorney friend and asked if I was right in going to David's bedside. When I got there, Bryan wanted to know

how in the world I found out that David was in the hospital, became upset, and asked me to leave.

15. I agreed to go to the waiting room, but asked if someone would let me know about any change in David's condition. Bryan called security, who spoke with me before I agreed to leave the hospital.
16. After David died, I received no call from Bryan or David's other son, Baxter Harwell, telling me that my husband had passed. The only thing I received was a text message from a business partner of David that said "It's over." I read about the visitation in the newspaper and talked to David's sister.
17. On Saturday, October 3, 2015, I called the Horry County Coroner and was advised to take my marriage certificate to the funeral home, letting them know that I just wanted to see my husband. I did so and was told that he wasn't ready. When I asked where he was, I was told that Bryan Harwell had told them that I could not see him.
18. I handed over my marriage certificate and he immediately called Bryan, who again told them that I could not see my husband. The funeral home told him that I had presented a legal document and they had no choice. Bryan relented, but only to say that I could see my husband for five minutes, and without making any photographs.
19. After David died, The State newspaper and the Florence newspaper published obituaries that made no reference to me as the surviving spouse. I waited until after the visitation to avoid confusion, but ran a second obituary in The State newspaper and The Sun News that properly included my name.

20. Both newspapers maintain online obituaries. The State newspaper published the obituary in the print and on its website, but the obituary disappeared almost as soon as it appeared online.
21. When I applied for David's small General Assembly retirement, I was asked for a Death Certificate. I went to the Probate Court in Florence to find that my name was not on the Death Certificate, and that the surviving spouse was listed as "N/A." I then went to the Florence office of DHEC, and they refused to give me a Death Certificate. I drove to the funeral home and asked for a copy of my husband's death certificate, but they said I would have to get it from Bryan.
22. An employee at the DHEC office told me that I was not listed on the Death Certificate. I asked how that could be, since I was still married at the time of his death. She looked up something on her computer and told us that "R. Bryan Harwell" had left me off the death certificate. I asked her how she would have that specific information, and she showed me that it was in the DHEC records, listing Bryan as the informant.
23. I eventually hired the former probate judge in Horry County, Deirdre Edmonds, to help me. She impressed me with her immense knowledge of the law. She informed that she had asked Bryan to agree to a corrected death certificate but that he had refused.
24. Deirdre's investigation, including contact with DHEC and with Kevin Barth, led us to believe that Bryan had intentionally omitted my name off the death certificate information he provided. Medical Records subpoenaed from Dr. Naso's office showed telephone calls from the funeral home stating that they wanted to change the death certificate.

25. I relied upon Deidre's advice regarding the lawsuit, and we were right. After the initial hearing in front of Judge Couch, DHEC voluntarily corrected the death certificate over Bryan's objections.
26. After David's death, I began receiving information that suggested David had assets about which I never knew. I wanted to know whether the potential nondisclosure of assets may entitle me to some relief from the settlement agreement in family court, especially since David had always assured me they meant nothing and were being done solely to keep Bryan happy.
27. It was nearly impossible to find a family court lawyer to help me, as several lawyers initially indicated they would help but backed out immediately. I eventually found Adam Silvernail, who said he would not appear in court for me, but he did help me draft some pleadings to file *pro se* to try to open up the family court matter based on undisclosed assets when we did the property settlement agreement.
28. Once Deidre filed the lawsuit against DHEC and Bryan, Bryan filed a claim against Deidre, which meant she could no longer represent me.
29. In the interim, Bryan filed an action for contempt against me in family court based on my coming to the hospital and funeral home nine months earlier. Ms. Derrick refused to help me defend against those claims, and even appeared at the hearing and testified against me before I was found in contempt and imprisoned at the Horry County Detention Center for several weeks.
30. While I was at the detention center I learned about my current counsel, Desa Ballard, and initiated contact with her. After meeting with her, we withdrew the claim I had filed in

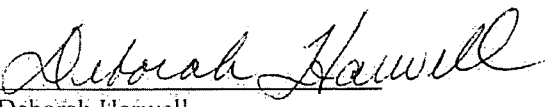
family court seeking relief under Rule 60. I did that as a show of "good faith" because Ms. Ballard was trying to work out an agreement with Kevin Barth. I also withdrew (without prejudice) the other claims Deidre had filed on my behalf. (She did finalize the issuance of the amended death certificate which lists me as surviving spouse).

31. I wanted the contempt citation vacated as part of a proposed settlement with Bryan, but Bryan would not agree and that matter is currently on appeal.
32. I am not a lawyer. I have absolutely no legal training. Only Deidre Edmonds would help me, and to a limited extent, Adam Silvernail, even though he insisted that I file the pleadings he prepared *pro se*. I relied upon the advice and counsel of both Ms. Edmonds and Mr. Silvernail with respect to all filings I made. They appeared to be correct to me, the non-lawyer.
33. I still believe that the family court settlement was based on insufficient financial information and disclosure for real estate and retirement assets that had become marital assets due to deferred payments. And I still believe my claims against the estate had merit. However, I now understand that relief that may be available to me from that will involve a claim against Ms. Derrick for not fully and adequately representing me.
34. My lawsuit for an amended death certificate resulted in an amended death certificate being issued. That lawsuit had merit and resulted in the relief I (through Deidre Edmonds' pleadings) requested.
35. Should the Court consider sanctions for the prior filings in this matter, please be aware that I spent more than 18 days in jail, following a hearing at which Kevin Barth tried to get the court to order me to withdraw my family court and probate court pleadings. Bryan

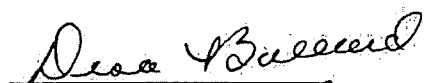
has gotten his pound of flesh. I now have a lawyer who is helping me. After the time I have spent in jail, I really don't understand why Bryan wants more sanctions against me. He could not convince David to divorce me prior to David's death, so I remain David's surviving spouse. Bryan doesn't like that, but he can't change it.

36. It breaks my heart that David's last few months of life were spent being afraid of Bryan and the limits to which Bryan would go to ensure that I was pushed as far out of David's life as much as possible. I am informed and believe that David did not want that, and I certainly did not want that. Bryan and his brother have inherited everything David had, so Bryan accomplished what he was trying to do.
37. As a result of the settlement in the family court, I have no ability to respond to an award of financial sanctions, should that be ordered. I am on the brink of bankruptcy, financially and permanently damaged mentally and emotionally.
38. I do not believe that Deirdre Edmonds did anything wrong. I believe it to just another act to keep me from having an attorney represent me.
39. I have acted in good faith throughout this proceeding.

Further, deponent sayeth not.


Deborah Harwell

Sworn to before me this
31st day of January, 2017.


Notary Public for SC
My commission expires:
8.20.20

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

) Case No. 2016-CP-21-1435

Estate of David Harwell,

)
)
) Decedent.

)
) Deborah Harwell,

) AFFIDAVIT OF HORRY COUNTY

) CORONER ROBERT EDGE

)
) Plaintiff,

)
) v.

)
) Robert Bryan Harwell, individually
) and as personal representative of the
) Estate of David Harwell, and
) South Carolina Department of Health
) And Environmental Control, Bureau
) Of Vital Statistics,

)
) Defendant

Personally appeared before me, Robert Edge, who being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters stated, except those matters which are stated on information and belief, and as to them, I have a good faith reason for my belief that they are true.
2. I am the Coroner of Horry County.
3. Sometime ago, Deborah Harwell, the widow of David Harwell, called to me say that she could not get a certified copy of her husband's death certificate and the state and the Social Security Administration needed a certificate for her paperwork. She said that she had been to Florence County DHEC twice and to the Stoudenmire-Dowling

Funeral Home in Florence and no one would issue her a Death Certificate on her husband.

4. I had known David and Debbie Harwell for around 20-years and Mrs. Harwell had temporarily worked in the Horry County Coroner's office. I had also known her from a local funeral home where she was employed after the death of her 7-year old daughter.
5. I asked her to meet me at the Horry County Government Complex at the M.L. Brown Building and offered to take her over to the Horry County DHEC Vital Statics office. All of that occurred.
6. I introduced her to the lady in charge at the DHEC Vital Statics office, who was seated at a window computer. She told Mrs. Harwell that her name had been left off the Death Certificate and she couldn't give her a Death Certificate. That shocked me as that is the first time I have ever heard of a wife not being able to get a certified copy of her husband's death certificate. Mrs. Harwell asked her how that could happen with her being the wife. The DHEC employee told her that she knew how it happened and she told her that she knew who did it. Mrs. Harwell asked her who and she said that R. Bryan Harwell did it. Mrs. Harwell asked her why she would think that. The DHEC employee held up a worksheet and pointed her finger to a line that said Informant R. Bryan Harwell. She said that he was the Informant and the Informant either had to physically fill out the worksheet or tell the person at the Funeral Home the information to put on the Death Certificate. She said that Death Certificates were automated there was no way that DHEC could have let off Mrs. Harwell's name. She also said that N/A was filled in when a homeless person died

and no relatives were known. I believe that it is also the case when the line is left blank. The DHEC employee said that the funeral home should also be held responsible because they knew what they were doing when they left the name off.

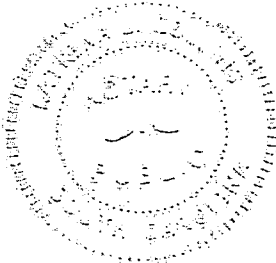
7. Mrs. Harwell was visibly teary eyed and I'm sure frustrated after several trips to the Florence DHEC office and now the Horry County DHEC office. She seemed to be perplexed at how she was going to fill out applications without a required Death Certificate and said she wasn't getting her mail either.
8. I am one of the thousands that knew Mr. and Mrs. Harwell and enjoyed both of them at a political function months before the Judge's death.
9. I have acted in good faith throughout this proceeding.

Further, deponent sayeth not.

Robert Edge Jr
Robert Edge, Horry County Coroner

Sworn to before me this
31st day of January, 2017.

Katrina L. Collins
Notary Public for S.C.
My commission expires: 04/20/2026



STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
Deborah B. Harwell,)
Plaintiff,)
V.)
Robert Bryan Harwell, individually and as)
Personal Representative of the Estate of)
David W. Harwell; and South Carolina)
Department of Health and Environmental)
Control, Division of Vital Records,)
Defendants,)
V.)
Law Office of Deirdre W. Edmonds, P.A.)
And Deirdre W. Edmonds, individually,)
Third-party Defendants.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
CASE NO. 2016-CP-01435

**SECOND SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
ROBERT BRYAN HARWELL'S
MOTION FOR SANCTIONS UNDER
RULE 11 AND SCFCPA**

This Memorandum is being submitted by Robert Bryan Harwell, Individually and as Personal Representative of the Estate of David W. Harwell as additional support for his Motions for Sanctions against Deborah B. Harwell, Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds individually under SCRPC Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act, S. C. Code Ann. §15-36-10, et. Seq. This Memorandum incorporates in their entirety the Memorandums previously filed by Harwell on this issue.

Rule 11(a), SCRCP provides that the signature of an attorney on pleadings is a certificate by that attorney that he or she has read the pleadings and "... that to the best of his knowledge, information and belief there is good grounds to support it." Similarly the South Carolina Frivolous Civil Proceedings Sanctions Act set forth in S.C. Code Ann. §15-36-10 provides that an attorney's signature on pleadings constitutes a certificate to the Court that "a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under existing law...." Both Rule 11 and §15-36-10 provide that if a pleading is signed in violation of the rule or the code section the Court may impose sanctions against the individual committing the violation including but not limited to,

reasonable attorney fees and other expenses incurred because of the filing. In this case both Ms. Harwell and Ms. Edmonds have violated both Rule 11 and §15-36-10.

By "Final Decree" dated July 21, 2015 in David W. Harwell v. Deborah B. Harwell, Horry County Case No. 2015-DR-26-691 an order was issued approving a mediated settlement agreement making a full and final division of all property between the parties. The mediated agreement was fully incorporated into the final order. Paragraph 2 of that agreement provides that "the parties have settled all of the issues arising out of their marriage and of the prenuptial agreement." Paragraph 12 further provides that **"both parties waive any and all rights they may have in the estate of the other or to make claims upon or against the estate of the other."** (Emphasis added)

David W. Harwell died on September 30, 2015 and his estate was opened in November of that same year. On December 7, 2015 the Plaintiff, Deborah B. Harwell filed a claim against the estate. On January 14, 2016, Ms. Harwell filed an additional claim against the estate based on a prenuptial agreement. Both claims were disallowed. The final Family Court Decree and Mediation Agreement were attached to the disallowance. On March 9, 2016, Ms. Edmonds filed 2 separate suits against the estate requesting the allowance of both claims. In a Family Court hearing on May 19, 2016, Ms. Edmonds testified that she had read the Family Court Order approving the settlement prior to the filing of the Summons and Petitions. In spite of this Ms. Edmonds assisted Ms. Harwell in filing the suits knowing she had waived any rights against the estate or to make claims against the estate with complete disregard for the order.

Ms. Edmonds has been licensed to practice law for close to thirty (30) years. She was Probate Judge for Horry County for twelve (12) of those years. In an affidavit previously filed with this Court she alleges she was acting in good faith in filing the suits. Ms. Edmonds attempts to show "good grounds" for the suits by pointing out that Ms. Harwell was not listed in Item 4(b) of the Probate Form 300ES Application for Probate and Appointment. That item requests the name and address of any intestate heirs. S. C. Code Ann. § 62-1-201 defines "heirs" as persons who are entitled to inherit under the South Carolina Intestacy Statute. That statute does include a Spouse. However, S. C. Code Ann. § 62-2-802(b)(3) provides that an individual is **not** a spouse for purposes of the probate code if they have been a "party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between the parties...." (Emphasis added) Based on this definition of "heir" Ms. Harwell was not an heir and therefore Form 300ES was correctly completed.

If the Personal Representative had listed Ms. Harwell as an heir, she might well have claimed that the Estate had waived the right to enforce the prior Family Court Order. This result could have subjected the Personal Representative to a claim of malfeasance by the estate's lawful heirs and/or beneficiaries.

I also note that Section I. 4(b) contains the following language "(See mediation/separation Agreement filed 7-21-15) Case # 2015-DR-26-691 Family Court Order Horry County" See attached Exhibit A. Had there been intent to misrepresent the facts this information would not have been provided to the Court. Both Ms. Edmonds and Ms. Harwell were well aware that there was such an order but

proceeded to file suit anyway. In addition by her own testimony, Ms. Edmonds acknowledged that on the date she filed the Petitions for Allowance of Claims she had reviewed the family Court Order which waived any right she had in Judge Harwell's estate. (See Transcript of Edmonds' testimony, Exhibit B, page 40 to Supplemental Memorandum dated January 27, 2017.

Respectfully submitted.

Orr, Elmore & Ervin, LLC



Gena Phillips Ervin, S.C. Bar # 004453

Post Office Box 2527

Florence, South Carolina 29503

(843) 662-6301

Attorneys for Respondent R. Bryan Harwell

Florence, South Carolina

January 31, 2017

STATE OF SOUTH CAROLINA

COUNTY OF Florence

IN THE MATTER OF: David W. Harwell

(Decedent)

THE PROBATE COURT

CASE NUMBER: 2015-ES-21-00778

***COMPLETE THIS SECTION ONLY IF FILING PETITION
FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT**

Petitioner(s)

vs.

Respondent(s)

APPLICATION FOR INFORMAL

☒ PROBATE OF WILL
☒ APPOINTMENT

(check any that apply)

***PETITION FOR FORMAL**

☐ TESTACY
☐ APPOINTMENT

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. If this is a formal filing, please explain below or attach pleadings pursuant to SC Rules of Civil Procedure.

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO
FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF \$150.00.
A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

If not a formal filing, please indicate N/A. N/A

2. Decedent Information:

Full Legal Name
(including all known names):

David W. Harwell

Date of Birth:

1-8-1932

Date of Death:

9-30-2015

Age at date of death:

83

3. Venue for this proceeding is proper in this County because:

- ☒ Decedent was domiciled in this County at date of death:

Address: _____; County: _____; State: South Carolina.

- ☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this County at date of death:

Address: _____; County: _____; State: South Carolina

- ☐ Decedent has a right to take legal action in this County because: _____

If the above address is the address of a nursing home, a prison, or other residential facility, please give the last address of the Decedent prior to entering the facility: _____



FORM #300ES (1/2014)

62-2-504, 62-3-102, 62-3-203, 62-3-301, 62-3-302, 62-3-303, 62-3-308, 62-3-311, 62-3-401, 62-3-402,
62-3-404, 62-3-409, 62-3-414, 62-3-601, 62-3-602, 62-3-704, 62-3-804, 44-23-1090, 44-23-1120

Page 1 of 6

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
R. Bryan Harwell		1389 Lazar Place, Florence, SC	son
William Baxter Harwell		1191 Carnoustie Ct., Myrtle Bch, SC	son

(use additional sheet if necessary)

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent

(See mediation/separation agreement filed 7-21-15) Case # 2015-DK-26-691
Family Court Order
Horry County

4(c) Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

☒ YES ☐ NO If no, please explain on page 3.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by the Court for this person?

☒ NO ☐ YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this State or elsewhere?

☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any Demands for Notice (FORM 111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten (10) years passed since the Decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The Decedent died with probate personal property having an approximate value of \$ 1750 and/or probate real estate having an approximate value of \$ 1750. (Note: A complete inventory of probate assets with fair market values to be filed after Personal Representative is appointed.)

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s), other than the one(s) attached hereto, relating to property in this State?

☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

- ☒ The original is attached.
☒ The original is in the Court's possession.
☐ An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
☐ An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
☐ The Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

2. The execution date of the Will was: 7-22-15
Codicil(s): _____

3. Does Decedent's Will refer to a Memorandum (list disposing of tangible personal property)?

☒ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

☒ YES ☐ NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (devisee, spouse of a devisee, or issue of a devisee)?

☒ NO ☐ YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:
 - ☒ named as Primary Personal Representative in Will
 - ☐ named as Alternate Personal Representative in Will
 - ☐ nominee of above Primary Personal Representative in Will
 - ☐ nominee of above Alternate Personal Representative in Will
 - ☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
 - ☐ other devisee of Decedent (describe): _____ or nominee of said devisee
 - ☐ surviving spouse of Decedent or nominee of said spouse
 - ☐ other heir of Decedent (describe): _____ or nominee of said heir
 - ☐ creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
 - ☐ other (describe): _____
3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:
_____ NONE

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 6th day 15 of Oct.
Sharon C. Davis
Notary Public for South Carolina
My Commission Expires: 6/19/19

Signature of Applicant/Petitioner: R. Bryan Harwell
Print Full Name: Robert Bryan Harwell
Address: 1389 LITZ PLACE
Florence, S.C. 29501
Telephone (work): 843-676-3800
(Home): 843-662-6598
(Cell): 843-453-9585
Email: Bryan_Harwell@scd.uscourts.gov
Relationship to Decedent/Estate: SON

SWORN to before me this _____ day _____ of _____.

Notary Public for South Carolina
My Commission Expires: _____

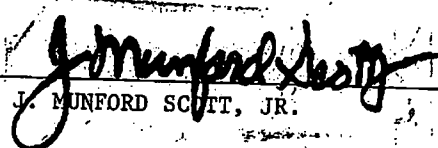
Signature of Co-Applicant/Co-Petitioner: _____
Print Full Name: _____
Address: _____
Telephone (work): _____
(Home): _____
(Cell): _____
Email: _____
Relationship to Decedent/Estate: _____

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed 7-22-2015

be informally ☒ GRANTED ☐ DENIED.

Executed this 13th day of OCT, 2015 .


J. MUNFORD SCOTT, JR.

Probate Court Judge

☐ For formal probate of Will, see separate order executed _____

ORDER OF INFORMAL APPOINTMENT

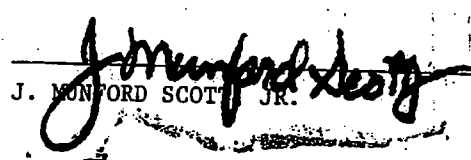
IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

- ☐ Fiduciary Bond in the amount of \$ _____
- ☐ Bond waived by Will or Personal Representative nominated by Will
- ☐ Bond not required as Personal Representative is sole heir or sole devisee
- ☐ Bond not required as Personal Representative is state agency, bank, or trust company
- ☐ Bond waivers filed
- ☐ See order dated _____
- ☐ Other: _____

Notice to Creditors

- ☒ Required
- ☐ Not Required

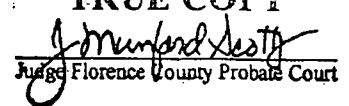
Executed this 13th day of OCT, 2015 .


J. MUNFORD SCOTT, JR.

Probate Court Judge

☐ For formal appointment of Personal Representative, see separate order executed _____

TRUE COPY


Judge Florence County Probate Court

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: R. Bryan Harwell
Print Full Name: ROBERT BRYAN HARWELL
Address: 1389 LAZAR PLACE
Florence, S.C. 29501
Telephone (Work): 843-676-3800
(Home): 843-662-6598
(Cell): 843-453-9585
Email: Bryan.Harwell@scd.uscourts.gov

Signature: _____
Print Full Name: _____
Address: _____
Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

Attorney: _____
Address: _____
Telephone: _____
Email: _____

STATE OF SOUTH CAROLINA

Deborah B. Harwell
Petitioner,

v.

Robert Bryan Harwell, individually and as
Personal Representative of the Estate of
David W. Harwell

Respondent,

v.

Law Office of Deirdre W. Edmonds, PA;
and Deirdre W. Edmonds, individually,

Third Party Defendants.

) IN THE FLORENCE COUNTY CIRCUIT
) COURT
) C/A No.: 2016-CP-21-1435
)

) **AMENDED AND SUPPLEMENTAL**
) **MEMORANDUM OF LAW OFFICE OF**
) **DEIRDRE W. EDMONDS, P.A. AND**
) **DEIRDRE W. EDMONDS IN**
) **OPPOSITION TO MOTION FOR**
) **SANCTIONS**

Respondent Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell ("Respondent"), seeks sanctions pursuant to Rule 11, SCRPC and the South Carolina Frivolous Civil Proceedings Act (SCFCPA), S.C. Code § 15-36-10, *et seq.* In response, along with this Supplemental Memorandum, the Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds (hereinafter collectively "Ms. Edmonds"), incorporate by reference their Motion to Dismiss and Memorandum in Support of Motion to Dismiss, filed previously with this Court (filed July 19, 2016). This Memorandum further supplements a previously filed Memorandum in Opposition to Motion for Sanctions (filed July 19, 2016), which is also incorporated by reference. All Exhibits previously submitted are also incorporated by reference.

On July 21, 2016, this Court heard Ms. Edmonds' Motion to Dismiss Respondent Robert Bryan Harwell's Third-Party Complaint/Claims and Amended Third-Party Complaint/Claims,

along with Respondent's Motions to Dismiss Petitioner's Claims. Prior to the Court ruling on those Motions, Petitioner Deborah Harwell and Respondent David Bryan Harwell resolved Respondent's Motions to Dismiss Petitioner's Claims. At the time of that hearing, Respondent also had a Motion for Sanctions pending, which was not heard. By letter to the Court dated December 12, 2016, Attorney Barth for Respondent requested his Motions for Sanctions be heard. On December 30, each of the parties received notice by the Court that the motion would be heard the week of January 30, 2017. On January 20, 2017, Respondent produced, via email, an Affidavit of Peter D. Protopapas,¹ filed with the Court the same day.

Edmonds opposes the Respondent's motion for sanctions against her and her law firm. She is well aware of the high esteem in which the Harwell family is held in South Carolina, including both the late Justice Harwell and the Respondent Judge Harwell. Yet, an attorney has a duty to take on clients, including in unpopular causes. The South Carolina Supreme Court Attorney's Oath states, in part: "I will assist the defenseless or oppressed by ensuring that justice is available to all citizens and will not delay any person's cause for profit or malice." See also Rule 1.3, SCRPC, "Diligence" Comment 1 ("A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy

¹ Edmonds objects to the Court's consideration of this Affidavit as untimely under Rule 6(d) of the South Carolina Rules of Civil Procedure: "When a motion is to be supported by affidavit, the affidavit shall be served with the motion." Respondent did not file any affidavits with his Motion for Sanctions as required by Rule 6(d). The Protopapas affidavit is not an "additional" affidavit as permitted by the Rule, as it is not in addition to an affidavit filed with the motion. The requirement of Rule 6(d) that supporting affidavits be filed with the motion that they support is not a mere technicality. Rather, it is intended to prevent exactly what has happened in this case; that a party filing a motion introduces new supporting evidence at the eleventh hour, when it is too late for the opposing party to effectively meet that evidence. The Court should not accept Mr. Protopapas' affidavit.

upon the client's behalf...."); Rule 1.2, "Scope of Representation and Allocation of Authority Between Client and Lawyer", SCRPC, Comment 5 ("Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities."). As will be shown below, Edmonds has represented Petitioner Deborah B. Harwell to the best of her ability and for good cause, within the bounds of her duties of professional responsibility. That her client's cause may be viewed as unpopular did not deprive her of her right to legal representation or relieve Defendant of her obligation to provide zealous representation.

Rule 11(a) of the South Carolina Rules of Civil Procedure requires every pleading to be signed with the signature constituting a certificate by the signor that he has read the pleading and "that to best of his knowledge, information and belief there is good ground to support it". Similarly, the South Carolina Frivolous Civil Proceedings Sanctions Act provides an attorney's signature on a pleading constitutes a certificate to the court "a reasonable attorney in the same circumstances would believe that under the facts his claim . . . may be warranted under the existing law". S.C. Code Ann. § 15-36-10(A)(3)(b). "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law." Rule 3.1, SCRPC.

Edmonds has acted at all time in good faith, as a reasonable attorney would under the circumstances - she has pursued claims on behalf of her client with the good faith belief that there are grounds to support those claims. Defendant sets forth in the attached Affidavit (**Exhibit 1**) and Rebuttal Affidavit (**Exhibit 2**) her actions related to these issues, which are incorporated

herein by reference. She also submits Affidavits of Professor and former Dean Burnele Powell (Exhibit 3), a renowned scholar on the legal profession and professional ethics and of Mitchell Payne, Esq. (Exhibit 4), an experienced and well respected probate practitioner. These Affidavits, together with the supporting Exhibits, demonstrate without question that Ms. Edmonds took the actions that she was professionally required to take to protect her client's legal rights.

Petition For Adjudication as Surviving Spouse and Amendment of Death Certificate

On March 1, 2016, after unsuccessfully trying to have Justice Harwell's Death Certificate corrected to reflect that Debbie Harwell was his surviving spouse, Edmonds filed a Petition to have her adjudicated the surviving spouse and to amend the Death Certificate. Mrs. Harwell is unarguably the surviving spouse under the law, regardless of whether she has any property rights as such under the Probate Code. See S.C. Code Ann. Sec. 62-2-802. Respondent's demand for sanctions for filing this Petition is ironic, because he resisted – without any legal basis whatsoever – the correction of the Death Certificate for five months prior to the filing of the Petition. In fact, he did not agree for the Death Certificate to be corrected until Mrs. Harwell agreed to give up all of her claims against her husband's estate. Nowhere in his motion for sanctions, or in his pleadings, briefs, or affidavits filed in this case, does he offer any explanation for refusing the simple correction of this document for whose accuracy he, as the Informant, was responsible.

In order to impose sanctions, the requesting party must prove by a "preponderance of the evidence that an attorney, party or pro se litigant engaged in advancing a frivolous claim or

defense.” S.C. Code Ann. § 15-36-10(C)(2).² However, where an attorney establishes “a basis to proceed with litigation, or to assert or controvert an issue therein, this is not frivolous, which includes a good faith argument for an extension, modification or reversal of the existing law”, sanctions are not appropriate. S.C. Code Ann. § 15-36-10(J). Rule 11 similarly provides that an attorney’s signature on a pleading certifies that “to the best of [her] knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.” “The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery.” Comment [2], Rule 3.1 SCRPC. Based on these standards, Edmonds is clearly not subject to sanctions. The Petition to have Mrs. Harwell declared the surviving spouse and to correct the Death Certificate was unquestionably valid. Indeed, it was Respondent’s specious opposition to the Petition that might properly be deemed frivolous.

Respondent appears to be complaining, not so much about the Petition itself, but about a specific allegation in the Petition that he, as Informant, “knowingly and willfully supplied false information in the preparation of the Decedent’s Death Certificate in violation of S.C. Code Section 44-63-161(A)(2).” Respondent could have moved to strike this allegation under SCRCP 12(f) if he believed that it was “redundant, immaterial, impertinent or scandalous”, but he did not. Rule 11 and the Frivolous Civil Proceedings Act are directed at frivolous actions and defenses, not “scandalous” allegations. Edmonds respectfully submits that Respondent’s motion for sanctions must be denied for this reason alone.

A second reason the motion must be denied is that the action was ultimately resolved in Mrs. Harwell’s favor, by the agreed correction of the Death Certificate. The SCFCPA “provides

² The criteria for SCRCP 11 sanctions “are essentially the same” as those for sanctions under the SCFCPA. *In re Beard*, 359 S.C. 351, 360, 597 S.E.2d 835, 839 (Ct. App. 2004).

that any person who takes part in the procurement, initiation, and continuation of any civil proceeding is subject to being assessed for payment of all or a portion of the attorney fees and court costs of the other party if ... (2) the proceedings have terminated in favor of the person seeking an assessment of the fees and costs." *Ex parte Gregory*, 378 S.C. 430, 438, 663 S.E.2d 46, 50-51 (2008). The Act defines which forms of termination could trigger sanctions:

At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous.

S.C. Code Ann. § 15-36-10(C)(1) (2005). Because these cases were neither terminated in Respondent's favor by trial or summary judgment, sanctions cannot be awarded.

The third reason that sanctions should not be imposed is that Edmonds had sufficient reason to allege that Respondent had deliberately omitted Mrs. Harwell as the surviving spouse on the Death Certificate:

1. By the time Mrs. Harwell sought counsel, there existed an established history of animosity between Mrs. Harwell and her husband's heirs. A review of the Family Court proceedings makes this abundantly clear.
2. Respondent, as Informant, is responsible for providing the information required on the Death Certificate (Rebuttal Affidavit of Edmonds, para. 11(1) and Affidavit of Saleeby, Exhibit C to Rebuttal Affidavit) (Exhibit 2 hereto).
3. An employee of DHEC refused to provide Mrs. Harwell with a copy of the Death Certificate because she was not the surviving spouse. Ms. Edmonds was informed that the employee told Mrs. Harwell that Respondent was the person who left her name off the Death Certificate. (Rebuttal Affidavit of Edmonds, para. 11(3)).

4. Respondent had filed a sworn Application for Probate and Appointment with the Florence County Probate Court, in which Mrs. Harwell's name was whited out.³ (Rebuttal Affidavit of Edmonds, para. 11(4) and Exhibit D).
5. Respondent had known for five months that the Death Certificate was incorrect, but he had taken no action to correct it. (Rebuttal Affidavit of Edmonds, para. 11(5) and Harwell Family Court testimony, Exhibit E). Respondent continued to oppose the correction of the Death Certificate even after the Petition was filed, until Mrs. Harwell agreed to abandon her claims against the Estate.
6. The affidavit given by Sandy Dowling, the funeral home director who submitted the forms to DHEC for the Death Certificate, was facially wrong and misleading. Ms. Saleeby at DHEC informed Ms. Edmonds, contrary to what Mr. Dowling asserted, that Mrs. Harwell's name was not submitted as the surviving spouse. (Rebuttal Affidavit of Edmonds, para. 14). This is confirmed in the affidavit provided by Ms. Saleeby (Exhibit C to Rebuttal Affidavit).
7. Indeed, subsequent investigation revealed that Mr. Dowling's affidavit (Exhibit F to Rebuttal Affidavit of Edmonds) is false. He says that "Attached to this Affidavit is the form I completed in conjunction with the death of Judge Harwell. The information was given to me by his son, [Respondent]". Affidavit, para. 3. The Certificate of Death form attached (C-3 to his Affidavit) bears his initials in the margin. In Box 9 of this form, Marital Status is indicated as "Married." The Surviving Spouse in Box 10 is shown as "Deborah Boggs." [Mrs. Harwell]. However, contrary to the assertion in Mr. Dowling's

³ Respondent explains that this was done because Mrs. Harwell's separation agreement had terminated her rights of inheritance. However, in Ms. Edmonds' experience this would be addressed by noting the judicial decree on the form (as was done), not by deleting the surviving spouse's name altogether.

Affidavit, this was not the final form submitted to DHEC. He would later testify in Family Court that Respondent "signed off on" -- and he (Dowling) submitted -- an amended Death Certificate form correcting Box 9 to indicate "Married, but Separated" rather than "Married". (Hrg. Transcr. 23:1-17 (June 16, 2016)). No Death Certificate form has ever been produced reflecting both Married but Separated and Deborah Boggs as the Surviving Spouse. Respondent has produced a "Work Sheet" purportedly dated September 30, 2015, the same day that Justice Harwell died, but this is not what was submitted to DHEC. Ms. Edmonds obtained by subpoena from DHEC the Death Certificate form (Rebuttal Affidavit of Edmonds Exhibit G) that Ms. Saleeby informed her "included all of the information keyed into DHEC's computerized system from the funeral home." Rebuttal Affidavit of Edmonds, para. 14. This form was, as Mr. Dowling testified in Family Court, "corrected" in Box 9 from the initial form to reflect that the Decedent was "Married, but Separated." However, Box 10, "Surviving Spouse", on DHEC's copy of the form is blank. Ms. Edmonds also sent a subpoena to Dr. Naso, the physician who had signed the Death Certificate. Dr. Naso produced a Death Certificate form (Exhibit I to Rebuttal Affidavit of Edmonds) that is identical to the form that DHEC provided. Box 9 says "Married, but Separated", and Box 10, "Surviving Spouse", is left blank. The funeral home supplied that form to Dr. Naso, who completed the physician's portion before it was submitted to DHEC. Contrary to Respondent's contention and Mr. Dowling's averment, the final Death Certificate form that the funeral home submitted to DHEC evidently did not list Mrs. Harwell as the surviving spouse. S.C. Code § 44-63-74 provides that the funeral director "shall obtain the personal data of the decedent from the next of kin or best qualified person or source available." That source was Respondent.

8. In Mr. Barth's letter to Ms. Edmonds of March 11, 2016, he provided the Affidavit of Mr. Dowling and said, "As you can clearly see, Debbie was listed as the surviving spouse on the *initial* form." (emphasis added). It would be reasonable for Ms. Edmonds to believe that this qualified disclaimer on Respondent's behalf warranted further investigation at least. She had evidence – and would have more evidence via her subpoenas to DHEC and Dr. Naso – that the Respondent did not in fact identify Mrs. Harwell as the surviving spouse on the "corrected" Death Certificate form that the funeral home submitted to DHEC. An attorney in Ms. Edmonds' position might reasonably believe that Respondent and the funeral home "corrected" the Death Certificate form both to indicate that the Decedent was "married, but separated" rather than "married" *and* to delete Deborah Boggs (Mrs. Harwell) as the surviving spouse.

In summary, Ms. Edmonds had an absolutely meritorious basis to petition for the Death Certificate to be amended and for Mrs. Harwell to be declared the surviving spouse, which would facilitate her access to certain survivors' benefits outside of her husband's estate. She further had a factual basis upon which to credit Mrs. Harwell's belief that Respondent had deliberately omitted her as the surviving spouse on the Death Certificate. She was entitled at least to make that allegation and conduct discovery to determine whether it was supportable. The motion for sanctions should be denied as to this claim.

Petition For Creditor's Claims

Should the Court consider Mr. Protopapas' Affidavit at all, it should consider that nowhere in the Affidavit does Mr. Protopapas profess to have any expertise in probate matters. Deirdre Edmonds has vast experience, including twelve years as a Probate judge. She has served as President of the South Carolina Association of Probate Judges and also served on the Chief

Justice's Probate Judges Advisory Committee. She served for three years on the S.C. Bar Probate Code Overhaul Committee that re-wrote our state's Probate Code. (Rebuttal Affidavit of Edmonds, para. 16).

Mr. Protopapas' opinion and Respondent's position regarding sanctions suffer from ignorance of the complexity of the problem that Mrs. Harwell presented to Ms. Edmonds when she retained her. Specifically, Mrs. Harwell had already filed claims against her husband's estate, which the Personal Representative had disallowed. Even though Mrs. Harwell's claims appeared to be foreclosed by her settlement agreement which had been approved by the Family Court, Mrs. Harwell intended to challenge the validity of that agreement based on fraud and misrepresentation. If the challenge was successful, Mrs. Harwell's claims against the Estate could succeed. If it was not successful, they would not succeed. Even if the claims were valid, they would be forever barred if a timely Petition was not filed. Ms. Edmonds had no way to predict whether Mrs. Harwell's challenge to her settlement agreement might succeed. She did not have the information, the expertise, or the time to know whether Ms. Harwell could prove her claim in Family Court. It is possible to overturn a settlement decree if, as Mrs. Harwell contended, she and the court had been misled about the nature and extent of her husband's assets. *See, e.g., Ray v. Ray*, 647 S.E.2d 237 (2007)(vacating a consent settlement decree where one spouse had fraudulently concealed assets). Mrs. Harwell earnestly believed that she had been defrauded, as she would later testify in Family Court (Transcript, Exhibit A to Rebuttal Affidavit of Edmonds). All that Ms. Edmonds could know in March, 2016 was that Mrs. Harwell's claims against the Estate, no matter how meritorious, would be forever barred if she did not file a timely Petition. She had no professionally responsible choice but to file the Petition to preserve those claims.

Mr. Protopapas opines that “Ms. Edmonds had options including: . . . file the petitions and immediately file the appropriate motion in Family Court to undo the Family Court Order (i.e. file a Rule 59 or 60 motion). That is *precisely what happened*, except that Mrs. Harwell filed her own Rule 60 motion since Ms. Edmonds did not and could not represent her in Family Court. (Rebuttal Affidavit of Edmonds, para. 6). It would have been irresponsible for Ms. Edmonds to unilaterally and summarily reject her client’s contention that she had been defrauded in her Family Court settlement agreement and to doom her claims against the Estate to failure by failing to file a timely Petition. By Mr. Protopapas’ own admission, it was permissible for Ms. Edmonds to file the Petition in Probate Court and await adjudication of Mrs. Harwell’s Rule 60 motion in Family Court.

Even if Ms. Edmonds had had the wherewithal to foresee that Mrs. Harwell’s claim was meritless, the dilemma in which she was placed is much like that the criminal defense lawyer faced in the recent case of *Kinard v. State*, No. 27687 (Supreme Court of South Carolina, December 7, 2016) when his client directed him to file an appeal from his guilty plea. The lawyer refused to file the appeal because he believed it would be frivolous. The Supreme Court held that this was ineffective assistance of counsel. The Court held, “A lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable regardless of whether the appeal would have had merit.” In other words, it is unprofessional for a lawyer to pretermitt her client’s claims through inaction; the client is entitled to a full and fair opportunity to prove her claims, no matter how speculative they might be. In this case, Ms. Edmonds did not undertake to champion Mrs. Harwell’s claim that she was defrauded in her Family Court settlement agreement. Rather, she acted responsibly in preserving that claim so that Mrs. Harwell would have an opportunity to prove it.

Both Respondent and Peter Protopapas misstate Ms. Edmonds' testimony from the Family Court Hearing on May 19, 2016 (Supplemental Memorandum in Support of Robert Bryan Harwell's Motion for Sanctions Under Rule 11 and SCFCPA, p. 4, referenced as Exhibit B, p.37; Affidavit of Peter D. Protopapas, p. 13) – that she knew that [Deborah Harwell] was not entitled to receive any funds from the Estate. That is not at all what she testified to. She testified that the Petition for Adjudication as Surviving Spouse was not filed for the purpose of obtaining property rights under the Probate Code. She testified that the Petition to have Mrs. Harwell adjudicated the surviving spouse “would not entitle her to any money or anything from the estate.” (Transcript, Exhibit B to Rebuttal Affidavit of Edmonds, p. 37). In other words, being a “surviving spouse” for purposes of S.C. Code § 62-2-802 and issuance of a Death Certificate does not determine what property rights that surviving spouse has under the Probate Code. Perhaps confusion over this important point is what led the Respondent to continue to resist the correction of the Death Certificate and the declaration of her status as surviving spouse that Mrs. Harwell sought in her Petition. In any event, Ms. Edmonds did not, and could not, form any opinion or make any assertion as to the viability of Mrs. Harwell's claim in Family Court that her settlement agreement was invalid.

For the foregoing reasons, Respondent's motion for sanctions on this claim should be denied.

Conclusion

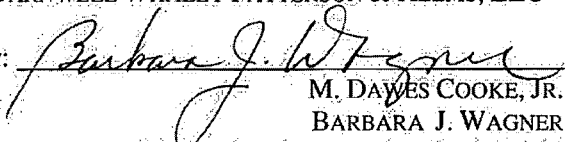
This Court should deny Respondent's motions for sanctions. Ms. Edmonds agreed to represent Deborah Harwell, the widow of Justice Harwell, in Probate Court. Her cause was unpopular because of the high esteem in which the Harwell family is held and because of the animosity between her and her husband's children. For this very reason, this Court should be

extremely reluctant to impose sanctions upon Ms. Edmonds even if it should find that she was overzealous in her representation of Mrs. Harwell. While Respondent's indignation over this litigation is understandable, it would do a grave disservice to the legacy of of his esteemed father – and, indeed to Respondent himself – for there to be even a suggestion that South Carolina's judicial system would retaliate against an attorney for opposing a powerful judicial family. Viewed objectively, Ms. Edmonds did what she reasonably believed her duty as an attorney to be: to represent her client's interests zealously, within the bounds of the law. An imposition of sanctions here would chill the willingness of any lawyer to take on an unpopular cause or client, and it is utterly unwarranted as to Ms. Edmonds.

Respectfully submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

By:



M. DAWES COOKE, JR.

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**ATTORNEYS FOR THIRD-PARTY DEFENDANTS LAW OFFICE
OF DEIRDRE W. EDMONDS, P.A. AND DEIRDRE W. EDMONDS**

Charleston, South Carolina
February 1, 2017

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Deborah B. Harwell,

Plaintiff,

v.

Robert Bryan Harwell, individually and as
Personal Representative of the Estate of
David W. Harwell; and South Carolina
Department of Health and Environmental
Control, Division of Vital Records,

Defendants,

v.

Law Office of Deirdre W. Edmonds, P.A.
and Deirdre W. Edmonds, individually,

Third-party Defendants.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
CASE NO. 2016-CP-21-01435

**Rule 59(e) Motion to Alter or Amend
on Behalf of Defendant Robert Bryan
Harwell, individually and as Personal
Representative of the Estate of David
W. Harwell**

FILED
2016 APR 21 AM 11:35
CLERK OF COURT
FLORENCE COUNTY, SC

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Defendant Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell (hereinafter, "Defendant") respectfully requests that the Court revisit and reconsider several portions of its Order imposing sanctions pursuant to Rule 11 and the South Carolina Frivolous Civil Proceedings Sanction Act.

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (internal quotation marks omitted). "[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). Rule 59(e) "allow[s] a party one final chance . . . to call the court's attention to a possible misapprehension of an earlier

CERTIFIED: A TRUE COPY

Shirley R. O'Hara
CLERK OF COURT C.R. & G.S.
FLORENCE COUNTY, S.C.

argument." *Id.* at 22, 602 S.E.2d at 779: "[T]he wisdom of giving [circuit] courts the opportunity promptly to correct their own alleged errors is all the justification needed for the practice of freely allowing a motion for reconsideration." *Id.* (alteration in original) (internal quotation marks omitted). "A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* at 24, 602 S.E.2d at 780.

Understandably, the factual background of this matter is somewhat complicated and confusing due to numerous filings of frivolous claims made by Deborah Harwell. With that in mind, it is with great respect and deference to this Court that the following points/issues need to be raised in this Motion. To summarize:

- (1) There should be no reduction for the Family Court fees awarded against Deborah Harwell.
- (2) Clarification is necessary as to the awards made to indicate they are made under both Rule 11 and the Frivolous Civil Proceedings Sanction Act, and apply to ALL of Deborah Harwell's various claims except the death certificate claim.
- (3) Additional sanctions should be awarded against Edmonds based upon the arguments outlined in #3 below.
- (4) Regarding the death certificate claim, although Defendant respectfully accepts the 10% reduction, Defendant requests a finding that the inflammatory felony allegation was unnecessary to the relief sought and was made for harassment purposes and that some sanction would be appropriate as a result
- (5) Defendant also requests reconsideration of the Court's statement that (1) "[t]he death certificate as then written would not have allowed Ms. Harwell to obtain certain retirement and/or social security benefits that may be available to a surviving spouse," and (2) the statement that the Defendant could have acted sooner to correct the certificate. T
- (6) The Court failed to give a time deadline to Edmonds and Ms. Harwell for the payment of the fees awarded, and therefore needs to include same in the Order.

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WB

1. The Court's Finding That Attorney's Fees Against Deborah B. Harwell Are To Be Reduced by \$25k

On page 15 of the Order, the Court assesses "sanctions against Deborah B. Harwell in the sum of \$40,000.00, to be reduced by any sums which she may have already paid pursuant to the Family Court award of \$25,000.00 in attorney's fees as provided in its Contempt Order." Defendant believes clarification on this issue is both necessary and helpful to this Court, and respectfully requests reconsideration of this matter as the total legal expenses incurred solely in defense of these Common Pleas and Probate Claims in this Court was \$51,897.06. That amount is separate and not inclusive of the legal fees/expenses that the Estate has incurred in the Family Court matter.¹ The \$25,000.00 attorney's fee award from the Family Court dealt solely with attorney's fees incurred in the Family Court action. The attorney's fees and costs submitted to this Court dealt solely with the fees and costs incurred in this action, and not the Family Court action. Defendant therefore requests modification of the Order to reflect that the \$40,000 sum should *not* be reduced by any other sums paid in the Family Court action.

Additionally, the Defendant would call the Court's attention to the fact that the Deborah Harwell has appealed the Family Court Order and has not paid any of the \$25,000.00 attorney's fee award. That appeal is still pending in the Court of Appeals.

2. Clarification as to Awards Made

(A) The Court awarded sanctions under both Rule 11 and the South Carolina Frivolous Proceedings Sanction Act. However, Defendant would respectfully bring to the attention of the Court that further clarification is necessary. On page 11 of the Order, the Court states, "As to the pleadings file by Deborah Harwell, I find that the Creditor's Claims filed pro se by her were filed without merit and frivolous." For purposes of clarification, Defendant brings to the Court's attention that Deborah Harwell filed not just the Creditor's Claim/forms pro se, but she also filed two lawsuits (Petitions, which are separate and distinct actions from the Creditor's Claims under the Probate Code) regarding those Creditor's Claims through counsel Edmonds, and also filed a pro se petition for elective share. Respectfully, Defendant believes it was the Court's intention to

¹ The total legal fees/expenses in this Court and the Family Court are approximately \$100,000 due to the misconduct of Deborah Harwell that continues to this date.

and the Court's Order should reflect that all of those filings were *without merit and frivolous* under both Rule 11 and the Frivolous Proceedings Sanction Act.

(B) On page 13 of the Order, the Court states, "I find that Edmunds was not justified in filing or pursuing the claim for the reimbursement of the obituary publication." Respectfully, the Court's Order should further state that it was *without merit and frivolous* under both Rule 11 and the Frivolous Proceedings Sanction Act.

3. Additional Sanctions Are Warranted as to Edmonds

(A) On page 13 of the Order, the Court states, "As to the filings by Edmunds concerning the Creditor's Claim based on 'the prenuptial agreement' I find them to have been justified on Edmunds part. She has consistently taken the position that she was not a Family Court Practitioner. As such she claimed no knowledge of the facts or the issues involved in those proceedings. Clearly, at the time she was faced with the questions surrounding those claims she perceived herself to be in a time constraint. . . . She had been told by her client that she intended to take action in that court to seek relief from the Settlement Order by way of a Rule 60 Motion for Relief. In fact Mrs. Harwell did file such a motion, pro se, when she was unable to get an attorney to take the case."

Respectfully, regarding the above paragraph, Defendant wishes to bring two (2) matters to the Court's attention. Edmonds was clearly aware of the valid, unappealed Family Court order approving the settlement at the time she filed the lawsuits. Such knowledge reveals Edmonds did not have "good ground" to support the allegations in the lawsuits. See Rule 11(a), SCRCP ("The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; *that to the best of his knowledge, information and belief there is good ground to support it*" (emphasis added)).

First, there was absolutely no reference in the pro se Creditor's Claim forms filed by Deborah Harwell and then sued upon by Edmonds that made *any* reference to *fraud* by David W. Harwell. The form and lawsuit simply referenced the basis being the prenuptial agreement. No reference to fraud is made, nor was any fraud alleged. The alleged fraud involved the Family Court litigation disposing of the parties' marital assets. The Family Court has no authority to deal with non-marital assets (which would be the assets outlined in the Pre-Nuptial Agreement).

The claim for money due under the "Pre Nuptial Agreement" (i.e., a contractual obligation) is totally unrelated to the Family Court action in which Deborah Harwell now alleges a fraud was perpetrated on her.

With regard to Edmonds' assertion that she had been told by her client that Deborah intended to take action in the Family Court to seek relief from the Settlement Order by way of a Rule 60(b) motion, it is important to note that there was **NO** Rule 60(b) filed or pending when Edmonds filed this Creditor's Claim lawsuit. (Exhibit A, Rule 60(b) Family Court Motion, attached hereto) Nowhere in any pleadings did Edmonds reference any Rule 60(b) motion. Nowhere in any pleadings was a reference to fraud by David Harwell. Nowhere in her affidavit that she filed with the Court at the July 21, 2016 hearing does Edmonds make any reference to a Rule 60(b) motion.² (Exhibit B, July 21, 2016 Affidavit attached hereto) Nowhere does she indicate she asked at any time in her representation to see a copy of a Rule 60(b) motion from Deborah Harwell. The pro se Rule 60(b) motion that Deborah Harwell eventually filed was done *long after* these lawsuits were filed long after the deadline to file probate claims, and prior to the second day of the Family Court contempt hearing, apparently in an attempt to thwart the Family Court's contempt proceeding. Edmonds' excuse to file the \$3.1 million dollar Creditor's Claim lawsuit under Rule 60(b) is belied by the fact that no such excuse could exist for the obituary claim, which she also wrongfully sued upon, and is simply a post hoc rationalization. In fact, the first mention by Edmonds of knowledge of a potential claim for fraud was in a Supplemental Affidavit filed with this Court dated January 30, 2017, as an attachment to her Memorandum in Opposition to Sanctions. (Exhibit C, January 30, 2017 Affidavit attached hereto) **Second**, even if the Court believes Edmonds' 60(b) argument, there is absolutely no basis to justify her "continuation" in these matters.

On page 13 of the Order, the Court states, "I agree with Ms. Edmunds experts that she took the actions necessary **to preserve** her client's opportunity to have her claims litigated." While Defendant respects the Court's ruling, Defendant would simply ask the Court to reconsider Defendant's expert's affidavit. This is especially so due to the fact that Edmonds' **continued** actions were not necessary to preserve her client's opportunity to have her claims litigated. She could have filed the pleadings to protect the deadline and immediately withdraw as counsel. She

² In fact, the Memorandum submitted to the Court by Edmonds' lawyer, to which the Affidavit was attached, made no reference to any alleged fraud being perpetrated by David Harwell. It dealt only with the time deadline issue.

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AB

could have drafted Pro Se pleadings for the client to sign, as did Adam Silvernail. Instead, Edmonds chose to continue as counsel in the litigation. Both *Ex parte Gregory* and section 15-36-10 speak of procurement, initiation, or continuation of frivolous suits. While Defendant may disagree but still respects the Court's position that Edmonds, due to time constraints, was justified in filing this Creditor's Claim due to an alleged 60(b), there is no basis for and the Court's order is silent on her "continuation" of the frivolous litigation and should reflect there was no basis and sanctions awarded at least on that basis.

Defendant respectfully requests that the Court reconsider its denial of sanctions as to Edmonds regarding the Creditor's Claim, if not in her initiation of the claim, then at least in her continuation of a frivolous claim.

(B) Although the Defendant respects and accepts the 10% reduction for fees incurred on the death certificate claim, the Defendant asserts that the unnecessary inflammatory allegation made by Edmonds that Defendant was guilty of a felony was purely for harassment purposes and was unnecessary for the relief being sought. The allegation was made not once but twice, even in the face of a statute that limited a family member's involvement to a funeral home and the funeral home confirming that the funeral home was given Deborah Harwell's name by the PR. This unnecessary, defamatory allegation and the failure to sanction such false and unnecessary allegations are particularly troubling given the ramifications of such to this Defendant. A reasonable investigation before making such an inflammatory and unnecessary allegation is required, especially in light of a state statute that limited a family member's involvement to the funeral home. No expert's affidavit can ignore that statute. Neither an expert nor this Court can ignore that Edmonds never contacted the funeral home and never requested DHEC to contact the funeral home, or that the DHEC forms (which included Deborah Harwell's name) were signed by Defendant and given to the funeral home. **Nor did Edmonds contact Defendant or his lawyers prior to filing suit.** As in *Ex parte Gregory*, "a simple phone call may have led to an explanation" and "[s]uch a discussion between the attorneys could have prevented the . . . suit from being filed against" Defendant. 378 S.C. 430, 439, 663 S.E.2d 46, 51 (2008).

Ex parte Gregory requires a reasonable investigation before accusing an attorney of conversion or misappropriation of funds. *Id.* The accusation here—being guilty of a felony—is

no less serious and no less sanctionable. Edmonds did not simply allege a declaratory judgment or negligence, she made the bold statement that Defendant was guilty of a felony, and not even on information and belief. She made this statement as a statement of fact. This type of conduct is why the public despises lawyers. SOME type of sanction (whether monetary or not) is warranted to deter lawyers from engaging in such conduct.

4. Statements by the Court Regarding Amendment of the Death Certificate

Defendant respects the Court's decision and does not object to the 10% reduction dealing with the death certificate claim. However, Defendant would request reconsideration of two (2) statements by the Court regarding the death certificate.

(A) On page 2 of the Order, the Court states, "The death certificate as then written would not have allowed Ms. Harwell to obtain certain retirement and/or social security benefits that may be available to a surviving spouse." Respectfully, this statement is both factually and legally incorrect for three reasons. First, Deborah testified at the Family Court hearing on June 16, 2016 (on pages 57-58—see attached Family Court transcript already filed with the Court) that she had received all her benefits. This was before the death certificate was amended. Therefore, the existing death certificate did not preclude her from receiving her benefits. This Court held its first hearing on July 21, 2016, when DHEC representatives were present and the death certificate was amended after that date. Second, Deborah clearly had a copy of a Family Court Decree to obtain any benefits that were due to her. Third, the fact that Deborah received all her benefits is consistent with basic Social Security law, specifically 42 U.S.C. § 416 which permits even a divorced person to receive a deceased spouse's Social Security benefits if they were married over ten years (which Deborah was). She apparently did not even need any designation as "surviving spouse" because she had in fact been married over ten years. Regardless, Deborah testified she received all her benefits with the existing, original death certificate that had not been amended. (Exhibit D, Family Court transcript testimony attached hereto)

(B) On pages 12 and 14 of the Order, the Court indicates "Bryan Harwell could have taken concrete steps to resolve the problem early in the life of the death certificate issue" and "gone forward with correcting the death certificate at the beginning of the litigation." Defendant respectfully requests the Court to reconsider this statement. Not to belabor the point, but as

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indicated in the Family Court transcript and the various pleadings filed with this Court, Defendant's position has always been that he would abide by DHEC's protocol in regard to the Death Certificate.³

Because of Deborah's ongoing misconduct, Defendant had two attorneys (Barth and Ervin), both civil and probate lawyers, from the beginning after his father's death. There is **NO** evidence that Edmonds ever informed these lawyers or Defendant that someone with DHEC said there was an issue with the death certificate until her affidavits were filed at the July 21, 2016 hearing. There is **NO** evidence that DHEC or the funeral home notified Defendant or his lawyers questioning the correctness of this death certificate. Prior to the July 21, 2016 hearing, the **ONLY** person who was informing Defendant of a problem is the same lawyer (Edmonds) who had wrongfully filed a \$3 million dollar lawsuit and obituary claim lawsuit in violation of a valid Family Court order, and who wrongfully accused him of a felony. Certainly neither Defendant nor his lawyers felt they could rely on such information. Additionally—and significantly—**even DHEC's own responsive pleadings/Answer did NOT indicate a problem with the death certificate or that it needed amendment despite DHEC knowing that the existing certificate had "married but separated" and "N/A" by surviving spouse.** (Exhibit E, DHEC's Answer attached hereto)

The Personal Representative has a fiduciary, statutory duty to protect the Estate. The statement by the Court that Defendant "used this issue as a bargaining chip to seek a withdrawal of the other unrelated claims" is correct, but only to the extent that Defendant and his lawyers were seeking to protect the Estate (by having the frivolous claims for money from the estate dismissed) and at the same time not allow Edmonds or Mrs. Harwell to claim any sort of waiver or estoppel to perpetuate her wrongful claims against the Estate.⁴ Viewed in the eyes of both Defendant and his attorneys as well as in the context of all that was going on, it is unreasonable to state that Defendant and his attorneys should have immediately consented to the amendment

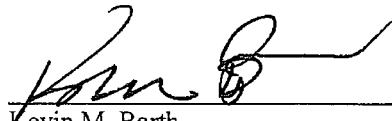
³ Defendant's position throughout has been that he would abide by whatever DHEC says should be shown on a Death Certificate in a case where the parties are married but separated. In other words, if DHEC indicated that her name should be on the Death Certificate, Defendant had no objection. If the Death Certificate should show "N/A", he had no objection to that either.

⁴ The Court references S.C. Reg. 61-19 Section 30, which provides that DHEC can correct an obvious error on its own if brought to its attention. The certificate had "married but separated" but had "N/A" beside surviving spouse. Edmonds at first claimed it was an obvious error. If DHEC then did not agree to correct the purported obvious error on its own, as Edmonds suggests in her affidavit, then how can it be said to have been obvious to Defendant and his two lawyers who didn't know whether the certificate should be corrected?

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B

of the death certificate early on when they had absolutely no assurances that the correction was necessary or that it would not be used against the Estate to support these wrongful claims made against it. More importantly, DHEC's own responsive pleadings gave no clue that a change was even necessary. If DHEC had ever indicated that an amendment was necessary or proper, Defendant certainly would have consented. Even though the Defendant is not requesting a modification to the 10% reduction, the Defendant would respectfully request modifications to the language in the Order as outlined herein.

For the foregoing reasons, Defendant respectfully requests that the Court reconsider its Order and correct the provisions described above.



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Attorneys for Defendant Robert Bryan
Harwell, individually and as Personal
Representative of the Estate of David W.
Harwell

Florence, South Carolina

April 21, 2016

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE FAMILY COURT
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NUMBER: 2015-DR-26-691

David W. Harwell through Bryan R.
Harwell, Executor of Estate
Plaintiff,
vs.

Deborah B. Harwell,
Defendant.

Request to Set Aside a
Final Decree through
Rule 60(b)

FILED
HARRIS COUNTY
2016 MAY 26 PM 4:45
CLERK OF DISTRICT COURT

Defendant Deborah B. Harwell requests to set aside a Final Decree Action. A hearing was held on July 21, 2015, by Trial Judge James A. Spruill.

The Defendant moves, pursuant to Rule 60 (B), to set aside the Final Decree, based on fraud, misrepresentation and other misconduct of an adverse party.

The Defendant requests a hearing to seek relief from the Final Decree.

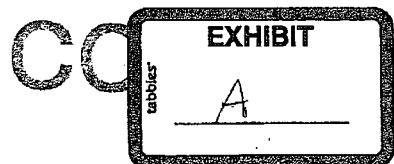
The Defendant reserves the right to file an affidavit prior to a hearing on this matter.

Respectfully submitted

Deborah B. Harwell
Deborah B. Harwell, Defendant Pro se
P.O. Box 7769
Myrtle Beach, SC 29572

April 26, 2016

Myrtle Beach, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

)
)
)
IN THE FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2015-DR-26-691

David W. Harwell

Plaintiff,

vs.

Deborah B. Harwell,

Defendant.

Request to Set Aside a
Final Decree through
Rule 60(b)

FILED
Horry County
2016 MAY 25 PM 4:45
Myrtle Beach, SC

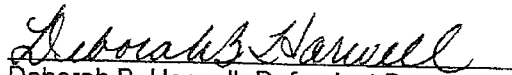
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The Defendant reserves the right to file an affidavit prior to a hearing on this matter.

Respectfully submitted



Deborah B. Harwell, Defendant Pro se
P.O. Box 7769
Myrtle Beach, SC 29572

April 26, 2016

Myrtle Beach, South Carolina

copy

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Deborah B. Harwell,

Petitioner,

v.

Robert Bryan Harwell, individually and
as Personal Representative of the Estate
Of David W. Harwell, and South
Carolina Department of Health and
Environmental Control Division of Vital
Records,

Respondents,

v.

Law Office of Deirdre W. Edmonds, PA;
and Deidre W. Edmonds, individually,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

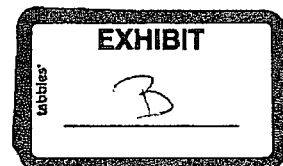
CASE NO. 2016-CP-21-1435

**AFFIDAVIT OF THIRD-PARTY
DEFENDANT DEIRDRE W. EDMONDS**

PERSONALLY APPEARED before me, Deirdre W. Edmonds, Esquire, who first being duly sworn
deposes and says as follows;

1. I am a licensed attorney in the State of South Carolina and the principal of Law
Office of Deirdre W. Edmonds, P.A., with a single office located at 1500 Highway 17 North,
The Courtyard Suite 213, Surfside Beach, South Carolina 29578.

2. On or around February 8, 2016, Deborah B. Harwell provided me with a copy of
David W. Harwell's Death Certification ("Death Certificate") that she had obtained from the



Florence County Probate Court, which Death Certificate had been filed with the Court on October 15, 2015. (Attachment A)

3. The Death Certificate for David W. Harwell (the "Decedent") indicated that the Decedent was "Married, But Separated" and in the space provided on the Death Certificate for inclusion of the surviving spouse's name, Deborah B. Harwell's name was not included and instead "NA" was listed. The Death Certificate listed Robert Bryan Harwell as the "Informant" who provided the information for the Death Certificate.

4. Deborah B. Harwell and David W. Harwell were married at the time of the Decedent's death. As a result of Deborah B. Harwell not being listed on the Death Certificate as the Decedent's surviving spouse, Deborah B. Harwell was unable to proceed with arranging certain death benefits due her.

5. I then contacted the South Carolina Department of Health and Environmental Control (DHEC) Vital Records Division, and spoke with Angie Saleeby, Director of Vital Records Division. I discussed with Ms. Saleeby the process of amending the death certificate to correct the patent error not listing Deborah B. Harwell as the surviving spouse. I was told that unless the "informant" on the Death Certificate was willing to submit an affidavit (and evidence of the marriage) to correct the Death Certificate to have the surviving spouse's name added to the Death Certificate, the only way to have the spouse's name added was through a court order. I advised Ms. Saleeby that the Informant on the Death Certificate knew the Decedent was survived by a spouse and knew the identity of the surviving spouse; however, I was still told that a court order would be necessary to correct or amend the Death Certificate if an affidavit from the Informant could not be obtained. I was also told by Angie Saleeby that the funeral home should

not have filed the death certificate with DHEC knowing that the surviving spouse's name was not included on the Death Certificate.

6. The Death Certificate issued by the Division of Vital Records, SC Department of Health and Environmental Control for David W. Harwell states *"This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control. Catherine E. Heigle, Director and State Registrar."*

7. Based upon the Decedent's Death Certificate issued by the Division of Vital Records and the certification on same, the facts certified as being on file by the Division of Vital Records are that (i) the decedent's marital status is "married but separated," (ii) the surviving spouse's name is "NA", and (iii) the informant's name is "Bryan Harwell."

8. Additional information provided to me in February 2016 by Deborah B. Harwell included a clocked copy of the sworn Application for Probate and Appointment filed with the Florence County Probate Court on October 12, 2015 by R. Bryan Harwell. A review of the clocked copy of the verified Application filed by R. Bryan Harwell reveals that initially the surviving spouse's name was inserted under Item 4(b) on page two of the Application but was later whited out. (Attachment B)

9. Based upon my knowledge and training as the former Probate Judge for Horry County for twelve years, it is generally accepted protocol to include all heirs not devisees under a decedent's Last Will in the Application under Item 4(b) and, if there are particular facts that bear on the heir's inheritance rights, a notation as to the particular facts would be included in Item 4(b). Such a notation was included on R. Bryan Harwell's verified Application but the surviving spouse's name was whited out nevertheless as if she did not even exist at all.

10. On March 1, 2016, I filed a Petition on behalf of Petitioner Deborah B. Harwell with the Probate Court in Florence County for adjudication of Deborah B. Harwell as the Decedent's surviving spouse and for amendment of the Decedent's Death Certificate to include Deborah B. Harwell as the Decedent's surviving spouse on said Death Certificate.

11. On March 11, 2016, I was contacted by Kevin Barth, counsel for Respondent Robert Bryan Harwell, who provided an affidavit of the funeral home associate director, Sandy Dowling, along with an attached computer form entitled "South Carolina Department of Health and Environmental Control Certificate of Death" purported to have been completed and submitted by Sandy Dowling to DHEC through DHEC's computerized system. Sandy Dowling stated in his Affidavit that "the form that was completed and submitted by me named the surviving spouse as 'Deborah Boggs'." (Attachment C)

12. On March 14, 2016, Kevin Barth provided me with a second form entitled "South Carolina Certificate of Death Worksheet" purported to have been prepared by the funeral home based upon the information provided to the funeral home by R. Bryan Harwell. The South Carolina Certificate of Death Worksheet includes the surviving spouse's name as "Deborah Boggs." (Attachment D)

13. At this point, I contacted Ms. Saleeby at DHEC again, and was told that the information they received from the funeral home did not list anyone as the surviving spouse. I then shared with Ms. Saleeby the documents that I had been provided from the funeral home. Ms. Saleeby then advised me that the information I had been provided from the funeral home did not reflect what the funeral home had submitted to DHEC through their computerized death certificate system. Later, Ms. Saleeby confirmed with me that their computerized system

automatically enters "NA" in the surviving spouse field on the death certificate if that field is left blank.

14. I subpoenaed the DHEC records on March 14, 2016 and received two (2) forms, one of which was a computer generated form entitled "South Carolina Department of Health and Environmental Control Certificate of Death." I was subsequently advised by Angie Saleeby that this form included all of the information keyed into DHEC's computerized system by the funeral home. This form shows a blank in the surviving spouse field. (**Attachment E**). The second form provided by DHEC is a form entitled "Death Certification", which includes "NA" in the field provided for the surviving spouse's name and is the same form filed in the Probate Court. (**Attachment F**)

15. Shortly thereafter, I subpoenaed the records of physician, Dr. Naso, who had completed the medical certification information on the "South Carolina Department of Health and Environmental Control Certificate of Death" form. Based upon information and belief, it is my understanding that that form had been delivered to the physician's office by the funeral home after the funeral home completed their portion of the form. The form I received from Dr. Naso (**Attachment G**) also shows a blank in the surviving spouse field and does not match the form purported to have been submitted by the funeral home to DHEC. (**Attachment C**)

16. The form I received from DHEC (**Attachment E**) and the form I received from Dr. Naso (**Attachment G**) are the same but they both differ from the form submitted with the Affidavit of Sandy Dowling, the funeral home director (**Attachment C**). The form from DHEC and Dr. Naso both have blanks in the surviving spouse field, while the form submitted by Affidavit from Sandy Dowling has "Deborah Boggs" listed in the surviving spouse field.

17. Kevin Barth offered to have his client, R. Bryan Harwell, sign a consent to amend the death certificate to name Deborah (Boggs) Harwell as the decedent's surviving spouse, but only if Petitioner Deborah B. Harwell agreed to dismiss certain other claims, with prejudice. Petitioner declined to accept that offer.

18. To this day, David W. Harwell's death certificate still lists "NA" as the surviving spouse and I am aware of no efforts on the part of R. Bryan Harwell, the Informant and Personal Representative of the Estate of David W. Harwell, to correct this obvious error and omission on the Decedent's Death Certificate. (Attachment A)

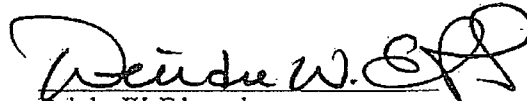
19. On or around February 8th, 2016, Deborah B. Harwell contacted me and told me she had filed certain claims against the Estate of David W. Harwell, her deceased husband, and she provided me with copies of her filed claims. Thereafter, she mentioned to me during a telephone conversation that she had received some correspondence and documents from R. Bryan Harwell's probate attorney, Gina Ervin, related to the claims and them being disallowed.

20. In order to preserve a claim that had been disallowed by a personal representative, a petition or other formal proceeding must be commenced by a creditor within thirty (30) days of the mailing of a notice of the disallowance or the disallowed claim is barred under the South Carolina Probate Code. I advised Mrs. Harwell of this and urged her to send me the letter and documents from Ms. Ervin at her earliest convenience.

21. Mrs. Harwell sent the correspondence and documents to me and I received them on or about March 3, 2016 and, based upon my review of same, determined that the filing deadline was March 12, 2016. Due to the exigency of filing a petition with regards to the Personal Representative's disallowances of Mrs. Harwell's claims or the claims being forever

barred, I had filed two (2) separate Petitions for allowance of creditor claims on Mrs. Harwell's behalf on March 9, 2016.

FURTHER AFFIANT SAYETH NOT.


Deirdre W. Edmonds

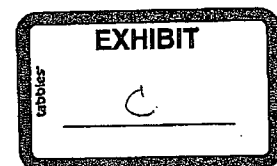
SWORN TO before me this
15 day of July 2016.


Notary Public for South Carolina
My commission Expires: July 8, 2025

STATE OF SOUTH CAROLINA	)	IN THE FLORENCE COUNTY CIRCUIT
	)	COURT
COUNTY OF FLORENCE	)	
	)	C/A NO.: 2016-CP-21-1435
Deborah B. Harwell,	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Robert B. Harwell, Individually and as	)	REBUTTAL AFFIDAVIT OF
Personal Representative of the Estate of	)	DEIRDRE W. EDMONDS ON BEHALF OF
David W. Harwell,	)	THIRD-PARTY DEFENDANTS,
Respondents,	)	LAW OFFICE OF DEIRDRE W.
	)	EDMONDS, PA AND DEIRDRE W.
vs.	)	EDMONDS, INDIVIDUALLY
	)	
Law Office of Deirdre W. Edmonds, PA	)	
and Deirdre W. Edmonds, Individually.	)	
Third-Party Defendants.	)	

PERSONALLY, APPEARED before me, Deirdre W. Edmonds, Esquire, who first being duly sworn deposes and says as follows:

1. Respondents have requested sanctions pursuant to Rule 11, South Carolina Rules of Civil Procedures ("SCRCP"), as well as under the South Carolina Frivolous Civil Proceedings Act ("SCFPCA"), SC Code § 15-36-10, *et seq.*
2. This Rebuttal Affidavit is being submitted in response to the Affidavit of Peter D. Protopapas and the Supplemental Memorandum in Support of Robert Bryan Harwell's Motion for Sanctions Under Rule 11 and the SCFPCA.
3. I incorporate herein by reference my original Affidavit of Third-Party Defendant Deirdre W. Edmonds dated July 15, 2016 that was previously filed with this Court on July 19, 2016.
4. I respectfully disagree with Mr. Protopapas' all-encompassing statements that "filing Petitions that are precluded by prior Court Order and Agreement is frivolous under the



Act and violates Rule 11" and "that there is no reasonable reading of fact or law that could support the Petitions." Aff. Peter Protopapas p. 9 (Jan. 20, 2017). Such all-encompassing statements preclude *any instance* whatsoever that a party to a court order and agreement, as was the case here, could pursue new claims that arise after the court order and agreement. That is simply not the case. South Carolina law allows parties to set aside such orders and agreements based on several situations, including newly discovered evidence, fraud and misrepresentation.

5. During my initial conferences with Mrs. Harwell, she advised me that she had received a great deal of information after the Order and Agreement that lead her to believe that Mr. Harwell had not fully disclosed his assets to her during their mediation conference and she testified to this information at the Family Court hearing. See Hrg. Transcr. 61:18-69:25 (June 16, 2016). **Exhibit A.**

6. When I was retained by Mrs. Harwell she provided me with this information and we discussed how she might proceed with the matter. Although I initially believed that Mrs. Harwell might be able to proceed in the Probate Court with regard to her claims of fraud and misrepresentation with regard to the Mediated Agreement, I later determined that she would need to seek to set aside the Family Court order and I advised her that she should retain a family court attorney for purposes of same. I am aware that Mrs. Harwell sought legal representation from numerous family court attorneys throughout this state before eventually filing, pro se, her Rule 60(b) Motion in the Family Court to set aside the Order based upon fraud and misrepresentation.

7. Deborah Harwell initially filed her creditor claims pro se in the Probate Court before I was retained. Subsequently, I filed the Petitions for Allowance of Claims to preserve any right that Mrs. Harwell might have with regards to such creditor claims. If Mrs. Harwell had failed to timely file her Petitions for Allowance of Claims after being notified by the Personal Representative of the Estate that her creditor claims were being disallowed, her creditor claims would have been barred by statute regardless of whether she was successful in setting aside the Family Court Order and Mediated Settlement in her Rule 60(b) Motion.

8. Based upon the information Mrs. Harwell received regarding David W. Harwell's assets following the Court Order and Mediated Agreement as she testified to at the Family Court hearing, Mrs. Harwell believed that there had been fraud and/or misrepresentations and a failure to disclose assets. Hrg. Transcr. 61:18-69:25 (June 16, 2016), Exhibit A. If Mrs. Harwell had failed to file her creditor claims within the statutory filing deadline for the filing of creditor

claims after a decedent's death, she would have been precluded from recovering on her claims. Once her creditor claims were disallowed by the estate's representative, she was required to act to preserve the claims or they would be barred. I reasonably believed that there was a good faith basis for preserving her creditor claims and, thus, filed the Petitions for Allowance of Claims on her behalf. Specifically, though I do not practice family law and I did not represent Mrs. Harwell in Family Court, I knew that under the law it was possible for Mrs. Harwell to obtain relief from the Family Court Order if she could prove fraud or misrepresentation concerning her husband's assets. I could not, consistent with my professional responsibility, allow her claim against the estate to become time-barred when there was no way for me to determine whether she might be entitled to recovery. I believed that my actions were reasonable under the circumstances and, based upon my knowledge, information and belief, there was good ground to support the filing of the Petitions for Allowance of Claims.

9. Mr. Protopapas also asserts that, with regard to the Petitions for Allowance of Claim, "a cursory reading of the [Mediated] Agreement and [Family Court] Order preclude [my] filings". Aff. Protopapas, p. 13. Based upon the information that Mrs. Harwell had received from third persons related to David W. Harwell's assets, there was some evidence that there had not been a full and fair disclosure during the mediation settlement. The Petitions for Allowance of Claims that I filed on Mrs. Harwell's behalf were filed in good faith based upon a reasonable belief that Mrs. Harwell had claims that she might recover in the Probate Court. They were not filed for harassment, delay or to simply injure the estate.

10. Regarding my testimony in the Family Court, both Respondent and Peter Protopapas misstate my testimony from the Family Court hearing on May 19, 2016 (Supplemental Memorandum in Support of Robert Bryan Harwell's Motion for Sanctions Under Rule 11 and SCFCPA, p. 4, referenced as Exhibit B, p. 37; Aff. Protopapas, p. 13). They both state that I testified that Deborah Harwell was not entitled to receive any funds from the estate. My testimony was in response to Mr. Barth's questions to me that were related solely to the Petition for Adjudication as Surviving Spouse. (Question Kevin Barth: "Okay so this Summons and Petition as I understand it, and correct me if I'm wrong, asking that she be adjudicated the surviving spouse would not entitled her to any money or anything from the estate?" Answer Deirdre Edmonds: "No, sir.") My response regarding the Petition for Adjudication as Surviving Spouse was that the purpose of that Petition was not for property rights but rather the purpose

was for the Court to find that Deborah Harwell was the surviving spouse so that she could be included on the death certificate. I was not commenting on whether Deborah Harwell was entitled to funds from the estate in general, as I had been asked by Mr. Barth specifically about the Petition for Adjudication and Amendment of the Death Certificate and my answer was related to that Petition alone. Hrg. Transcr. 36:14-37:22 (May 19, 2016). **Exhibit B.**

11. Mr. Protopapas asserts that there is no competent information that would lead any reasonable attorney or person to make the statements of felonious conduct against Respondent Harwell. Aff. Protopapas, p. 12. The information that I relied upon in making the allegation against Harwell are as follows:

(1) The Informant provides the information required on the death certificate for filing purposes. See Angelia Saleeby's Affidavit, which confirms this statement. Third-Party Defendants' Supp. Memo. Opp. Mtn Sanctions, Exh. C, filed July 19, 2016 and **Exhibit C.**

(2) Bryan Harwell was listed as the "Informant" on David W. Harwell's death certificate and it is undisputed that Bryan Harwell was well aware of his father's surviving spouse.

(3) An employee of DHEC refused to provide Deborah Harwell with a copy of David Harwell's death certificate because she was not listed as the surviving spouse and the DHEC employee told Deborah Harwell that Bryan Harwell, the Informant, was the person who left her name off the death certificate.

(4) Bryan Harwell filed a sworn Application for Probate and Appointment with the Florence County Probate Court in which he initially listed Deborah Harwell as David Harwell's surviving spouse but later her name was whited out on his Application as the decedent's surviving spouse. Aff. Deirdre Edmonds, Attachment B, filed July 19, 2016 and **Exhibit D**

(5) Bryan Harwell had actual knowledge in October 2015 that the surviving spouse's name had not been included on the death certificate yet in the almost five (5) months since the death certificate was issued before the filing of Deborah Harwell's Petition to amend the death certificate, the death certificate had not been amended to include Mrs. Harwell's name as the surviving spouse. See his testimony in Family Court

hearing Hrg. Transcr. 119:22-.25 (May 19, 2016). Exhibit E. Indeed, he continued, without any basis, to refuse to amend the death certificate even after I filed the Petition.

(6) I spoke to Angelia Saleeby, Director of Vital Statistics at DHEC, about the procedure for amending the death certificate and sought to have DHEC, in accordance with its regulations, R.61-19, amend the certificate based upon an obvious error on its face in that the death certificate stated that the decedent was "married but separated" but listed the surviving spouse's name as "N/A". DHEC refused to do so, and advised me that the death certificate could only be amended by submission of an affidavit by the Informant or a court order.

12. I submit that based upon the foregoing information that I discovered through my investigation of the facts before filing the Petition for Adjudication as Surviving Spouse, I had a good faith belief that Bryan Harwell willfully and knowingly failed to include Deborah Harwell as the decedent's surviving spouse on the death certificate. We also now know that Bryan Harwell failed to seek to correct the death certificate after he became aware of the omission of the surviving spouse's name on the death certificate, a state statistical vital record of his father that listed Bryan Harwell as the informant. See his testimony Hrg. Transcr. 119:22-.25 (May 19, 2016), Exhibit E.

13. Mr. Protopapas's opinion asserts that I only had available to me four (4) pieces of information in making the allegations in the Petition for Adjudication. That is simply not the case. I had all the facts that Mr. Protopapas asserts in his opinion, but I also had the additional facts outlined above in Paragraph 11. Further, I also had access to the full scope of S.C. Code §44-63-74, which provides, in part, that the funeral director "shall obtain the personal data of the decedent from the next of kin or best qualified person or source available". I also had the fact available that, although the funeral home electronically transmitted the information for the death certificate to DHEC, in this case it had relied upon Bryan Harwell as the Informant as it electronically transmitted that information to DHEC for inclusion on the death certificate. Therefore, I had a great deal more information available at the time I filed the Petition than simply the four facts that Mr. Protopapas alleges in his opinion. And, based upon the totality of the information available at the time, I had a good faith belief in the allegations as did my client, Deborah Harwell.

14. Mr. Protopapas further states in his opinion that "[e]ven more concerning is that shortly after the filing of the Petition, Ms. Edmonds was presented with information that proved that any error that occurred happened either at DHEC or the Funeral Home". Aff. Protopapas, p. 12. What Mr. Protopapas fails to appreciate is that shortly after I was provided with the information he alludes to, i.e., the Affidavit of Sandy Dowling, I was also advised by the Director of the Division of Vital Records that the information that had been submitted by sworn affidavit was not true and that, in fact, the surviving spouse's name had not been included on the death certificate. This information from DHEC directly contradicted the sworn affidavit of Sandy Dowling, the associate funeral home director. Third-Party Defendants' Supp. Memo. Opp. Mtn Sanctions, Exh. C, filed July 19, 2016, **Exhibit F**. To say the least, this threw up red flags. I had been presented a sworn affidavit by the associate director of the funeral home that I was told contained false information. Therefore, I immediately subpoenaed the records from DHEC and was provided with DHEC's certified records, which did not support the sworn affidavit I had been provided by the associate director of the funeral home. I received two forms from DHEC, one of which was a computer generated form entitled "South Carolina Department of Health and Environmental Control Certificate of Death". Third-Party Defendants' Supp. Memo. Opp. Mtn Sanctions, Exh. E, filed July 19, 2016 and **Exhibit G**. I was subsequently advised by Angelia Saleeby that this form included all of the information keyed into DHEC's computerized system by the funeral home. This form shows a blank in the surviving spouse field. The second form provided by DHEC is a form entitled "Death Certification", which includes "NA" in the field provided for the surviving spouse's name and is the same form filed in the Probate Court. Third-Party Defendants' Supp. Memo. Opp. Mtn Sanctions, Exh. F, filed July 19, 2016 and **Exhibit H**. Further, I also subpoenaed the records of the certifying physician who completed the medical information on the death certificate, Dr. Naso. Third-Party Defendants' Supp. Memo. Opp. Mtn Sanctions, Exh. G, filed July 19, 2016, **Exhibit I**. The certifying physician's records matched DHEC's records and neither included the surviving spouse's name in the appropriate field. At this juncture, we knew the affidavit contained false information and, thus, we could not rely on any of the information in the affidavit as being true, including the funeral director's statement that Bryan Harwell had included Deborah Harwell's name on the death certificate worksheet. For this reason and based upon the facts that we had available at the time, my client instructed me to reject the estate's offer to settle the matter by dismissing all her Petitions with prejudice.

15. Finally, Mr. Protopapas states that as it pertains to each Petition, there is nothing complex regarding the claims and defenses. Aff. Protopapas p. 14. I believe the fact that we have actions involving the Petitions in several different courts provide a complexity that does not normally exist in other cases. There have been proceedings filed in the Probate Court and in the Family Court. There are now actions pending in the Circuit Court. Some claims that Mrs. Harwell may have against the estate can only be filed in the Probate Court. Other actions against her have been filed in the Family Court. She has also been faced with the need to file an action in the Family Court to set aside its original Order and, at the same time on the same day she had two separate Family Court judges having hearings on matters related to the original Order. Her failure to file claims in the Probate Court could easily preclude her from any recovery even if she was successful in the Family Court in setting aside the Order. And, her failure to file her Petitions to preserve her claims would result in a bar for any recovery against the estate. So, all of these matters were intertwined and complex and they should be taken into consideration in finding that the actions that I took were to protect my client and represent her fully under the law.

16. I have been licensed to practice law for almost thirty years. I served as Probate Judge for Horry County for twelve years. Prior to such service, I practiced law in Myrtle Beach and Surfside Beach for fifteen years focusing my practice in the areas of wills, trusts and estate planning, probate administration and litigation, guardianship and conservatorship, elder law and general corporate and tax matters. I returned to the private practice of law in January 2015 and I concentrate my practice in the area of wills, trusts and estate planning, probate and trust administration and litigation, and elder law. I previously served as President of the South Carolina Association of Probate Judges and I also served on the Chief Justice's Probate Judges Advisory Committee. I also served for three years on the SC Bar Probate Code Overhaul Committee that re-wrote our state's Probate Code, which became effective January 2014.

17. In his Supplemental Memorandum in Support of Motions, Respondent Harwell states that he is seeking sanctions against me for two reasons. First, because I signed and filed claims "knowing and admitting under oath that [my] client was not entitled to receive any money from Judge Harwell's estate". Suppl. Memo. in Support of Robert Bryan Harwell's Mot. for Sanctions, p. 4. As explained in Paragraph 10, above, Mr. Harwell misinterprets my testimony. Under questioning by Kevin Barth as to the Petition for Adjudication as Surviving Spouse, my testimony was that it was not for purposes of any property rights in the estate and that its purpose

was to find that Mrs. Harwell was the surviving spouse so she could be included on the death certificate. See Hrg. Transcr. 36:14-37:22 (May 19, 2016), Exhibit B.

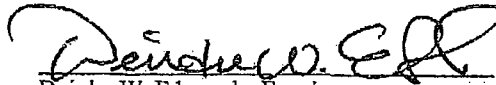
18. Respondent Harwell's second reason for seeking sanctions against me is that I accused him of committing a felony without investigating the matter at all and without speaking with anyone at all. Suppl. Memo. in Support of Robert Bryan Harwell's Mot. for Sanctions, p. 5. I have set forth above in paragraph 11 the actions that I took to investigate the matter before filing the Petition to amend the death certificate. Respondent Harwell's assertion that I filed the Petition without conducting an investigation and without speaking with anyone is simply not true.

19. Respondent Harwell also states in his Memorandum that "[t]he PR's position in this litigation *has always been* that the Death Certificate could be amended if that was DHEC's protocol". Suppl. Memo. in Support of Robert Bryan Harwell's Mot. for Sanctions, p. 6 (emphasis added). This is simply not true. Respondent Harwell has fought to deny and dismiss Deborah Harwell's Petition for adjudication as the decedent's surviving spouse and has also fought to deny and dismiss Deborah Harwell's request to amend the decedent's death certificate from the initial filing of his Answer and Motions to Dismiss up until at least after the July 2016 hearing before your Honor on his Motion to Dismiss. See Answers, Counterclaims and Third-Party Claims and Motion to Dismiss, filed by Respondent Harwell, April 1, 2016 and May 16, 2016.

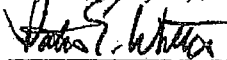
20. Respondent Harwell also seeks to point out in his Memorandum that one of the reasons that I previously stated for filing the Petition for Adjudication for Deborah Harwell was so Mrs. Harwell could receive benefits due her. Respondent Harwell then alleges that this statement by me in my sworn testimony/Affidavit directly contradicts Mrs. Harwell's sworn testimony at the Family Court hearing stating that "Mrs. Harwell testified at the family court hearing that she had never been denied any benefits and had received all benefits due her. This testimony directly contradicts the sworn testimony/Affidavit of Deirdre Edmonds." Suppl. Memo. in Support of Robert Bryan Harwell's Mot. for Sanctions, p. 6. The testimony of Mrs. Harwell was quite the opposite. Mrs. Harwell testified that "I was not able to obtain retirement because I could not get a death certificate so I got my first check for \$400 about three weeks ago." Hrg. Transcr. 36:13-15 (June 16, 2016). Exhibit J.

21. Respondent Harwell further alleges that instead of filing the lawsuit to amend the death certificate "the only thing Edmonds or Mrs. Harwell had to do was contact DHEC directly and provide them with information allowing DHEC to correct the error, if in fact, there was an error" and "that no lawsuit for such an amendment needed to be filed at all". Suppl. Memo. in Support of Robert Bryan Harwell's Mot. for Sanctions, p. 7. Respondent Harwell cites the applicable DHEC regulation that allows corrections of obvious errors on certificates by the State Registrar. I would like to point out to this Honorable Court that in my earlier Affidavit dated July 15, 2016, I stated that I did contact DHEC about correcting the error and was advised that unless the informant was willing to submit an affidavit to correct the death certificate, the only way to amend the certificate was through a court order. Further, I have not, as Respondent Harwell alleges held myself out as the "probate expert" although I did, in fact, know about this Regulation from my previous cases as a former probate judge and handling similar issues. Thus, my first attempt was to have the death certificate amended under the DHEC Regulation by contacting Angelia Saleeby before ever filing the Petition to have it amended. It was through these communications, as well as other investigative actions, that I determined there was a good faith basis for filing suit on my client's behalf to amend the death certificate and the obvious omission of her from same.

FURTHER AFFIANT SAYETH NOT!


Deirdre W. Edmonds, Esquire

SWORN to before me this 30th
day of January 30, 2017.



Patricia E. White
Notary Public of South Carolina
My Commission Expires: 10-25-2023

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
COUNTY OF HORRY)	2015-DR-26-691
David W. Harwell by and)	
through his personal)	
representative,)	
Bryan Harwell,)	
Plaintiff,)	Transcript of Record
vs.)	
Deborah B. Harwell,)	June 16, 2016
Defendant.)	

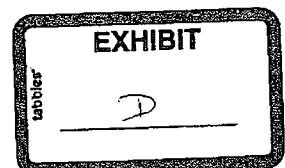
B E F O R E:

Honorable Melissa Buckhannon
Horry County Courthouse
Conway, South Carolina

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

Kevin M. Barth, Esquire
Gena Ervin, Esquire
Attorneys for Plaintiff

Cliff Welsh, Esquire
Attorney for Defendant



1 you wanted to be the surviving spouse because you're not -- I
2 asked her if you're entitled to any money and her answer was,
3 "she is still a surviving spouse under the law but not for the
4 purposes of any property rights through the Probate Court".

5 Now, you understood that to mean exactly what you told us
6 before that you just want to be listed as the wife but you're
7 not asking for any money from the estate; isn't that true?

8 A: I was distracted by someone coming in; what?

9 Q: Okay, you heard that testimony and you understood, as the
10 rest of us did, you just wanted to be listed as his wife on
11 the death certificate but that it doesn't entitle you to any
12 money from the estate. Did you hear your lawyer say that?

13 A: I -- yes.

14 Q: Alright and --

15 A: That's why I initially went to her was to get my name on
16 the death certificate so I could actually get retirement and
17 get through the process of Social Security I'm 67 and there's
18 like -- I couldn't get it.

19 Q: Okay so your purpose in doing all that was to get the
20 retirement which you have?

21 A: Yes.

22 Q: Get Social Security, which I assume you also have?

23 A: Just got it.

24 Q: Okay and so the purposes for which you filed that claim
25 have been satisfied; right? That's what you needed it for and

now you have it?

A: That's what initially happened.

3 Q: Alright, well lets -- I want you to show the Judge
4 what you filled the week after the hearing. Please take a
5 look at that document can you tell me what that is?

6 THE COURT: While she looks at it my secretary has just
7 said there is an emergency she needs me right quick. Look at
8 that document and then --

9 (Recess)

10 THE COURT: Be seated. I apologize. Back on the record.

11 MR. BARTH: May it please the Court, Your Honor?

12 BY MR. BARTH:

13 Q: After hearing your lawyer testify that you weren't
14 entitled to any money from the estate and after you understood
15 you had to do that to get social security and retirement,
16 which you now have; right?

17 A: Just got it.

18 Q: Alright.

19 A: After months.

20 Q: Alright and right after that hearing before this Judge,
21 you went to the Probate Court and filed something else; didn't
22 you?

23 A: I did.

24 Q: Alright and tell me if you can identify that.

25 A: That is a Petition for Elective Share.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

ESTATE OF DAVID W. HARWELL

Deborah B. Harwell,

Petitioner(s),

v.

Robert Bryan Harwell, Individually and as
Personal Representative of the Estate of David
W. Harwell, and South Carolina Department of
Health and Environmental Control Division of
Vital Records,

Respondents.

IN THE PROBATE COURT

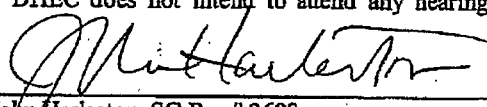
Docket No.: 2015-ES-21-00779

ANSWER OF SOUTH CAROLINA
DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL

2016 APR 26 PM 1:03

FILED

Without admitting the allegations of the Petition, Respondent South Carolina Department of Health and Environmental Control ("DHEC") has no objection to the relief Petitioner requests, as long as Petitioner: (1) presents sufficient evidence to the court's satisfaction to establish that Petitioner was the decedent's surviving spouse; (2) provides Petitioner's full maiden name and full married name to be added to the death record; and (3) pays any fees required by law for an amended death certificate. DHEC understands that Petitioner does not request any change to the decedent's marital status. Pursuant to SCRCF 5(b)(3), DHEC requests that Petitioner provide the undersigned counsel with a copy of any proposed order she submits to the Court. Unless otherwise directed by the Court, counsel for DHEC does not intend to attend any hearings scheduled in this matter.


John Harleston, SC Bar # 2698
Rachel Erwin, SC Bar #064152
South Carolina Department of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201
Phone: (803) 898-3350; Fax: (803) 898-3367
Email: harlesj@dhec.sc.gov
ATTORNEYS FOR RESPONDENT DHEC

4/21, 2016
Columbia, South Carolina

EXHIBIT

E

STATE OF SOUTH CAROLINA	)	IN THE FLORENCE COUNTY CIRCUIT
	)	COURT
	)	C/A No.: 2016-CP-21-1435
	)	
Deborah B. Harwell	)	
Petitioner,	)	
	)	
v.	)	LAW OFFICE OF DEIRDRE W.
	)	EDMONDS, P.A. AND DEIRDRE W.
Robert Bryan Harwell, individually and as	)	EDMONDS' MOTION AND
Personal Representative of the Estate of	)	MEMORANDUM IN SUPPORT OF
David W. Harwell	)	MOTION FOR RECONSIDERATION
	)	
Respondent,	)	
	)	
v.	)	
	)	
Law Office of Deirdre W. Edmonds, PA;	)	
and Deirdre W. Edmonds, individually,	)	
	)	
Third Party Defendants.	)	

The Third-Party Defendants, Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds (collectively "Edmonds") respectfully request for an Order altering or amending that part of this Court's April 12, 2017 Order for Sanctions that finds "that Edmonds was not justified in filing or pursuing the claim for the reimbursement of the obituary publication", and sanctions Edmonds \$5,000.000 for her filing the Petition to preserve the claim for the cost of the obituary publication. Order 13-14. Edmonds moves for reconsideration because 1) there is no evidence that the claim for the obituary expense was frivolous; and 2) the amount awarded is disproportionate to any fees reasonably expended in opposing the claim.

I. No Evidence the Obituary Claim was Frivolous

This Court properly recognized in its "Statement of Facts":

By March 6, 2016, Edmonds had received sufficient information to determine that the pro se claims had been denied by the Personal Representative and that unless an action was begun in the Probate Court to enforce the claims they would be barred by statute and lost. An action on the claims would have to be brought in the Probate

Court by March 12, 2016 in order to preserve the possibility of a Rule 60 claim. The action to enforce the pro se claims was filed by Edmonds on March 9, 2016. She states that this was done to protect Mrs. Harwell's right to pursue a Rule 60 reopening of the Family Court Order approving the property settlement agreement....

Order 4-5. The pro se claims/petitions (plural) referenced are a \$3.1 million creditor claim based on a prenuptial agreement and a \$1,457.25 creditor claim based on an obituary publication. This Court found under "Conclusions and Rulings" that Edmonds' filing concerning the creditor's claim based on the prenuptial agreement was justified, that "[t]he time was fast approaching that the claims would be lost if not sued upon", and agreed "that she took the actions necessary to preserve her client's opportunity to have her claims litigated." Order 13. The Court properly recognized that there was no way that Attorney Edmonds could have known whether Mrs. Harwell might prevail on her as-yet unadjudicated claims, let alone known that they were frivolous. The same rationale applies to the Petition filed to preserve the obituary claim.

The party moving for sanctions bears the burden of showing that the claims were frivolous. Usually a motion for sanctions is made following a trial on the merits or a ruling on a dispositive motion.¹ In such cases, the evidence has been fully developed and the trial judge is in a position to assess whether the claim or defense was frivolously maintained. This is not the case here. Mrs. Harwell voluntarily dismissed her claims (when she was represented by substitute counsel, not Attorney Edmonds). This Court has heard no evidence concerning the merits of the obituary claim. The record is replete with Motions, Memoranda, Affidavits and live testimony regarding the issues before this Court. However, there is almost no mention of the creditor claim

¹ The Frivolous Civil Proceedings Act provides, at section 15-36-10(C)(1): "At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous."

for obituary publication, no argument or evidence that it is without merit, and certainly no arguments made that this claim is frivolous. In Respondent's Answers and Counterclaims and Third-Party Claims, filed April 1, 2016, Respondent alleges:

4. As to the \$1457.25 claim concerning the obituary, that expense was not a debt incurred by the Decedent David W. Harwell or by his Estate, was not authorized by the PR and was incurred solely by the Petitioner as referenced by the billing documents attached to the Petitioner's claim. The \$1457.25 expense is solely the responsibility of the Petitioner.

6. The creditor's claim for \$1475.25 concerning an obituary fails to allege facts sufficient to state a claim and must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP").

The closest "argument" related to this claim was at the February 2, 2017 hearing regarding Respondent's Motion for Sanctions, and even that is more just a statement:

She filed a second claim, Your Honor, asking for some money for an obituary she ran herself subsequent to the one run by the personal representative but basically they're both asking for money from the Estate. Our position, at the time, was she waived that in Family Court. They shouldn't be allowed to go forward.

Sanctions Hrg. Transcr. 10:4-9 (Feb. 2, 2017).

There is no evidence in the record that the obituary claim is unwarranted, let alone frivolous. It is not uncommon for estates to bear the expense of publishing an obituary. The original obituary that the Estate published was patently in error. It identified as Justice Harwell's survivors his children, his grandchildren, his sister, his sisters-in-law, and numerous nieces and nephews. It even makes mention of Justice Harwell's black Labrador dog, yet it makes no mention of his surviving spouse, Deborah Harwell.² The obituary that Mrs. Harwell published was correct, since it identified her as the widow, whereas the obituary that Bryan Harwell had

² See, e.g., the October 2, 2015 obituary published in The State Newspaper at <http://www.legacy.com/obituaries/thestate/obituary.aspx?n=david-walker-harwell&pid=175994265>.

published did not mention Justice Harwell's surviving spouse, just as the initial Death Certificate omitted the surviving spouse.

The Estate's objection to reimbursing Mrs. Harwell for the cost of publishing the correct obituary – that “she waived that in Family Court” - is itself frivolous inasmuch as this claim did not even exist and could not reasonably have been contemplated when Mrs. Harwell made her agreement in Family Court.

II. Amount Awarded Disproportionate to Effort Expended or Amount at Stake

This Court sanctioned Edmonds and awarded Respondents \$5,000.00 in legal fees related to the above-referenced creditor claim for the obituary publication. The claim itself was for only \$1,457.25. The Respondent offered no evidence of what, if any, legal expense he incurred because of the obituary claim. Indeed, it appears that he did nothing more to defend that claim than to deny it and move to dismiss it. Just last week the Supreme Court of the United States held in *Goodyear Tire & Rubber Co. v. Haeger*, “So as we have previously noted, a sanction counts as compensatory only if it is ‘calibrate[d] to [the] damages caused by’ the bad-faith acts on which it is based. . . . A fee award is so calibrated if it covers the legal bills that the litigation abuse occasioned. . . . That kind of causal connection, as this Court explained in another attorney’s fees case, is appropriately framed as a but-for test: The complaining party (here, the Haegers) may recover ‘only the portion of his fees that he would not have paid but for’ the misconduct. *Fox v. Vice*, 563 U. S. 826, 836 (2011); see *Paroline v. United States*, 572 U. S. ___, ___, 134 S.Ct. 1710, 1722, 188 L.Ed.2d 714 (2014)”. No. 15-1406, 2017 WL 1377379, at *5 (U.S. April 18, 2017). Here, Respondent has made no showing of what legal expenses, if any, he would not have incurred but for the filing of the Petition to preserve the claim for the obituary

publication. Just as he has failed to prove that the obituary claim was frivolous, he has failed to prove what damages he sustained because of that claim.

In determining the reasonableness of legal fees, South Carolina courts typically focus on six factors from the case of *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997): (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. The factors for determining the reasonableness of fees set forth in Rule 1.5 of the Rules of Professional Conduct, Rule 407, SCACR, include the same factors as those in *Jackson*.

The vast majority, if not substantially all, of Respondent's counsel's efforts, as evidenced by their Motions, Memoranda, Affidavit and live testimony, were spent arguing against the merits of the \$3.1 million creditor claim and the amendment of the death certificate. *See* Respondent's Answers and Counterclaims, and Third-Party Claims (April 1, 2016); Respondent's Mot. Dismiss, Mot. Rule 11 Sanctions (April 1, 2016); Respondent's Memo. July 21, 2016; Mot. Dismiss Hrg., Judge Couch (July 21, 2016); Aff. Peter D. Protopapas (Jan. 20, 2017); Respondent's Suppl. Memo. Sanctions (Jan. 27, 2017); Respondent's Second Suppl. Memo. Sanctions (Jan. 31, 2017); Sanctions Hrg. Transcr. (Feb. 2, 2017). As noted above, there is virtually no evidence in the record related specifically to the obituary publication creditor claim, let alone arguing against its merits or that it was a frivolous claim. Further, a \$5,000.00 award is grossly disproportionate for a \$1,457.25 claim. The Petitioner would have to have been uncommonly vindictive and contumacious to spend \$5,000 to defend a claim that small and that innocuous.

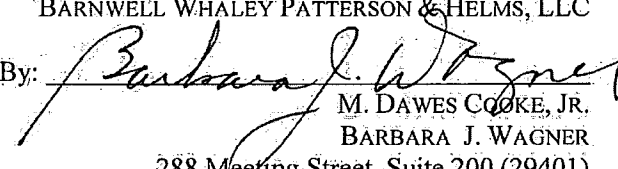
Attorney Edmonds has worked long and hard to earn her excellent reputation in the legal profession. This Court is aware of the difficulty that Mrs. Harwell has had in retaining counsel to represent her. The Rules of Professional Conduct and the Lawyer's Oath encourage lawyers to take on unpopular causes and to protect the helpless and oppressed. Attorney Edmonds should not be sanctioned for her part in helping Mrs. Harwell preserve whatever claims she might have had against her husband's estate.³

Attorney Edmonds appreciates the time and thought that this Court has put into this matter. Based on the foregoing, Attorney Edmonds respectfully requests that this Court reconsider its prior Order for Sanctions and to relieve her of sanctions in this matter.

Respectfully submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

By:



M. DAWES COOKE, JR.

BARBARA J. WAGNER

288 Meeting Street, Suite 200 (29401)

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bwagner@barnwell-whaley.com

**ATTORNEYS FOR THIRD-PARTY DEFENDANTS LAW OFFICE
OF DEIRDRE W. EDMONDS, P.A. AND DEIRDRE W. EDMONDS**

Charleston, South Carolina
April 26, 2017

³ "Section 15-36-20 creates a presumption that a person taking part in the initiation or continuation of proceedings acted with a proper purpose 'if he reasonably believes in the existence of facts upon which his claim is based' and . . . reasonably believes under the facts that his claim may be valid under existing or developing law." *Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903, 912 (1997)(quoting S.C. Code Ann. § 15-36-20(1)(Supp. 1995)).

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Roger L. Couch

RECEIVED

JAN 04 2018

SC Court of Appeals

Circuit Court Case No. 2016-CP-21-1435
Probate Court Case Nos. 2015ES2100778 (Florence County) &
2016ES0700302 (Beaufort County)

Deborah B. Harwell. Defendant,

v. . .

Robert Bryan Harwell, individually
And as Personal Representative Of
the Estate of David W. Harwell; And
the South Carolina Department of Health
and Environmental Control, Div. of Vital Records Respondents.

v.

Law Office of Deirdre W. Edmonds,
P.A. and Deirdre W. Edmonds, Individually..... Third-Party Defendants

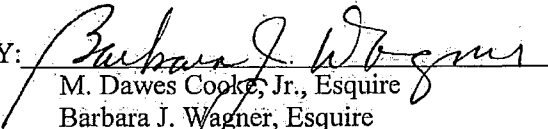
of Whom

Law Office of Deirdre W. Edmonds,
P.A. and Deirdre W. Edmonds,
Individually is..... Appellant.

AMENDED NOTICE OF APPEAL

Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds, Individually hereby respectfully
appeal the Orders of The Honorable Roger L. Couch, dated September 27, 2017, and filed October 2,
2017 (attached); and the Order dated April 6, 2017, and filed April 12, 2017 (attached).

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 
M. Dawes Cooke, Jr., Esquire
Barbara J. Wagner, Esquire
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, SOUTH CAROLINA 29402
PHONE: (843) 577 - 7700

ATTORNEYS FOR THIRD-PARTY DEFENDANTS
LAW OFFICE OF DEIRDRE W. EDMONDS, P.A. AND
DEIRDRE W. EDMONDS, INDIVIDUALLY

January 2, 2018
Charleston, South Carolina

Other counsel of Record:

Kevin M. Barth, Esquire
Ballenger, Barth, Hoefer and Lewis, L.L.P.
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Attorney for Respondent

Gena Phillips Ervin, Esquire
Orr Elmore & Ervin, LLC
PO Box 2527
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Florence, SC 29503
Attorney for Respondent

Blake A. Hewitt, Esquire
Bluestein Thompson Sullivan, LLC
Post Office Box 7965
Columbia, SC 29202
Attorney for Respondent

Deborah Harwell
P.O. Box 7769
Myrtle Beach, SC 29572
Pro Se Defendant

STATE OF SOUTH CAROLINA)

)

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE)

C.A. No. 16-CP-21-1435

Deborah B. Harwell)

Plaintiff,)

)

v.)

ORDER

)

Robert Bryan Harwell, individually)

And as the Personal Representative)

Of the Estate of David W. Harwell;)

And the South Carolina Department)

Of Health and Environmental)

Control, Div. of Vital Records)

Defendants,)

)

v.)

)

Law Office of Deidre W. Edmunds,)

P.A/ and Deidre W. Edmunds,)

Individually,)

Third Party Defendants.)

)

RECEIVED

JAN 04 2018

SC Court of Appeals

2017 OCT -2 AM 10:25
DORIS FORD, CLERK
COURT OF COMMON PLEAS
FLORENCE COUNTY, SC

FILED

CERTIFIED A TRUE COPY
Doris Ford, Clerk
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Dec 21

This matter is before this court on motions under Rule 59(e) of the South Carolina Rules of Civil Procedure by all parties in this matter.

A.) I will first address those issues raised by the Defendant Robert Bryant Harwell,

individually and as the Personal Representative of the Estate of David W. Harwell, in as much as that party was the moving party before me.

1. The Personal Representative and the Estate have moved that I reconsider the provision in my Order which provides for the reduction of the amount that I awarded under Rule 11 and the Frivolous Claims Act by any portion of the Family Court Award of attorney's fees which is actually paid by Ms. Harwell. I was made aware at this hearing that she had paid nothing on that award as of the time of the hearing. I was informed that Ms. Harwell had been sanctioned by the Family Court for filing the same actions that were complained of in the Motion before me in this matter. This Family Court action resulted in her being ordered to pay attorney's fees of \$25,000.00, and she was to be jailed for a period of 45 days for contempt. I am aware that she served a portion (about 18 days) of that sentence.

In setting the appropriate measure of Sanctions to be assessed in a case under Rule 11 or the Frivolous Claims Act the amount of costs and attorney's fees incurred is certainly a factor to be considered by a court. Rule 11 seeks of a reasonable costs and attorney's fees may be assessed. The Frivolous Claims act talks of an assessment of all or a portion of the attorney's fees incurred in defending a claim be a possible award. One my concerns in is matter is that the issues in the Probate Court, this court and the Family Court involve the filing and merits of the same claims. In some areas the facts and the legal arguments overlap. Further, I was not given any information as to Ms. Harwell's financial ability to pay sanctions. Certainly that is a factor to consider



when considering the issues addressed recently in the Pee Dee Health Care case. In that case the Court of Appeals examined the origins and purposes of an Order for sanctions under Rule 11, SCRCP. While attorney's fees and costs are to be considered, there are many other factors to be considered. The Court made the point that the sanctions are intended to end the litigation and to prevent the filing of future frivolous actions. Pee Dee Health Care, P.A. v. Estate of Thompson, 418 S.C. 557, 567, 795 S.E.2d 40, 46 (Ct. App. 2016), reh'g denied (Jan. 17, 2017). It is my finding that the sanctions that I Ordered will put an end to the useless litigation when taken into consideration with all sanctions imposed in both this case and in the Family court action.

2. The Defendant Personal Representative asks that this Court to clarify the actions taken by the Ms. Harwell which are the subject of the sanctions issued by this Court. After a review of my Order I would agree that this does need clarification. It was my intention to include the actions filed by Ms. Harwell for an Elective Share and an Action for Reimbursement for the obituary written by her as part of the actions for which there was no justification. Ms. Harwell had waived any claims against the Estate in the Family Court Order that she agreed to. Until and unless that Order is vacated it is the Order that binds her. It was improper for her to begin any action for these items against the Estate. To this extent my previous Order is hereby amended to include these actions as improper and frivolous and therefore the proper subject for sanctions.
3. The Defendant seeks to have this Court revisit and reconsider its rulings and findings concerning Dedre Edmonds. I have reviewed my findings and rulings and see no basis upon which I would change or amend my Order concerning these rulings.



4. The Defendant asks the Court to reconsider its finding and rulings in regard to the Death Certificate issue. Specifically, that the omission of the surviving spouse on the Original Death Certificate prevented Ms. Harwell from receiving certain benefits to which she was entitled which they dispute. This information and finding was taken by this Court from testimony given in the Family Court by Ms. Harwell and repeated in certain Affidavits submitted by Ms. Edmonds. This testimony was to the effect that this omission in the Death Certificate delayed her receiving certain of her benefits. In any case, it was the ruling of this Court that as soon as this death certificate matter was pointed out to the Personal Representative, it should have been researched and corrected. This did not happen and is the basis for this Court's rulings concerning this issue. Therefore, I do not amend or alter my rulings on these matters.

B) Next I will consider the issues raised by Third Party Defendant Deidre W. Edmonds in her Rule 59(e) Motion for Reconsideration.

1. She raises the issue that the claim for reimbursement for the obituary was not a frivolous claim. This court made that finding based on the fact that Ms. Harwell had waived any and all claims, including future claims that she might have had against David Harwell or his estate. Her decision to run and alternate obituary was made by her with full knowledge of this waiver of past, current and future claims. When she ran the Obituary she was in no position to bind the estate or to contract on it's behalf. I see no reason to amend my ruling that the claim should not have been made and was without legal basis. I am not aware of any case or statute that allows a family member or an in-law to take independent actions that create a legally binding obligation on the part of an estate unless that person has been given the legal authority to do so. I know of no such authority in this case.

DEC
84

2. Secondly, she questions the amount of the award of attorney's fees or sanctions issued in this matter. I have considered the usual factors in awarding attorney's fees such as the nature and complexity of the action, the professional standing of the attorneys involved, the contingency of the action, the results achieved, the customary fees for similar services and the time necessarily expended in defending the action.

In awarding the sanctions that I did also consider what amount of sanctions would assure that the action would be ended and the future conduct of such a nature would be discouraged.

The sanctions awarded against Ms. Edmonds of \$5,000.00 would amount to 20 hours of legal work if billed at \$250.00/ per hour. That amount of time and that level of compensation is found by this court to be reasonable concerning this issue given the work in this matter that this court has observed, the complexities of the case, the results achieved and the professional standing of counsel involved. Further, the court finds that this amount would also serve to discourage future actions such as this. Therefore, this court has determined that the sanctions awarded are proper.

C) Finally, I will consider the issues raised by Deborah B. Harwell in her Rule 59(e) Motion to Reconsider:

1. Ms. Harwell raises several issues of fact which she says are not disputed. The Court has reviewed the four such factual issues that she raises, and after reviewing these matters finds that they do not provide a basis to amend its previous Order concerning these issues.

2. Next she raises the issue that she was incarcerated by the Family Court and that this fact should negate the need for sanctions concerning the matter before this Court. First of all it should be noted that this court did take the actions of the Family Court concerning costs and

attorney's fees by giving her a credit for those fees and cost against the fees and court awarded by this court in this case. However, her incarceration by the Family Court was for contempt. This court has made no finding of Contempt against her and the issue is not before me in this case. My sanctions are for misconduct under Rule 11 of the SCRCP and the Frivolous Claims Act. Therefore, the actions by the Family Court in connection with a contempt citation would not preclude this court's action in the matters before me, but were considered by me along with other factors in reaching my conclusions in this matter.

3. She next raises the issue of her inability to pay sanction being the only evidence in the record as precluding the issuance of any monetary sanctions in this matter against her. This court noted that there was ample evidence in the record that Ms. Harwell had received a substantial marital settlement from Judge Harwell including a mountain home that was unencumbered. She indicated that she made numerous attempt to employ attorneys and never mentioned that a lack of funds prevented her from doing so. It appears to the court that she was able to afford and employ attorneys at the time of this action.

4. She raises the issue that the Court found that she was motivated by an ongoing personal dispute with the heirs of David Harwell. The Court's finding in this regard was based on the lack of communication that was apparent from the handling of the death certificate issue, the refusal to allow Ms. Harwell to view the body of her husband at the funeral home, and observations made by the Court during the hearing. These disputes seem to be mutual in nature but did exist.

5. The court's finding that as Ms. Harwell proceeded to make her claims in the Probate Court that she was disregarding Orders of a court were based on the fact that there was and still is a valid Family Court Order in effect in which she had specifically waived the very claims that

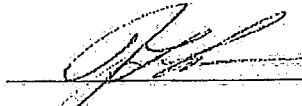
A handwritten signature in dark ink, appearing to be 'J. L. 26' or similar, located below the text of the fifth point.

she was advancing without having had that Order set aside. This conduct justifies this court's findings in this regard.

IT IS SO ORDERED:

Spartanburg, SC

9/27/17

 (SEAL)
Roger L. Couch, Circuit Court Judge

2017 OCT -2 AM 10:25
DORIS P. VULF, CLERK
COURT OF COMMON PLEAS
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY
Donna H. H. H.
CLERK OF COURT C.R. & G.S.
FLORENCE COUNTY, S.C.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 16-CP-21-1435

Deborah B. Harwell

2017 APR 12 PM 2:45

Robert Bryan Harwell, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

RECEIVED

JAN 04 2018

SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Robert Bryan Harwell et al.	Deborah B. Harwell	\$ 40,000.00
" " " "	Law Off. Deborah W. Edmond et al. P.H.	\$ 5,000.00
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2135
Judge Code4/6/16
Date

For Clerk of Court Office Use Only

Desa Ballard
PO Box 6338 W. Columbia SC 29171

K. Benth. - PO Box 107, Florence SC - Hand Del.
Gen. P. Brin PO Box 5527, Clarendon SC 29523
Barbara Wargner, PO Brewer St. Charleston SC 29402

Donor P.O. # 1422

M. Dawes Cook, Jr. PO Drawer #
Chapin SC 29402

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or printed text on the paper.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 16-CP-21-1435Deborah B. Harwell

2011 APR 12 PM 2:45

Robert Bryan Harwell, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

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JAN 04 2018

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
<u>Robert Bryan Harwell et al.</u>	<u>Deborah B. Harwell</u>	<u>\$ 40,000.00</u>
<u>" " " "</u>	<u>Law Off. Deborah W. Edmunds et al. P.H.</u>	<u>\$ 5,000.00</u>
		<u>\$</u>

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

Desa Ballard
PO Box 6338 W. Columbia SC 29171

K. Benth - PO Box 107 - Florence SC - Hand Del.
Gena P. Bivin PO Box 2527 Florence SC 29503
Barbara Wagner PO Drawer H - Charleston SC 29402

Dono P. O'Hara

CLERK OF COURT
M. Dawes Cook, Jr. PO Drawer #
Charleston SC 29402

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[illegible]

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE)

C.A. No. 16-CP-21-1435

Deborah B. Harwell
Plaintiff,

v.

ORDER

Robert Bryan Harwell, individually
And as the Personal Representative
Of the Estate of David W. Harwell;
And the South Carolina Department
Of Health and Environmental
Control, Div. of Vital Records
Defendants,

v.

Law Office of Deidre W. Edmunds,
P.A/ and Deidre W. Edmunds,
Individually,
Third Party Defendants.

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JAN 04 2018
SC Court of Appeals

CERTIFIED A TRUE COPY
Jana Harbo Ottom
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter is before this court on a motion by the Defendant Robert Bryant Harwell, individually and as the Personal Representative of the Estate of David W. Harwell seeking sanctions against Deborah B. Harwell, Deirdre W, Edmonds and the Law Office of Deidre W. Edmonds, P.A. . The sanctions are sought under Rule 11 of the South Carolina Rules of Civil Procedure (SCRCP) and the South Carolina Frivolous Civil Proceedings Sanctions Act as contained in S.C. Code Ann., Section 15-36-10, et.seq. Sanctions are sought against Deborah B. Harwell for the filing of legal claims and actions by her against the Estate of David W. Harwell .

[Signature]
pt

and its Personal Representation Robert Bryan. The legal actions complained of include the filing by Deborah B. Harwell, pro se, of Probate Court creditor's claims for payment for the publication of an obituary, money from the Estate for alleged claims involving a prenuptial agreement, and a claim of entitlement to an elective share. There is a claim against Deidre Edmonds and her law firm for refiling the above reference creditor's claims in the Probate Court, for filing actions to enforce the creditor's claims and for the filing of an action in the Probate Court for the amendment of the death certificate of David W. Harwell.

STATEMENT OF FACTS

David W. Harwell and Deborah B. Harwell were legally separated and a complete property settlement Order was filed in the Florence County Family Court by Order on July 21, 2015. Thereafter, David W. Harwell died on September 30, 2015.

Deborah Harwell filed, pro se, on January 14, 2016, claims in the Florence County Probate court seeking an "elective share" from the estate of \$3,100,00.00 based on a "prenuptial agreement." At the same time she filed, pro se, a claim for \$1,440.00 against the estate for reimbursement for the costs of publication an obituary by her.

Mrs. Harwell met with Attorney Edmonds on February 6, 2015, and shown her a copy of the death certificate of David W. Harwell that did not indicate that she was a surviving spouse. She had obtained that copy from the Florence County Probate Court. The death certificate as then written would not have allowed Ms. Harwell to obtain certain retirement and/or social security benefits that may be available to a surviving spouse.

That copy of the certificate indicated that Robert Bryan Harwell was the informant. Thereafter, Edmonds contacted Angie Saleeby, the Director of Vital Records at DHEC to learn

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the proper method by which to have the certificate amended. Edmonds was told that the informant on the certificate could have it corrected or she would have to obtain a court order directing that it be amended.

At the February meeting she was shown a copy of the Application for Probate or Appointment filed with the Florence County Probate Court on October 12, 2015. That document appeared to have been altered by the whiting out of an entry in the surviving spouse blank of that form. Edmonds did not believe that this was the proper way to report that actual marital status of the decedent to the Probate Court

On about March 1, 2016, Deirdre Edmonds assumed representation of Mrs. Harwell only in the matters involving the Probate Court and her husband's estate. Edmonds did not assume representation of Mrs. Harwell concerning any issue involving the Family Court since she does not practice in that court. Ms. Edmonds filed a petition in the Probate Court on behalf of Mrs. Harwell seeking an adjudication of Deborah as the surviving spouse, and also seeking, the amendment of David Harwell's death certificate so as to have Deborah listed as the Surviving Spouse on the certificate. Ms. Edmonds refiled in the Probate Court the creditor's claims previously filed by Mrs. Harwell, pro se, in the David W. Harwell Estate on March 9, 2016.

In the weeks that followed Edmonds was provided information concerning the death certificate by Kevin Barth, attorney for Bryan Harwell and by subpoena from DHEC. At some point in time Barth offered to have Bryan apply for an amended death certificate should Mrs. Harwell dismiss her claims against the Estate. This offer was rejected by Mrs. Harwell.

The claim filed by Mrs. Harwell for an elective share is barred by the terms of the Property Settlement Order filed in the Family Court. As of that time the Family Court Order had

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not been appealed from and no action seeking further relief from that Order had been filed by Mrs. Harwell.

Prior to Mr. Harwell's death, during the spring and early summer of 2015 David W. Harwell and Deborah B. Harwell were negotiating a marital property settlement. On July 21, 2015, in the case of David W. Harwell v. Deborah B. Harwell, 15-DR-26-691, the Horry County Family Court issued an Order approving a mediated separation and property settlement. The agreement was incorporated into the order. The Order stated in part in Paragraph #2 that, "the parties have settled all of the issues arising out of their marriage and of the prenuptial agreement." In Paragraph # 12 the Order stated further, "both parties waive any and all rights that may have in the estate of the other or to make claims upon or against the estate of the other." That Order has never been amended or appealed. It remains the law of their property settlement.

On February 8, 2016 Edmonds was informed of the existence of the pro se claims in the Probate Court filed by Mrs. Harwell. By March 3, 2016, Edmonds had received sufficient information to determine that the pro se claims had been denied by the Personal Representative and that unless an action was begun in the Probate Court to enforce the claims they would be barred by statute and lost. An action on the claims would have to be brought in the Probate Court by March 12, 2016 in order to preserve the possibility of a Rule 60 claim. The action to enforce the pro se claims was filed by Edmonds on March 9, 2016. She states that this was done to protect Mrs. Harwell's right to pursue a Rule 60 reopening of the Family Court Order approving the property settlement agreement, based on her allegations of fraud and misrepresentation of assets by her husband at the time of the mediation. Edmonds claims a lack of expertise in Family Court matters and that she had informed Mrs. Harwell of the need for her to obtain other representation in the Family Court to be able to pursue the Rule 60 Motion.

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At the initial meeting between Mrs. Harwell and Edmonds, Harwell told Edmonds that she felt that she had been misinformed concerning the assets of her husband at the time that the Property Settlement was negotiated and approved in the Family Court. At some point in time it became apparent to Edmonds that Mrs. Harwell would have to pursue her claims of fraud and misrepresentation concerning the mediated Property Settlement agreement by the filing in the Family Court of a Rule 60 motion to set aside or seek relief from the Order approving and adopting the property settlement agreement. Edmonds claims to have filed her petitions regarding the claims for monetary relief in the Probate Court in order to preserve Mrs. Harwell's ability to seek relief in the Family Court from the Mediated Property Settlement Order. Those probate claims would be deemed abandoned if action is not taken in a timely fashion to enforce them following their disallowance by the Personal Representative. Edmonds refused to assume representation of Harwell in the Family Court matters since she did to believe herself to be competent in those matters.

The actions seeking a monetary recovery from the Estate were filed by Mrs. Harwell in the Probate Court as Creditor's Claims. The Personal Representative of the Estate filed a denial of the claims. Then the Personal Representative on April 1, 2016, filed Motions to Dismiss the Probate Court Petitions and seeking sanctions, attorney's fees and costs because of the alleged frivolous claims and Rule 11 SCRCP violations by Deborah and Ms. Edmonds. The sanctions were requested from both Mrs. Harwell and Attorney Edmonds.

On April 12, 2016, Dawes Cooks appeared as attorney for Edmonds defending her and her firm in the claims filed by the Estate and the personal Representative. On May 3, 2016 Adam Silvernail assumed representation of Mrs. Harwell in the probate matters from Edmonds.

A handwritten signature in black ink, appearing to read "AS" or "ASilvernail", with a stylized flourish underneath.

Silvernail later assists Mrs. Harwell in preparing and filing her later pro se pleadings in the Family Court.

There follows in early May various Motions on both sides for dismissal of the claims and actions.

A contempt hearing against Mrs. Harwell was conducted in the Family Court beginning May 20, 2016. An Order was filed on July 21, 2016 by Judge Buckhannon which resulted in Mrs. Harwell being held to be in contempt of Court and incarcerated for a period of time as a result of this contempt.

A hearing on the Motions for Sanctions and the Motions to Dismiss filed by both sides was held before the undersigned on July 21, 2016. At that hearing Desa Ballard appeared as counsel for Mrs. Harwell having been hired by her on the day prior to the hearing. At that hearing Ms. Ballard requested additional time in which to familiarize herself with the facts and issues involved in the case and to make an attempt to resolve some of the matters before the court. An Order substituting her as counsel was filed on August 31, 2016.

On August 31, 2016, Mrs. Harwell through her attorney Ms. Ballard filed a partial Stipulation of Dismissal which dismissed the claim for and Elective Share with prejudice and other claims (with the exception of the claim for amendment of the Death Certificate) without prejudice. The issues of Rule 11 and Frivolous Actions sanctions remains open.

CONCLUSIONS OF LAW

1. South Carolina Rules of Civil Procedure:

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RULE 11
SIGNING OF PLEADINGS; ATTORNEYS

- (a) **Signature.** Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address..... The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

.....

If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

2. Ex Parte Gregory, 378 S.C. 430, 430-437-39, 663 S.E. 2d 46, 50 (2008)

Under Rule 11(a), SCRCP, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Id.* The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature *438 designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Id.* Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. *Id.* A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed. *Id.* Ex parte Gregory, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50 (2008)

The South Carolina Frivolous Civil Proceedings Sanction Act provides for liability for attorney fees and costs of frivolous suits. South Carolina Code Ann. § 15-36-10 (2005) provides that any

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person who takes part in the procurement, initiation, and continuation of any civil proceeding is subject to being **51 assessed for payment of all or a portion of the attorney fees and court costs of the other party if (1) he does so primarily for a purpose other than that of securing the proper adjudication of the claim upon which the proceedings are based, and (2) the proceedings have terminated in favor of the person seeking an assessment of the fees and costs.
Ex parte Gregory, 378 S.C. 430, 438, 663 S.E.2d 46, 50-51 (2008)

3. South Carolina Code of Laws: Section 15-36-10

SECTION 15-36-10. Frivolous lawsuits; signing pleadings; imposition of sanctions; notice and opportunity to respond; reporting violations.

(A)

(2) A document filed in a civil or administrative action by a party who is not represented by an attorney must be signed by the party and must include the address and telephone number of the party.

(3) The signature of an attorney or a pro se litigant constitutes a certificate to the court that:

(a) the person has read the document;

(b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;

(c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and

(d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

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(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

(B)(1) If a document is not signed or does not otherwise comply with this section, it must be stricken unless it is signed promptly or amended to comply with this section after the omission is called to the attention of the attorney or the party.

(2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.

(C)(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or

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(c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

(2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

4, Pee Dee Health Care, P.A. v. Estate of Thompson, 418 S.C. 557, 567, 795 S.E.2d 40, 46 (Ct. App. 2016), reh'g denied (Jan. 17, 2017)

"Under Rule 11, the primary purpose of sanctions against counsel is not to compensate the prevailing party, but to 'deter future litigation abuse.' " *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 151 (4th Cir. 2002) (quoting *In re Kunstler*, 914 F.2d 505, 522 (4th Cir. 1990)). The expenses opposing counsel incurs in combatting frivolous claims is an appropriate factor for a court to consider when determining whether to issue a monetary sanction. *In re Kunstler*, 914 F.2d at 522. "[O]ther purposes of the rule include compensating the victims of the Rule 11 violation, as well as punishing present litigation abuse, streamlining court dockets[,] and facilitating court management." *Moore v. Southtrust Corp.*, 392 F.Supp.2d 724, 736 (E.D. Va. 2005) (quoting *In re Kunstler*, 914 F.2d at 522).

Pee Dee Health Care, P.A. v. Estate of Thompson, 418 S.C. 557, 567, 795 S.E.2d 40, 46 (Ct. App. 2016), reh'g denied (Jan. 17, 2017)

5. *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)

"A willful act is one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." (internal quotation marks omitted)); *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)

CONCLUSIONS AND RULINGS

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As to the pleadings filed by Deborah Harwell. I find that the Creditor's Claims filed pro se by her were filed without merit and frivolous. I have seen no credible evidence or claim that would indicate that Mrs. Harwell was entitled to any money or property from the Estate of David W. Harwell. All such claims were barred by the express terms of the Property Agreement as embodied in the Order of the Probate Court approving and adopting that agreement. Mrs. Harwell appears to have been represented by what appears to be competent counsel at the time that the Family Court approved the terms of the property settlement. She had employed experts to assist her in the negotiation of that agreement. She was fully aware that the agreement and Family Court Order did not allow her to make the claims that she was making. The only possible justification for such action would have been if she was bringing an action to set aside the Order and Agreement, which is an action that she took much later. That Rule 60 motion has now been terminated by the withdrawal of that claim without any credible allegations or evidence presented to advance the claim. It is my further finding that Mrs. Harwell advanced these claims willfully and with a total disregard for the application of the law or the respect due to a valid Court Order affecting the parties before the Court. I find that she was motivated by an ongoing personal dispute with the heirs of David W. Harwell, and her actions were intended to delay the settlement of his estate and to seek a recovery to which she was not entitled. Also, I find no basis for Mrs. Harwell's claim for reimbursement for the obituary which she caused to be published.

As to the claims by Mrs. Harwell for Amendment of the Death Certificate I find that claim to have been justified as stated below.

Concerning the Petition seeking the Amendment of the Death Certificate advanced by Mrs. Harwell and Ms. Edmonds. I find that the relief sought in that action was justified and that



the action was necessary. While it is clear that some of the allegations contained in that petition concerning the alleged actions of the personal representation were false and ultimately found to be without justification, it is my finding that these allegations were the result of what appears to be an almost paranoid belief on the part of the parties to these actions concerning the evaluation of the motives of the other side. The allegations of intentional wrong doing Bryan Harwell were false, but may have been the product of the ongoing distrust between these parties and beliefs based on physical evidence (such as the whiting out of pertinent information on probate forms) which turned out to be meaningless. This is an equitable matter and I must consider that possibility that Bryan Harwell could have taken concrete steps to resolve the problem early in the life of this Death Certificate issue to resolve this matter, (See S.C. Reg. 61-19 Section 30), but instead used this issue as a bargaining chip to seek a withdrawal of the other unrelated claims. At any rate, the claim was necessary since the Death Certificate was incorrect in the manner in which it did not reflect the existence of a surviving spouse. It is my finding that Ms. Edmunds preparation of this pleading was based on information provided to her by DHEC and Mrs. Harwell. While some of her allegation were not later proven to be true and were perhaps over zealous when made, it did result in obtaining the relief her client needed in that situation. The case of In Re Gregory, cited above does impose on a claimant's attorney some duty to investigate a claim based on information provided to the attorney by the client before filing a petition on that information. However, this duty is only mandatory as it applies to the narrow circumstance involving the fiduciary relationship of an attorney/client. Such a fiduciary relationship did not exist in this case. I find that the investigation related by Ms. Edmunds and the information supplied by the client would have allowed Edmunds enough justification in filing the death certificate claim in question.

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PJL

As to the filings by Edmunds concerning the creditor's claims based on "the prenuptial agreement" I find them to have been justified on Edmunds part. She has consistently taken the position that she was not a Family Court Practitioner. As such she claimed no knowledge of the facts or the issues involved in those proceedings. Clearly, at the time she was faced with the questions surrounding those claims she perceived herself to be in a time constraint. The time was fast approaching that the claims would be lost if not sued upon in the Probate Court. She had been told by her client that she intended to take action in that court to seek relief from the Settlement Order by way of a Rule 60 Motion for Relief. In fact Mrs. Harwell did file such a motion, pro se, when she was unable to get an attorney to take the case. While all of those claims and motions have now been withdrawn, I cannot consider this question in the light of 20/20 hindsight. I agree with Ms. Edmunds experts that she took the actions necessary to preserve her client's opportunity to have her claims litigated.

I find that Edmunds was not justified in filing or pursuing the claim for the reimbursement of the obituary publication.

SANCTIONS

1. In determining Rule 11 Sanctions this court should consider the following language from the Rule:

The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature *438 designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Id.* Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith.

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2. In determining the amount due under the South Carolina Frivolous Civil Proceedings Sanction Act:

The South Carolina Frivolous Civil Proceedings Sanction Act provides for liability for attorney fees and costs of frivolous suits. South Carolina Code Ann. § 15-36-10 (2005) provides that any person who takes part in the procurement, initiation, and continuation of any civil proceeding is subject to being **51 assessed for payment of all or a portion of the attorney fees and court costs of the other party if (1) he does so primarily for a purpose other than that of securing the proper adjudication of the claim upon which the proceedings are based, and (2) the proceedings have terminated in favor of the person seeking an assessment of the fees and costs.

3. The attorney's fees claimed were as follows:

a) Barth:	\$15,312.78
b) Ervin:	\$19,530.00
c) Protopapas:	\$17,054.28

Total Fees: \$51,897.06

I am reducing the amount that would otherwise be due to Bryan Harwell, personally and as Personal Representative by 10% because of the fact that he could have reduced the fees incurred had he gone forward with correcting the Death Certificate at the beginning of the litigation. This reduces total fees incurred of \$46,707.35.

I am assessing sanctions against Law Office of Deirdre W. Edmonds, P.A and Deidre W. Edmonds for her participation in the claim for the cost of the Obituary Publication the sum of \$5,000.00.

*ADL
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I am assessing sanctions against Deborah B. Harwell in the sum of \$40,000.00, to be reduced by any sums which she may have already paid pursuant to the Family Court award of \$25,000.00 in attorney's fees as provided in its Contempt Order.

The sanctions assessed herein shall be paid to R. Bryan Harwell personally and as Personal Representative in partial repayment of fees and costs incurred by them in defending these claims.

IT IS SO ORDERED:

Spartanburg, SC

4/6/17

 (SEAL)
Roger L. Couch, Circuit Court Judge

2017 APR 12 PM 2:45
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

CERTIFIED A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
In the Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge
Circuit Court Case No. 2016-CP-21-1435
Probate Court Case Nos. 2015ES2100778 (Florence County)
& 2016ES0700302 (Beaufort County)

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JAN 04 2018

SC Court of Appeals

Appellate Case No. 2017-002290

Deborah B. Harwell, ...Defendant.

v.

Robert Bryan Harwell, individually and as the Personal Representative of
the Estate of David W. Harwell; and the South Carolina Department of Health
and Environmental Control, Division of Vital Records, ... Respondents,

v.

Law Office of Deirdre W. Edmonds, P.A.
and Deirdre W. Edmonds, Individually Appellant.

PROOF OF SERVICE

I certify that on this 2nd day of January, 2018, I have served on the Respondents' counsel a copy of the attached AMENDED Notice of Appeal of Third-Party Defendant Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds, Individually by causing a copy of the same to be placed in the U.S. Mail, first-class postage paid, addressed to:

Kevin M. Barth, Esquire
Ballenger, Barth, Hoefer and Lewis, L.L.P.
P.O. Box 107
Florence, SC 29503
Attorney for Respondents

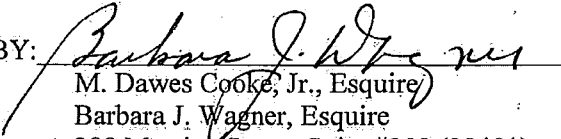
Deborah B. Harwell
P.O. Box 7769
Myrtle Beach, SC 29572
Pro Se Defendant

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Bluestein Thompson Sullivan, LLC
Post Office Box 7965
Columbia, SC 29202
Attorney for Respondents

Gena Phillips Ervin, Esquire
Orr Elmore & Ervin, LLC
P.O. Box 2527
504 S. Colt Street
Florence, SC 29503
Attorney for Respondents

January 2, 2018
Charleston, South Carolina

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 
M. Dawes Cooke, Jr., Esquire
Barbara J. Wagner, Esquire
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STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
COUNTY OF HORRY)	2015-DR-26-691
David W. Harwell by and)	
through his personal)	
representative,)	
Bryan Harwell,)	
Plaintiff,)	Transcript of Record
vs.)	
Deborah B. Harwell,)	May 19, 2016
Defendant.)	

B E F O R E:

Honorable Melissa Buckhannon
Horry County Courthouse
Conway, South Carolina

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

Kevin M. Barth, Esquire
Gena Ervin, Esquire
Attorneys for Plaintiff

Sallie Beth Todd
Family Court Reporter

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1 **THE COURT:** Alright, this case number 2015-DR-26-691,
2 David W. Harwell, deceased, by and through the duly appointed
3 personal representative of his estate, Mr. Robert Bryan
4 Harwell, versus Deborah B. Harwell. The matter is before the
5 Court today on an Order and Rule to Show Cause issued by the
6 Court on February the 11th, 2016. There is an Affidavit of
7 Service in the file wherein the defendant was served with a
8 copy of the Summons and Complaint -- I'm sorry, the Rule to
9 Show Cause, Notice of Hearing on March the 10th, 2016. There
10 is an Answer to the Complaint for Contempt filed on behalf of
11 the defendant as a self-representing litigant, that being
12 dated -- filed dated April the 11th, 2016. There being a Reply
13 to the Counterclaim filed with the Court on behalf of the
14 plaintiff on April the 22nd, 2016. Present at the call of the
15 case is the plaintiff appearing along with his attorney, Mr.
16 Barth. The defendant is also present appearing as a self-
17 representing litigant. Now, filed on yesterday's date is an
18 Emergency Motion of Deborah Harwell for continuance of the May
19 19th, 2016 hearing..

20 Mr. Barth, did you receive a copy of this? I understand
21 it was filed yesterday so did you receive a copy of this?

22 **MR. BARTH:** I didn't receive a filed copy but she did e-
23 mail me a copy of what I assume Your Honor has along with an
24 affidavit.

25 **THE COURT:** Alright.

1 Ms. Harwell, stand up for me, please, ma'am.

2 MS. HARWELL: Yes, ma'am.

3 THE COURT: You understand you are here today without an
4 attorney and you understand as the trial Judge I cannot give
5 you any help or legal guidance of any nature? Do you
6 understand that?

7 MS. HARWELL: Uh, yes, ma'am.

8 THE COURT: Okay.

9 MS. HARWELL: If -- if ---

10 THE COURT: All I needed was a yes or no to that
11 question.

12 MS. HARWELL: Yes, ma'am.

13 THE COURT: And I'll let you have a say in just a minute
14 but just listen to what I'm asking and so you understand that
15 I cannot give you any legal guidance or direction in your
16 representation. Do you understand that?

17 MS. HARWELL: Yes, ma'am.

18 THE COURT: And you understand that Mr. Barth represents
19 Mr. Harwell and he also cannot give you any legal help or
20 guidance?

21 MS. HARWELL: Yes, ma'am.

22 THE COURT: Okay. Now, tell me about your Motion for
23 Continuance.

24 MS. HARWELL: Um, I am the defendant and I'm the wife of
25 the retired Chief Justice of South Carolina Supreme Court,

1 David Harwell. We were together for 18 wonderful years ---

2 THE COURT: Just tell me about your Motion to Continue,
3 ma'am, not the history of the case. You filed a Motion to
4 Continue ---

5 MS. HARWELL: Right.

6 THE COURT: --- as I understand, you were served in
7 plenty of time. I think you were served back in April.

8 MS. HARWELL: Yes, ma'am.

9 THE COURT: So, they've met the time requirement. Tell
10 me the basis of your Motion to Continue.

11 MS. HARWELL: Right. I've got no legal training,
12 basically no experience, no litigation and I realize that I
13 cannot adequately represent and protect myself in this matter
14 and I do not wish to go forward pro se unless I'm forced to by
15 continuing the hearing. I've been searching for a Family
16 Court attorney to represent me in this matter two months ago
17 with retired Chief Justice and a United States District Judge
18 holding Court, it presents itself with a unique set of
19 circumstances in finding representation without conflicts or
20 that are not afraid to do it. Attorney Carrie Warner in
21 Columbia signed an Engagement Contract as my attorney and
22 received a fee and two days ago she found a conflict and
23 pulled out of her contract. She took my files and those files
24 could not be picked up in Columbia yesterday due to trying to
25 get a continuance request ready for this Court. The previous

1 two weeks I had worked with Pope Johnson in Columbia. He had
2 spoken to both probate attorneys and agreed to represent me.
3 He had a three day trial and wanted to settle down to work on
4 the hearing after that. Then he placed a call to Kevin Barth
5 and sent an e-mail back that said it was too contentious and
6 had multiple cases and that he didn't have the time to get
7 into that. I've provided only a few of the names of the
8 attorneys that I have approached in this hearing and they are
9 listed there for you to see. I believe that the allegations
10 in the matter are not -- are meritless and brought for the
11 purposes -- they don't have anything to do with the case but
12 another case. I wrote Kevin Barth and, um, I realize that I'm
13 at risk for sanctions or even jail if -- I'm an inexperienced
14 person and do not want to go forward with pro se and would
15 like to have an attorney especially since I'm dealing with a
16 United States District Judge and an attorney of more than 25
17 years. I'd like the matter resolved as quickly as possible
18 and to move forward because I have received letters from the
19 Postal Inspector two days ago that stated that it was illegal
20 for them to testify without preapproved questions so they
21 would only be answering questions that Kevin or Bryan had
22 submitted and asked and I would not even be able to ask them a
23 question or even ask if my mail or my CompuServe checks are
24 going to the estate or to Bryan. So, I've had a number of
25 things canceled as my insurance -- my dental insurance, my

1 life insurance, my not ---

2 THE COURT: Alright, I don't want to go into the merits
3 of it. We're still sticking with your basis of your ---

4 MS. HARWELL: I don't think that I've done anything
5 wrong, not since I was about six years old and ---

6 THE COURT: I want to stick ---

7 MS. HARWELL: --- and so I think ---

8 THE COURT: Ms. Harwell, listen ---

9 MS. HARWELL: --- I think ---

10 THE COURT: Nope, listen to me carefully ---

11 MS. HARWELL: --- I realize, so ---

12 THE COURT: No, ma'am. Okay, hold on. When I ask you to
13 stop talking I'm doing that for a purpose, okay.

14 MS. HARWELL: Okay.

15 THE COURT: Because only one of us can talk at a time.
16 This lady sitting here beside me must repeat everything that
17 is said in the courtroom and it's impossible for her to do
18 that if two people are talking at a time.

19 MS. HARWELL: Okay.

20 THE COURT: So, when I have a question for you I'm going
21 to get your attention and say hold up. That means you stop
22 talking ---

23 MS. HARWELL: Okay.

24 THE COURT: --- that doesn't mean you continue and that
25 doesn't mean as I'm gathering my thoughts to say something to

1 you that you jump in. My question is -- and I'm trying to --
2 I've given you some leeway but I want to only hear about your
3 basis for your continuance. If we go forward with this you'll
4 be allowed to testify and you can tell me anything that you
5 think is pertinent to the facts of this case, absolutely you
6 can, but not at this time. I'm just trying -- so, the basis
7 of request for continuance is so that you can get an attorney?

8 MS. HARWELL: Exactly.

9 THE COURT: Is that pretty much it?

10 MS. HARWELL: Exactly.

11 THE COURT: Mr. Barth?

12 MR. BARTH: May it please the Court, Your Honor. We
13 absolutely object to that. She was served within two days of
14 two months ago. She's had plenty of time to find an attorney.
15 As a matter of fact, she's found two attorneys to represent
16 her in Probate Court in claims that she's filed against the
17 estate. She obviously didn't have any trouble finding those
18 lawyers. We had to jump through a million hoops to get the
19 Post Office Inspector people here, we had to jump through --
20 comply with the Touhy regulations, they're here. So, we've
21 got Juliaan Derrick under subpoena, we've got Deidre Edmonds
22 under subpoena. Both of them cleared their calendar. My
23 client and two lawyers, we've all cleared ours for this. I
24 expected that she would come up at the last minute with a
25 reason to delay this but one day's notice on a hearing where

1 she was served two months ago -- I would note, Your Honor,
2 that it was continued once before because it took us over a
3 month to find her. She was evading service and so we had to
4 reschedule and it took us all the way until now to get the
5 matter served on her and get it scheduled and she's had two
6 months to find a lawyer. She found a lawyer -- and now two
7 lawyers to handle a case that is virtually the same in Probate
8 Court that she's filed. I have no idea why she can't find a
9 lawyer and the fact that she doesn't have one shouldn't
10 prejudice us, Your Honor, there are a number of issues that
11 are pressing that need to be dealt with today in a hearing and
12 it's -- like I said, it's been put off once already because
13 she was hiding and we couldn't find her and we're here and
14 ready to go.

15 THE COURT: Alright.

16 MS. HARWELL: Your Honor, may I respond to that?

17 THE COURT: No, ma'am.

18 MS. HARWELL: I find that the proof of service is -- he
19 gave you service on March the 10th, 2016. He is only required
20 to give you 10 days' notice. If he can show that he gave you
21 10 days' notice then that under the Rules of Court is adequate
22 service for a Rule to Show Cause. So, giving you over two
23 months' notice is more than adequate service time for you to
24 arrange for legal representation or whatever you wish to do.
25 I would point out that you have filed a Answer to the

1 Complaint for Contempt and other relief. You filed that on
2 April the 11th so a month after you got served you did file
3 responsive pleadings on your own. So, I am not going to
4 continue the matter based upon your inability to have counsel
5 here with you today simply because the service time has run.
6 This Motion to Continue was filed yesterday certainly not
7 timely service and so if there is an issue with an attorney
8 not being straight up with you then that needs to be taken up
9 with the attorney but as far as today's proceeding I'm going
10 to deny your Motion to Continue.

11 Alright, Mr. Barth, have y'all been able to work out any
12 of the issues between you?

13 MR. BARTH: No, Your Honor.

14 MS. HARWELL: They have not contacted me, Your Honor.

15 THE COURT: Well, ma'am, did you contact them?

16 MS. HARWELL: I didn't think I could.

17 THE COURT: Well, if you're acting as your own attorney
18 just as you prepared documentation and filed on your own
19 behalf you certainly have a way to contact him. You contacted
20 him this week with e-mails and letters so I don't know why you
21 would think that you could not contact him when you have done
22 so.

23 MS. HARWELL: I have had an attorney for the past three
24 weeks and so I didn't think that that was my place.

25 THE COURT: Well, you contacted him ---

1 MS. HARWELL: Yesterday.

2 THE COURT: Yes, ma'am. So, did you attempt to make --
3 my only question was have y'all been able to work anything
4 out? You're saying they didn't contact you.

5 MS. HARWELL: I would love to.

6 THE COURT: Well, if you would have loved to, prior to
7 coming here today would have been the time to do that.

8 Mr. Barth, are you interested in talking to her regarding
9 a possible resolution?

10 MR. BARTH: No, Your Honor, we're ready to go forward.

11 THE COURT: Alright, call your first witness.

12 MR. BARTH: Thank you. We'd call Juliaan Derrick.

13 THE COURT: Ms. Derrick, if you'll come up for me,
14 please, ma'am. Put your left hand on that bible; raise your
15 right.

16 MS. DERRICK, HAVING BEEN FIRST
17 DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE COURT: Thank you, have a seat and once you get
19 situated if you could state your full name for the record.

20 MS. DERRICK: Yes, ma'am. Juliaan Derrick.

21 MR. BARTH: May it please the Court, Your Honor?

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION OF JULIAAN DERRICK BY MR. BARTH:

24 Q: Juliaan, what do you do for a living?

25 A: I'm an attorney in Horry County.

1 Q: How long have you been practicing law?

2 A: 33 Years.

3 Q: Okay and do you practice regularly in Family Court?

4 A: 99 percent.

5 Q: Alright and how long has that been the case?

6 A: 22 years.

7 Q: In your capacity as a lawyer who handles Family Court
8 cases did you have the opportunity to represent Deborah
9 Harwell?

10 A: Yes, I did.

11 Q: And was that in conjunction with the litigation that was
12 filed by the late David Harwell?

13 A: Yes, it was.

14 Q: Alright, now do you remember a mediation being scheduled
15 with Lisa Kinon?

16 A: Yes, I do.

17 Q: And that was held, I believe, on July 17th, 2015. Do you
18 remember that?

19 A: Yes, I do.

20 Q: Prior to the mediation were you asked by your client to
21 make a settlement proposal to us?

22 A: I probably was.

23 Q: If you wouldn't mind, look at that letter and most of it -
24 - all the financial stuff is redacted out but does that appear
25 to be a copy of the letter that you were asked to send me?

1 A: Well, it looks like my letterhead and there is some stuff
2 that's ---

3 Q: Missing?

4 A: --- yeah, redacted.

5 Q: Okay we took out the financial information in the offer
6 because I just want to ask you about one piece of it.

7 A: It looks like my letter with the missing ---

8 Q: Okay.

9 A: Yes.

10 Q: While I show this letter to Ms. Harwell before offering it
11 into evidence; did Ms. Harwell make a settlement demand that
12 was a touch out of the ordinary for us Family Court lawyers?

13 A: Probably to some extent but that's not real unusual with
14 some clients.

15 Q: What was her request in regards to Judge Harwell's
16 funeral?

17 A: I think she wanted to attend. I think she felt like she
18 should be allowed to.

19 Q: To attend and be treated as his wife?

20 A: Yes.

21 Q: Alright, and that provision did not make it into the
22 agreement; did it?

23 A: No.

24 Q: Alright, now do you remember about how long that mediation
25 lasted?

1 A: Um, I think we started that morning and I think we got --
2 I think we were finished before 5:00. I think it was from
3 about 10:00 to maybe 4:00, something like that. It was past
4 the three hours.

5 Q: Alright and who went with you and Ms. Harwell? Did she
6 have someone else there assisting her?

7 A: Yes. Yes, let me see what his name was.

8 Q: That's okay. What was he there for and what does he do
9 for a living?

10 A: He was a CPA that she knew.

11 Q: Alright and what was his function there?

12 A: He was just trying to advise her on some financial issues?

13 Q: And did he participate in the mediation?

14 A: Well, he was there and answered some questions.

15 MR. BARTH: Your Honor, I'd move to introduce this letter
16 as plaintiff's exhibit one.

17 THE COURT: Ms. Harwell, do you have any evidentiary
18 objections to this piece of evidence -- to this letter coming
19 into evidence? If you do, stand up and state your objection
20 for me. If you do not then you can just tell me that you
21 don't have an objection.

22 MS. HARWELL: May I see it again, Kevin?

23 MR. BARTH: Yes, ma'am.

24 MS. HARWELL: It pretty much just blank pieces of paper.

25 THE COURT: Do you have an objection or no?

1 MS. HARWELL: NO, ma'am.

2 THE COURT: Alright, plaintiff's exhibit one into
3 evidence without objection.

4 (PLAINTIFF'S EXHIBIT NUMBER ONE IS
5 ADMITTED INTO EVIDENCE.)

6 BY MR. BARTH:

7 Q: Julaan, as a result of the mediation conference was a
8 settlement reached?

9 A: Yes, we did reach an agreement.

10 Q: Alright and did Lisa Kihon prepare a mediated agreement
11 for us?

12 A: Yes, she did and we signed it.

13 Q: Alright, prior to that agreement being signed did you have
14 the opportunity to discuss that with Ms. Harwell?

15 A: We discussed everything.

16 Q: Did you explain it to her in detail?

17 A: We have some very extensive discussions about all of it.

18 Q: In your opinion did she appear to understand the terms of
19 it?

20 A: I felt that she did.

21 Q: Did she actually sign the agreement?

22 A: Yes, she signed the agreement and an Affidavit of
23 Nonappearance the same day.

24 Q: She signed the agreement and Judge Harwell signed the
25 agreement, correct?

- 1 A: That's correct.
- 2 Q: Alright and you mentioned she filed an Affidavit in Lieu
3 of Appearance or Affidavit of Nonappearance; can you tell us
4 what that is?
- 5 A: That's -- she signed to say that we could go ahead and do
6 the hearing and that she would not attend. I knew she had
7 some -- she had some business, she was helping somebody out of
8 town so she signed an Affidavit of Nonappearance so we could
9 get a quick hearing.
- 10 Q: Okay, to get the agreement approved?
- 11 A: Yes.
- 12 Q: Alright, did you explain that to Debbie?
- 13 A: Yes.
- 14 Q: Alright, did she appear to understand it?
- 15 A: Yeah, I thought she did.
- 16 Q: Did you tell her there would be a hearing?
- 17 A: That's why she signed it.
- 18 Q: Okay and you provided that to the Court and it was filed?
- 19 A: Yes.
- 20 Q: Alright, did you or Ms. Harwell appear at the hearing?
- 21 A: I did.
- 22 Q: Okay, did you ever tell Debbie that Judge Harwell wouldn't
23 be there and no Order would be issued at that hearing?
- 24 A: I don't have any recollection of doing that.
- 25 Q: Okay and you appeared at the hearing and presented the

1 Affidavit?

2 A: Yes.

3 Q: Did the hearing go forward?

4 A: Yes.

5 Q: And the agreement was approved?

6 A: Correct.

7 Q: Alright, after the agreement was approved did you provide
8 a copy of that to Ms. Harwell?

9 A: What we have in our file is a letter dated July the 21st
10 and it says to be picked up by client; and one of the reasons
11 we had her to come pick it up, it had with the Final Order in
12 a letter two separate checks from Mr. Harwell, one in the
13 amount of \$1,000 and one in the amount of \$75,000.

14 Q: And those were checks that were negotiated in the mediated
15 agreement; were they not?

16 A: That's correct.

17 Q: Alright and you had a copy of the Order and the two
18 checks?

19 A: That's what the correspondence in the file when I pulled
20 it -- we pulled the file, that's what that indicates.

21 Q: Okay, did she pick it up to your knowledge?

22 A: To my knowledge she picked it up.

23 Q: Okay, not in some of her pleadings she acknowledges that
24 she didn't understand the impact of the Order. That somebody
25 could be held in contempt of Court for failing to comply. Is

1 that a discussion that you and she had?

2 A: I can't remember in particular. I'm trying to look on my
3 Affidavit of Nonappearance sometimes we put that -- well, it's
4 in the Affidavit of Nonappearance.

5 Q: Okay.

6 A: That she signed.

7 Q: Alright and it clearly says that she understands the
8 contempt powers of the Court, right?

9 A: Correct.

10 Q: Now, as I was going to ask you, so Judge Harwell complied
11 with the Order to your knowledge; paid the \$75, paid the
12 \$1,000.

13 A: Correct.

14 Q: And she was to get a mountain house; correct?

15 A: That's right.

16 Q: And to your knowledge that was done as well or do you
17 know?

18 A: To the best of my knowledge. I remember we had some
19 discussion about that deed. I think I made a call to you about
20 making sure that was done because we were all kind of hurrying
21 because of his health situation.

22 Q: Okay and you weren't asked to file anything to hold him in
23 contempt for not doing it; were you?

24 A: No.

25 Q: Alright. When is the first time you became aware that she

1 was taking the position she didn't know an Order was issued
2 and that an Order carried the weight of the Court's contempt
3 powers with it?

4 A: I think when you contacted me. I hadn't heard anything.

5 Q: Alright and has that been the extent of your involvement?

6 A: Since then, yes.

7 Q: Do you remember there being any discussion about Ms.
8 Harwell being listed in Judge Harwell's obituary as his wife?

9 A: I think we had some discussion about that.

10 Q: And that did not end up in the written agreement; did it?

11 A: No, no.

12 Q: Okay. Thank you, ma'am. Answer any questions that Ms.
13 Harwell may have for you.

14 THE COURT: Ms. Harwell, now is your time if you wish to
15 ask Ms. Derrick any questions you are certainly able to do so.
16 Keep in mind this is not your time to testify so question her
17 as to anything you wish to ask her about but refrain from
18 arguing from her if you don't agree with her answer because
19 you will get your change to tell your side of whatever you
20 disagree with her about. Okay?

21 MS. HARWELL: Yes, Your Honor.

22 CROSS EXAMINATION OF JULAAN DERRICK BY MS. HARWELL:

23 Q: Ms. Derrick, you just testified that actually you had not
24 heard from me; do you remember actually a first request for
25 getting a copy of my file from your office?

1 A: Oh yeah, you contacted me about that. You did.

2 Q: Do you remember the second -- and you denied that -- do
3 you remember the second request in getting a copy of my file
4 from your office?

5 A: We complied with your request.

6 Q: Do you remember the third request in asking for a copy of
7 my file giving you an additional two weeks which resulted in -
8 - I think -- three months in order to get a copy of my file.

9 A: It wasn't three months.

10 Q: Do you remember the forth request which came after the
11 Disciplinary Committee was contacted with the Supreme Court of
12 South Carolina to ask them to please let me have a copy of my
13 file?

14 A: Okay, let me -- let me clarify this. The Disciplinary
15 Committee did not contact me to make me give you the file.
16 You called one time and we told you we had to order the file
17 from storage. It was already gone to storage. We ordered the
18 file from storage and you called back and because of the
19 holidays the file wasn't there so I told the girls to order
20 the file again. I think in the whole time span it was about a
21 months' time that we were able to get your file but nobody
22 contacted me from the Disciplinary Committee about that. You
23 filed a grievance on me but nobody contacted me and told me to
24 do that. I had already given you a copy of the file.

25 Q: Do you also remember back, there was a mention of two

1 checks; a \$1,000 check and a \$75,000 check. Do you remember
2 the circumstances behind that and what that was supposed to be
3 for?

4 A: The \$75,000 was the cash payout and I cannot quite
5 remember why we had a second -- a \$1,000 and it might have
6 been something after mediation that came about but I'm not
7 sure -- not exactly sure why there was two checks issued.

8 Q: Do you remember the amount of debt that was actually
9 presented in credit card debt and other debt at that time?

10 A: I don't remember the exact amount.

11 Q: Does the debt of \$112,000 and a \$600,000 deficit come to
12 mind?

13 A: I don't know what it -- what respect your asking that.

14 Q: Does it come to mind that that \$75,000, which was to pay
15 debt, would only pay for one-half of the debt and that it was
16 deemed to be -- would not be given unless it was given as
17 alimony thus presenting a \$20,000 tax consequence upon me
18 during this taxable year and that the reimbursement from that
19 taxes would go to offset -- because it offset the tax
20 consequence of this taking the \$75,000?

21 MR. BARTH: Your Honor, I object. Number one it's not
22 relevant; number two it's not a question.

23 THE COURT: Are you -- Ms. Harwell, as I stated earlier,
24 this is your opportunity to ask her questions. That sounded
25 dangerously close to you testifying as to why you got that and

1 you will have that opportunity to do that.

2 MS. HARWELL: Okay.

3 THE COURT: You just can't give testimony through this
4 witness. This must be a question and answer back and forth.
5 You ask her a question and ---

6 MS. HARWELL: I'm trying, Your Honor, and I beg one more
7 time to ask for an ---

8 THE COURT: No, ma'am.

9 MS. HARWELL: --- to have an attorney come represent me.

10 THE COURT: No, ma'am. Listen.

11 MS. HARWELL: Okay.

12 THE COURT: I'm not going to hear the excuse of when you
13 don't follow my directions that you're not an attorney and you
14 don't know what you're doing. It is a simple matter of asking
15 a question and not testifying so I'm going to sustain the
16 objection. Ask her a question keeping in mind you can testify
17 when it is your turn as to whatever you want to tell me about
18 these checks or anything else.

19 MS. HARWELL: Yes, ma'am.

20 THE COURT: Ask her a question.

21 MS. HARWELL: Okay.

22 BY MS. HARWELL:

23 Q: Ms. Derrick, do you remember the CPA actually left?

24 A: Yeah, he left before the end, yes.

25 Q: He left before lunch; correct?

1 A: I can't remember if he left before lunch or not.

2 Q: Do you remember his disposition as he left being very
3 frustrated?

4 A: Nope, I don't remember that at all.

5 Q: Do you remember why he left?

6 A: I think that we thought that we had an understanding of
7 what the financial situation was and I think he had another
8 appointment to get to and he needed to go. I think he was not
9 from here, he was from upstate South Carolina and he needed to
10 get somewhere else.

11 Q: Ms. Derrick, you stated that there was a -- a
12 Nonappearance Affidavit or something signed?

13 A: Yes.

14 Q: And you stated that Ms. Harwell had business out of town
15 but that's not the reason; was it?

16 A: I don't remember the exact reason. I know that you were
17 helping your cousin up in North Carolina and you were out of
18 town a lot and you decided to sign this. I've got a copy of
19 it if you want to look at it. You signed it so that you would
20 not have to go to the hearing and I don't know if it was
21 because you didn't want to see Justice Harwell or if you had
22 business out of town but for whatever reason we had a
23 discussion and you decided you would rather not attend the
24 hearing and you signed this Affidavit.

25 Q: Ms. Derrick, was it not because the defendant had been

1 diagnosed with severe depression and could not attend?

2 A: Who had been -- you? No. There was no mention of any
3 severe depression. I didn't know about any kind of diagnosis.

4 MS. HARWELL: That's all, thank you.

5 THE COURT: Any redirect?

6 MR. BARTH: Just one.

7 REDIRECT EXAMINATION OF MS. DERRICK BY MR. BARTH:

8 Q: What happened to the grievance she filed on you?

9 A: Dismissed.

10 Q: Thank you.

11 MR. BARTH: That's all I have.

12 THE COURT: Alright. Any objection to this witness being
13 excused from the Courtroom, Mr. Barth?

14 MR. BARTH: No, ma'am, no objection.

15 THE COURT: Ms. Harwell?

16 MS. HARWELL: No objection.

17 THE COURT: Alright, thank you, ma'am. You can stay if
18 you wish to or you can be excused.

19 MS. DERRICK: Thank you.

20 THE COURT: Call your next witness.

21 MR. BARTH: Deidre Edmonds, Your Honor.

22 THE COURT: If you could put your left hand on that bible
23 for me, please, ma'am; raise your right.

24 MS. EDMONDS, HAVING BEEN FIRST
25 DULY SWORN, TESTIFIED AS FOLLOWS:

1 THE COURT: Thank you, ma'am, have a seat there.

2 MS. WAGNER: Your Honor, I'm Barbara Wagner. I represent
3 Deidre Edmonds.

4 THE COURT: Alright, thank you. You can have a seat at
5 this table if you wish to be closer to your client and give
6 you a little room to work.

7 If you could state your full name for the record, please,
8 ma'am.

9 MS. EDMONDS: My full name is Deidre Wisenut Edmonds.

10 THE COURT: Thank you.

11 Counsel?

12 MR. BARTH: May it please the Court, Your Honor.

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION OF MS. EDMONDS BY MR. BARTH:

15 Q: Ms. Edmonds, what do you do for a living?

16 A: I'm an attorney.

17 Q: Okay and how long have you been practicing?

18 A: Well, I've been licensed to practice almost 29 years. I
19 did not practice for 12 of those years.

20 Q: Okay, you were a Probate Judge?

21 A: Yes, I was.

22 Q: Alright, and you've been back in private practice now how
23 long?

24 A: Almost a year and a half.

25 Q: Okay and you do what kind of work?

1 A: I do estate planning. I do probate administration,
2 probate litigation.
3 Q: Do you have experience in Family Court?
4 A: No, I don't.
5 Q: Sometimes in your handling probate matters do you have the
6 opportunity to review Family Court Orders?
7 A: Sometimes.
8 Q: Okay and that's something that you've done on a number of
9 occasions?
10 A: Both when I was on the bench and in practice on a few
11 occasions.
12 Q: Okay, do you feel like you're comfortable reading an Order
13 and understanding it -- what it means and what the terms mean?
14 A: Yes.
15 Q: And do you understand that a willful violation of a Court
16 Order can subject one to contempt?
17 A: Of course.
18 Q: Alright and you had the opportunity to represent Ms.
19 Harwell; did you not?
20 A: Mr. Barth, I still represent Ms. Harwell.
21 Q: I thought you had been substituted?
22 A: Your co-counsel objected to my substitution. I have not
23 been relieved by the Court.
24 Q: So you are technically still her lawyer?
25 A: Yes, I am.

1 Q: Alright.

2 A: Only in the probate matter.

3 Q: Right, you did not appear in the Family Court matter;
4 correct?

5 A: No.

6 Q: Alright, now do you remember about when Ms. Harwell
7 contacted you about the probate matter? If you don't that's
8 okay.

9 A: The end of January, first of February.

10 Q: Okay and what was it that she was asking you to do?

11 THE COURT: Of what year?

12 MS. WAGNER: Objection.

13 THE COURT: Of what year, '16?

14 MS. EDMONDS: Yes.

15 THE COURT: Okay.

16 Yes, ma'am?

17 MS. WAGNER: Objection, they're attempting to evade the
18 attorney/client privilege.

19 MR. BARTH: I can ask it this way.

20 BY MR. BARTH:

21 Q: What were -- what were you retained to do?

22 MS. WAGNER: Objection. Same objection.

23 MR. BARTH: I don't think that's attorney/client
24 privilege, Your Honor.

25 THE COURT: I don't think that's attorney/client

1 privilege if she's made a Notice of Appearance in a file she
2 can certainly testify as to if she's made a Notice of
3 Appearance in a Court file.

4 BY MR. BARTH:

5 A: I was retained to represent Ms. Harwell in probate
6 matters.

7 Q: And in that representation -- let me ask you this; what
8 was your fee arrangement with her?

9 MS. WAGNER: Objection.

10 THE COURT: Mr. Harwell (sic)?

11 MR. BARTH: It's relevant on the issue of attorney's fees
12 because we're asking for attorney fees. Her ability to pay
13 her lawyer back then and now is relevant, Your Honor.

14 THE COURT: I don't know if that can evade -- if that is
15 relevant enough in this action to evade the attorney fee
16 unless that was something filed with the Probate Court and
17 it's made part of the record I don't know if her fee agreement
18 can come in because she's not seeking fees in this case. So,
19 I'm going to sustain the objection.

20 MR. BARTH: Alright, thank you, Your Honor.

21 BY MR. BARTH:

22 Q: Take a look at this document; tell me if you've seen that
23 before.

24 A: Yes, I have.

25 Q: Okay, can you tell the Court what that is, please?

1 A: It's a Notice of Allowance/Disallowance of Claim.

2 Q: Okay and that's in regard to the estate of David Walker
3 Harwell?

4 A: Yes, it is.

5 Q: Okay and it is a Disallowance of Ms. Harwell's claims?

6 A: It's a disallowance of a claim.

7 Q: A claim. Alright, if you would take a look at what's
8 attached to it, please, ma'am; and see if that was provided to
9 you along with the Disallowance?

10 MS. WAGNER: Objection, Your Honor. This is
11 attorney/client work product privilege. Are you asking when
12 she was -- obtained this?

13 BY MR. BARTH:

14 Q: Were you provided this disallowance and attachment?

15 A: I was provided this.

16 Q: Okay and did you file any pleadings in response to this
17 disallowance?

18 A: Yes, I did.

19 Q: Okay and can you tell the Court what you filed?

20 A: I filed a Petition for Allowance of a Claim.

21 Q: Prior to filing the Petition for Allowance of Claim did
22 you have -- did you have the opportunity to read the Family
23 Court Order?

24 MS. WAGNER: Objection, Your Honor.

25 THE COURT: Ma'am?

1 MS. WAGNER: This is the work product privilege. This is
2 what she knew, or had seen, or thought about the Order.

3 THE COURT: I'm going to overrule your objection on that.
4 If she's filed something, all he asked her is have you read
5 the Family Court Order prior to filing it. I'm going to allow
6 her to answer that question. Overrule your objection on that
7 one.

8 BY MR. BARTH:

9 Q: When you filed with Summons and Petition had you read the
10 Family Court Order that approved the agreement?

11 MS. EDMONDS: May I voice an objection?

12 THE COURT: No, ma'am.

13 MS. WAGNER: Your Honor, I'm going to object ---

14 THE COURT: I've already overruled you. The question is:
15 Have you read the Family Court Order before you filed this?
16 That is not protected. He's asking a question. She filed
17 documentation with the Court and she's going to testify to it.
18 Answer the question.

19 BY MR. BARTH:

20 A: Yes, I did.

21 Q: Alright.

22 Q: That's the Disallowance with the Order attached?

23 A: Yes.

24 MR. BARTH: I'd move to introduce it, Your Honor.

25 THE COURT: Did you show it to Ms. Harwell?

1 MR. BARTH: I gave her one, Your Honor.

2 THE COURT: Any -- any evidentiary objection to this
3 document, Ms. Harwell?

4 MS. HARWELL: No.

5 THE COURT: Alright, plaintiff's exhibit two into
6 evidence without objection.

7 (PLAINTIFF'S EXHIBIT NUMBER TWO IS
8 ADMITTED INTO EVIDENCE.)

9 BY MR. BARTH:

10 Q: After being provided with the Disallowance and a copy of
11 the Order approving the Family Court agreement; is this the
12 Petition for Allowance you filed?

13 A: Yes.

14 Q: And can you tell the Court what the claim is for, money
15 wise? What are you asking for?

16 A: This is to preserve Ms. Harwell's claim that she filed in
17 the Probate Court.

18 Q: Yes, ma'am. That you signed; correct?

19 A: I signed this Petition, yes.

20 Q: Alright and what does the Petition ask for in the way of
21 money?

22 A: Three million one hundred thousand dollars.

23 Q: Alright and what does the Petition that you signed show as
24 the basis for the \$3.1 million dollar request?

25 A: Prenuptial agreement.

1 Q: Okay. At the time that you sited this -- I'll move to
2 introduce this first.

3 THE COURT: Any evidentiary objection to that, Ms.
4 Harwell? To this document?

5 MS. WAGNER: I have an objection. These documents aren't
6 relevant to the Rule to Show Cause that's before the Court
7 today. All of the actions that Mr. Barth alleges in his Rule
8 to Show Cause occurred before Ms. Edmonds was hired by Ms.
9 Harwell.

10 THE COURT: One, that sounds awful close to an objection.
11 No, stand back up for me; I'm talking to you. That sounds
12 awful like an objection on behalf of Ms. Harwell. This is a
13 court document that filed; it's part of public record. Part
14 of the allegations he is alleging is the inappropriateness or
15 her possible violation by interfering into the probate matter.
16 I find it more than relevant so I'm going to overrule your
17 objection. Ms. Harwell had no objection. I don't know if you
18 have standing to object to a piece of evidence coming in in
19 this matter but if you do I'm overruling it and so plaintiff's
20 exhibit three into evidence without objection from plaintiff
21 or defendant.

22 (PLAINTIFF'S EXHIBIT NUMBER THREE IS
23 ADMITTED INTO EVIDENCE.)

24 MR. BARTH: Thank you, Your Honor.

25 BY MR. BARTH:

1 Q: Did you also file another Summons and Petition on Ms.
2 Harwell's behalf?

3 A: I did.

4 Q: And is this a copy of it?

5 A: Yes.

6 Q: Okay and what are you asking for in those pleadings on
7 behalf of Ms. Harwell?

8 A: I am asking for Ms. Harwell to be declared the surviving
9 spouse of David Walker Harwell and for the decedent's death
10 certificate to be amended to include the surviving spouse,
11 Debbie Harwell, on the death certificate.

12 Q: Alright, thank you, and you filed this again after having
13 read the Family Court Order approving the agreement? These
14 Petitions were filed together; weren't they?

15 A: No, they weren't.

16 Q: Oh they weren't. When was this one file?

17 A: This was filed on March 1st.

18 Q: Okay, had you read the Family Court Order by then?

19 A: I believe I had.

20 Q: Okay.

21 MR. BARTH: I'd move to introduce this, Your Honor.

22 THE COURT: And objection, Ms. Harwell?

23 MS. HARWELL: I guess I object because I don't think
24 that's true. I don't think that you had been retained by that
25 time.

1 THE COURT: Do you want to show her the document?

2 MR. BARTH: She has one, Your Honor. I just gave her one.

3 THE COURT: Alright, look at the -- do you have an
4 evidentiary objection to this document? She has -- the
5 witness has authenticated it, state's she filed it on your
6 behalf, gave the date of filing. Do you have an evidentiary
7 objection to it being made an exhibit?

8 MS. HARWELL: No, you can make it an exhibit.

9 THE COURT: Alright, plaintiff's exhibit three into
10 evidence without objection -- exhibit four, I apologize.

11 (PLAINTIFF'S EXHIBIT NUMBER FOUR IS

12 ADMITTED INTO EVIDENCE.)

13 BY MR. BARTH:

14 Q: At the time you filed that particular Petition to be
15 adjudicated the surviving spouse were you familiar with the
16 probate definition of a surviving spouse?

17 A: Yes.

18 Q: Okay and is a surviving spouse -- a quote "surviving
19 spouse" under the probate code if all of their property rights
20 have been tended to by a Court Order? If all of the issues
21 involved in their marriage other than the marriage itself, all
22 of the property and debts have been disposed of by prior Court
23 Order is she a surviving spouse under the statute?

24 A: There is a definition in the probate code for a surviving
25 spouse and the defined term if all of the property rights have

1 been settled the person is not a surviving spouse ---

2 Q: Okay.

3 A: --- but Ms. Harwell was Judge Harwell's surviving spouse
4 at his death.

5 Q: And how is that?

6 A: Because they were not divorced and there was not an
7 annulment of their marriage.

8 Q: Okay, in your opinion as a probate lawyer had all of their
9 marital business been tended to by prior Court Order? I mean,
10 all of their assets and debts had been divided by a Court
11 approved agreement.

12 A: She is still a surviving spouse under law.

13 Q: Okay.

14 A: Not for purposes of any property rights through the
15 probate code.

16 Q: Okay so this Summons and Petition as I understand it, and
17 correct me if I'm wrong, asking that she be adjudicated the
18 surviving spouse would not entitle her to any money or
19 anything from the estate?

20 A: No, sir. That was for purposes of the Court finding she
21 was the surviving spouse so she could be included on the death
22 certificate.

23 Q: Okay. And you filed a third claim on her behalf?

24 A: No, I did not.

25 Q: I would like for you to look at it, please. Would you

1 mind looking at that and telling me what it is?

2 A: This is a Petition, it is not a claim.

3 Q: Okay, what's the difference?

4 A: Ms. Harwell ---

5 Q: Is she asking for money from the estate?

6 A: It is a Petition for Allowance.

7 Q: She wants money from the estate; right?

8 A: Yes.

9 Q: Okay and can you tell the Court what that claim was for or
10 what the Petition was for?

11 A: It was for the obituary she published in the newspapers.

12 Q: Obituary she published; correct?

13 A: That's my understanding.

14 Q: Alright.

15 MR. BARTH: I'd move to introduce that, Your Honor.

16 THE COURT: Any objection, Ms. Harwell?

17 MS. HARWELL: No objection.

18 THE COURT: Alright, plaintiff's exhibit five into
19 evidence without objection.

20 (PLAINTIFF'S EXHIBIT NUMBER FIVE IS
21 ADMITTED INTO EVIDENCE.)

22 BY MR. BARTH:

23 Q: Do you know whether or not the estate authorized Ms.
24 Harwell to publish her own obituary for Judge Harwell?

25 A: I don't know whether they did or not.

1 Q: Does that make a difference?

2 A: Not to me.

3 Q: Okay and you filed an Amended Petition on May the 2nd on
4 behalf of Ms. Harwell; did you not?

5 A: I did.

6 Q: Okay and that asks for what?

7 A: Attorney's fees and costs.

8 Q: Okay, asks for attorney's fees and costs and reiterates
9 the request of being adjudicated the surviving spouse?

10 A: Yes.

11 Q: Yes, okay.

12 MR. BARTH: I'd move to introduce that, Your Honor.

13 THE COURT: Any objection, Ms. Harwell?

14 MS. HARWELL: Your Honor, I do object on this whole line
15 of questioning because there is another pending case in
16 Florence County and they're trying to try it right here
17 because it has the possibilities that ---

18 THE COURT: Is it in Probate Court?

19 MS. HARWELL: It is in -- let's see -- it is in Probate
20 Court.

21 THE COURT: Then they're not trying it here because I
22 can't make any decisions regarding probate.

23 MS. HARWELL: That's what this is.

24 THE COURT: No, it's not. I understand what it is. My
25 question is: Do you have any evidentiary objection to this

1 exhibit coming in? If you do state what your objection is.

2 MS. HARWELL: I think the exhibit is public information
3 so it may come in.

4 THE COURT: I agree, plaintiff's exhibit six into
5 evidence.

6 (PLAINTIFF'S EXHIBIT NUMBER SIX IS
7 ADMITTED INTO EVIDENCE.)

8 BY MR. BARTH:

9 Q: At the time you filed the first Petition for \$3.1 million
10 dollars and signed your name to it as attorney of record, had
11 you looked at the Family Court Order that said she waived any
12 right she may have to Judge Harwell's estate?

13 A: Yes.

14 Q: And you filed it anyway?

15 A: Ms. Harwell filed these claims before I was retained.

16 Q: Yes, ma'am, and you signed pleadings on her behalf as her
17 attorney of record; correct?

18 A: I did.

19 Q: Which certifies that you as an attorney believe there's a
20 good faith basis and factor of law for the filing of that
21 claim; correct?

22 A: Yes.

23 Q: And what is it? What is the basis for the \$3.1 million
24 dollars when you've already looked at the Court Order that
25 waived any right to collect any money from the estate?

1 MS. WAGNER: Objection, Your Honor. He's seeking her
2 attorney work product, her mental impressions.

3 THE COURT: He is not. She signed something, she
4 certified it, she put her name on. He's allowed to ask her,
5 overrule the objection.

6 BY MR. BARTH:

7 A: The basis for filing the Petition for Allowance of Claim -
8 --

9 Q: Yes, ma'am.

10 A: --- was that if Ms. Harwell did not respond to the Notice
11 of Disallowance within a certain time period her claims were
12 barred. In order to preserve her claims I filed a Petition
13 for Allowance on her behalf as she instructed me to do.

14 Q: Well, you understand Rule 11; right? You certify there's
15 a good faith basis and factor of law for any claim you file on
16 behalf of a client; you understand that?

17 A: Yes, sir.

18 Q: And I want to know what the basis was for you signing
19 pleadings asking for \$3.1 million dollars from an estate where
20 your client has specifically waived an interest in the estate;
21 that's what I'm asking?

22 A: Ms. Harwell felt that she had been ---

23 MS. HARWELL: Your Honor, is that not privileged
24 information between attorney/client?

25 THE COURT: No, ma'am, because you didn't tell her what

1 the -- I mean, he's not asking for the discussion between the
2 two of you so no it's no privileged.

3 BY MR. BARTH:

4 A: And my response is based on my communications with my
5 client.

6 Q: I understand.

7 THE COURT: And you can't argue the objection either, Ms.
8 Edmonds.

9 MR. BARTH: If I didn't move yet to introduce that Amended
10 Petition I move it at this time.

11 THE COURT: You did.

12 MR. BARTH: I did?

13 THE COURT: The Amended Petition is exhibit six.

14 MR. BARTH: Okay, thank you, Your Honor.

15 THE COURT: But I get the point, Mr. Barth. Let's move
16 on.

17 MR. BARTH: Okay.

18 BY MR. BARTH:

19 Q: And those claims are all still pending in a Probate Court
20 in Florence County?

21 A: Yes.

22 Q: Alright, thank you, ma'am. Answer any questions Ms.
23 Harwell might have for you.

24 THE COURT: Ms. Harwell, do you have any questions of
25 this witness?

1 CROSS EXAMINATION OF MS. EDMONDS BY MS. HARWELL:

2 Q: Ms. Edmonds, do you feel like -- you're involved in
3 another case; correct?

4 A: Yes, I am.

5 Q: Have you been sued by Kevin Barth and Bryan Harwell as the
6 executor of my husband's estate?

7 A: Yes.

8 Q: Did you find any evidence whatsoever that Deborah Boggs
9 Harwell is not the surviving spouse of David Harwell?

10 A: No.

11 Q: Did you investigate additional possibilities with the
12 department -- with DHEC supporting your thoughts?

13 A: Yes.

14 Q: And so the first objection was requested to get the wife's
15 name left off of the death certificate put on the death
16 certificate; correct?

17 A: Yes.

18 Q: If someone would have intentionally left the information
19 off or altered the information on the death certificate what
20 consequences would that have been to someone?

21 MR. BARTH: Object. I don't think that's relevant.

22 THE COURT: I'm going to allow ---

23 MS. HARWELL: It's why we're here today.

24 THE COURT: I overruled the objection.

25 BY MS. HARWELL:

1 A: It is a violation of law to provide false information for
2 a death certificate.

3 Q: Punishable by what?

4 A: I don't recall the punishment.

5 Q: A misdemeanor?

6 A: I believe it's a felony.

7 Q: Felony. When you preserved the ability to appeal in the
8 probate case did you think you were doing anything wrong?

9 A: No, I was trying to protect my client.

10 MS. HARWELL: That's all for right now, thank you.

11 THE COURT: Any redirect?

12 MR. BARTH: Just a couple, Your Honor.

13 REDIRECT BY MR. BARTH:

14 Q: They just asked you about any investigation you did prior
15 to filing the claim. Call it what it is, you've accused Bryan
16 of committing a felony; right? That's what your pleadings do;
17 right?

18 A: Yes.

19 Q: Alright and can you tell the Court what investigation you
20 did prior to accusing him ---

21 MS. HARWELL: You Honor, I totally object. We're in
22 Court in another Court in Florence ---

23 THE COURT: Ms. Harwell, you opened the door. You asked
24 her a question, you got an answer from her, he gets to come
25 back and ask her and expound on what you open the door on.

1 MS. HARWELL: Okay, thank you.

2 THE COURT: Overruled.

3 BY MR. BARTH:

4 Q: What investigation did you do?

5 A: I contacted the Department of Health and Environmental
6 Control.

7 Q: Okay. Were you given a copy of that?

8 A: I was given a copy of this by you, Mr. Barth.

9 Q: And that's a document signed by Bryan Harwell listing your
10 client, Ms. Harwell, as the surviving spouse married but
11 separated; correct?

12 A: Yes, this is a worksheet you gave me.

13 Q: Okay.

14 A: After I filed my Petition.

15 Q: Alright and after you had this and the death certificate
16 and had the opportunity to talk to the people at DHEC and look
17 at their file you reiterated in an Amended Petition after that
18 that he committed a felony; didn't you?

19 A: Yes.

20 Q: Did you also have an affidavit from the funeral home
21 saying that Bryan had filled out a sheet and that they
22 submitted it to DHEC as they do in every case? You had that
23 didn't you?

24 A: I had an affidavit but I don't think it's referenced the
25 attached worksheet.

1 Q: What evidence do you have that Bryan has committed a
2 felony because you've reiterated it twice and I want to --
3 what investigation did you do that has lead you to believe
4 Bryan Harwell's committed a felony?

5 MS. HARWELL: Your Honor, I object to that. I -- this is
6 a very serious thing and I don't think that it should be tried
7 without preparation and particularly without the files.

8 THE COURT: Ms. Harwell, I will remind you, your last
9 question of her is: Did you think you did anything wrong?
10 Her attorney did not object to that question. She answered
11 it. You opened the door, I'm going have to let him go through
12 it. I overrule your objection.

13 BY MR. BARTH:

14 Q: Ma'am?

15 A: I'm sorry, what was your question again?

16 Q: What evidence did you come up with in your investigation
17 that led you to believe that Bryan Harwell committed a felony
18 as you allege in two different Petitions?

19 A: I had information that Mr. Harwell was the informant on
20 the death certificate and had not provided Ms. Harwell's name
21 as a surviving spouse.

22 Q: And you had seen that sheet that said otherwise before you
23 filed your Amended Petition hadn't you because I gave it to
24 you?

25 A: I had seen that sheet. I had also subpoenaed the records

1 from DHEC ---

2 Q: Okay.

3 A: --- and from the certifying physician and their records
4 did not conform to what you had provided me from the funeral
5 home.

6 Q: Okay, so you think there's some other forms out there?

7 A: DHEC's records did not match what the funeral home said
8 they submitted to DHEC.

9 Q: Are you talking about the certificate of death?

10 A: I'm talking about the form that you said was attached to
11 the affidavit from the funeral home ---

12 Q: Okay.

13 A: --- was not the record that DHEC received from the funeral
14 home.

15 Q: And that claim is still pending in Probate Court as well;
16 isn't it?

17 A: Yes.

18 Q: Alright, thank you, ma'am.

19 THE COURT: Ms. Harwell, any recross?

20 MS. HARWELL: No, ma'am.

21 THE COURT: Thank you. Any objection to having --
22 allowing this witness to be excused from the courtroom?

23 MR. BARTH: No, Your Honor.

24 THE COURT: Ms. Harwell?

25 MS. HARWELL: What was the question?

1 THE COURT: Any objection to this witness being excused
2 from the courtroom?

3 MS. HARWELL: I'd like for her to remain in the
4 courtroom, please.

5 THE COURT: Okay, it's up to her. She's not under your
6 subpoena so if she wishes to leave I will allow her to leave.
7 Who are you calling next?

8 MR. BARTH: Tom Gasser, Your Honor, Postal Inspector.

9 THE COURT: Spell that last name for me?

10 MR. BARTH: G-A-S-S-E-R.

11 THE COURT: Thank you.

12 Sir, you see that bible there on the rail. If you could
13 put your left hand on it for me -- right over there in the
14 front -- bible -- left hand -- raise your right.

15 MR. GASSER, HAVING BEEN FIRST
16 DULY SWORN, TESTIFIED AS FOLLOWS:

17 THE COURT: Thank you so much. Have a seat there and if
18 you could state your full name for the record once you get
19 situated.

20 MR. GASSER: Thomas Gasser.

21 THE COURT: Thank you.

22 MR. BARTH: May it please the Court, Your Honor?

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION OF MR. GASSER BY MR. BARTH:

25 Q: Mr. Gasser, who do you work for?

1 A: I'm a U.S. Postal Inspector.

2 Q: And what is your title?

3 A: Postal Inspector.

4 Q: Postal inspector. How long have you been with the post
5 office?

6 A: Approximately 17 years.

7 Q: Alright and you have been given permission by the
8 Inspector General to testify today?

9 A: By legal counsel for my agency, yes.

10 Q: Okay, all regs have been complied with?

11 A: To the best of my knowledge.

12 Q: Alright. Were you contacted at some point by Bryan
13 Harwell in an attempt to get his dad's mail?

14 A: Yes, sir.

15 Q: Alright and can you tell the Judge as a result of his
16 contacting you what you did?

17 A: We -- what we did was we went and we started to look for
18 information regarding changes of address and things of that
19 nature. I spoke with Bryan Harwell regarding the situation,
20 the issues about it and I also contacted, I think, it's
21 Deborah Harwell.

22 Q: Yes, sir. Alright and can you tell me about your
23 conversations with Deborah Harwell -- well, first, what were
24 y'all trying to figure out?

25 A: Well, there was -- from what I was told was there was mail

1 that maybe associated with the estate. I think it was David
2 Harwell ---

3 Q: Correct.

4 A: --- the estate is for and I was told that there was maybe
5 mail that was out there for that estate that wasn't getting
6 where it was supposed to go possibly.

7 Q: Okay and you checked into that?

8 A: Yes, sir.

9 Q: Alright and did you have a conversation with Deborah
10 Harwell as a result?

11 A: Yes, sir.

12 Q: Can you tell the Court about that conversation, please?

13 A: We had discussed the mail delivery issues that were being
14 experienced and we discussed some issues that she said she was
15 having, in particular, she said she was having difficulty
16 getting her mail as well.

17 Q: Would you tell the Judge when this conversation took
18 place? I'm sorry, I meant to ask you?

19 A: I believe it was January 6th.

20 Q: Okay of this year?

21 A: Yeah, this year, 2016. I believe that was the date.

22 Q: Alright and if you would tell us exactly what Ms. Harwell
23 said to you about this whole situation?

24 A: Well, we had said it and she said she was having
25 difficulty getting her mail as well.

1 Q: Okay.

2 A: Um, she had discussed how mail that would be addressed
3 would be addressed to David and Deborah and that there was
4 problems with getting mail. In particular, she had discussed
5 insurance like house and car and things of that nature that
6 weren't getting to where it was supposed to be going.

7 Q: Alright and did she discuss with you what she wanted you
8 to do?

9 A: Well ---

10 Q: Let me ask you this; did she ask you -- did she talk about
11 prosecuting Bryan Harwell?

12 A: She said that she wanted to file mail theft charges
13 against Mr. Harwell.

14 Q: Okay.

15 A: Bryan Harwell.

16 Q: Okay, she wanted to file mail theft ---

17 A: Yes, sir.

18 Q: --- charges? Okay. Did she tell you whether -- at the
19 time you spoke with her in January 2016, did she tell you
20 whether she and her husband were separated or divorce?

21 A: She said that they weren't.

22 Q: That they weren't?

23 A: That they were not separated and they were not divorced.

24 Q: Okay. What happened with the mail? Did y'all investigate
25 her getting mail for the estate?

1 A: I didn't get any mail, no.
2 Q: Okay.
3 A: The -- it was all forwarded to legal for the postal
4 service for them to handle because it would be considered mail
5 in dispute, if I have the correct terminology.
6 Q: Okay and did you have the opportunity to look at the
7 forwarding documents ---
8 A: I did.
9 Q: --- that were involved in this case?
10 A: Yes, sir.
11 Q: You probably have them in your notes or in your notebook
12 but what's the difference between an IP and an FP forwarding
13 request?
14 A: An IP is an individual and an FP is a family.
15 Q: IP means I want my mail moved to a new spot. FP means I
16 want my entire family.
17 A: Yes, sir.
18 Q: All the mail?
19 A: All the mail.
20 Q: Alright, did you look and see whether or not Ms. Harwell
21 had filed some of those?
22 A: I can't say who filed them.
23 Q: Okay, did you find an FP forwarding address from Judge's
24 Harwell's houses to PO Box 7769?
25 A: If you could be particular about the addresses we're

1 talking about?

2 Q: Yeah, the two houses, the Cherry Grove house and the

3 Florence house on Timberlane?

4 A: Cherry Grove, I don't have any records in Cherry Grove.

5 Q: Canal Street?

6 A: Canal Street.

7 Q: You remember that one?

8 A: Yes, sir.

9 Q: Canal Street.

10 A: Canal Street and Timberlane.

11 Q: Alright and was there a forwarding notice for those two

12 houses to go to a PO Box in Myrtle Beach?

13 A: There were forwarding notices, yes.

14 Q: And have you been able to determine whose PO Box the mail

15 was to be forwarded to?

16 A: I don't have a record of whose PO Box that is, sir. I'm

17 sorry.

18 Q: That's alright. So, how did you leave it with Ms. Harwell

19 when the conversation ended? You can refer to your notes if

20 you want.

21 A: Well, I remember at one point in the conversation she was

22 -- she asked who she could call or what could she do and I

23 told her to consult an attorney, that she should do that so

24 that she could get advice on how to handle this as well.

25 Q: Do your notes reflect when the change of address forms

1 were -- were filled out?

2 A: Well, there are -- I believe some were provided under --

3 to y'all and I can refer to those ---

4 Q: Sure.

5 A: --- and that would be -- well ---

6 Q: I've got them if you want them.

7 A: Well, I can use yours or I can use mine. It doesn't

8 matter, whichever, you want me to refer to.

9 Q: Here you go.

10 A: Okay. So, I forgot your original question. I'm sorry.

11 Q: Oh okay. Who filled out an FP forwarding request?

12 A: To be clear, I don't know who exactly filled it out. I

13 can tell you the data that's on here ---

14 Q: Okay.

15 A: --- for who it would be for.

16 Q: That would be perfect.

17 A: So, if you look at this you read from the bottom up.

18 Q: Okay.

19 A: So, on or around February 13th, 2015 a forwarding order was

20 provided that sent Deborah Harwell's -- so it's an IP ---

21 Q: Okay, individual mail.

22 A: --- So, we sent her mail from Canal Street to the PO Box

23 in Myrtle Beach, 7769.

24 Q: Okay, and next?

25 A: As you go up the record shows a family -- an FP was filed

1 and it shows an updated date of September 25th, 2015 and that
2 was the same, Canal Street going to the PO Box.
3 Q: Okay and an FP would forward everybody at that address,
4 all there mail?
5 A: Should forward all their mail, yes.
6 Q: Okay, hers and her husband?
7 A: It should forward it all as best I know, yes.
8 Q: Okay.
9 A: So her husband and her and whoever else.
10 Q: Okay. Did anything happen on there next?
11 A: On the 16th of November there is an IP so it was turned
12 back into an individual.
13 Q: And for whom?
14 A: Deborah Harwell.
15 Q: Okay. What -- what does that mean?
16 A: So, it just took Deborah's mail and sent it to the PO Box.
17 Q: Does your document indicate who made that change?
18 A: Well, so -- hold on -- there -- well, you provided me a
19 change of address here ---
20 Q: Yes.
21 A: --- that was filed looks like by Bryan Harwell as the
22 estate; however, this is one -- this is an IP for David
23 Harwell's mail.
24 Q: Alright.
25 A: So, it wouldn't have affected her mail to the best of my

1 knowledge. It would have just taken stuff addressed to David
2 and sent it to -- Canal to Timberland.

3 Q: Okay. Thank you.

4 MR. BARTH: I'd move to introduce this, Your Honor.

5 THE COURT: Any objection, Ms. Harwell?

6 MS. HARWELL: No.

7 THE COURT: Plaintiff's exhibit seven into evidence
8 without objection.

9 (PLAINTIFF'S EXHIBIT NUMBER SEVEN IS
10 ADMITTED INTO EVIDENCE.)

11 BY MR. BARTH:

12 Q: Is there anything else we should know concerning your
13 conversation with Ms. Harwell about this mail issue that you
14 can recall?

15 A: I asked her if she had any mail for the estate, in
16 particular in David Harwell's name only, and she said, "No",
17 that if it had it would have been turned over to the Court or
18 to whoever is supposed to be getting it.

19 Q: Thank you, sir. Answer any questions that she might have
20 for you or the Court.

21 A: Yes, sir.

22 THE COURT: Ms. Harwell?

23 CROSS EXAMINATION OF MR. GASSER BY MS. HARWELL:

24 Q: Mr. Gasser, so can you state for me so I can understand it
25 one more time when you asked me if there was any mail for the

1 -- for David Harwell you told me to do what with it if any
2 came?

3 A: I don't remember what I told you to do with it if any came
4 but it -- I would believe -- I can't say. I don't remember so
5 I don't want to speculate.

6 Q: Do you remember telling me to actually send it to the
7 Probate Court?

8 A: I don't remember saying that but that sounds like a
9 reasonable thing.

10 Q: Okay and did they tell you that Mr. Harwell's mailing
11 address was not 312 Canal Street, nor was it Timberlane, but
12 it was actually PO Box 2459, Georgetown, South Carolina where
13 he got his 100 percent of his mail?

14 A: I got the first -- I didn't understand the last part of
15 your sentence.

16 Q: Did they mention PO Box -- PO Drawer 2459 in Georgetown to
17 you?

18 A: There was the mention of that, yes.

19 Q: And at the time that this mail request was made as an
20 individual for Debbie Harwell, this was the residence in which
21 Debbie Harwell was residing.

22 A: Which one are you referring to?

23 Q: Canal Street.

24 A: Canal Street? I don't know where you were looking.

25 Q: In the -- on this page where it says -- as far as the

1 documentation goes where it has individual and family
2 requests. They were both made on the same date; correct?

3 A: No.

4 Q: Okay.

5 A: This one here is February ---

6 Q: February 13th.

7 A: So, this one here is ---

8 MR. BARTH: Which one is that?

9 Q: February 13th, created on ---

10 A: It looks like she's showing me the same document that you
11 gave me, sir. So, let's see it says here, "created on 2/13
12 effective date 2/13".

13 Q: Alright.

14 A: Then this is an update so it says last update right there.

15 THE COURT: Alright, we're going to take a quick break.
16 I've got an emergency phone call that's come in from my child
17 so I will be right back.

18 (Recess)

19 THE COURT: Alright, back on the record.

20 Ms. Harwell?

21 MR. GASSER: Your Honor, can I clear up something real
22 quick here from a prior question she asked?

23 THE COURT: From a prior question? Yes, sir.

24 BY MS. HARWELL:

25 A: You had asked me about the PO Box in Georgetown and you

1 gave a specific number. I remember a conversation about that
2 box but I don't know the number that it was.

3 Q: Alright. Also, Mr. Messer (SIC) ---

4 A: Gasser.

5 Q: Can you read these dates up here of when these requests
6 were made again for the transfer of mail? Is it 2/13? Do you
7 need my reading glasses?

8 A: I left mine on the seat of the car. No, I can read it if
9 my arms stay long.

10 Q: 2/13, basically 2/13.

11 A: Well, but again that's the ---

12 Q: Initial date.

13 A: --- it's the initial date, yes.

14 Q: Okay and at that time David Harwell was living until 9/30
15 so do you not think that since he was living that if would
16 have wanted to object to it that he would have objected to it
17 at that time?

18 MR. BARTH: I object to the question. Asking Mr. Gasser
19 what Judge Harwell would think or do.

20 MS. HARWELL: Well, would it not have been his right ---

21 THE COURT: Ms. Harwell, ma'am, when an objection's made
22 you can argue with me what your response is to his objection.
23 He objects that he cannot say what Mr. Harwell would have
24 thought. What is your objection -- what is your response to
25 that?

1 MS. HARWELL: My response is I'm thinking. Would it have
2 not ---

3 THE COURT: No, no, no you're talking to me.

4 MS. HARWELL: Okay.

5 THE COURT: Because I haven't ruled on whether or not he
6 can answer it or not.

7 MS. HARWELL: Oh okay. I guess my question is since
8 David Harwell was living the estate really didn't ---

9 THE COURT: Okay, I sustain the objection. He can't tell
10 me what somebody else was thinking.

11 MS. HARWELL: Right.

12 THE COURT: That was the objection so move on to the next
13 question. I can see the dates. I'm very aware of the dates;
14 move on to your next question.

15 MS. HARWELL: Okay.

16 BY MS. HARWELL:

17 Q: Mr. Gasser, when people have been living together for
18 nearly 20 years and someone dies is -- is it normal for there
19 to be any kind of confusion in their mail?

20 MR. BARTH: I object.

21 THE COURT: Sustained. He can't answer that question. I
22 mean, he's not a probate expert so move on. You're asking
23 about somebody -- is there confusion. No, go on, move on.

24 MS. HARWELL: Okay. I think that's all I'm going ask for
25 right now. Thank you.

1 THE COURT: Alright, thank you so much.

2 Any redirect?

3 MR. BARTH: One question, Your Honor.

4 REDIRECT EXAMINATION OF MR. GASSER BY MR. BARTH:

5 Q: Just making sure I understand, Mr. Gasser; this is an
6 online form?

7 A: Well this is ---

8 Q: You can fill it out online?

9 A: Well, you can or you can mail it in.

10 Q: Okay.

11 A: There's a form that can be mailed in.

12 Q: And the Canal Street mail was to go to PO Box 7769 and
13 that was a family transfer; correct?

14 A: Yes, sir.

15 Q: And that was September 25th?

16 A: That was the updated date. Yes, sir.

17 Q: Okay, thank you.

18 MR. BARTH: No other questions, Your Honor.

19 THE COURT: Alright, thank you, sir. Any objection to
20 this witness being excused from the courtroom?

21 MR. BARTH: No, Your Honor.

22 THE COURT: Ms. Harwell?

23 MS. HARWELL: No, ma'am.

24 THE COURT: Alright, thank you, sir. You're excused.

25 Do you have another witness?

1 MR. BARTH: Bryan Harwell.

2 THE COURT: Come forward for me, please, sir. If you
3 could put your left hand on the bible for me; raise your
4 right.

5 MR. HARWELL, HAVING BEEN FIRST
6 DULY SWORN, TESTIFIED AS FOLLOWS:

7 THE COURT: Thank you so much, have a seat there in that
8 chair and once you get situated if you could state your full
9 name for the record, please, sir?

10 MR. HARWELL: Yes, ma'am. Robert Bryan Harwell. Bryan
11 is with a Y.

12 THE COURT: Thank you.
13 Counsel?

14 MR. BARTH: May it please the Court, Your Honor?

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION OF MR. HARWELL BY MR. BARTH:

17 Q: Bryan, you are the duly appointed personal representative
18 of your dad's estate?

19 A: Yes, sir. I am.

20 Q: And were you appointed by the Probate Court in Florence
21 County?

22 A: I was.

23 Q: And you are representing the estate in that capacity in
24 pursuing this matter?

25 A: I am.

1 Q: Is it the estate's position that Debbie has intentionally
2 violated the Court approved agreement?

3 A: It is.

4 Q: Alright and we're going to go through some of those things
5 but are you asking that she be held in contempt and punished?

6 A: I am.

7 Q: Okay, now the Court approved agreement, and you may have a
8 copy up there, says that the parties would prorate their tax
9 refund for 2014; is that right?

10 A: Yes, sir, under the agreement, as I understand it, and I
11 have as personal representative tried to comply with the Order
12 and agreement. The agreement at page three, paragraph 13
13 indicates, "The parties will file a joint tax return for 2014.
14 The husband shall be responsible for the payment of taxes due.
15 The parties will proportionally share any refund they may
16 receive."

17 Q: Alright and do you have a copy of Judge Harwell and
18 Deborah Harwell's 2014 tax return that the two of them filed?

19 A: I've seen it and that's what you've just handed me. As I
20 understand it they had Bob Callahan prepare this for them and
21 as I understand it, it showed a tax refund.

22 Q: Of how much?

23 A: Uh, bear with me just a minute. At line 75 it looks like
24 a refund of \$39,799.

25 Q: That's the amount that per the agreement needs to be

1 prorated?

2 A: Yes, sir.

3 Q: Thank you.

4 MR. BARTH: I'd move to introduce this, Your Honor. The
5 social security numbers have been redacted.

6 THE COURT: Any objection to this document coming into
7 evidence?

8 MS. HARWELL: No.

9 THE COURT: Alright, plaintiff's exhibit eight into
10 evidence without objection.

11 (PLAINTIFF'S EXHIBIT NUMBER EIGHT IS
12 ADMITTED INTO EVIDENCE.)

13 BY MR. BARTH:

14 Q: Bryan, Judge Harwell's portion of the prorated tax refund
15 would be an asset of the estate?

16 A: It's my understanding, yes, sir.

17 Q: Alright, now did you have me contact Debbie regarding the
18 prorating of the income tax returns?

19 A: I did.

20 Q: Okay, if you would, can you take a look at this document
21 and tell me if this is the letter that you had me send Ms.
22 Harwell?

23 A: It is.

24 Q: And can you tell me what your position is on the prorating
25 of that tax refund, \$39,799 was the total and how did you

1 calculate it to be prorated?

2 A: Well, according to this letter and my understanding and
3 again I'm trying to -- as I indicated in the Rule to Show
4 Cause -- I'm trying to seek the guidance, direction and
5 blessing of the Court regarding this. My understanding was
6 consistent with this letter that it would be proportional to
7 the gross income of the parties.

8 Q: Alright and how did you calculate that, please?

9 A: Well, according to your letter their joint income was
10 \$422,425.

11 Q: Judge Harwell earned how much of that?

12 A: He earned 94 percent of that.

13 Q: Alright and Debbie earned six percent?

14 A: That's my understanding.

15 Q: And can you tell me how that would equate to the tax
16 refund?

17 A: Well, according to the calculations that are set forth in
18 your letter the estate would receive \$37,290.51 and Debbie
19 would receive \$2,508.49.

20 Q: Alright.

21 MR. BARTH: I'd move to introduce this, Your Honor.

22 THE COURT: Any objection to this letter coming in?

23 MS. HARWELL: No.

24 THE COURT: Plaintiff's exhibit number nine into evidence
25 without objection.

(PLAINTIFF'S EXHIBIT NUMBER NINE IS
ADMITTED INTO EVIDENCE.)

BY MR. BARTH:

Q: Bryan, when we sent that request to Debbie asking if she agreed with the calculation, did she respond to us?

A: She did. She sent you an e-mail.

Q: Is that a true and correct copy of the e-mail we received from her?

A: It is.

Q: And what is her position regarding the tax refund?

A: She indicates that -- in paragraph five of her e-mail she indicates that, "I'm requesting that all tax return funds be relinquished to me." She makes other comments that are disparaging towards me.

Q: Did she accuse you of stealing money?

A: Oh yes.

Q: How much did she accuse you of stealing?

A: Well, she accused me of taking over \$800,000 in cash.

Then, she says she's just finding out about \$7-\$9,000,000. It says she was tricked into everything.

Q: Her position on the tax refund is that she wanted it all?

A: Yes.

Q: Alright.

MR. BARTH: I'd move to introduce that, Your Honor.

THE COURT: Any objection? Ms. Harwell?

1 MS. HARWELL: I'm seeing if they've redacted anything in
2 this document. It's fine.

3 THE COURT: Alright, plaintiff's exhibit 10 into evidence
4 without objection.

5 (PLAINTIFF'S EXHIBIT NUMBER TEN IS
6 ADMITTED INTO EVIDENCE.)

7 BY MR. BARTH:

8 Q: Bryan, are you asking the Court to portion the tax refund
9 as you've outlined in the letter and to authorize you to sign
10 the documents to get that tax refund?

11 A: I am and to enforce the agreement ordered that I've been
12 trying to comply with.

13 Q: What are you asking the Court to do in the event Debbie
14 refuses to sign the refund check that will obviously come in
15 both names?

16 A: Ask the Judge to authorize the Clerk of Court to sign it
17 or some other method or procedure. Whatever the Court thinks
18 is appropriate.

19 Q: In the ---

20 THE COURT: Mr. Barth?

21 MR. BARTH: Yes, ma'am.

22 THE COURT: This might not be the right time, but check
23 your math.

24 MR. BARTH: Okay, Judge.

25 THE COURT: Just so I'll know what you're asking for

1 because you're numbers and my numbers are not the same.

2 MR. BARTH: They don't match?

3 THE COURT: Uh-uh. What's six percent?

4 MR. BARTH: \$2,388.

5 THE COURT: In your letter you've got \$2,508.

6 MR. BARTH: Oh okay.

7 THE COURT: I'm sorry. Go ahead.

8 BY MR. BARTH:

9 Q: Bryan, would you look at the agreement that was Court
10 approved for a second and tell me if there were any
11 restraining orders?

12 A: There were.

13 Q: And let's talking about the restraining order about making
14 any disparaging comments about Judge Harwell or his family.
15 Was that in there?

16 A: If you'll give me a second, please, sir.

17 Q: Okay.

18 A: Paragraph 10, page three of the agreement, "The parties
19 shall be mutually restrained from disparaging the other party
20 or any member of the other parties family including children,
21 children's spouses and grandchildren in any manner. The
22 parties are further restrained from contacting or
23 communicating with the other."

24 Q: Alright and accusing you of a felony and of stealing
25 \$880,000 you believe that violates the restraining outlined in

1 that agreement?

2 A: I do.

3 Q: Alright, there's also a restraining order in there that
4 says that they're not to communicate with one another; is that
5 right?

6 A: Yes, sir.

7 Q: Alright, did you have a problem with that before your
8 father passed away?

9 A: I did.

10 Q: Can you tell the Judge about that, please, sir?

11 A: My father was on a respirator for about a week. Give me
12 just a second, please.

13 THE COURT: You're fine.

14 BY MR. BARTH:

15 A: I am my brother were there with him pretty much nonstop
16 and in the middle of the night Debbie showed up unannounced
17 and I had to have her removed by hospital security.

18 Q: And did that occur at a time when this restraining order
19 you've just announced -- read to the Court was in full force
20 and effect?

21 A: Sure.

22 Q: Did you talk to Ms. -- Did you talk to Debbie that night?

23 A: I did.

24 Q: Can you tell us about that conversation?

25 A: Well, she came in the room and stayed for a couple of

1 minutes and then I told Debbie, "It's time for you to leave,
2 you're not supposed to be here" and Baxter was with me and she
3 stepped outside, sat down right outside and she wasn't
4 supposed to be there.

5 Q: Did she voluntarily leave?

6 A: After hospital security came up and spoke to her.

7 Q: Do you believe that violates the restraining order?

8 A: I do.

9 Q: Alright, now can you read the provision that talks about
10 the estate, please?

11 A: Paragraph 12, page three.

12 Q: Yes, sir.

13 A: It says, "Both parties waive any and all rights they may
14 have in the estate of the other or to make any claim upon or
15 against the estate of the other. Each party's estate shall be
16 bound by the terms of this agreement."

17 Q: Even in the face of that restraining order has Debbie file
18 claims against your dad's estate?

19 A: She's filed three claims.

20 Q: Alright and we've got them introduced into evidence but
21 generally what are they?

22 A: She's filed one for \$3.1 million dollars alleging as the
23 basis the prenuptial agreement; she's filed one for \$1,400 or
24 \$1,500 for obituaries that she ran that were unauthorized by
25 me, that were not authorized by my brother, that were not

1 authorized by the funeral home; that she ran on her own in --
2 in direct contravention of my father's instructions. He did
3 not want Debbie listed in any obituaries. He made that clear
4 to me, he made it clear to the lawyers and I've tried to
5 comply with his wishes.

6 Q: Are these claims still pending in Florence County?

7 A: They are. They have not been withdrawn.

8 Q: Alright.

9 A: Even after we requested that they be withdrawn and advised
10 Ms. Edmonds of -- again of the Order.

11 Q: And you said they are still pending; correct?

12 A: They are.

13 Q: And just in general without going into much detail; have
14 those claims caused a problem with the administration of your
15 dad's estate?

16 A: They have.

17 Q: In particular the house at Cherry Grove and the lot.
18 What's the problem?

19 A: Well, we have in the estate dad had the Canal Street home,
20 he had a lot at Shaftesbury Glen and he had half ownership in
21 R&D Holdings which his best friend was a guy named Ron
22 Huffman. Ron had agreed to purchase the lot at Shaftesbury
23 Glen and also my dad's interest in R&D Holdings which
24 consisted of a beach house that they owned together. I also
25 had an offer from Mr. Eric Myers, the next door neighbor, to

1 purchase the Canal Street home ---

2 Q: Can you sale any of this property with this \$3 million
3 dollar claim pending?

4 A: No. I mean, what we were trying to do before all of these
5 claims got filed we were getting an Order. We had filed an
6 action in the Probate Court with the help of Gena Ervin. She
7 had filed an action in the Probate Court which was in essence
8 going to get -- as I understand it get consent with Baxter, my
9 brother, and since there were no claims filed then an Order
10 would be issued allowing me to sale these properties. As a
11 practical matter, you know, we couldn't go through with that.
12 Additionally, as a practical matter, my understanding is these
13 are just like liens on any piece of property nobody's going to
14 buy these properties with these claims pending against the
15 estate.

16 Q: Well, let me ask you this, Bryan. Do you believe her
17 filing these claims is an intentional violation of the Court
18 approved agreement?

19 A: Absolutely.

20 Q: And what are you asking the Court to do on this particular
21 issue?

22 A: I want Her Honor to inforce this Order and order Debbie to
23 withdraw all claims that she's filed against the estate.
24 That's what's in the agreement. That's what's in the Order.

25 Q: And you believe she's in contempt of Court and asking the

1 Court to hold her in contempt?

2 A: I believe she is but that's for Her Honor to decide.

3 Q: And if Debbie refuses to execute documents withdrawing
4 that are you asking the Court to allow the Clerk to sign it on
5 her behalf?

6 A: I am.

7 Q: Alright, now just the estate stuff without going through a
8 bunch of -- a bunch of details this late in the day -- did you
9 have a problem with the funeral and the visitation and
10 everything around that?

11 A: I did.

12 Q: Just give us the cliff notes versions, please.

13 A: Again, my dad as pointed out in the letter that you
14 introduced through Attorney Derrick, Debbie had emphasized or
15 had asked that she be allowed to be treated as his wife in any
16 funeral and to be listed as such in any obituaries. Dad did
17 not want that, it was not in the agreement. I tried to follow
18 his wishes and Debbie did everything she could to interfere.
19 She threatened me. I got a text message.

20 Q: Is that it?

21 A: It is. She was insistent on being allowed to participate
22 in the funeral. She was insistent on filing or having
23 unauthorized obituaries published in the State Newspaper, the
24 Sun News listing herself as his wife.

25 Q: How long had it been since we were in Court having their

1 Court approved agreement approved?

2 A: They got, as I recall, the agreement was approved in July.

3 Q: And he passed away ---

4 A: He died in -- on September the 30th.

5 Q: Okay.

6 A: But Debbie texted me saying, "Bryan, don't" -- this is
7 October 3rd ---

8 Q: Okay.

9 A: --- according to this screen shot of a text message.
10 "Bryan, don't make my husband's legacy one of controversy. He
11 deserves respect and praise for his career accomplishments.
12 Don't ruin that for him it will go down in history and how
13 will it be viewed in five years. I want to be at my husband's
14 reception line and burial."

15 Q: What did you -- what did you take that to mean; don't make
16 it one of controversy?

17 A: She was threatening me with litigation.

18 MR. BARTH: I'd move to introduce this, Your Honor.

19 THE COURT: Any objection -- evidentiary objection to
20 this coming into evidence?

21 MS. HARWELL: I do object to it, Your Honor. I believe
22 that he's read something into it that is not there.

23 THE COURT: I'm not asking you the explanation of it.
24 I'm saying he has validated it that it is a text that he
25 received on his phone. Do you have any evidentiary objection

1 to the document? You can testify to the document when it's
2 your turn to testify but do you have any objection based on
3 the evidence that this not come in?

4 MS. HARWELL: I don't have any objection to putting this
5 text message on file at all.

6 THE COURT: Alright, plaintiff's exhibit 11 into evidence
7 without objection.

8 (PLAINTIFF'S EXHIBIT NUMBER ELEVEN IS
9 ADMITTED INTO EVIDENCE.)

10 BY MR. BARTH:

11 A: She also at the funeral home -- we were not going to have
12 a public viewing. She appeared at the funeral home, demanded
13 to see my dad. Um, the funeral home was uncomfortable with
14 the situation. I was trying not to cause them any unnecessary
15 difficulty. It was difficult enough losing my dad but I was
16 constantly dealing with her interfering with the funeral,
17 interfering with -- I mean, anyway I agreed for her to have a
18 supervised limited viewing of my dad.

19 Q: Okay.

20 A: At the funeral home.

21 Q: Alright, now we've heard a little bit about an obituary.
22 Can you tell me what that document is, please?

23 A: I also -- before I discuss this -- we also ended up having
24 -- because we were worried that she was going to show up and
25 turn everything into a circus we ended up having a private

1 burial with just family. Again, this was all -- what made
2 everything even more complicated was this was at the time of
3 the 1,000 year flood. We couldn't bury him for a long time.

4 Q: And what were you dealing with while all of that was going
5 on as it relates to Debbie?

6 A: I'm not sure of your question.

7 Q: Yeah, when y'all were trying to plan it and you realized
8 that you couldn't bury your dad; were you hearing from Debbie?

9 A: Oh yes.

10 Q: Alright, about what kind of issues? Let me ask you this;
11 did she -- did she mention anything to you about hiring
12 lawyers and suing you guys?

13 A: I can't remember the details. It---

14 MS. HARWELL: Your Honor, I object. That's allegations
15 totally false and an insinuation that's untrue.

16 MR. HARWELL: Well, I've got the text message ---

17 THE COURT: Wait a minute, Judge.

18 MR. HARWELL: Yes, ma'am. Yes, ma'am.

19 THE COURT: I overrule the objection. You will have your
20 time to testify at the appropriate time. I will allow the
21 answer to go forward.

22 Yes, sir.

23 BY MR. BARTH:

24 A: I interpreted that text message as a threat. I know she
25 kept going up to the funeral home. She -- there was a -- on

1 the condolence page of the funeral home where people can post
2 condolences online, somebody who was a friend of my dad's
3 tried to advise other people that they needed to be aware of
4 Debbie and dad's marital separation and Debbie made the
5 funeral home take it off, threatened them and -- you know, and
6 I apologized for them having to be subjected to all of this
7 chaos and confusion.

8 Q: In the obituary you and the funeral home put together what
9 charities did -- was Judge Harwell asking memorials to be sent
10 to?

11 A: Hope Well -- that's the church that ---

12 Q: That you all grew up in?

13 A: Yes.

14 Q: Alright and Debbie's obituary did what?

15 A: Well, of course, it listed her as the wife. It indicated
16 -- and, you know, my dad was a good man. It listed donations
17 to another charity, it think the Grandfather Home or whatever
18 for children. Dad wouldn't be offended by that but, you know,
19 she's taken charge of my dad's obituary taking charge, doing
20 all this stuff, running all these obituaries in the State
21 Newspaper, the Sun News. I'm having to contact the South
22 Carolina Bar. I'm having to try to contact -- or have you
23 contact the State Newspaper and the Sun News and I'm trying to
24 comply with my dad's wishes.

25 Q: And do you believe her interference is a violation of the

1 Court approved agreement?

2 A: I do.

3 Q: And you're asking that she be held in contempt of Court?

4 A: I am.

5 Q: Alright, let's skip over real quickly to the mail issue.

6 When your father passed away you were appointed to administer
7 the estate and were in charge of getting his mail?

8 A: I was.

9 Q: Alright now were you expecting things in the mail such as
10 a tax refund, dividend checks, bank statements, and things of
11 that nature?

12 A: Yes, sir. As any PR would have to -- any executor or PR,
13 you know, you're trying to get -- make sure you've got a
14 handle on everything. That you're getting bills, that you're
15 getting notices, that you're, you know, if you're not getting
16 bills, you're not getting mail, you're not getting notices you
17 can be subjected to all kind of liability and I'm trying to
18 get all the bills and notices and making sure I've got
19 everything because I'm going to tell you if you've never
20 served as a PR it's a daunting task trying to reconstruct ---

21 Q: Everything.

22 A: --- everything.

23 Q: Were you getting the mail?

24 A: Well, I don't think so. I mean, I was trying to make sure
25 I was getting it all ---

1 Q: Take a look at that.

2 A: --- until I went down -- I mean, several red flags started
3 raising themselves.

4 Q: Such as?

5 A: And I apologize for getting upset, um, I've had a hard
6 time getting past the grieving. On, November the 18th, a month
7 -- almost two months -- a month and a half after my dad died.
8 After he's dead, after I'm the personal representative of his
9 estate I get a notification from the US Postal Service
10 indicating a change of address.

11 Q: Did you do that?

12 A: No.

13 Q: Did you know anything about it?

14 A: No.

15 Q: Look at this one that came in in December; what is that?

16 A: I got a -- I got another change of address notification
17 again at Timberlane. Both of these were in Florence at the
18 Timberlane address in Florence. That's dated December 20th.
19 That's three months after my dad's dead and after I've already
20 been appointed as personal representative in October.

21 MR. BARTH: I'd move to introduce these two, Your Honor.

22 THE COURT: Any objection?

23 MS. HARWELL: No.

24 THE COURT: Plaintiff's exhibit twelve -- do you want
25 them marked together or separately?

1 MR. BARTH: Together is fine, Judge.

2 THE COURT: Alright, plaintiff's exhibit twelve into
3 evidence without objection.

4 (PLAINTIFF'S EXHIBIT NUMBER TWELVE IS
5 ADMITTED INTO EVIDENCE.)

6 MR. BARTH: And if I didn't move to put the bill and the
7 obituary in I move at this time.

8 THE COURT: Alright, any objection to the bill from the
9 obituary, Ms. Harwell?

10 MS. HARWELL: No.

11 THE COURT: Alright, plaintiff's exhibit thirteen into
12 evidence without objection.

13 (PLAINTIFF'S EXHIBIT NUMBER THIRTEEN IS
14 ADMITTED INTO EVIDENCE.)

15 BY MR. BARTH:

16 Q: Bryan, after you started getting the change of address
17 forms what did you do in an attempt to get the estate mail?

18 A: Well, I contacted Postal Inspector Gasser, um, trying to
19 find out, you know, what's going on. At first I went to the
20 Post Office and did Freedom of Information Act request.

21 Q: Okay.

22 A: And asked them, you know, what was going on. They
23 provided me copies. Those copies were showing that Debbie had
24 requested these change of addresses and asking that all the
25 mail from Timberlane, months after my dad's dead, would be

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
COUNTY OF HORRY)	2015-DR-26-691
David W. Harwell by and)	
through his personal)	
representative,)	
Bryan Harwell,)	
Plaintiff,)	Transcript of Record
vs.)	
Deborah B. Harwell,)	May 19, 2016
Defendant.)	

B E F O R E:

Honorable Melissa Buckhannon
Horry County Courthouse
Conway, South Carolina

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

Kevin M. Barth, Esquire
Gena Ervin, Esquire
Attorneys for Plaintiff

Sallie Beth Todd
Family Court Reporter

PART 2

1 forwarded to her PO Box. So, I got all of that together. I'd
2 also gone before this I'd gone down to the Cherry Grove Post
3 Office, I think, and got a FOIA request there and that's when
4 I found out she had done a change of address request for mail
5 -- and again these were FP, family mail, but she did that the
6 week he was in the hospital on a respirator.

7 Q: And that would have been late September and the Court
8 approved the agreement in July?

9 A: Yes, sir.

10 Q: Look at these two documents. Are those the FOIA requests
11 that you sent?

12 A: I believe they are, yes, sir.

13 MR. BARTH: I'd move to introduce these, Your Honor.

14 THE COURT: Any objection?

15 MS. HARWELL: No.

16 THE COURT: Plaintiff's exhibit fourteen into evidence
17 without objection.

18 (PLAINTIFF'S EXHIBIT NUMBER FOURTEEN IS
19 ADMITTED INTO EVIDENCE.)

20 BY MR. BARTH:

21 Q: You said you contacted Mr. Gasser about getting your dad's
22 mail. At some point were you able to retrieve a little bit of
23 your dad's mail?

24 A: I was. I meet with Agent Gasser first. Told Agent
25 Gasser, look this is what the situation is with their -- there

1 was an Order, I've gotten these notifications, I'm not trying
2 to cause Debbie any problems but this foolishness has to stop.
3 All I want is my dad's mail and I cannot as PR tend to the
4 business of this estate and make sure that bills are being
5 paid, that notices are being tended to when -- my dad had a
6 sizeable estate. This is -- this is worth about \$3 million
7 dollars according to the inventory and appraisal and, I'm
8 sorry, I may have lost track of your question.

9 Q: That's alright. Let me ask you this. You got some
10 documents before you, documents in the mail. Where was the
11 mail from both of your dad's houses to be sent to?

12 A: The Canal Street was to go to Timberlane.

13 Q: Okay and then Timberlane was supposed to go where?

14 A: Well, it was supposed to stay there and I was picking up
15 mail there at Timberlane.

16 Q: Debbie's change of address -- family change of address had
17 mail -- had all the mail going where?

18 A: Had it going to her PO Box in Myrtle Beach.

19 Q: Okay, I want to show you ---

20 A: And I change -- you know, I had to go up there and change
21 it.

22 Q: Are these some more change of address notifications you
23 were getting from banks and stock companies?

24 A: They are. Dad had substantial stocks listed with
25 Computershare Trust Company, which as I understand is like a

1 | custodian or whatever. He had BB&T stock. He had Bank of
2 | America stock and he had Toronto Dominion stock and I got a
3 | notification from them. This is in -- dated December the 15th.
4 | Three separated letters one -- two of them are December 15th,
5 | one is December 16.

6 | Q: Where was all that mail to be sent?

7 | A: This -- everything regarding these stocks from
8 | Computershare regarding BB&T and Bank of America and TD,
9 | Toronto Dominion Bank, they sent me these letters indicating
10 | that the new address was now David W. Harwell, PO Box 7769,
11 | Myrtle Beach, South Carolina 29572..

12 | Q: Whose address is that?

13 | A: That PO Box is Debbie's.

14 | Q: Has your dad ever gotten mail there?

15 | A: Not, you know, I don't think so ---

16 | Q: Okay. I'd move ---

17 | A: --- and I can tell you these stocks were valuable. You're
18 | talking several hundred thousand dollars and obviously I was
19 | concerned about these and what turned out was he received
20 | dividend checks ---

21 | Q: Well, let me identify those first.

22 | A: Alright, thank you.

23 | Q: The one in your lap too.

24 | A: Alright, this is a letter I received from Palmetto GBA
25 | which is Medicare as I understand it and it's a letter

1 notifying of a change of address that they were sending to my
2 dad dated January 5, 2016 and ---

3 Q: Where is it?

4 A: --- that's important -- well, this I got this notification
5 at the Timberlane address but it's a notification indicating
6 that a change of address has been made. I didn't authorize
7 one and it's significant in that my dad was in the hospital
8 for a week. There were numerous medical providers and I was
9 trying to get a Medicate summary to make sure I had a handle
10 on any medical providers that may be owed money.

11 MR. BARTH: I'd move to introduce these, Your Honor.

12 THE COURT: Any objection?

13 MS. HARWELL: No.

14 THE COURT: Alright, plaintiff's exhibit fifteen into
15 evidence without objection.

16 (PLAINTIFF'S EXHIBIT NUMBER FIFTEEN IS
17 ADMITTED INTO EVIDENCE.)

18 BY MR. BARTH:

19 Q: Bryan, in particular Computershare the trustee that holds
20 all of those stocks ---

21 A: Or whatever you call them. I can't remember the exact
22 name. They're the custodian or something like that.

23 Q: When you received ---

24 A: Those stocks have since been moved to Wells Fargo.

25 Q: Okay. Look at this document from Computershare addressed

1 to your dad. Where does it -- where does it indicate it was
2 sent to?

3 A: It was addressed to David W. Harwell at 2208 Timberlane
4 Drive in Florence.

5 Q: And it was forwarded where?

6 A: And it was forwarded according to this to -- it just says,
7 "notify sender of new address: Harwell, PO Box 7769, Myrtle
8 Beach, South Carolina" is where it was forwarded to.

9 Q: Okay.

10 MR. BARTH: I'd move to introduce that, Your Honor.

11 THE COURT: Any objection?

12 MS. HARWELL: No, Your Honor, it doesn't say what it is
13 for with CompuShare. It's just a general envelope. It could
14 be hundreds of things.

15 THE COURT: He's identified it as an envelope that he has
16 and he's identified the information. He's not saying what was
17 contacted in the envelope at this point in time. Do you have
18 an objection to the copy of the envelope coming in?

19 MS. HARWELL: No, ma'am.

20 THE COURT: Alright, plaintiff's exhibit sixteen into
21 evidence without objection.

22 (PLAINTIFF'S EXHIBIT NUMBER SIXTEEN IS
23 ADMITTED INTO EVIDENCE.)

24 BY MR. BARTH:

25 Q: As soon as you saw that, Bryan, did you write

1 Computershares?

2 A: I did. I sent them an overnight letter.

3 Q: In general what were you telling them?

4 A: I told them I'm the personal representative of the estate.
5 I sent them a copy of my dad's death certificate along with my
6 appointment as the personal representative of his estate.

7 Q: Where'd you want the mail?

8 A: I advised them that I had received those letters regarding
9 change of addresses and that those addresses were fraudulently
10 and improperly changed. They should not have been and that
11 any dividend checks that have been issued, which I understand
12 to be a BB&T dividend check for \$2,295 and a Bank of America
13 dividend check for \$17.40 need to be reissued and sent to me
14 at my home address at 1389 Lazar Place, Florence, South
15 Carolina and that all future mail should be sent to my
16 address. I over-nighted this letter to Computershare Trust
17 Company.

18 MR. BARTH: I'd move to introduce it.

19 THE COURT: Any objection to this letter coming into
20 evidence?

21 MS. HARWELL: No.

22 THE COURT: Plaintiff's exhibit seventeen into evidence
23 without objection.

24 (PLAINTIFF'S EXHIBIT NUMBER SEVENTEEN IS
25 ADMITTED INTO EVIDENCE.)

1 BY MR. BARTH:

2 Q: And did Computershares reissue the check?

3 A: They did.

4 Q: And did you get it?

5 A: I did.

6 Q: Did you ever get the first ones?

7 A: The original ones that was sent?

8 Q: Ye, sir.

9 A: Not to my knowledge.

10 Q: Okay.

11 A: I did get -- let me restate that. With regard to the Bank
12 of America check you should have a copy of that. I've got it
13 but the Bank of America -- if you've got it there that was
14 forwarded -- I've got it I'd like to -- because it shows not
15 only was a dividend check forwarded to her but it also
16 contained tax information that I needed with regard to the
17 Bank of America stock.

18 Q: Is that what this document is?

19 A: Well, these are the documents from Computershare with
20 regard to responding to my letters regarding each of these
21 three stocks advising me that they've made the correction and
22 reissued the check for \$2,295.

23 MR. BARTH: I'd move to introduce it, Your Honor.

24 THE COURT: Any objection?

25 MS. HARWELL: No.

1 THE COURT: Plaintiff's exhibit eighteen into evidence
2 without objection.

3 (PLAINTIFF'S EXHIBIT NUMBER EIGHTEEN IS
4 ADMITTED INTO EVIDENCE.)

5 BY MR. BARTH:

6 Q: Bryan, is it the estate's intention that her having
7 David's mail converted to her is a violation of the Court's
8 Order?

9 A: I think it is.

10 Q: And the same with the dividend checks that were sent to
11 her?

12 A: Yes, but I'm not aware -- I'm not aware that Debbie has
13 cashed those checks.

14 Q: Now, after your father's death did you receive a call from
15 Baxter Hahn?

16 A: I did.

17 Q: Who is Baxter Hahn?

18 A: Baxter Hahn is a financial advisor with Wells Fargo. My
19 dad ---

20 Q: He helped your dad?

21 A: He helped my dad and when my dad was in Florence -- my dad
22 previously had a lot of stuff with Bank of America. I think
23 he also had some stuff with Wells Fargo but Bank of America
24 closed all of their branches and was closing branches in
25 Florence. My dad had talked to a bunch of people and Baxter

1 Hahn was well respected. He did a lot of work of a lot of ---

2 Q: Good people.

3 A: --- good people and my dad chose Baxter Hahn to handle a
4 lot of his financial stuff, his stocks and everything else.

5 But, I got a call from Baxter sometime, it seems like in
6 December.

7 Q: Okay and what was the gist of the call?

8 A: The gist of the call was that he had gotten a call from
9 Debbie saying that she was on one of dad's accounts -- one of
10 his IRA accounts and ---

11 Q: Was that true?

12 A: Not to my knowledge.

13 Q: Okay. Did she leave a voicemail?

14 A: She did.

15 Q: And do we have that on recording and a transcript?

16 A: We do.

17 Q: Is that what that is?

18 A: I've got it still on my phone.

19 Q: Is that an accurate transcript of what's on the disk?

20 A: I believe it is but Her Honor can certainly listen to it
21 and determine specifically what is said on that. She also
22 told Mr. Hahn that she was having me removed as personal
23 representative the next week.

24 Q: Okay.

25 MR. BARTH: I'd move to introduce this, Your Honor. We've

1 got the disc and a transcription.

2 THE COURT: Any objection, Ms. Harwell?

3 MS. HARWELL: Yes, ma'am, to the last statement but I
4 don't know how to object to it.

5 THE COURT: I'm not asking you if you agree with what
6 he's saying. I'm saying are you -- your objection would be to
7 the document coming in.

8 MS. HARWELL: Yes, I object to the document because I
9 don't know where it came from.

10 MR. BARTH: I might can play it for Your Honor.

11 THE COURT: Do you have a means to play it or do you want
12 me to try to play it?

13 MR. BARTH: I think you're going to have to. I don't have
14 one.

15 THE COURT: Let me see if I have one. I don't think I
16 have one either.

17 MR. HARWELL: It was a voicemail recording that Baxter
18 Hahn sent to me.

19 MR. BARTH: If it would please the Court I can introduce
20 it. If the transcription isn't an accurate reflection then
21 Your Honor can strike it into the file.

22 THE COURT: Alright, I'm going to allow it into evidence
23 over objection after I review the recording. If it's not an
24 accurate reflection of the transcript then I'll strike the
25 transcript from the file but allow the recording to stand.

(PLAINTIFF'S EXHIBIT NUMBER NINETEEN IS
ADMITTED INTO EVIDENCE.)

MR. BARTH: Thank you, Your Honor.

BY MR. BARTH:

Q: Did Debbie receive any IRA's or any accounts like that through the Court approved agreement?

A: Not to my knowledge according to the court ordered agreement. She was to be listed as the beneficiary of the legislator's survivor's annuity.

Q: Is it the estate's intention that he trying to somehow gain access to that IRA is a violation of the Court's Order?

A: Yes, sir.

Q: Alright. Now, very briefly I want to go -- you're asking for attorney's fees -- the estate's asking for attorney fees?

A: Yes, sir.

Q: And you hired me on behalf of the estate to pursue this Rule to Show Cause?

A: Yes, sir.

Q: And you hired Gena Ervin, probate attorney, as well?

A: I have.

Q: Did we enlist the services of a private investigator to serve the Rule to Show Cause on Ms. Harwell?

A: We did.

Q: Alright and who did you hire at first?

A: We initially hired a guy named Steve Smith who's a retired

1 SLED agent.

2 Q: And do you know generally how long it took Mr. Smith to
3 follow Debbie?

4 A: A good while.

5 Q: Did he ever get her served?

6 A: I know we had to hire a second process server.

7 Q: Okay.

8 A: I think he did. I think Steve Smith eventually did get
9 her served but I think there was a problem because he was
10 trying to work with the North Carolina Sherriff's Department.
11 He was trying to -- he was having to go all over the place
12 trying to get her served and he may have gotten her served but
13 it wasn't within the 10 days of the notice requirement for the
14 Rule.

15 Q: Take a look at Mr. Smith's bill and tell me how much he
16 charged the estate for his work?

17 A: It looks like \$11,845.58 I believe.

18 Q: And based on the amount of work he did do you believe
19 that's reasonable?

20 A: Yes, sir. My understanding is that Debbie was evading
21 service and he was having to go all over the place to try and
22 get her served and even was trying to use the North Carolina
23 Sherriff's Department.

24 Q: Okay and we then had to hire a second PI to serve her with
25 the new hearing date; didn't we?

1 A: Right.

2 Q: Who did you hire?

3 A: The Marion Brown Agency in Florence. I don't know the
4 gentleman's name.

5 Q: How much did they charge you? And they did serve her;
6 didn't they?

7 A: They got her served and they were able to get her served
8 and charged \$578.95.

9 Q: Okay and are you asking that Debbie be required to
10 reimburse that money?

11 A: I am.

12 Q: Alright and you've seen this attorney's fee affidavit
13 before.

14 MR. BARTH: Your Honor, I'd move to introduce these PI
15 bills. I'm sorry.

16 THE COURT: Any objection?

17 MS. HARWELL: Yes, ma'am.

18 THE COURT: What's your ---

19 MS. HARWELL: I'd like to be able to review it and read
20 it first.

21 THE COURT: Alright, review it and read it. We'll come
22 back to it.

23 MR. BARTH: Okay.

24 BY MR. BARTH:

25 Q: Bryan, is that a fee affidavit for the work I've done on

1 your behalf?

2 A: It is.

3 Q: Have you had the opportunity to review it?

4 A: I have.

5 Q: Does it accurately reflect the amount of work I have done

6 on behalf of the estate in the Family Court action and in

7 trying to enforce the Family Court action in Probate Court?

8 A: It does.

9 Q: And what is the total?

10 A: The total is \$14,266.56.

11 Q: And are you asking the Court to require Debbie to pay

12 that?

13 A: I am.

14 Q: Okay.

15 MR. BARTH: I'd move to introduce that as well, Your

16 Honor.

17 THE COURT: Any objection? Ms. Harwell?

18 MS. HARWELL: I object to them asking for it but what

19 you're asking is the objection of which to file this -- to put

20 this paper in the file?

21 THE COURT: Yes, ma'am.

22 MS. HARWELL: I have no objection to it.

23 THE COURT: Alright, plaintiff's exhibit number twenty

24 into evidence without objection.

25 (PLAINTIFF'S EXHIBIT NUMBER TWENTY IS

1 ADMITTED INTO EVIDENCE.)

2 BY MR. BARTH:

3 Q: Did you also hire Gena Ervin?

4 A: I did.

5 Q: To assist in all this?

6 A: I did.

7 Q: And have you seen her fee affidavit?

8 A: I have.

9 Q: I ask you the same questions: is it accurate and does it
10 accurately reflect the work handled in this matter and the
11 probate matter trying to enforce this Order?

12 A: It does.

13 Q: What's her total fees?

14 A: \$10,308.57.

15 Q: And are you asking that Debbie be required to pay that as
16 well?

17 A: I am.

18 MR. BARTH: I'd move to introduce that, Your Honor.

19 THE COURT: Any objection?

20 MS. HARWELL: No, they can file it.

21 THE COURT: Alright, plaintiff's exhibit number twenty-
22 one into evidence without objection.

23 (PLAINTIFF'S EXHIBIT NUMBER TWENTY-ONE IS

24 ADMITTED INTO EVIDENCE.)

25 BY MR. BARTH:

1 Q: Bottom line, Bryan, what are you asking the Court to do?

2 A: I want the Court to enforce its Order. I've tried to
3 comply with the Order.

4 Q: Have you gotten any cooperation out of Debbie?

5 A: No.

6 Q: Answer any questions that she might have for you, Bryan.

7 A: I'll be glad to.

8 THE COURT: Ms. Harwell?

9 CROSS EXAMINATION OF MR. HARWELL BY MS. HARWELL:

10 Q: You say that there's no cooperation by me. Have you ever
11 contacted me to ask me to cooperate in any way whatsoever
12 about anything?

13 A: Yes, ma'am. Yes, ma'am. Let me answer your question.

14 Q: When?

15 A: Yes, ma'am, I sure did. With regard to the tax refund
16 check and the response I got was I was accused of stealing
17 money and that you wanted 100 percent of the tax refund in
18 violation of the Order.

19 Q: That was from Mr. Barth? The communication from Mr. Barth
20 is what you're talking about?

21 A: Yes, ma'am, because I've tried ---

22 Q: My question is -- my question is have you ever contacted
23 me to ask me to cooperate at all about anything or to help
24 you?

25 A: Ma'am, I don't want to have any future contact with you

1 ever again and I have not. You put my father through hell and
2 I don't think I should have to contact you, okay. I have done
3 it through counsel.

4 Q: Hold on, I'm going to get something else. The statement
5 that you made was that I put your father through hell and you
6 really realize that that's not an accurate statement so I'm
7 not sure why you're saying that. Do you recognize these
8 people?

9 A: Yes, ma'am, I sure do and I'll be glad to clarify why I
10 made that statement because one of the things that occurred in
11 February was y'all got in an argument about him not paying ---

12 Q: And you were there -- and you were there?

13 A: --- I'm trying to answer the question.

14 Q: And you were there?

15 THE COURT: Okay, only one talk at a time. He's
16 answering your question.

17 BY MS. HARWELL:

18 A: I'm trying to answer your question.

19 Q: Where you there? Is this second hand information, third
20 hand information?

21 A: This is information my father gave me and my brother.

22 Q: So, you're testifying to what Judge Harwell has told you?
23 My husband told you?

24 A: Yes.

25 Q: That's what you're testifying to?

1 A: I am.

2 Q: What my husband told you? Okay, please do.

3 A: Okay, he said that y'all had gotten into an argument.

4 That you wished he was Fing dead and you were screaming at

5 him. You had left him at the home in Timberlane by himself,

6 took his phone, didn't tell anybody, didn't tell me, didn't

7 tell Baxter he was there by himself at all while he's

8 recovering from knee surgery there at the house. No food. No

9 phone, nothing.

10 Q: May I ask you the question of who took him to the hospital

11 to have the operation?

12 MR. BARTH: Your Honor, I hate to object but it's not
13 relevant.

14 MS. HARWELL: Okay, I don't have to ask the question at
15 this moment.

16 MR. HARWELL: I'll be glad to.

17 THE COURT: Okay, okay, okay. Ms. Harwell, we're not
18 going to rehash your marriage.

19 MS. HARWELL: He opened the door.

20 THE COURT: No, ma'am, you can't stand on opened the door
21 because you asked him a question and he answered your
22 question. If Mr. Barth had asked him that question that would
23 have opened the door. Now, we are here on the issue they have
24 filed a Rule to Show Cause again you. He testified as to your
25 alleged violations of the Court Order. That's what you can

1 ask him about. I don't want to hear about your marriage.

2 MS. HARWELL: Okay, so ---

3 THE COURT: Because I want to know. ---

4 MS. HARWELL: --- Can I strike from the testimony ---

5 THE COURT: No, ma'am. You can ask him a question that's
6 pertinent at this time.

7 MS. HARWELL: Okay.

8 THE COURT: Now, we've been here for well over the two
9 hours that was requested and we're going to finish this today
10 but you're going to stay on point. We're all going to stay on
11 point.

12 MS. HARWELL: Okay. I'm not sure if this abides by your
13 request.

14 BY MS. HARWELL:

15 Q: Who took him to the hospital to be operated on?

16 MR. BARTH: Objection.

17 THE COURT: And, Ms. Harwell, what does that have to do?
18 I mean, listen to my question. We're here -- they are
19 alleging that you violated the restraining order that was in
20 the Final Order. They've alleged that you did not do the tax
21 return correctly that's in the Final Order. They've alleged
22 that you have made claims against the estate in violation of
23 the Final Order. Those are the issues that we're here on.
24 You taking your husband to the hospital prior to the Final
25 Order ever being entered is not relevant to this Court at this

1 time.

2 MS. HARWELL: Okay.

3 BY MS. HARWELL:

4 Q: Alright, I have a long series of questions to ask. Let's
5 talk about the tax return first. Were you at the mediation?

6 A: No, I was not.

7 Q: You were not privy to the conversation that led up to the
8 mediation agreement?

9 A: Ma'am, I was not at the mediation ---

10 Q: Were you anywhere at the mediation ---

11 A: I'm trying to follow the Order.

12 Q: --- participating in by telephone in the mediation?

13 A: Ma'am, I said I was not at the mediation. I've -- my
14 basis is solely complying with this Order.

15 Q: Were you referred to as a third party at the mediation in
16 violation of the mediation agreement?

17 THE COURT: What ---

18 MR. BARTH: I object.

19 THE COURT: --- you have asked him that two different
20 times. He said he was not at the mediation.

21 BY MS. HARWELL:

22 Q: Were you at the courthouse on your cell phone in your
23 truck until the last of the mediation participating in the
24 mediation?

25 A: No. I did not participate in the mediation.

1 Q: So, you're saying that you are not the third party giving
2 push back to my husband ---

3 MR. BARTH: I object.

4 THE COURT: He has answered your question, Ms. Harwell.
5 I can't help he didn't answer it like you wanted him to. Move
6 on.

7 MS. HARWELL: Okay.

8 BY MS. HARWELL:

9 Q: Okay, in the tax agreement what was agreed upon in the tax
10 agreement was not to pay the bills; is that your
11 understanding?

12 MR. BARTH: I object, Your Honor.

13 BY MS. HARWELL:

14 Q: And was to take it as ---

15 THE COURT: Ms. Harwell. Ms. Harwell, look at me. When
16 he stands up and says object ---

17 MS. HARWELL: I didn't hear him.

18 THE COURT: --- you need to stop talking, okay.

19 MS. HARWELL: I didn't hear him.

20 THE COURT: Because when he stands up and objects that
21 means I've got to deal with the objection. That doesn't mean
22 you get louder and talk faster. But show some respect to my
23 court reporter who can only record one person talking at a
24 time.

25 Now, what is your objection?

1 **MR. BARTH:** My objection is I don't believe it's proper to
2 go behind the Court agreement. It is what it is and it's
3 Court approved and I have no idea where she's going with but
4 to go back and rehash how we ended up at the mediated
5 agreement I don't think is proper.

6 **THE COURT:** Ms. Harwell, he testified he was not at the
7 mediation so I don't -- one, I don't think he's the witness
8 that can testify as to the negotiations regarding the mediated
9 agreement but two, the Order speaks for itself. I can read
10 what the Order says and the Order is what I have to follow.
11 There are a lot of times that negotiations go one way, one
12 person proposes, they go back and forth and back and forth
13 those proposals might not make it to the agreement so the only
14 thing the Court can consider as a result of that mediation is
15 what came out of it as far as enforcement. I can only enforce
16 the Order in front of me not any of the negotiations or
17 discussions that went forward that did not make it to the
18 Order.

19 **MS. HARWELL:** I'd like to call Julann Derrick to the
20 stand.

21 **THE COURT:** You have already excused Julaan Derrick and
22 this witness is on the stand. Finish with this one.

23 **MS. HARWELL:** Okay.

24 **BY MS. HARWELL:**

25 **Q:** You testified that you could not sale some property due to

1 what reason?

2 A: You filed these claims against the estate. We were in the
3 process of getting a Consent Order authorized by the Probate
4 Court. We had filed a petition and all of this is a matter of
5 record. We had filed a petition, the process as I understand
6 it, we had to get Baxter's consent go through that process and
7 then submit a proposed order to the Judge allowing us to go
8 forward in selling this property. We couldn't do that because
9 when you filed all your claims that changed everything. That
10 changed the whole complexion of everything. In addition, no
11 one in their right mind would buy this property now with these
12 claims pending against the estate.

13 Q: Did you have your -- did you make out a new will for your
14 father to sign just right before he died?

15 MR. BARTH: I object, not relevant.

16 THE COURT: What's the relevance ---

17 MR. HARWELL: I didn't make out any now ---

18 THE COURT: Okay, Judge, you've got to stop too.

19 MR. HARWELL: Okay.

20 THE COURT: What's the relevance of a new will being
21 signed?

22 MS. HARWELL: It's that the new will did not allow for
23 the sale of property.

24 THE COURT: What has that got to do with this Family
25 Court Order and your claim against the estate and whether or

1 not you had a basis to make that claim against the estate?

2 MS. HARWELL: That it didn't allow for the sale of
3 property therefore it was actually the new will and they are
4 actually having to sue his brother. That was the reason for
5 that and not the claim.

6 THE COURT: Do you know what she's talking about?

7 MR. HARWELL: As I understand it, the will did not have a
8 provision as the personal representative allowing me to sale
9 the property. Plus, Gena Ervin, my probate lawyer, filed a
10 petition where we had to name my brother and then end up
11 getting his consent to allow the sale of the property because
12 he and I were the only beneficiaries in the estate. There
13 weren't any creditor claims of any significates against the
14 estate and that was going to be submitted -- an Order -- a
15 proposed Order was going to be submitted to Judge Scott who
16 would authorize me then to sale the property. But in addition
17 -- but all that stopped when she filed the claims. That's my
18 understanding. But, additionally I don't know how anybody can
19 give clear title to these properties when we've got these
20 existing claims against the estate.

21 THE COURT: Alright.

22 MR. HARWELL: As I understand a claim against the estate

23 ---

24 BY MS. HARWELL:

25 Q: That's enough. That's fine. Thank you. In the e-mail

1 that Kevin Barth presented that was dated Thursday, December
2 17th, 2015 in that e-mail it states that there was \$880,000 in
3 cash in Bank of America and you said that the defendant's
4 claiming that you stole it. Was there \$880,000 in cash that
5 the estate actually took from there?

6 A: What?

7 Q: Did the estate take \$880,000 from Bank of America in cash?

8 A: You'll have to look at the -- there were numerous assets,
9 Debbie. You'll have to look at the inventory and
10 appraisement. A lot of dad's money that was with -- as I
11 recall, he had a substantial sum with Bank of America that he
12 moved to Wells Fargo. He still has, as I recall, I don't have
13 the inventory and appraisement in front of me that's been
14 filed. He still has about \$175 or \$180,000 somewhere in that
15 range with Bank of America. But, most of the money as I
16 recall got transferred to Wells Fargo.

17 Q: Which went into the estate; correct?

18 A: He did this -- he did this, yes but everything he has went
19 into the estate. He did that when he set up the stuff with
20 Baxter Hahn.

21 Q: Right and \$440,000 in cash at BB&T ---

22 A: I don't know about that.

23 Q: --- went into the estate?

24 A: I don't know about that. He had a lot of BB&T stock. I'm
25 not aware of him having BB&T cash. He has a lot of BB&T

1 stock. I'm not aware of BB&T cash. If you've got some bank
2 statements that you've somehow gotten I sure would like to see
3 them because I've tried to assimilate all the assets of the
4 estate and that's exactly why I'm upset about you taking the
5 mail.

6 Q: Do you have any proof whatsoever that I took one piece of
7 mail or have one piece of mail from David W. Harwell that I
8 have not sent to the Probate Court or not sent back to company
9 it came from and asked them to send it to the executor of the
10 estate, Bryan R. Harwell, at your address Lazar Place. Do you
11 have one, even one?

12 A: I've got several letters that were forwarded to you. One
13 was a bank statement from Merrill Lynch. One was a -- Mr.
14 Barth has it -- one's a bank statement from Merrill Lynch.
15 One is -- bear with my just a second -- one is this
16 Computershare letter that was forwarded to PO Box 7769 where
17 he had several hundreds of thousands of dollars of stock. One
18 is this Bank of America letter ---

19 Q: Is there any ---

20 A: Let me finish -- let me finish my answer, Debbie.

21 Q: And is there any proof whatsoever ---

22 THE COURT: Ms. Harwell ---

23 BY MS. HARWELL:

24 Q: --- that he ---

25 THE COURT: --- he gets to finish the answer.

1 MS. HARWELL: But he's finished all I needed to know.

2 MR. HARWELL: No, I'm not, ma'am. No, I'm not.

3 THE COURT: No, he's not.

4 MR. BARTH: Bryan, no arguing. Don't argue with her.

5 BY MR. BARTH:

6 A: One is a letter from Bank of America indicating important
7 tax return document enclosed that was forwarded to PO Box 7769
8 which included the dividend check; and another one was a
9 Merrill Lynch bank statement that was sent to 7769.

10 Q: And you ---

11 A: Let me finish. You also asked about letters that you sent
12 to the Probate Court. I'm not aware of any letters of my
13 father's that you have forwarded to the Probate Court, that
14 you or Ms. Edmonds has forwarded to the Probate Court. I
15 haven't seen any. Are there? Well, I can't ask a question,
16 I'm sorry. I assume there not.

17 Q: That would represent the mail that the mail inspector as
18 testimony showed earlier that's where he asked those to be
19 sent and where they were sent.

20 A: Are any of them filed in the Probate Court in Florence
21 County? Are any of them filed in the Florence County Probate
22 Court?

23 Q: They were sent to the Probate Court. Who's that from?

24 A: Wells Fargo.

25 Q: And who's it to?

1 A: Adobepalm.

2 Q: And what does it say?

3 A: It says, "Your 2015 forms are coming soon." 2015 tax
4 forms but I've never seen this and I don't even know what it
5 is.

6 MS. HARWELL: I'd just like to present this to the Court
7 to show that ---

8 THE COURT: Are you moving that into evidence?

9 MS. HARWELL: Yes, I'll move it into evidence, please.

10 THE COURT: Any objection, Mr. Barth?

11 MR. BARTH: No, ma'am.

12 THE COURT: Alright, defendant's exhibit one into
13 evidence without objection.

14 (DEFENDANT'S EXHIBIT NUMBER ONE IS
15 ADMITTED INTO EVIDENCE.)

16 BY MS. HARWELL:

17 Q: Mr. Harwell, why did you not have my husband a funeral?

18 MR. BARTH: I object. I don't think that's relevant. I
19 don't understand that question but I object.

20 THE COURT: What's the relevance of the question, Ms.
21 Harwell?

22 MS. HARWELL: I'm following up with the questions that
23 they put on record.

24 THE COURT: Alright, I'll allow it with very little
25 latitude but I'll allow it.

1 MR. HARWELL: I'll answer it.

2 BY MS. HARWELL:

3 Q: This was the worst, if you've ever had a perfect storm
4 this was it. Baxter and I were dealing with not only dad's
5 death but also this 1000 year flood, Debbie. We couldn't bury
6 him for a week. By the time we could bury him a week had
7 passed. He specifically did not want you in the obituary. He
8 did not want your attendance at a funeral. We ended up having
9 a private family burial because of all this and originally we
10 had scheduled it -- I can't remember what day dad died ---

11 A: Wednesday.

12 Q: --- we had scheduled it one day then the weather forecast
13 completely changed. They were announcing these major floods
14 all over the state. We changed it to the next day and that
15 turned out to be when the flood actually happened. So, we
16 couldn't bury dad for a week and we decided on a private
17 funeral because number one, we'd already gone through a week
18 and then number two, we didn't want continued interference by
19 you.

20 Q: And what interference did you see by me?

21 A: Debbie, I'll tell you for the last time. My understanding
22 has always been, as was indicated in that letter to Julian
23 Derrick, that dad did not want you showing up at his funeral.
24 He did not want you treated as his wife at the funeral. He
25 didn't want you listed in any obituaries.

1 Q: And you realize that your father and I were spending time
2 together the entire time before and after the mediation?

3 MR. BARTH: I object. It's not relevant.

4 MS. HARWELL: It certainly is relevant. You just got
5 through saying ---

6 BY MS. HARWELL:

7 A: That is not my understanding, Debbie. That is not my
8 understanding.

9 Q: May I ask you, on the first part of March when my husband
10 and I were spending time together over in Florence at the
11 Country Club of South Carolina it was a Saturday afternoon.
12 It was very pretty, the dog was outside, the sun was shining
13 and all of a sudden I heard the screeching of tires. You came
14 around the front of the house, jumped over the top of my head
15 as I sat on the porch, slammed the door to keep my husband and
16 me from each other. Is that an accurate statement?

17 MR. BARTH: I object.

18 MR. HARWELL: No, it's not accurate. I went to church ---

19 MR. BARTH: Bryan.

20 THE COURT: Mr. Harwell.

21 MR. BARTH: Hold on.

22 I object. It's not relevant.

23 THE COURT: Sustain the objection. Ms. Harwell, let's
24 move on to the issues. They're alleging you have violated the
25 Court Order. If I were you I'd focus on that.

1 BY MS. HARWELL:

2 Q: In the Court Order -- were you at the hearing for the
3 Court Order?

4 A: I was not.

5 Q: Was my husband ---

6 A: I wasn't at the mediation or the hearing, Debbie.

7 Q: Was my husband at the Court ordered hearing?

8 A: I assume he was.

9 Q: Are you aware that I had not seen the Court Order and was
10 not presented the Court Order ---

11 THE COURT: And how would he ---

12 MS. HARWELL: --- and did not know there was a Court
13 Order ---

14 THE COURT: And how would he ---

15 MS. HARWELL: --- are you aware or that?

16 THE COURT: Ms. Harwell, how would he be aware of what
17 you seen and what you knew? Move on. Ask him about questions
18 he can answer. I'll take judicial notice of the Final Order
19 that's in the court file that David Harwell was at the final
20 hearing. I will also take judicial notice you were not at the
21 final hearing. I will also take judicial notice that an
22 affidavit in lieu of appearance was signed by you and
23 presented by your attorney at that time wherein you requested
24 the Court approve the agreement. Let's move on.

25 MS. HARWELL: And that's inaccurate statements, Your

1 Honor. As ---

2 THE COURT: It's not an inaccurate statement by me
3 because I'm looking at it in the Court Order. When it's your
4 turn to testify ---

5 MS. HARWELL: Right.

6 THE COURT: --- you can testify but you're not going to
7 get your testimony in through this witness.

8 MS. HARWELL: Okay.

9 BY MS. HARWELL:

10 Q: You had mentioned the obituary. During the mediation
11 process I was advised to actually do that, to place that
12 obituary notice. Were you aware of that? I was advised that
13 by the attorney and the mediator. Were you aware of that?

14 MR. BARTH: I object.

15 THE COURT: Ms. Harwell, how would he be aware of what
16 you were advised of? Once again ---

17 MS. HARWELL: Should I ask it another way?

18 THE COURT: No, unless you can lay a foundation of how he
19 would know that. That sounds more like your testimony which
20 you will have an opportunity to do.

21 MS. HARWELL: Okay.

22 BY MS. HARWELL:

23 Q: You, in the papers that you put together, said that you
24 felt like that I was trying to actually get the mail forwarded
25 expecting a check but yet in your testimony and from what's

1 been said there's no check to be expected because it was
2 applied to the next year. Why would you -- which one is it?

3 A: I'm not sure I understand your question.

4 Q: Why would you think that I was trying to get mail because
5 of a refund check coming ---

6 A: Because of the e-mail -- because of the e-mail you sent to
7 Kevin. The e-mail that you sent to Kevin and then I went, you
8 know, I went to the IRS to find out has a joint -- has a check
9 been mailed. I was advised that they had not mailed one
10 because in the past, as I indicated in the pleading, the tax
11 refunds were applied to the next year's income tax due and I
12 had Mr. Barth contact you. How'd you want to handle this?
13 The IRS told me we need to fill out a form 1360, or whatever,
14 and I told Mr. Barth, I said, "I'm not doing anything with her
15 making these allegations against me".

16 Q: Do you ---

17 A: I'm not going to do anything without the Judge telling me
18 what to do. I needed the Judge's guidance and direction and
19 blessing. I was not about to fill out any forms or do
20 anything until we had this hearing.

21 Q: Do you have any mail for Debbie Harwell?

22 A: I don't have any of your mail, Debbie.

23 Q: Do you have any checks from CompuShare to Debbie Harwell?

24 A: I have none of yours.

25 Q: Who requested the address change to CompuShare for Debbie

1 Harwell to go to your address?

2 A: I didn't do a change of address for Debbie Harwell.

3 Q: There are two changes of addresses for Debbie Harwell.

4 MR. BARTH: I object. That's not a question.

5 BY MS. HARWELL:

6 A: I'll be glad to look at them and answer. I mean, you need
7 to give me some sort of context for clarification.

8 Q: Okay. Have you ---

9 A: I've done an individual change of address for my dad,
10 David W. Harwell.

11 Q: Did you do a family requested forward from 2208
12 Timberlane, the house in which my husband and I have had for
13 nine years, for your entire family and list your name as Bryan
14 and your wife's name as Debbie to forward all the mail to your
15 Lazar Place?

16 A: I did a forwarding -- for the last time, I did a
17 forwarding of address to me from Timberlane. If you'll show
18 me what you're talking about?

19 Q: I will look for it when I go back there.

20 A: But you have no interest in Timberlane. You were not
21 awarded -- you were not given Timberlane.

22 Q: Do you know what a Rule 70 is?

23 A: A Rule 70? No.

24 Q: Are you aware of a Rule that is a request to overturn a
25 Judge's ruling?

1 MR. BARTH: I object. It's not relevant. I don't know
2 what she's talking about.

3 THE COURT: Ms. Harwell ---

4 MR. HARWELL: What are you talking about?

5 THE COURT: Mr. Harwell, you've got to stop.

6 MR. HARWELL: I'm sorry.

7 THE COURT: Ms. Harwell, what relevance does that have?
8 I'm not aware of a Rule 70 for overturning.

9 MS. HARWELL: Well, maybe I've got the wrong number but
10 that's what I've been told that it was.

11 THE COURT: Well, I don't know what relevance that has
12 here because I'm -- in this file there's been no rule for
13 reconsideration -- or Motion for Reconsideration under any
14 rule filed. So let's move on.

15 BY MS. HARWELL:

16 Q: Did you receive an application in the mail to apply for
17 retirement that had the name David Harwell on the outside and
18 all the information on the inside was for Debbie Harwell to
19 apply for retirement?

20 A: No, ma'am. What was the address it was mailed to?

21 Q: 2208 Timberlane.

22 A: I'm unaware of it.

23 Q: From PEBA.

24 A: I'm unaware of it.

25 Q: Multiple pieces of mail.

1 A: I'm unaware.

2 Q: And you've received no mail from PEBA from Debbie Harwell?

3 A: Not for you. No, ma'am, and I question why you would not
4 give them your PO Box that you have been using to receive your
5 application for benefits?

6 Q: And in testimony that perhaps can be answered.

7 A: Okay.

8 Q: You also -- you have asked me to actually pay your
9 attorney's bill and people to serve papers bills but you --
10 did Mr. Barth tell you that he had actually been called by the
11 attorney's office and asked him to please serve those papers
12 up front the very first day that they were known about -- to
13 Deidre Edmonds office, that she had been permitted to receive
14 any and all served papers the first day in South Carolina?

15 A: I'm sorry I don't understand your question.

16 Q: The question is: Did you realize that the papers could be
17 served to Deidre Edmonds office and that Deidre Edmonds had
18 placed a call to Kevin Barth to say yes please the very first
19 day that they would except any pleadings that were going to be
20 served, any sort of papers.

21 A: I don't think that Deidre Edmonds agreed to represent you
22 in this or agreed to accept service for you for this Rule to
23 Show Cause. That's my understanding.

24 Q: And for what period of time did you try to serve these
25 papers?

1 A: I didn't try to serve them. I hired a process server, a
2 retired SLED agent to try and have you served and I think it
3 took a couple of months they were chasing you.

4 Q: So, what state did you send them to, to serve it?

5 A: What state?

6 Q: Yes.

7 A: I didn't send them to any state. I gave Mr. Barth various
8 addresses that I knew of which were the Rosanna Court Grand
9 Dunes, the Seven Devils and the -- Mr. Barth may have had some
10 other information or the investigator came up with some other
11 information with the location of the business that you were
12 apparently working at.

13 Q: And so they were trying to serve them in North Carolina
14 but the only place they served them was where I was residing
15 and was in South Carolina is where this says it was served.

16 A: That's where you were -- I think this last time you were
17 served I don't know where they finally got you served by Mr.
18 Smith but he was trying to get you served apparently where you
19 were working up in North Carolina and my understanding is he
20 sought assistance from the Sheriff's Department.

21 Q: So, let's go over the mail thing. So, you have no
22 evidence that I have any mail whatsoever in my possession or
23 have held any or done anything other than send it back to ask
24 that Bryan Harwell the executor be sent this mail?

25 A: You have filed unauthorized change of addresses on two

1 occasions after my dad died and after I was appointed personal
2 representative.

3 Q: And you realize that was a result of PEBA; correct?

4 A: I don't know why you did it, Debbie. I don't know why you
5 didn't call PEBA and give them your correct address? The
6 Order was issued in July.

7 Q: And we can address that.

8 A: I don't want your mail, Debbie. Nobody wants your mail.
9 Nobody's gotten your mail. In fact, with PEBA when I contacted
10 them to start Baxter's benefits and my benefits because we're
11 the beneficiaries under the judicial survivor's annuity, when
12 I contacted them to my surprise they had already been alerted
13 of dad's death and I offered to give them whatever information
14 they may need to help you get your benefit's started. They
15 promptly told me no we can't discuss it -- can't discuss it.
16 I said fine.

17 Q: PEBA requires a Certified Death Certificate in order to
18 apply for retirement.

19 MR. BARTH: I object, I object. That's not a question.

20 MS. HARWELL: I'm finishing my sentence.

21 THE COURT: Ms. Harwell, I'm trying to allow you some
22 leeway but you haven't brought a Rule to Show Cause against
23 them taking your mail, the subject of your mail in not before
24 me. So, let's address the issues of the Rule to Show Cause
25 that is before me. If you have some questions for this

1 witness regarding those issues you need to ask those.
2 Anything he might have done to you, you didn't file a Rule to
3 Show Cause so that's not before me. I've allowed you some
4 latitude but you need to move on.

5 BY MS. HARWELL:

6 Q: In pertaining to the death certificate that is in this
7 paper that you filed; did you ask for the death certificate to
8 be altered?

9 A: No, ma'am. Let me tell you, I signed a form, a DHEC
10 worksheet form that gave your name -- it gave your name and it
11 said, I think Deborah Boggs, and it also said married but
12 separated. The form -- and I gave that to the funeral home.
13 I don't deal directly, and I did not deal directly with DHEC.
14 The original form, as I understand it, which Ms. Edmonds has
15 that Mr. Dowling submitted indicated your name and it said
16 married, instead of married but separated. The only change
17 that I know of is that they were changing married to married
18 but separated. I signed the correct information, gave that
19 information to the funeral home with my brother present. They
20 have always known you were married but separated and it's my
21 understanding that was passed on to DHEC.

22 Q: Did you see the death certificate when it came back?

23 A: I did and it said N/A under surviving spouse and I even
24 contacted -- when I got it from the funeral home because the
25 provided it to me. DHEC didn't send it to me. I don't

1 contact -- I didn't have any contact with DHEC. The funeral
2 home sent it to me and I asked them. I said, "this thing says
3 N/A is that correct"? Mr. Dowling's response was, "I guess
4 so". "If she's not happy" -- talking about you -- "If she's
5 not happy, she needs to take it up with the government".
6 That's my understanding but your name was provided.

7 Q: Is your testimony here in Court today that you never asked
8 for a change to be made on the death certificate after the
9 original one was put in?

10 MR. BARTH: Your Honor, I object. It's not relevant. I
11 don't know what that has to do with our allegations of content
12 against ---

13 MR. HARWELL: The only thing that ---

14 THE COURT: Mr. Harwell?

15 MR. HARWELL: Yes, ma'am.

16 THE COURT: Stop talking, please.

17 Ms. Harwell, what is the relevance of him changing the
18 death certificate to the Rule to Show Cause against you?

19 MS. HARWELL: Let me go pull the papers so I can see how
20 they listed it in their Rule to Show Cause.

21 THE COURT: Well, before you do that he's objected that
22 it's not relevant. What is your argument as to the relevancy
23 of that question?

24 MS. HARWELL: It this to you?

25 THE COURT: Yes.

1 **MS. HARWELL:** The relevance of it is that we're talking
2 about an agreement. An agreement cannot be conformed with
3 because they're standing in the way of the agreement through
4 different methods as a death certificate, can't apply for
5 retirement, can't -- can't do anything.

6 **THE COURT:** Mr. Barth, as you brought it out on your
7 testimony under Ms. Edmonds about the death certificate I'm
8 going to allow a brief ---

9 She asked you: Did you do anything after the original to
10 change the death certificate. Answer her question.

11 **BY MS. HARWELL:**

12 **Q:** What happened was Mr. Dowling, if you'll look at the form
13 -- I hadn't seen it until it was sent to Mr. Edmonds -- that
14 Mr. Dowling completed it indicated married up at the top.
15 That was supposed to be changed to married but separated to
16 reflect what was on the form that I gave them. They had your
17 name on that form and they had married but separated. The
18 correction, if there was any correction, was to be married but
19 separated. Now, I don't know what -- because I didn't deal
20 directly with DHEC.

21 **Q:** Are you aware that your responsibility as PR is that you
22 are the informant on the death certificate and you are the
23 only one that can apply for a change. No one else can do
24 that.

25 **A:** I'm not sure. I don't have the statute in front of me.

1 Whatever the statute allows but let me tell you, I have not
2 made any intentional misrepresentation to DHEC or to anybody.

3 Q: Why did you not make a correction -- an effort to make a
4 correction?

5 A: Because it's their -- I don't know what DHEC's protocol
6 is, Debbie. Do they put N/A when it's married but separated?
7 I don't know. I don't know. I didn't prepare -- I didn't deal
8 with DHEC. A DHEC employee prepared it. I don't know what
9 else you want me to say?

10 THE COURT: I don't either so let's move on to a
11 different topic.

12 MR. HARWELL: If the law ---

13 THE COURT: Mr. Harwell?

14 MR. HARWELL: Thank you.

15 BY MS. HARWELL:

16 Q: You made statements that I disrupted the funeral and I had
17 tape recorded the entire conversation of which how may I
18 present that to the Court so they may listen to that?

19 THE COURT: When it's time for you to testify. Right
20 now, you're asking him questions.

21 BY MS. HARWELL:

22 Q: Did he tell you that he had -- that he called you and
23 asked you come -- did he call you and ask you to come to the
24 funeral home just to sit down and work everything out.

25 THE COURT: Who is he?

1 MS. HARWELL: The funeral home -- the man at the funeral
2 home.

3 BY MS. HARWELL:

4 A: I got a call as I recall it either from Sandy Dowling or
5 one of the other people there that you had shown up and had
6 demanded to see dad's body.

7 Q: Did they tell you that I had called prior to make an
8 appointment?

9 A: I don't recall that, Debbie. The bottom line was I agreed
10 to allow you to have a limited viewing of dad's body.

11 Q: But is it not so that you actually objected but when Ms.
12 Harwell presented her marriage certificate you were called and
13 told that he had no choice but to actually allow it.

14 A: No, he didn't to my knowledge and I don't think you
15 provided a death certificate, you may have provided a marriage
16 certificate.

17 Q: I'm sorry, a marriage certificate -- correction, marriage
18 certificate.

19 A: But all I know is I agreed -- I mean, I'm trying to deal
20 with the death of my father. Trying to, you know, I've got
21 all kind of emotions going on and the bottom line is I took
22 the high road and allowed you a viewing of my dad's body.

23 Q: Because you were told that there was legal reasons that --
24 -

25 A: No, that ---

1 MR. BARTH: I object.

2 THE COURT: Mr. Harwell.

3 MR. BARTH: I object.

4 THE COURT: Sustained move on.

5 BY MS. HARWELL:

6 Q: What was wrong with the wife viewing her husband's body?

7 A: Debbie, I tried to comply with my dad's wishes. That's it
8 plain and simple, okay. Y'all had gone through a contentions
9 family court hearing. I don't know what else you want me to
10 say, Debbie.

11 Q: I'll have my time to testify. Did you make any
12 alterations in the funeral whatsoever as a result of the wife
13 wanting to come to her husband's funeral or was it all weather
14 related?

15 A: Debbie, we had a private burial in part because we were
16 concerned about what you may do. We had a private -- or a
17 visitation on private property in part because we didn't know
18 what you may do.

19 Q: And ---

20 A: Let me finish. Let me finish. Because I couldn't
21 restrict you from showing up at the funeral home but you were
22 not going to show up at the visitation and just turn it into a
23 circus, Debbie. I'm trying to -- if you need to put yourself
24 in my shoes. You need to put yourself in my shoes for a
25 second. I'm his son.

1 Q: You ---

2 A: Well, I'm trying to explain. You need to put yourself in
3 my shoes and Baxter's shoes, okay. We're trying to comply
4 with dad's wishes. Y'all had been through family court. It
5 was contentious. I don't know what else to tell you, Debbie.

6 Q: It was not contentious and when spent time even afterwards
7 ---

8 THE COURT: Alright, alright ---

9 BY MS. HAARWELL:

10 Q: What did you think might happen -- what could a crying
11 widow who was beyond herself because it was the love of her
12 life and still is. What is it in the world you thought could
13 have happened?

14 A: Debbie, again, we tried to comply with dad's wishes. It's
15 his funeral not yours.

16 Q: It's my husband.

17 MR. BARTH: I object. She's arguing with the witness,
18 Your Honor.

19 THE COURT: Sustained.

20 BY MS. HARWELL:

21 Q: Exactly how do you think that I have violated the tax
22 refund division because there's been no action taken?

23 A: You demanded 100 percent of it in your e-mail.

24 Q: Has that been done?

25 A: Has what been done?

1 Q: Has there been any division of the tax refund?

2 A: No because you refused to comply with it.

3 Q: Has the tax refund been received?

4 A: No.

5 Q: The tax refund is applied toward next year.

6 A: I don't know what the IRS has done. I haven't filed a tax
7 return yet.

8 Q: You've seen the tax return of David and Debbie Harwell's
9 joint 2000 and ---

10 A: '14.

11 Q: '14 return?

12 A: Yeah. Yes.

13 Q: Does it say on there that it's being applied to next year?

14 A: I don't know, but if you want to show me in a tax return
15 where it says that I'll be glad to look at it. That's my
16 understanding from talking to the IRS agent.

17 Q: You also state in here and you say that, "interfering,
18 violating the cell phone release provision in the Court's
19 Order instead of reporting the deceased phone as stolen". Can
20 you give me an explanation of that?

21 A: Yes, as part of my responsibility as PR I was trying to
22 stop any bills that my dad was incurring. As I understood the
23 Order his cell phone number was supposed to have been
24 released. He told me he had paid for this phone. I went to
25 the Verizon store to say, hey, I'm the PR, here's the death

1 certificate, here's my appointment. I need to make sure that
2 these bills are stopped so we don't incur any more unnecessary
3 bills for the estate. When I went to the Verizon store they
4 advised me that his phone had been reported as stolen. That
5 it was still on your account and they got you on the phone
6 while I was there and that you were demanding the phone. So,
7 as to not cause any more confusion or problems and to just end
8 that headache with you I just gave them the phone and told
9 them to wipe everything off of it that was of a personal
10 nature. I gave them the phone.

11 Q: And on this document do you see that phone was not paid
12 for and that payments were having to be made and that David
13 Harwell was not paying the bill and that Debbie Harwell was
14 paying the bill and that Debbie Harwell had purchased the
15 phones and that David Harwell had not purchased the phones?

16 MR. BARTH: I object. It's not relevant, Your Honor.

17 THE COURT: Ms. Harwell, they didn't ask this on the
18 direct. He didn't bring up any information to me on direct
19 about the phone so what's the relevance?

20 MS. HARWELL: It's -- it's ---

21 THE COURT: But he didn't choose to go forward with it so
22 he didn't try to ask anything about the phone in his direct
23 examination.

24 MS. HARWELL: Okay so my understanding is that number D
25 is discarded?

1 THE COURT: Number D he did not go forward with.

2 MS. HARWELL: Okay.

3 BY MS. HARWELL:

4 Q: When you refer to violating a restraining order, was there
5 an actual restraining order or was this something that was in
6 a mediated agreement?

7 A: As I understand it, this was part of the Order that dad
8 wanted the restraining order. I'm following the Order,
9 Debbie.

10 Q: Is that in the Order or is that ---

11 A: It's in the agreement which is incorporated into the
12 Order. It's an Order. This agreement is an Order.

13 Q: And what's the date on the agreement?

14 THE COURT: The date on page one is July 17th, 2015 of the
15 mediated agreement. That was approved by the Court and made
16 part of the Final Order of the Court.

17 BY MS. HARWELL:

18 Q: And are you -- I've about lost my train of thought here,
19 but in violating the restraining order have you seen your
20 father and myself together after the document was executed?

21 A: When you showed up at the hospital.

22 Q: But not between then and the signing of this document?

23 A: I don't recall.

24 Q: Did he tell you that we had been together numerous times
25 after this document was signed?

1 MR. BARTH: I object, hearsay.

2 THE COURT: Sustained.

3 BY MS. HARWELL:

4 Q: So, your objection in this violating the restraining order
5 provision and disparaging remarks provision of the Court's
6 Order; what are the disparaging remarks referring to?

7 A: Your e-mail and the accusations that you made against me.

8 Q: Which ---

9 A: Your e-mail where you accuse me of stealing \$800,000 or
10 millions of dollars or whatever you say in your e-mail.

11 Q: But you just got through saying that the estate did sweep
12 those funds and took them into the estate. I did not use the
13 word steal and it is the amount that was swept into the
14 account.

15 A: Can I see the unredacted -- can I see the e-mail you sent?
16 I don't know what exhibit it is.

17 THE COURT: It's exhibit ten.

18 MR. BARTH: I think it's ten, Your Honor.

19 MS. HARWELL: Here it is.

20 BY MS. HARWELL:

21 A: "Because Bryan took the \$880,000 in cash in our account at
22 Bank of America, the \$440,000 in cash at BB&T and all the
23 other cash and assets and accounts that we are just now
24 finding out about totaling between \$7 - \$9,000,000 that were
25 not listed on notarized filing." Then you go on and say,

1 "plain and simple Bryan Harwell took advantage of an elderly
2 man with diminished mental abilities". Yeah, I think those
3 are disparaging remarks and accusing me of a felony on the --
4 on the death certificate when I provided your name and I
5 continue to provide your name.

6 Q: You didn't take this to mean that Bryan as the PR,
7 executor of the estate, had taken the \$880,000 and the
8 \$440,000 in ---

9 A: It doesn't indicate that; does it? It indicates Bryan
10 Harwell took advantage of his father is what it says.

11 Q: And ---

12 A: Read it.

13 Q: And because Bryan took -- now Bryan -- is addressed to the
14 David W. Harwell estate and you serve as the executor of that
15 estate; is that not correct?

16 A: I am.

17 Q: So, therefore that would be the intentions and it's ---

18 A: Well, you can testify to that. That's not how I
19 interpreted, Debbie, and certainly the last sentence about me
20 taking advantage of an elderly man with mental disabilities or
21 something like that, read those two together.

22 Q: In the postal inspector's testimony -- where did you meet
23 with the postal inspector? It indicates in the letter you met
24 with them?

25 A: I did. I met with him up in my office.

1 Q: At the United States Federal Courthouse Office?

2 A: I did. Yes, ma'am.

3 Q: On the probate papers there is an e-mail address to send
4 all probate information to for my husband's estate. What is
5 that probate address?

6 A: It gives ---

7 MR. BARTH: I object. I don't have a clue what the
8 relevance of that would be, Your Honor.

9 THE COURT: What's the relevance of that, Ms. Harwell, to
10 this action?

11 MS. HARWELL: I'm getting to it.

12 THE COURT: Then tell me it now. What's the relevance of
13 the e-mail address he provided as a Probate Court contact to
14 this action for Rule to Show Cause in Family Court?

15 MS. HARWELL: I will come back to that, your Honor.

16 THE COURT: Sustained.

17 BY MS. HARWELL:

18 Q: In your violation number three where it says the parties
19 were restrained from contacting or communicating with each
20 other. The violation is a provision of the agreement. The
21 defendant appeared without permission. My husband was alive
22 at that point; correct?

23 A: He was.

24 Q: Did he have any objections to me being there?

25 A: My father was on a respirator, Debbie, struggling for his

1 life.

2 Q: I realize that.

3 A: He was not even able to speak, Debbie.

4 Q: But it is the estate saying they objection but actually my
5 husband was alive at that point.

6 A: Yes.

7 Q: Is that not correct?

8 A: Yes.

9 Q: So I don't see how they could have a violation of ---

10 MR. BARTH: I object. The Order says what it says, Your
11 Honor.

12 THE COURT: The Order speaks for itself. There is a
13 restraining order in place. If you have an Order that resends
14 that Order I'd be happy to see it at this time but the Order
15 speaks for itself.

16 BY MS. HARWELL:

17 Q: In page number six, violation number four talking about
18 the funeral of my husband did you look at the law to see who's
19 actually in charge at that time at the funeral ---

20 MR. BARTH: I object.

21 THE COURT: What's the basis of your objection?

22 MR. BARTH: The basis of the objection is she wants to
23 know if he looked at the law -- apparently she's going to ask
24 him ---

25 MS. HARWELL: Exactly.

1 MR. BARTH: --- of his statutory priority which is
2 irrelevant to this case.

3 THE COURT: Ms. Harwell, I'm looking at an Order that's
4 not been rescinded in Family Court and it's my understanding
5 it's not been appealed. The Order says; one, it includes a
6 restraining order, and two, there includes a waiver of estate
7 claims or make any claims upon or against the estate of the
8 other. Each party's estate shall be bound by the terms of
9 this agreement. So, what does the bearing of the law have on
10 this because people enter into agreement all the time what may
11 waive their rights under the law that might not ordinarily be
12 taken away from them any other way. There is an Order in
13 place signed by both of you that was approved by the Court.

14 MS. HARWELL: Right and we're ---

15 THE COURT: And we're not going into the law that might
16 supersede that at this time. Sustained.

17 MS. HARWELL: Okay.

18 BY MS. HARWELL:

19 Q: I'm not sure how to ask this but if the right has the
20 legal right at the time of the funeral how could you possibly
21 come up with violation four?

22 MR. BARTH: I object. Same objection, the agreement is
23 what it is, Your Honor.

24 MS. HARWELL: You're the one that put violation four.

25 MR. BARTH: There was to be no communication under the

1 Court Order, no interference of the estate.

2 THE COURT: I'm going to sustain the objection. Ms.
3 Harwell, the Order speaks for itself.

4 MS. HARWELL: I'm sorry.

5 THE COURT: The Order speaks for itself.

6 BY MS. HARWELL:

7 Q: Judge Harwell, my husband, chose not to go by that Order
8 and making phone calls, visits ---

9 THE COURT: Is this a question?

10 BY MS. HARWELL:

11 Q: --- spending time together ---

12 THE COURT: Ms. Harwell, is this a question because
13 you're asking him about the actions of someone else. It
14 sounds more like your testimony to me but is there -- what is
15 the question?

16 BY MS. HARWELL:

17 Q: The question is how is it that you pick and choose a
18 violation of an agreement?

19 A: It's my knowledge that you showed up at the hospital and
20 the agreement had a restraining order. You showed up
21 unannounced. Baxter and I were with our dad while he's on a
22 respirator. I don't know what else you want me to say,
23 Debbie?

24 Q: And you asked me what questions when I was there?

25 A: I didn't ask you -- I don't think I asked you a whole lot.

1 I told you, you shouldn't be here and I let you stay there for
2 a couple of minutes and then I said it's time for you to
3 leave. You didn't leave you just went outside and sat down.

4 Q: That can come in testimony later. In going through the
5 mail I think we have established that you said that you have
6 no mail of mine and that you know of no mail that I have of my
7 husband's.

8 A: I don't know if you have mail or not. You did all of
9 these change of address authorizations. You had some. You
10 had the Bank of America dividend check, the tax statement from
11 Bank of America ---

12 Q: That's not true.

13 MR. BARTH: I object.

14 MS. HARWELL: I object.

15 BY MS. HARWELL:

16 A: Well, she's -- Your Honor has the documents that shows
17 that they were forwarded to your PO Box.

18 Q: That's not true.

19 THE COURT: Don't argue with the witness, Ms. Harwell.

20 BY MS. HARWELL:

21 Q: And once again, in violation eight, have you seen any
22 evidence of Ms. Harwell asking CompuShare to change any
23 addresses whatsoever on David Harwell other than herself?

24 A: I got those three letters from CompuShare or Computershare
25 indicating that they had gotten a request for change of

1 address for David W. Harwell to PO Box 7769, Myrtle Beach,
2 South Carolina on three separate letters. One involving
3 Toronto Dominion Bank stock, one involving BB&T stock, one
4 involving Bank of America stock all in the aggregate involving
5 several hundred thousand dollars worth of stock. That's what
6 those ---

7 Q: So, Computershares stock that is Debbie Harwell's you do
8 not have?

9 A: What?

10 Q: Debbie Harwell's Computershares TD stock, you do not have?

11 A: I do not have, not to my knowledge. David Harwell has
12 Toronto Dominion stock.

13 Q: And so does Debbie Harwell so my suggestion is that ---

14 THE COURT: No, ma'am, you don't get to argue back with
15 him.

16 BY MS. HARWELL:

17 A: You need to notify them of your correct address.

18 Q: Ms. Harwell has done that.

19 A: Where did your father get his mail?

20 A: He was getting it at Timberlane. He also got mail, to
21 some extent, he was still getting some at Canal Street for
22 example a property tax notice that we didn't get. He was
23 still getting mail there. He had utility bills coming there
24 and he also had mail that he was getting at a PO Box in
25 Georgetown that was associated with the Bell Legal Group. I

1 don't know that exact PO Box number but at one time he was
2 getting mail there.

3 Q: So, would you say on a percentage would 99.9 percent of it
4 go to Georgetown or do you have any idea?

5 A: Well, because he was in Florence he was getting a lot of
6 his mail in Florence until he closed that PO Box in Georgetown
7 he would get some business related mail there.

8 Q: Have you asked for any assistance in the -- from David
9 Harwell's wife, Debbie Harwell, in conducting your judiciary
10 responsibilities as executor of the estate? Have you asked
11 for any assistance on any problems that you needed, anything
12 that you wanted, anything that would cause the estate not to
13 have any problems? Have you asked for any assistance?

14 A: Debbie, I have not contacted you directly and there was no
15 sense -- once we got this e-mail on this tax refund that told
16 us all we needed to know. It was clear by that you weren't
17 going to comply with anything.

18 Q: Have you contacted any attorneys that Ms. Harwell has
19 actually talked to about representing her?

20 MR. BARTH: Objection. That's not relevant.

21 THE COURT: What's the relevancy of that, Ms. Harwell?

22 MS. HARWELL: The relevance would be not being able to be
23 represented by an attorney today.

24 THE COURT: Sustained.

25 Ms. Harwell, do you have any more questions?

1 MS. HARWELL: I'm looking through to see what they've
2 alleged. Not just yet but I reserve the privilege to recall.

3 THE COURT: Any redirect?

4 MR. BARTH: None, Your Honor. Is there any chance I could
5 have a minute to run to the restroom?

6 THE COURT: Well, we're going to stop at this point in
7 time because I've got a court reporter and staff that need to
8 get home so what I'm going to have to have you do is contact
9 the scheduling clerk tomorrow and reschedule to finish up this
10 case when I'm here again. I'll be back here, I believe, the
11 week of Memorial Day and the first week of June and then it's
12 iffy after that. So, we will expedite this matter to have it
13 rescheduled in front of me even if we have to move some stuff
14 around. I think we're going to need half a day just to be
15 safe. Because it was scheduled for two hours and we've gone
16 almost four. Ms. Harwell, Mr. Barth is going to reschedule
17 this case. He is then going to notify you of the scheduled
18 date. Let me advise you -- well, first tell me an address
19 that you wish to be sent notice of this hearing at for the
20 record?

21 MS. HARWELL: Can I choose an attorney's office?

22 THE COURT: No, ma'am. It's a Rule to Show Cause it's
23 got to be served directly upon you under Rule 14 of the Family
24 Court Rules of Civil Procedure. No one can accept service on
25 your behalf because of the possibility that the person being

1 ruled in can go to jail due process required them to served
2 personally. So, what is the address you wish to be served at?

3 MS. HARWELL: 8552 Rosanna Circle, Myrtle Beach.

4 THE COURT: And I do not want there to be any issue of
5 avoiding service. I'm going to direct Mr. Barth to contact
6 you once he has a hearing date. He is going to find a time
7 that you will be available to accept service and then he's
8 going to send someone there to give it to you and I expect for
9 you to be there ---

10 MS. HARWELL: I have never avoided service, Your Honor.

11 THE COURT: I don't care at this point. I'm talking. I
12 want there to be no problem in getting this matter set and no
13 problem in getting this matter heard and no problem in getting
14 you served.

15 Alright, check and make sure you have all of your
16 exhibits.

17 I'm going to let my court reporter check and make sure
18 she's got all of the exhibits before y'all leave.

19 Ms. Harwell, you asked for additional time before the PI
20 bills that Mr. Harwell testified to come into evidence. Do
21 you now have an objection -- evidentiary objection to these
22 coming in?

23 MS. HARWELL: Yes, ma'am.

24 THE COURT: What is your evidentiary objection?

25 MS. HARWELL: I don't know if they made them or if the PI

1 made them. I don't know where they came from.

2 THE COURT: Alright, plaintiff's exhibit number 22 is
3 into evidence over objection.

4 (PLAINTIFF'S EXHIBIT NUMBER TWENTY-TWO IS
5 ADMITTED INTO EVIDENCE.)

6 THE COURT: Alright, she's got them all. Thank you.

7 MR. BARTH: Thank you, Your Honor.

8 THE COURT: Mr. Barth, just contact Ms. Church and she'll
9 get you a new hearing date.

10 MR. BARTH: I'll do that in the morning. Thank you.

11

12 (Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of David W. Harwell by and through his personal representative Bryan Harwell, held in the Family Court for Horry County, Horry County Courthouse, Conway, South Carolina, on May 19, 2016.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Sallie Beth Todd, CVR
Official Reporter

June 13, 2016.

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
COUNTY OF HORRY)	2015-DR-26-691
David W. Harwell by and)	
through his personal)	
representative,)	
Bryan Harwell,)	
Plaintiff,)	Transcript of Record
vs.)	
Deborah B. Harwell,)	June 16, 2016
Defendant.)	

B E F O R E:

Honorable Melissa Buckhannon
Horry County Courthouse
Conway, South Carolina

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

Kevin M. Barth, Esquire
Gena Ervin, Esquire
Attorneys for Plaintiff

Cliff Welsh, Esquire
Attorney for Defendant

Sallie Beth Todd
Family Court Reporter

Part One: Pages 1 - 75

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
SAMUEL DOWLING				
By Kevin Barth	8		25	
By Cliff Welsh		23		25
BAXTER HARWELL				
By Kevin Barth	28			
By Cliff Welsh		31		
DEBORAH HARWELL				
By Kevin Barth	34		95	
By Cliff Welsh		86		

Certificate of Court Reporter				122

EXHIBITS

<u>No.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>
P23	Funeral Home Documents		X	9
P24	Death Certificate		X	22
P25	Lis Pendens in Horry County & Petition for Approval of Sale		X	30
P26	Text message from Defendant		X	30
P27	Petition for Elective Share		X	59
P28	Rule 60B		X	61
P29	E-mail from Defendant regarding Change of Venue		X	83
P30	Inventory and Appraisement		X	97
P31	Revised Attorney Fee Affidavit Of Kevin Barth		X	97
P32	Revised Attorney Fee Affidavit Of Gena Ervin		X	97
D2	Order of Removal to Florence County Circuit Court		X	94

1 **THE COURT:** We are back on the record in case number
2 2015-DR-26-691, David W. Harwell, deceased, by and through his
3 duly appointment personal representative of his estate, Robert
4 Bryan Harwell versus Deborah Harwell. The matter commenced on
5 the filing of an Order and Rule to Show Cause by the Court on
6 February the 11th, 2016 wherein the plaintiff is seeking to
7 hold the defendant in contempt for her failure to follow the
8 Court Order dated July 21st, 2015. The hearing was started on
9 May 19th, 2016. It was initially scheduled for two hours. We
10 went approximately two -- four and a half hours at that time
11 and the matter was continued over until today's date. Present
12 at the call of the case is the plaintiff along with his
13 attorney, Mr. Kevin Barth. The defendant is also present
14 along with her attorney, Mr. Cliff Welsh, who was not present
15 for the first portion of this trial but is now representing
16 the defendant in this matter.

17 Alright, counsel, have y'all been able to talk and
18 resolve any of the issues of the Rule to Show Cause since the
19 last time we were here, Mr. Barth?

20 **MR. BARTH:** No, Your Honor. I actually didn't know she
21 was represented but I have not talked with Ms. Harwell.

22 **MR. WELSH:** She didn't know she was represented until
23 yesterday, Your Honor. I just came for very limited -- my
24 representation is somewhat limited.

25 **THE COURT:** Okay, alright.

1 Mr. Barth, you don't -- do you have any further
2 witnesses?

3 MR. BARTH: I do, Your Honor. I do have two short ones
4 but may I -- may I ask a question?

5 THE COURT: Yes, sir.

6 MR. BARTH: I'm not sure I understand what limited
7 representation means?

8 THE COURT: I am curious --

9 MR. WELSH: Well, okay, I'm here for this hearing and I
10 was just contacted by some of the lawyers that David used to
11 practice with who were concerned that this had kind of taken
12 an unusual turn so they wanted someone to be with her and I
13 agreed to do it.

14 THE COURT: Well, are you now her attorney of record? I
15 mean, for the purpose of -- I'm just concerned about how were
16 going to go forward and concerned about you. When we say
17 you're limited, does it mean you're limited to this -- just
18 this hearing?

19 MR. WELSH: Yes, ma'am.

20 THE COURT: You're limiting your representation? Are you
21 now the attorney of record? You're on the -- because, I mean,
22 if you're appearing as her attorney of record you're on the
23 hook as far as the Court's concerned, I mean, until there's an
24 Order relieving you.

25 MR. WELSH: I understand.

1 **THE COURT:** Okay. Alright.

2 **MR. BARTH:** Your Honor, I promise you I'm not trying to
3 be difficult but it's a little bit complicated because after
4 our last hearing, and I'm getting ready to question Ms.
5 Harwell on it, she filed a Rule 60B Motion to set aside the
6 Court Ordered Agreement that is being heard this afternoon. I
7 mean, is Mr. Welsh in that?

8 **MR. WELSH:** Well, I agreed to go with her for that. My
9 participation in that primarily was I told her that whatever
10 she filed as a reply should be in affidavit form. I didn't
11 know whether the Judge would want to hear testimony or not.
12 Probably not in a Motion for Reconsideration but that -- my
13 concentration was this. I didn't even know about the 60B
14 until yesterday.

15 **THE COURT:** You know it's scheduled for 2:00 today?

16 **MR. WELSH:** Okay.

17 **THE COURT:** In front of Judge Spruill down the hall
18 because we had -- because that Motion was filed, we knew we
19 were continuing this Motion, so in an effort to be
20 accommodating to all parties so they didn't have to keep
21 coming back and forth, coming back and forth we knew Judge
22 Spruill was going to be here this week, I was here this week.
23 So, we scheduled it -- we cleared a day and scheduled it so
24 that all matters could be heard at the same time while
25 everybody was here. So, that's set for 2:00 today in front of

1 Judge Spruill.

2 MR. WELSH: Yes, ma'am.

3 THE COURT: Okay.

4 MR. WELSH: I guess I will be there.

5 THE COURT: Alright.

6 MR. BARTH: Thank you, Your Honor. May it please the
7 Court?

8 THE COURT: Yes, sir.

9 MR. BARTH: We call Sandy Dowling.

10 THE COURT: Sir, you'll see that blue bible there on the
11 rail. When you get to it if you would put your left hand on
12 it for me; raise your right?

13 MR. DOWLING, HAVING BEEN FIRST
14 DULY SWORN, TESTIFIED AS FOLLOWS:

15 THE COURT: Have a seat there in that chair and once you
16 get situated if you could state your full name for the record,
17 please, sir.

18 MR. DOWLING: My actual full name is Samuel Dowling. My
19 nickname is Sandy, that's what I go by.

20 THE COURT: I understand. Could you spell your last name
21 for my court reporter, please, sir?

22 MR. DOWLING: D-O-W-L-I-N-G.

23 THE COURT: Just like it sounds. Thank you so much.

24 MR. BARTH: May it please the Court, Your Honor?

25 THE COURT: Yes, sir, Mr. Barth.

1 DIRECT EXAMINATION OF MR. DOWLING BY MR. BARTH:

2 Q: Mr. Dowling, give us your full name and occupation,
3 please.

4 A: Samuel Gardner Dowling, I am an associate director of
5 Stoudenmire Dowling Funeral Home.

6 Q: Where is that?

7 A: Florence.

8 Q: Alright and can you tell me how long you've been in the
9 funeral business?

10 A: I actually started working part-time when I was in high
11 school so most of my life.

12 Q: Most of your life. Alright, and Stoudenmire Dowling is
13 the funeral home that handled Judge Harwell's --

14 A: That's correct.

15 Q: -- funeral arrangements?

16 A: That's correct.

17 Q: Alright, now in your business as a funeral director, do
18 you keep records in the ordinary course of your business?

19 A: Absolutely.

20 Q: To memorialize what -- what the arrangements are?

21 A: Yes.

22 Q: Can you take a look at that set of documents and tell me
23 whether or not those are true and correct copies of the
24 documents in your file?

25 A: Everything here is copies of what we have in our file.

1 Q: Okay and there's some other stuff about financial
2 arrangements and all of that that doesn't apply to this.

3 A: Right.

4 Q: Those are the documents that have relevance --

5 A: Correct.

6 Q: -- to this?

7 A: Yes, sir.

8 MR. BARTH: I'd move to introduce that, Your Honor.

9 THE COURT: Any objection, Mr. Welsh?

10 MR. WELSH: No, ma'am.

11 THE COURT: Alright, that would be plaintiff's exhibit 23
12 into evidence without objection.

13 (PLAINTIFF'S EXHIBIT NUMBER TWENTY THREE IS
14 ADMITTED INTO EVIDENCE.)

15 BY MR. BARTH:

16 Q: Sammy, will you take a look at that document; and I'd like
17 you to start, if you would, at the -- at the back of it.

18 MR. BARTH: Judge, I've got one for you to write on if
19 you need to.

20 BY MR. BARTH:

21 Q: What is that document?

22 A: I'm assuming you're talking about the fax coversheet -- oh
23 no, the very last thing.

24 Q: The very last one.

25 A: That is -- it's called an abstracted of the death

1 certificate.

2 Q: Alright, and can you just tell us in general what that is,
3 please?

4 A: When we gather the information from the family to document
5 on the death certificate we have to enter it in the abstract
6 form to e-mail to DHEC.

7 Q: Okay and does that have to be done under the statute
8 electronically?

9 A: Yes, yes.

10 Q: Alright, is that what this document is?

11 A: That's a copy of what is actually e-mailed through to DHEC
12 and everything on here -- you will notice over on the left
13 hand side you will see my initials.

14 Q: Yes, sir.

15 A: That is saying that I have looked at this, matched it with
16 the death certificate worksheet, which is also in here, that a
17 family member has to sign off on --

18 Q: Okay.

19 A: -- to verify that all of that information is correct.
20 That means that once we transfer it to the abstract I'm
21 confirming that all of that information is the same as on the
22 worksheet.

23 Q: Alright and if you would look at the top margin where it
24 says items one to 23; who completes that portion of the form?

25 A: The funeral home.

1 Q: Alright, that'd be you guys?
2 A: Yes, sir.
3 Q: Alright and is there a spot on there for surviving spouse?
4 A: There is.
5 Q: And that's blank number 10; right?
6 A: Uh-huh. (Affirmative response)
7 Q: Can you tell me whose name is listed on that?
8 A: Deborah Boggs.
9 Q: Okay and you got that information from where?
10 A: From Bryan.
11 Q: Alright, now I'd like to flip up one page, please. You
12 referenced a worksheet, you see that?
13 A: Uh-huh. (Affirmative response)
14 Q: Alright and is that document signed by anybody?
15 A: R. Bryan Harwell.
16 Q: Alright and dated what?
17 A: September 30th, 2015.
18 Q: Alright, would you tell me whether or not this document
19 lists a surviving spouse?
20 A: Deborah Boggs --
21 Q: Alright.
22 A: -- as maiden name.
23 Q: Alright, now there is a block number nine that says
24 marital status and then there's a block 55 at the bottom that
25 references the kind of business he was in.

1 A: Correct.

2 Q: Alright, block number nine, if you would, tell me what
3 block is checked?

4 A: Originally, married.

5 Q: Okay.

6 A: We realized that the actual legal status was married but
7 legally separated and we made a correction, faxed it into DHEC
8 --

9 Q: Okay.

10 A: -- and had the correction made.

11 Q: Okay, on this one that was first done you had his business
12 as judicial and his status as married; correct?

13 A: Correct.

14 Q: Alright and you tell me that that was a mistake and it was,
15 corrected.

16 A: Uh-huh. (Affirmative response)

17 Q: What document would we look at to see where that was
18 corrected?

19 A: The same basic document it'll also have Bryan's signature
20 on it.

21 Q: Okay, is that part of this file?

22 A: Yes, sir.

23 Q: Alright and, if you would, turn to that one and tell us if
24 Bryan signed it?

25 A: He did.

- 1 Q: Was that done the same day?
- 2 A: The same day.
- 3 Q: Alright, block number nine, marital status. You corrected
- 4 it to say what?
- 5 A: Married but separated.
- 6 Q: Alright and did it also list a surviving spouse?
- 7 A: Deborah Boggs.
- 8 Q: Alright and it changed block 55 from judicial to what?
- 9 A: Legal.
- 10 Q: Okay, now are there any other documents that would be used
- 11 to go to DHEC that Bryan would have signed?
- 12 A: Not that he would have signed, the only other document --
- 13 and this is an internal document for us, the first document on
- 14 that stack that you handed me is a death certificate release
- 15 form. That's where Bryan picked up the certified copies that
- 16 we had ordered for them.
- 17 Q: Okay.
- 18 A: And he signed off saying that he had received those
- 19 copies. That's the only other signature that we have.
- 20 Q: Well, other than signing the bottom of the worksheet, is
- 21 there anything that Bryan would do under the statute that
- 22 would give information directly to DHEC?
- 23 A: No.
- 24 Q: Would he have any other reason or method to contact DHEC?
- 25 A: No.

1 Q: Alright, all this stuff about ordering death certificates
2 and sending in the doctor's certification and things like
3 that; that's done by whom?

4 A: Funeral home.

5 Q: Done by you guys?

6 A: Uh-huh. (Affirmative response)

7 Q: And did y'all do that in this case?

8 A: We did.

9 Q: Alright and a death certificate was issued that says
10 marital status, married but separated and surviving spouse's
11 name is N/A. Did Bryan sign any worksheet or did you fill out
12 any worksheet that had N/A where the surviving spouse was?

13 A: No.

14 Q: Do you have any idea why DHEC does it that way?

15 A: I have no idea.

16 Q: Okay, is there any other way for you to send the stuff to
17 DHEC other than married but separate and listing the surviving
18 spouse's name?

19 A: No.

20 Q: I want to direct you to, if you would, an e-mail that's in
21 your file. Do you see that?

22 A: Is this it?

23 Q: Yes -- no, sir, next page. I think it's an e-mail dated
24 September the 3rd.

25 A: I'm just looking through what you handed me. I don't find

1 it.

2 Q: It should be in here.

3 MR. WELSH: Your Honor, I'm Johnny come lately to this
4 but what's the relevance of this to what we're doing here
5 today?

6 THE COURT: Mr. Barth?

7 MR. BARTH: Ma'am.

8 THE COURT: I'll let you respond to -- he's asking to the
9 relevance of this information.

10 MR. BARTH: The relevance of the information is one of
11 our allegations is that she's violated the Court Order by
12 making disparaging comments about Judge Harwell or the family;
13 and one of the disparaging comments is that he's intentionally
14 and willfully committed a felony by giving false information
15 to DHEC and that's what this addresses.

16 THE COURT: That was part of her -- during the first part
17 of the trial, and I know you are coming in late --

18 MR. WELSH: And I apologize for that.

19 THE COURT: -- That's fine. She made a great deal about
20 the fact and accused the personal representative of purposely
21 leaving her off of information, purposely not including her as
22 a surviving spouse, even made allegations that he had broken
23 the law by not listing her, falsely reporting his marital
24 status. So, I guess that is --

25 MR. WELSH: But how does this Court have jurisdiction

1 today?

2 **THE COURT:** One of the -- the Family Court Order is --
3 and I'm assuming this is -- the Family Court Order included a
4 very broad restraining order by agreement of the parties; that
5 the restraining order required both of them to -- for no
6 harassing contact -- no contact, no coming about, no calling,
7 no harassing of either of the parties, including no
8 disparaging remarks or making any comments about the family.

9 **MR. WELSH:** All of that would've died with the deceased.

10 **THE COURT:** Not necessarily because the Family Court
11 Order as it extends -- for example, if the Family Court Order
12 doesn't just die with the deceased that's why we can still do
13 equitable division once the deceased is gone. We can still do
14 still follow the terms if the terms apply to things that are
15 not directly involved, such as, if she were to pass away
16 alimony would terminate if she were awarded alimony but if she
17 were to pass away prior to him her estate would still receive
18 whatever property division.

19 **MR. WELSH:** Oh, I understand about the property and I
20 think in their jurisdictional paragraph they talk about the
21 tax refund but everything else -- as I understand it
22 everything other than equitable division especially -- you
23 know, died with the -- one of the spouses.

24 **THE COURT:** Mr. Barth?

25 **MR. BARTH:** That's not the case. That's not the case

1 law and it can be --

2 MR. WELSH: Well, I'm saying --

3 MR. BARTH: -- she can be held in contempt for violating
4 the Court Order on and on depending on what it is and one of
5 the allegations is she's interfering with Judge Harwell's
6 estate. That doesn't die with him. She can still be held in
7 contempt for that because that's exactly what the agreement
8 addresses.

9 MR. WELSH: Maybe so but not in this Court, I don't
10 think.

11 THE COURT: Who else would enforce the Family Court
12 Order, Mr. Welsh?

13 MR. WELSH: Well, if it's an estate matter I'm sure
14 there's something going on -- I've heard talk about probate
15 attorneys and things going on. There's something going on in
16 Florence, something going on in Beaufort. I mean, there are
17 actions going on in other Courts involving the estate.

18 MR. BARTH: That does not affect this Court's authority
19 to enforce a Family Court Order and that is what we're asking
20 Your Honor to do.

21 MR. WELSH: I think it does. I mean, that doesn't
22 necessarily, some of that stuff is exclusive --

23 THE COURT: What other Court could enforce a Family Court
24 Order if she has violated it?

25 MR. WELSH: Well, the problem is any kind of -- I don't

1 mean it to -- it's just what I remembered when I practiced in
2 Family Court. The case law says everything but the possible
3 equitable division dies with the spouse. It's personal to the
4 spouse and including contempt. In fact, I'm sure one of the
5 cases they had a contempt proceeding pending at the time of
6 death and it -- Supreme Court said that's gone.

7 **THE COURT:** You got the case law to back that up?

8 **MR. WELSH:** I'll find it. I mean, I really don't care if
9 they want to go into that. I just didn't understand the
10 reason for it.

11 **THE COURT:** Well, normally -- and I will tell you, this
12 is a very different type of Order. They worked it out through
13 mediation. They both signed the agreement at mediation and
14 brought it before the Court, the Court approved the Order. I
15 mean approved the agreement and made it part of the Court
16 Order. The parties, and it's very common in Family Court, the
17 parties can bind themselves to something that the Court would
18 never order. They can bind themselves to things that the
19 Court would never consider equitable to order, would never
20 feel like it was an appropriate order and one of those things,
21 I would point out, that these people agreed to that is not
22 something that the Court would normally do -- I don't think
23 I've ever done it on a permanent basis myself -- is they
24 agreed that there would be a restraint that they would have --
25 that there would be no harassment of each other and further no

1 disparaging remarks about the other's family. Now, that's
2 something that the Court would not ordinarily order but it was
3 something that the parties bound themselves to. So, it didn't
4 say and that dies upon the death -- ends upon the death of it.
5 I don't know but if that's what there allegations they're
6 making you can certainly come back with her testimony but it's
7 a Family Court Order and the only Court that can enforce the
8 Family Court Order in this regard would be the Family Court.

9 MR. WELSH: Well, with all due respect, I don't know that
10 the Family Court can -- in this particular circumstance, but I
11 -- I -- if they want to go through and put this on the record
12 I'm not going to tell Mr. Barth how to try his case.

13 THE COURT: So, are you withdrawing your objection?

14 MR. WELSH: I'll withdraw my objection.

15 THE COURT: Alright, thank you.

16 MR. BARTH: May it please the Court, Your Honor?

17 THE COURT: Yes, sir.

18 BY MR. BARTH:

19 Q: I'm going to show you this e-mail. It may not be in the
20 one I handed you but --

21 A: I found it.

22 Q: Alright, do you see an e-mail from Ms. Harwell --

23 A: I do.

24 Q: -- from September the 30th? Who is that addressed to?

25 A: To our e-mail address.

1 Q: It belongs to the funeral home?

2 A: Yes, sir.

3 Q: Alright and can you read that for us, please?

4 A: It says, "I am David Harwell's wife. I ask that you
5 include me as his wife in the obit. This is a sad situation
6 but I do insist on being included. We were together for more
7 than 18 wonderful years."

8 Q: Alright and did she also leave a message with the funeral
9 home's answering service a week or two later?

10 A: She did. It was actually taken on October the 1st.

11 Q: Oh, October 1st. Alright, tell me what her complaint was
12 at that point.

13 A: There was apparently someone had posted a negative posting
14 -- our website has what's called a tribute wall where people
15 can go in and sign an online register book basically.

16 Q: Okay.

17 A: Someone apparently had said something unseemly about their
18 relationship. As soon as we got the message we went online
19 and removed the negative comments.

20 Q: Okay. This is a separate document from what's in your
21 file. Can you identify those two documents for me, please?

22 A: They both look to be certified copies of the death
23 certificate but one of them is unusual.

24 Q: Okay, one of them has the doctor's notes on it?

25 A: Yes.

1 Q: Okay and the other one is the death certificate?

2 A: Uh-huh. (Affirmative response)

3 Q: Alright, now you showed us earlier an electronic

4 transmission form where you fill out the top. Who fills out

5 the second section?

6 A: The doctor.

7 Q: Alright and is that what you have in your hand?

8 A: My left hand, yes.

9 Q: Alright and as a result of those documents coming in a

10 death certificate is generated?

11 A: Correct.

12 Q: Is that what's in your right hand?

13 A: No, the one that's in my right hand was all electronically

14 -- electronic I should say.

15 Q: Okay.

16 A: The doctor's part was done on the computer.

17 Q: Who does that?

18 A: DHEC.

19 Q: DHEC does that?

20 A: Uh-huh. (Affirmative response)

21 Q: Is that anything that Bryan would communicate with them

22 about?

23 A: No.

24 Q: Where would they get that information?

25 A: We submit that information to them electronically.

1 Q: And that's the electronic document that's generated?

2 A: Yes.

3 Q: Thank you.

4 MR. BARTH: I'd move to introduce these, Your Honor.

5 THE COURT: Any objection, Mr. Welsh.

6 MR. WELSH: No objection.

7 THE COURT: Alright, plaintiff's exhibit 24 into evidence
8 without objection.

9 (PLAINTIFF'S EXHIBIT NUMBER TWENTY FOUR IS
10 ADMITTED INTO EVIDENCE.)

11 BY MR. BARTH:

12 Q: Again, this electronic death certificate says, "surviving
13 spouse N/A".

14 A: Correct.

15 Q: Any clue why it's that way?

16 A: Someone from DHEC would have to tell you.

17 Q: Okay.

18 A: You saw -- you saw our worksheet showing her name.

19 Q: Okay. Is there any document that you're aware of that
20 Bryan would have signed that did not disclose this lady as his
21 surviving spouse?

22 A: No.

23 Q: Alright, thank you, sir.

24 MR. BARTH: Bear with me one second, Your Honor.

25 BY MR. BARTH:

1 Q: Sammy, did the funeral home send the Family Court Order to
2 DHEC?

3 A: We did along with the correction on nine -- number nine.

4 Q: That went from married to married by separated?

5 A: Uh-huh. (Affirmative response)

6 Q: Why'd y'all do that?

7 A: To show that that was the actual legal status.

8 Q: Okay whose job is it under the statute to make sure that
9 the correct information is provided to DHEC?

10 A: Funeral home.

11 Q: Alright and when the funeral home realized that the wrong
12 block was checked that's when you sent the documents in the
13 corrected form?

14 A: Correct.

15 Q: Did Bryan have anything to do with correcting that
16 mistake?

17 A: Yeah, he signed off on the correction?

18 Q: Okay and that's all he did?

19 A: Yeah.

20 Q: And that also listed Debbie's name?

21 A: Correct.

22 Q: Thank you, sir.

23 THE COURT: Alright, Mr. Welsh, any questions?

24 MR. WELSH: I just -- I just have one question.

25 CROSS EXAMINATION OF MR. DOWLING BY MR. WELSH:

1 Q: Mr. Dowling, with your obvious expertise in this area can
2 you explain why her name hasn't been added?

3 A: It's a mystery to me in all honesty and I'll give you an
4 example. We send information in on the abstract death
5 certificate. We ask a lot of questions that we type in, level
6 of education; I'll use that for one. It never shows on the
7 certified death certificate. They use that information
8 internally but it does not print out on the death certificate.
9 Why her name is not on the certified copy, I cannot tell you.
10 I do not know.

11 Q: So, as early -- your testimony is as early as September
12 30th, 2015 that Mr. Harwell had made an effort to correct the
13 death certificate; is that correct?

14 A: Correct, yes, sir.

15 Q: And that would have been this document? I don't know what
16 number.

17 A: This is the corrected married but separated and there's
18 where he signed off on it.

19 Q: Okay and do you remember -- and that would have been
20 September 30th, 2015. Do you remember where it was signed?

21 A: In our conference room.

22 Q: In your conference room. Okay, thank you.

23 MR. WELSH: I have no further questions.

24 THE COURT: Thank you, any redirect?

25 MR. BARTH: I just have one question.

1 REDIRECT EXAMINATION OF MR. DOWLING BY MR. BARTH:

2 Q: Sammy, around that same time did Debbie show up at the
3 funeral home and make a scene?

4 A: I don't remember the exact day but she did show up. I was
5 actually down in Lake City marking a grave for another service
6 and they called and said she was there. I came straight back.
7 I called Bryan because he was handling things, told him she
8 was there. He told me to allow her to view the Judge as long
9 as I was there to make sure she didn't take pictures or
10 anything but I -- best I remember about 15 minutes is what she
11 spent there.

12 Q: Okay.

13 A: She waited for me a lot longer than that but as far as
14 being in the funeral home.

15 Q: Did she make any kind of threats?

16 A: Not directly to me.

17 Q: Okay. And then after you let her see Judge Harwell she
18 left?

19 A: Yes.

20 Q: Alright, thank you, sir.

21 THE COURT: Any redirect on that?

22 MR. WELSH: Well, just a couple.

23 RECROSS EXAMINATION OF MR. DOWLING BY MR. WELSH:

24 Q: Mr. Dowling, her visit was categorized as a scene. Did
25 she make a scene?

1 A: Other than the fact, you know, she showed up unannounced
2 and she said she was not going to leave without seeing the
3 Judge. At that point in time I had instructions that she was
4 not to see him so we had to work that out. Bryan agreed to
5 let her view him and we gave her some time.

6 Q: Did she in fact ask for you to call the boys and have them
7 come over?

8 A: She didn't ask me because I wasn't there at the time but
9 she may have asked someone else and I just don't know that.

10 Q: Alright, so that's not something you can testify to?

11 A: No, sir.

12 Q: Okay, alright. No one in your staff mentioned the fact
13 that she called ahead to make sure it was okay?

14 A: No, sir.

15 Q: What about someone on her behalf?

16 A: No, sir. Not to my knowledge.

17 Q: Okay. Thank you.

18 THE COURT: Thank you, sir. You can have a seat -- is
19 there any objection to having this witness excused?

20 MR. BARTH: No, Your Honor, not from us.

21 MR. WELSH: No, there's none whatsoever.

22 THE COURT: Alright, thank you, sir. You can be excused.

23 MR. DOWLING: Thank you.

24 THE COURT: You can stay or you can leave the courtroom.
25 You're excused from the courthouse.

1 MR. BARTH: Let me get that exhibit from you, Sandy.

2 THE COURT: Uh oh. We'd have to track you down for that.

3 MR. DOWLING: Let's don't do that.

4 MR. BARTH: They'll hunt you down for that.

5 THE COURT: That's alright; we'd just send a deputy out
6 after you.

7 Alright, Mr. Barth, you've got another witness you said?

8 MR. BARTH: Yes, ma'am, Baxter Harwell.

9 THE COURT: Now, are you rehearsing the row you've already
10 done with his brother or has he got additional information?

11 MR. HARWELL: We've got five minutes worth of additional
12 information.

13 THE COURT: Alright, come forward. Not to say that I'm
14 limiting you to what you can ask your witness but I heard it
15 the first time. I took big notes.

16 MR. BARTH: No, I understand.

17 MR. BAXTER HARWELL, HAVING BEEN FIRST
18 DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE COURT: Thank you. Have a seat there for me and once
20 you get situated if you could state your full name for the
21 record, please, sir.

22 MR. HARWELL: My name is William Baxter Harwell.

23 THE COURT: Thank you.

24 Counsel?

25 MR. BARTH: May it please the Court?

1 DIRECT EXAMINATION OF MR. BAXTER HARWELL BY MR. BARTH:

2 Q: Baxter, you're Bryan's brother?

3 A: Yes.

4 Q: And the other heir to the estate of your dad?

5 A: Yes.

6 Q: Alright, there was some conversation with Debbie and Bryan
7 about a Petition to be allowed to sale some property. Do you
8 remember that?

9 A: I recall that, yes.

10 Q: Alright and what property were you and Bryan intending on
11 selling?

12 A: The house he resided in over on Canal Street in Cherry
13 Grove and I think there was another lot.

14 Q: And were you in agreement with that?

15 A: Yes.

16 Q: Alright now take a look at these two documents and if you
17 would tell me -- tell me what they are.

18 A: Well, the first one I'm looking at is a Lis Pendens that
19 was filed.

20 Q: In Probate Court?

21 A: In Probate Court in Horry County.

22 Q: Alright and take a look at the second document.

23 A: Petition for Approval of Distribution/Sale of Estate
24 Assets.

25 Q: Alright and were those the documents that were filed by

1 the estate and consented to by you to sale the property?

2 A: Yes, that is correct.

3 Q: Were you in agreement with selling the property?

4 A: Absolutely.

5 Q: Alright and after those were filed did you get any

6 communication from Debbie?

7 A: I did.

8 Q: Can you tell the Judge what type of communication, please?

9 A: Well, it was a text message sent by way of text on my

10 telephone number.

11 Q: Alright and whose number appears at the top?

12 A: It's Debbie's.

13 Q: Alright, you familiar with that number?

14 A: 843-458-3300, that was Debbie's cell phone.

15 Q: Alright and the texts came to you?

16 A: Came directly to me.

17 Q: Was it before or after this Petition was signed?

18 A: It was shortly after.

19 Q: Shortly after y'all filed to sell it?

20 A: Right.

21 Q: Alright and tell me about the text, please?

22 A: It just mentions -- and I thought it was kind of odd that

23 she would send me a message like this telling me, "David

24 wanted you and Teresa to have the beach house --

25 Q: Are you okay? Do you want me to read the rest of it?

1 A: It says, "He didn't want it sold."

2 Q: Your dad didn't want is sold? He wanted you and Teresa to
3 have it?

4 A: (Affirmative response)

5 Q: Okay.

6 MR. BARTH: I'd move to introduce the pleadings first,
7 Your Honor, and then the text message second.

8 THE COURT: Any objection to the pleadings?

9 MR. WELSH: No.

10 THE COURT: Alright plaintiff's exhibit 25 into evidence
11 without objection.

12 (PLAINTIFF'S EXHIBIT NUMBER TWENTY FIVE IS
13 ADMITTED INTO EVIDENCE.)

14 THE COURT: And any objection to the text message?

15 MR. WELSH: No.

16 THE COURT: Alright, plaintiff's exhibit number 26 into
17 evidence without objection.

18 (PLAINTIFF'S EXHIBIT NUMBER TWENTY SIX IS
19 ADMITTED INTO EVIDENCE.)

20 BY MR. BARTH:

21 Q: Did you ever talk to her about that e-mail?

22 A: No, I didn't.

23 Q: Alright, did you ever respond to her?

24 A: No, I didn't.

25 Q: Did you know about her \$3 million claim against your dad's

1 estate at the time you got that text message?

2 A: I think I became aware of it because we thought it was
3 mighty ironic that the same time Bryan had filed and Gena had
4 filed the Notice of Inventory and Appraisal on the estate. I
5 thought it was more than coincidental, ironic that she would
6 send me a message like that knowing that it was our intention
7 to try to dispose of some of daddy's assets.

8 Q: Were you with Bryan when he gave Sandy Dowling the
9 information for the worksheet?

10 A: I was.

11 Q: At any point did Bryan fail to give Sandy Debbie's
12 information?

13 A: Not at all. I think Bryan did a great job in just trying
14 to cooperate with Sandy, with the funeral home and making sure
15 they got everything they needed to prepare my dad's death
16 certificate.

17 Q: Thank you, Baxter. If you would answer any questions Mr.
18 Welsh or the Judge might have.

19 THE COURT: Mr. Welsh?

20 CROSS EXAMINATION OF BAXTER HARWELL BY MR. WELSH:

21 Q: I've always wanted to cross examine Baxter but I don't
22 think I'm going to have a lot of questions. I'm just puzzled
23 with plaintiff's number 26. What was so odd about that? I
24 think that's text message.

25 A: Well, it was just odd in that why would she comment on

1 what she thought my dad's wishes were so shortly after the
2 filing of the inventory and appraisal. My dad and I were real
3 close. I just thought it was kind of bizarre that -- because
4 he had never specifically stated to me that he wanted me and
5 Teresa to have that beach house and, you know, we never really
6 talked about it but he always treated me and Bryan fairly.
7 There was never any specific mention about the disposition of
8 that house.

9 Q: Did your wife have an interest in the house?

10 A: No, she was my wife. We didn't have any interest other
11 than my spouse in any interest of any assets my dad may have
12 owned.

13 Q: Okay I was just curious. I heard that, that's why --
14 anyway, so you in fact were present when they attempted to
15 straighten the death certificate out?

16 A: I was present -- I was present with Bryan. Bryan was the
17 PR. As soon as practical after my dad's death we met with
18 Sandy at the funeral home, you know, to do whatever we had to
19 do to provide him with all of the relevant information. He
20 had to have to send to DHEC, you know, and I didn't have a
21 clear understanding as to what the process was. I was with
22 Bryan when we gave them all of the information they asked us
23 to provide so that they could send all of the relevant
24 information to DHEC.

25 Q: And --

1 **THE COURT:** That's the stack, that's not necessarily what
2 you're looking for but that's the stack that was entered.

3 **MR. WELSH:** Okay, thank you.

4 **BY MR. WELSH:**

5 **Q:** And, I mean -- was that the September 30th, 2015 date you
6 were present?

7 **A:** Whatever date --

8 **Q:** When he was trying to correct it or the initial?

9 **A:** We all met with Sandy on one occasion and I'm not sure
10 exactly, it was the day after his death, I think; we went to
11 meet with Sandy. Whatever the date was that's on the
12 document.

13 **Q:** Okay.

14 **A:** It may have been the 30th. There was a lot going on.

15 **Q:** Do you remember what time of day?

16 **A:** It was a very unusual situation with the 1,000 year storm
17 and everything else that was going on. It was just horrific.

18 **Q:** But you don't know if it was morning or afternoon?

19 **A:** I'm pretty sure it was in the afternoon if I'm not
20 mistaken.

21 **MR. WELSH:** I have no further question.

22 **MR. BARTH:** No redirect.

23 **THE COURT:** Thank you, sir. You can have seat back over
24 there.

25 Anything further, Mr. Barth?

1 MR. BARTH: I'd call Debbie Harwell.

2 THE COURT: Alright, before we start her, because I'm
3 figuring it's going to be a good while, let me give my staff a
4 five minute break. So, everybody take a quick break and we'll
5 be back.

6 (Recess)

7 THE COURT: Alright, you're going to call Ms. Harwell; is
8 that correct?

9 MR. BARTH: Yes, ma'am.

10 THE COURT: Alright, ma'am, if you'll come forward for
11 me, please? Raise your right hand; put your left hand on the
12 bible. Raise your right hand.

13 MS. HARWELL, HAVING BEEN FIRST
14 DULY SWORN, TESTIFIED AS FOLLOWS:

15 THE COURT: Can you state your full name for the record,
16 please, ma'am?

17 MS. HARWELL: Deborah Boggs Harwell.

18 THE COURT: Thank you, counsel.

19 MR. BARTH: May it please the Court, Your Honor? I do
20 have for Your Honor a copy of the transcript from the first
21 part of the trial that was requested and provided to us.

22 THE COURT: Okay.

23 MR. BARTH: We'll reference some of that in the -- in
24 this questioning, Your Honor.

25 DIRECT EXAMINATION OF MS. HARWELL BY MR. BARTH:

1 Q: Debbie, can you tell me where you live, please?
2 A: This week at live at 8552 Rosanna Circle.
3 Q: Why this week? I want to know where your primary
4 residence is.
5 A: I'm having to leave there this week so I'm not sure where
6 it will be.
7 Q: Where have you been living for the last month or two?
8 A: I claim 8552 Rosanna Circle as my permanent residence.
9 Q: It is a simply question. Where have you been living for
10 the past few months?
11 A: I've been sleeping on the couch at my office. I have had
12 -- when I can get to the mountains, which is six hours from
13 here, I love to go up there.
14 Q: Okay, what office do you have?
15 A: I have an office over at 1459 River Highway, Mooresville.
16 Q: 1459 River Highway, Mooresville, North Carolina?
17 A: Yes, sir.
18 Q: Okay, is that the marina?
19 A: Uh-huh. (Affirmative response)
20 Q: Okay, is that the place where the process server was
21 trying to find you?
22 A: It depends on which time.
23 Q: Well, for the two months we were looking for you.
24 A: Yeah, I was in Myrtle Beach and he was in North Carolina.
25 Q: Alright.

- 1 A: I guess that's the time you're talking about.
- 2 Q: Okay. Are you currently employed?
- 3 A: Yes, sir. I am.
- 4 Q: At the marina?
- 5 A: Yes, sir.
- 6 Q: Anywhere else?
- 7 A: No.
- 8 Q: Can you tell me what you make at the marina?
- 9 A: I make \$800 -- I make \$900 a week.
- 10 Q: Okay, any other income other than your --
- 11 A: No.
- 12 Q: -- late husband's retirement?
- 13 A: I was not able to obtain retirement because I could not
- 14 get a death certificate so I got my first check for \$400 about
- 15 three weeks ago.
- 16 Q: About three weeks ago, okay. Now, you used to -- do you
- 17 have a college degree?
- 18 A: Yes, sir.
- 19 Q: From where?
- 20 A: From Garner Webb.
- 21 Q: And can you tell me what your degree is in, please?
- 22 A: Education.
- 23 Q: Alright, any further education after that?
- 24 A: No, sir.
- 25 Q: Alright and you owned a business here at the beach?

- 1 A: I did.
- 2 Q: And it was a newspaper, I believe?
- 3 A: I founded the newspaper.
- 4 Q: Okay, how long did you own it and run it?
- 5 A: Probably seven years -- eight years, something like that.
- 6 I can't remember.
- 7 Q: You've been president or CEO -- managed?
- 8 A: I have.
- 9 Q: Alright and you managed all aspects of the business?
- 10 A: I did.
- 11 Q: Alright and I think you're familiar with business, how
- 12 they work, paying bills, things like that; right?
- 13 A: I'm familiar with paying bills, yeah.
- 14 Q: Alright and in your past as business owner you certainly
- 15 had the opportunity to talk with lawyers, read documents,
- 16 figure out in your mind what they meant; didn't you?
- 17 A: No. I've never had any legal dealings.
- 18 Q: You're never had any legal dealings?
- 19 A: To amount to anything, no.
- 20 Q: Well, let me ask you this: didn't you sue your last
- 21 husband's children -- two children through an estate?
- 22 A: Okay, I will tell you about that --
- 23 Q: Wait a second.
- 24 A: -- they forged --
- 25 Q: Wait a second.

1 A: -- they forged my name --

2 THE COURT: Ms. Harwell, okay wait a minute. We're not
3 going to have a repeat of what we had last time. When there's
4 an objection, you stop talking. When there's a question, you
5 stop talking. As I explained to you last time, this lady
6 sitting here beside me has to repeat everything that is said
7 in this courtroom. She can only repeat one person at a time.
8 We're going to show her as much respect as this Court will
9 show you and her doing her job so that only one person's going
10 to talk at a time. So, when he tells you, "Wait a minute",
11 and he starts talking; you don't get to talk louder and hope
12 that your point of view gets across. We went through this
13 with both sides last time and we're not going to do it again
14 today. So, let's conduct ourselves with a little more respect
15 for my court reporter today. His question was a yes/no
16 question. If he asks you a question that requires a yes or
17 no, please answer the question and then if you need to explain
18 your answer you can do so but the question must be answered
19 first. Now, Mr. Barth, if you could restate your question --

20 MR. BARTH: Yes, ma'am.

21 THE COURT: -- and she's going to answer accordingly.

22 MR. BARTH: Yes, ma'am.

23 BY MR. BARTH:

24 Q: Isn't it true that you filed a lawsuit against your former
25 husbands' estate and children.

1 A: Yes.

2 Q: Okay and, as a matter of fact, it even went up on appeal;
3 did it not?

4 A: I don't remember that. It was a criminal thing.

5 Q: Okay, so you've dealt with lawyers. You know that if you
6 lost at trial you could appeal something?

7 A: It was forgery on a quarter of a million dollar document
8 that the bank had notarizing my signature and therefore the
9 bank was involved with a RICO action.

10 Q: Did you know that if you lost at trial you had the right
11 to appeal it I you didn't like the trial Judge's Order? You
12 knew that didn't you?

13 A: At that time?

14 Q: Yes, ma'am.

15 A: It's when he passed away. It's been a lot of years ago.
16 I don't really remember that much.

17 Q: Who were your lawyers? Larry Richter?

18 A: No. He -- it was someone in his office.

19 Q: Okay and do you remember them appealing an Order for you
20 and then the matter settling on appeal?

21 A: I'm sorry, I just can't remember that far.

22 Q: Okay, so your statement that you're not really involved
23 with legal documents and legal proceedings; that's not true is
24 it?

25 A: I don't have any law education, no.

1 Q: I understand; extensive business education though;
2 correct? You ran a business, a good one; right?

3 A: I ran a business, yes.

4 Q: Okay. You and David separated when, February of 2015?

5 A: Yes, I left the house and you called me and he was gone
6 when I got back.

7 Q: You separated in February of 2015.

8 A: It was 2015.

9 Q: And you guys didn't resume living together as husband and
10 wife; did you?

11 A: We did not spend the night together again.

12 Q: Okay. When Judge Harwell filed the Family Court action we
13 went to a mediation conference; didn't we? Do you remember
14 that?

15 A: Yes.

16 Q: With Lisa Kinon?

17 A: Yes.

18 Q: Alright and you had flown in a financial advisor didn't
19 you?

20 A: He was a friend.

21 Q: So that would be a yes?

22 A: He is a CPA by trade but we had no ability to actually do
23 discovery so he looked on the internet and was there to tell
24 us what he had found.

25 Q: Did you fly in a CPA to sit with you and assist you during

1 the mediation?

2 A: I -- I don't know if he flew in or not, I'm sorry. He was
3 there at the mediation for about two hours.

4 Q: And Julaan Derrick was your lawyer?

5 A: Yes.

6 Q: Okay and, as a matter of fact, we started the mediation
7 early in the morning and we finished it way after supper;
8 didn't we?

9 A: It was 5:30 or 6:00.

10 Q: Okay and you had all day to talk with Lisa, and Julaan,
11 and your CPA while he was there; right?

12 A: No.

13 Q: Can you -- do you mind explaining that for me?

14 A: There was no one with me in the room for most of the time.
15 I was by myself.

16 Q: Alright, did you have an opportunity to read that document
17 that Judge Kinon prepared as a result of the mediation?

18 A: I did not.

19 Q: You didn't?

20 A: I did not.

21 Q: You signed it; didn't you?

22 A: I initialed the corners of it.

23 Q: Okay, well let's look at that if you don't mind. This is
24 the mediation agreement. Do you see that?

25 A: I see the mediation agreement, yes, sir.

1 Q: Okay and you see your initials on every single page except
2 for the one that's got your signature; correct?

3 A: Yes, sir.

4 Q: Alright, paragraph two of the first page says that, "We
5 are settling all of the issues arising out of your marriage
6 and of the prenuptial agreement by this mediation agreement."
7 Isn't that what it says?

8 A: That's what it says.

9 Q: And you initialed that page?

10 A: I did.

11 Q: Alright, look all the way over to number 12. "Both
12 parties waive any and all rights they may have in the estate
13 of the other or to make any claim upon or against the estate
14 of the other." You see that?

15 A: Yes, sir.

16 Q: And that's a page you initialed; correct?

17 A: Correct.

18 Q: Alright, did you understand what that meant?

19 A: No, sir.

20 Q: Why'd you sign it?

21 A: I didn't have a choice.

22 Q: And how's that?

23 A: Well, for a number of different reasons.

24 Q: Well, give me some.

25 A: I can give you a number of different reasons. One of the

1 reasons was I had been threatened and I was told that if I
2 didn't sign it --

3 Q: Who threatened you?

4 A: I was told before I went to the mediation if I didn't go
5 to the mediation or if I objected to it later that I would be
6 indicted or found dead.

7 Q: Who told you that?

8 A: Judge Harwell told me that talking about Bryan.

9 Q: Your deceased husband told you that?

10 A: Before the mediation.

11 Q: Okay, alright.

12 A: And they also told me that because it was a separation
13 that I would get nothing and I got pretty badgered and pretty
14 coerced.

15 Q: By who your lawyer?

16 A: Yes.

17 Q: The mediator?

18 A: Uh-huh. (Affirmative response)

19 Q: Okay and they told --

20 A: Mainly my attorney.

21 Q: Okay and your attorney told you if the Judge enforced the
22 prenup you would end up with \$25,000; didn't she -- under the
23 prenup?

24 A: She said I would end up with nothing because you were
25 claiming that I'd already gotten \$25,000.

1 Q: That's right and instead you signed an agreement that gave
2 you \$75,000 in cash; right?

3 A: No, sir, that is not correct.

4 Q: It was a check.

5 A: No, sir, that is not correct.

6 Q: It's not?

7 A: No, I turned in \$112,000 worth of bills for food, clothing
8 and shelter and he --

9 Q: Listen, listen --

10 A: -- was finally willing to pay \$75,000 of that which left
11 me almost \$70,000 in debt.

12 Q: Okay, here's my question: you signed an agreement that
13 says you were going to accept \$75,000; didn't you?

14 A: I said I would accept it because it would -- he told me it
15 would give me a \$20,000 tax liability if I signed it but he
16 would not pay for any of the bills at all unless I took it as
17 alimony. So, it was either nothing, I mean --

18 Q: Or money. You got \$75,000, you got a paid for beach house
19 that you -- mountain house that you wouldn't have gotten under
20 the prenup; correct? You would have gotten a partial
21 interest?

22 A: Partial interest and half of the house in the mountains,
23 basically the same thing that we settled for and that.

24 Q: Well, and all of it in this agreement; didn't you?

25 A: Pardon?

1 Q: You got all of it. The whole beach house; right -- I
2 mean, the whole mountain house; right?

3 A: I got the mountain house, yes.

4 Q: Alright and you were named irrevocable beneficiary of his
5 General Assembly retirement; right?

6 A: Which nets about \$300 a month after insurance.

7 Q: It's a yes or no.

8 A: Yes.

9 Q: And you get that for the rest of your life; don't you?

10 A: I hope.

11 Q: Alright and you wouldn't have gotten any of that under the
12 prenup; would you?

13 A: Yes, I've been the beneficiary on that policy for 15
14 years.

15 Q: Okay, under the prenup you got \$25,000.

16 A: No, under the prenup it also gave me that.

17 Q: Well, whatever it gave you this agreement overrode it;
18 didn't it? Right? You took the \$75; right?

19 A: Did you say overrode the prenup?

20 Q: Yes, ma'am.

21 A: I didn't understand it that way.

22 Q: Okay, well did you take the \$75?

23 A: I took it and paid his food, clothing and --

24 Q: Listen to me. Listen to me.

25 A: -- and the other things --

1 Q: Listen to me. I want you to answer my question.

2 A: Yes, sir.

3 Q: Did you take the \$75?

4 A: We did.

5 Q: Alright and you and your lawyer called me until I got the
6 deed to the mountain house transferred to you to make sure it
7 was done; correct? And it was done. So, the deed's in your
8 name and the house is paid for; correct?

9 A: Correct.

10 Q: Okay and some personal property you were supposed to get
11 under this; you got it. Didn't you?

12 A: Yes, what was it?

13 Q: I don't know. Some stuff out of the house.

14 A: I don't know I had all of my own things.

15 Q: Okay and have been named beneficiary of the retirement;
16 right?

17 A: I have been named it.

18 Q: Okay, now that agreement that did all these things for you
19 said that you guys would share the tax refund for 2014; right?

20 A: No, sir, that's not what was mediated.

21 Q: Can you read it? What's it say? "You will
22 proportionately share any refund you may receive."

23 A: It wasn't proportionately shared. We don't filed taxes
24 based on just salaries. I turned in twenty something thousand
25 dollars' worth of interest to be taken off. I was required to

1 sign the marital agreement which would give us another \$14,000
2 in credit and because they're taking the \$75,000 as alimony
3 instead of as just him paying the bills it gave me a \$20,000
4 tax consequence. So, Lisa Kinon said -- Judge Kinon said, "So
5 they're giving you that to offset what it would cost you as a
6 tax consequence", and I'm sure that Judge Kinon would not tell
7 me something that was not the truth.

8 Q: Okay. Paragraph 15, "Each party has the advice of very
9 competent attorneys with whom they are fully satisfied". You
10 signed that page; didn't you? Did you initial that page?

11 A: I initialed that page.

12 Q: It says, "The wife also acknowledges she had very
13 competent financial advisor during the negotiations. You are
14 satisfied with his services and does not need any additional
15 time to discuss this with him". You signed that; didn't you?

16 A: I signed it. He was there for two hours; he wasn't there
17 for the financial discussions. He was only there to present
18 what he had found online.

19 Q: Is any of that in here?

20 A: I don't know.

21 Q: Well, you can look.

22 A: I don't know.

23 Q: Alright, and in addition to signing this document you then
24 signed what's called an Affidavit of Nonappearance; didn't
25 you?

1 A: I evidently did.

2 Q: Alright and did you read it?

3 A: No, sir.

4 Q: Alright.

5 A: I wasn't given it to read.

6 Q: Why did you sign it and swear to the truth of it if you

7 didn't read it?

8 A: I was told that you had to take the mediation agreement

9 over to the courthouse for the Judge to say yes or no. I had

10 no idea there would be a hearing and I said, "what does it

11 say" because at that point --

12 Q: What does what say, the agreement that you just signed?

13 A: The Notice of Nonappearance, what did it mean?

14 Q: Oh, alright. Did you know you signed it under oath?

15 A: No.

16 Q: Okay, tell me this, the paragraph that you read to me a

17 minute ago that says you waive any claim you may have in David

18 Harwell's estate or to make a claim upon the estate; what does

19 that mean to you?

20 A: I'm sorry, which agreement? Is it the mediation agreement

21 you're talking about?

22 Q: Yes, ma'am. It says you waive any claim you may have in

23 and to the estate of David Harwell and you will not make a

24 claim again it.

25 A: I probably did sign that.

1 Q: Okay.

2 A: I was so upset that I really didn't even know where I was
3 and I shouldn't have been there.

4 Q: Here's my question: what does that mean to you?

5 A: That means that if you find new evidence later that you
6 can come back and do that.

7 Q: Okay, please tell us what evidence you have.

8 A: I -- well, it just keeps coming in.

9 Q: What do you have?

10 A: For instance I a letter that I got from Social Security
11 just a few weeks ago that notified me that there was a Nelson
12 Mullins retirement plan and that I possibly could be the
13 beneficiary to please be notified and how much it was, that
14 kind of thing. That's not listed anywhere.

15 Q: Did you turn that over to the estate?

16 A: I turned it over to the attorney. I just got it --

17 Q: Okay.

18 A: -- a few weeks ago. I mean, it came to Debbie Harwell.
19 It didn't go to the estate.

20 Q: Alright, it went to your PO Box didn't it?

21 A: Yes.

22 Q: And that's because it was addressed to David Harwell?

23 A: I've got it over there. It's addressed to Deborah B.
24 Harwell, PO Box 7769, Myrtle Beach. It didn't have anything
25 to do with mail to David.

1 Q: Didn't have anything to do with David?

2 A: Uh-uh. (Negative response)

3 Q: Alright, what else do you claim to have?

4 A: There's a number of different properties and things and it
5 came up when I went to sign the income tax that David had
6 filed with five other CPAs other than our CPA.

7 Q: Do you have any of those returns?

8 A: I can't get them because I'm not the personal
9 representative and we've never been in a position to do
10 discovery.

11 Q: Isn't it true that you guys filed joint tax returns?

12 A: We filed joint tax returns for 15 years.

13 Q: Okay and every year you signed them and every year you had
14 the opportunity to look at them; didn't you.

15 A: Most years.

16 Q: Alright, now tell me what CPAs Judge Harwell would have
17 used --

18 A: Lindsey --

19 Q: Listen. Tell me what CPAs Judge Harwell used to file tax
20 returns that you didn't know anything about.

21 A: Lindsey Evans.

22 Q: Okay and tell me what proof you have?

23 A: There was a document that I found within out 2004 tax
24 return.

25 Q: 2004?

1 A: 2014 tax return.

2 Q: Do you have it?

3 A: And there was -- when I went to the CPA's office he had me
4 sign a document and I think the -- he didn't give me a copy
5 and I asked for it but they didn't give me one.

6 Q: So, you don't have a document?

7 A: That he was not aware what was filed in other tax returns
8 for Lindsey Evans, for Buzz Rogers at Rogers CPA, for Holbert
9 and Holbert, for I don't remember the other CPA's this second.

10 Q: Do you have any documentation to back up these alleged
11 claims that he had all these accountants filing tax returns
12 that you didn't know anything about? Do you have anything to
13 show this Court?

14 A: I do have something on Lindsey Evans in the box.

15 Q: Okay, you want to go get it?

16 A: I'll go get that for you if I can --

17 Q: Okay.

18 A: -- well that can take a little while.

19 Q: I just want to see what you have.

20 A: Maybe you could call a break and me look for it then.

21 THE COURT: Mr. Barth, do you want her to go get it?

22 MR. BARTH: I'd like to see it, Your Honor --

23 THE COURT: Go get it.

24 MR. BARTH: -- if she has it.

25 Your Honor, I don't mind waiting until we take a lunch

1 break if she wants to look for it then.

2 THE COURT: Alright, when we take a more extensive break
3 she can look for it at that time.

4 MR. BARTH: Thank you, Your Honor.

5 THE COURT: Come back to the stand, Ms. Harwell.

6 BY MR. BARTH:

7 Q: If you locate that I will look at it over the next break.
8 Alright, when you picked up Judge Harwell's check for \$75,000
9 you picked it up from Juliaan's office didn't you?

10 A: I did.

11 Q: Alright and it had a copy of the Order attached to it
12 didn't it?

13 A: I do not think so.

14 Q: You do not think so?

15 A: Uh-uh. (Negative response)

16 Q: Alright, when'd you first claim to see the Order?

17 A: I'm not positive when I first saw it but I think that it
18 was around November, I think.

19 Q: Okay, at any point after you got the Order did you appeal
20 it?

21 A: I first went to --

22 Q: It's easy; yes, ma'am or no, ma'am.

23 A: I didn't know it was appealable.

24 Q: You did not know it was appealable?

25 A: No.

1 Q: Okay, so you -- it hadn't been appealed from; correct?

2 A: No, sir.

3 Q: And you've told us you got the money, you got the mountain
4 house and you're getting your retirement; right? You gave
5 Judge Harwell his personal stuff back; right?

6 A: Uh-huh. (Affirmative response)

7 Q: You got what you were supposed to get under the agreement;
8 correct?

9 A: Uh-huh. (Affirmative response)

10 Q: Is that a yes?

11 A: Yes.

12 Q: Alright so as far as those terms in the agreement you
13 obviously understood all of those; didn't you? Because you
14 knew what you were supposed to get and you got it. You knew
15 what he was supposed to get and he got it; right? That part
16 you understood. Right?

17 A: I guess so.

18 Q: Alright, signing that agreement that waived an interest in
19 the estate of Judge Harwell you initialed the page; right? It
20 was Court approved and yet you have filed claims against Judge
21 Harwell's estate; have you not?

22 A: Yes.

23 Q: Alright, you filed a Petition for \$3.1 million; correct?

24 A: Yes.

25 Q: Alright and the basis for that, according to your

1 document, is the prenuptial agreement; correct?

2 A: Yes.

3 Q: And that is the prenuptial agreement that was settled
4 under this mediated agreement; is that right?

5 A: It was approved, I guess, or whatever.

6 Q: Alright, so please tell me how the prenup entitles you to
7 \$3 million from the estate when you signed an agreement that
8 said just the opposite?

9 A: Our prenuptial agreement called for David to pay two-
10 thirds of the expenses of everything of which he paid \$800 a
11 month so we went back and figured up --

12 Q: Who --

13 A: -- David and I. David and I before he died.

14 Q: Okay.

15 A: David and I figured up during this period of time because
16 we're still seeing each other and so we figured out how much
17 money I had put into the -- into our marriage -- into
18 everything that's what it came to and --

19 Q: It came up to \$3 million?

20 A: It's \$3.1.

21 Q: Okay and what document -- what legal document do you have
22 that would entitle you to that?

23 A: I think that's what I'm asking for; isn't it?

24 Q: Oh, it's definitely what you're asking for. I want to
25 know what document you have that says you're entitled to that

1 when you signed a Court approved agreement that says you're
2 entitled to nothing from the estate?

3 A: I think it also says that the prenuptial agreement is
4 approved.

5 Q: Okay, do you remember sitting in this hearing a couple
6 weeks ago, the first part of this hearing?

7 A: Yes.

8 Q: Alright and Deidre Edmonds is your lawyer in probate --
9 was?

10 A: She was until you sued her, yes.

11 Q: Alright and she was the one giving you advise on your
12 probate stuff; right?

13 A: Yes.

14 Q: As a matter of fact, she sat through the first part of the
15 hearing and gave you advice then; didn't she?

16 A: I don't believe she ever spoke to me.

17 Q: Okay, did she help you with any of your pro se pleadings?

18 A: No, that was Adam Silvernell.

19 Q: Okay, Adam helped you prepare some of your pro se
20 pleadings?

21 A: Helped me, yes.

22 Q: Who helped you prepare the Continuance Motion in this
23 case?

24 A: Adam.

25 Q: Adam did, okay. Now, on page -- I don't know where the

1 page numbers are but this is where your lawyer was testifying;
2 do you remember that?

3 THE COURT: It's at the very top.

4 MR. BARTH: Oh, it's at the very top.

5 THE COURT: Take the clip off and you'll see it.

6 MR. BARTH: There we go, 37. Thank you, Your Honor.

7 BY MR. BARTH:

8 Q: Do you remember when Deidre Edmonds was testifying?

9 A: I remember she went to the stand, yes.

10 Q: Alright and you sat here and you listened to what she
11 said; didn't you?

12 A: Yes.

13 Q: And she testified under oath as your lawyer that --

14 A: She was at that time there had not been a transfer and
15 y'all were objecting to me having another lawyer.

16 Q: She testified on this stand as your probate lawyer.

17 A: Uh-huh. (Affirmative response)

18 Q: Yes?

19 A: Yes.

20 THE COURT: Ms. Harwell, the reason he keeps saying yes
21 when you say uh-huh, she can't record a uh-huh.

22 MS. HARWELL: Okay, I'm sorry.

23 THE COURT: Thank you.

24 BY MR. BARTH:

25 Q: Alright and your lawyer when I asked her specifically why

1 you wanted to be the surviving spouse because you're not -- I
2 asked her if you're entitled to any money and her answer was,
3 "she is still a surviving spouse under the law but not for the
4 purposes of any property rights through the Probate Court".

5 Now, you understood that to mean exactly what you told us
6 before that you just want to be listed as the wife but you're
7 not asking for any money from the estate; isn't that true?

8 A: I was distracted by someone coming in; what?

9 Q: Okay, you heard that testimony and you understood, as the
10 rest of us did, you just wanted to be listed as his wife on
11 the death certificate but that it doesn't entitle you to any
12 money from the estate. Did you hear your lawyer say that?

13 A: I -- yes.

14 Q: Alright and --

15 A: That's why I initially went to her was to get my name on
16 the death certificate so I could actually get retirement and
17 get through the process of Social Security I'm 67 and there's
18 like -- I couldn't get it.

19 Q: Okay so your purpose in doing all that was to get the
20 retirement which you have?

21 A: Yes.

22 Q: Get Social Security, which I assume you also have?

23 A: Just got it.

24 Q: Okay and so the purposes for which you filed that claim
25 have been satisfied; right? That's what you needed it for and

1 now you have it?

2 A: That's what initially happened.

3 Q: Alright, well lets -- I want you to show the Judge
4 what you filled the week after the hearing. Please take a
5 look at that document can you tell me what that is?

6 THE COURT: While she looks at it my secretary has just
7 said there is an emergency she needs me right quick. Look at
8 that document and then --

9 (Recess)

10 THE COURT: Be seated. I apologize. Back on the record.

11 MR. BARTH: May it please the Court, Your Honor?

12 BY MR. BARTH:

13 Q: After hearing your lawyer testify that you weren't
14 entitled to any money from the estate and after you understood
15 you had to do that to get social security and retirement,
16 which you now have; right?

17 A: Just got it.

18 Q: Alright.

19 A: After months.

20 Q: Alright and right after that hearing before this Judge,
21 you went to the Probate Court and filed something else; didn't
22 you?

23 A: I did.

24 Q: Alright and tell me if you can identify that.

25 A: That is a Petition for Elective Share.

1 Q: Okay and elective share, you are asking the Probate Judge
2 to award you one-third of Judge Harwell's estate; is that
3 right?

4 A: Yes, sir.

5 MR. BARTH: I'd move to introduce this, Your Honor.

6 THE COURT: Any objection?

7 MR. WELSH: It's public record.

8 THE COURT: Alright, plaintiff's exhibit number 27 into
9 evidence without objection.

10 (PLAINTIFF'S EXHIBIT NUMBER TWENTY SEVEN IS
11 ADMITTED INTO EVIDENCE.)

12 BY MR. BARTH:

13 Q: Can you please tell, Ms. Harwell, what basis you have for
14 filing a claim for an elective share when you waived it and
15 your lawyer confirmed it?

16 A: When I first went to Ms. Edmonds to get my name on the
17 death certificate it was purely for that and when we got into
18 the case and realized there was so many things so severely
19 wrong we realized that something was wrong here and when we
20 started looking into it it became very obvious and so --

21 Q: It became very obvious what?

22 A: That there was something wrong and that as of a result of
23 the things that are stated in the public papers that's when --

24 Q: What things are stated in public papers that shows
25 something so terribly wrong?

1 A: No, that's what I did in the public papers was ask for the
2 elective share.
3 Q: Okay and certainly by that time you'd sat through a four
4 hour hearing where we talked about you waiving any claim to
5 Judge Harwell's estate; right? You sat through that didn't
6 you?
7 A: You're talking about this hearing?
8 Q: Yes, ma'am.
9 A: The first part of this hearing?
10 Q: Yes, ma'am.
11 A: Yes, we already knew that we were doing that, yes.
12 Q: And you heard your lawyer say that you weren't entitled to
13 any money from the estate; right?
14 A: Until --
15 Q: Right?
16 A: -- that --
17 Q: It's a yes or no.
18 A: -- it's not what I think she meant.
19 Q: It's not what she meant? Okay, alright.
20 A: I think that she meant that I was entitled until such time
21 as I filed the official claim.
22 Q: Okay. That wasn't the only you filed after the hearing is
23 it?
24 A: Correct.
25 Q: Alright, can you tell me what that is?

1 A: It's a request to set aside the Final Decree through 60B.

2 Q: Okay and who wrote that for you? Who prepared that for
3 you?

4 A: I prepared that myself and --

5 Q: Who helped you?

6 A: Well, this one's pretty much a form right here and --

7 Q: What lawyer helped you prepare this?

8 A: I didn't have a lawyer help me prepare this. I didn't
9 have one.

10 Q: Okay.

11 MR. BARTH: I'd move to introduce this, Your Honor.

12 THE COURT: Any objection?

13 MR. WELSH: No, ma'am.

14 THE COURT: Alright, plaintiff's exhibit number 28.

15 (PLAINTIFF'S EXHIBIT NUMBER TWENTY EIGHT IS
16 ADMITTED INTO EVIDENCE.)

17 BY MR. BARTH:

18 Q: Can you please tell me what proof you have that fraud's
19 been committed in this case?

20 A: Is that not for the 60B hearing?

21 Q: I'm asking you what proof you have that there's been any
22 fraud in this case?

23 A: We're going to present a number of assets that have been
24 not presented.

25 Q: Okay, they would be what?

1 A: Gosh, there's -- well, here's one. This one, this is a
2 retirement plan. There are two more retirement plans. There
3 was two other accounts.

4 Q: It's a retirement plan that was reported in the year 2000.
5 He hasn't worked at Nelson Mullins in 25 years; has he?

6 A: Let's see if I pulled the right sheet. This is the one
7 that was just sent to me like two weeks ago.

8 Q: Okay.

9 A: That came from social security is the only way I found out
10 about that one.

11 Q: This says \$41,000, if you're the beneficiary it's yours
12 isn't it?

13 A: I don't know if I'm the beneficiary.

14 Q: Okay, did you turn this over to the personal
15 representative to try and determine what this is?

16 A: Not yet.

17 Q: Alright and what else?

18 A: Can my attorney hand me my sheet? I mean, I guess we'll
19 have to go over this with both Court's. It's just my notes.

20 Q: Who prepared the spreadsheet?

21 A: I did.

22 Q: Alright.

23 A: There were -- when it became so many things -- well, you
24 asked me for specific things.

25 Q: Yes, ma'am.

1 A: Specific things is in the mediation agreement that they
2 gave wrong appraisals for different assets such as the Cherry
3 Grove home. They gave an approximate \$500,000 or something
4 like that and now on the probate section it's listed at
5 \$770,000. We had listed it for sale at \$1.3.

6 Q: And isn't it true that was, is and always will be a non-
7 marital asset? He owned it before the marriage.

8 A: No, sir. I moved in that house before -- the first night
9 we ever slept there. He was building it when we dated -- we
10 were dating.

11 Q: Even under the prenup you waived an interest in that
12 premarital house; didn't you?

13 A: That's the house that we were living in --

14 Q: Answer my question please. Even in the prenup you waived
15 an interest in that premarital house; didn't you?

16 A: Yes and after we got married we decided to both houses in
17 both of our names, the rental house, the house we were living
18 in and that house so I changed the title of an interest in my
19 house to both of our names and he was to do the same thing
20 with Cherry Grove and he didn't get it -- he just hadn't done
21 it in about three or four months or five months and so we
22 changed it -- I changed it back.

23 Q: You put it -- you took the Cherry Grove house and changed
24 it?

25 A: No, that was the Hobcaw House. We lived there -- we lived

1 in my house for 14 and a half years.

2 Q: Okay. Did you know about the Cherry Grove house before
3 you signed the mediated agreement? Of course you did, you
4 lived in it.

5 A: Yeah.

6 Q: You could have had it appraised if you'd have wanted to.

7 A: Yes.

8 Q: You could have had it appraised if you wanted to; couldn't
9 you? When we were in litigation.

10 A: Are you talking about now, this moment in time?

11 Q: We're talking about before you asked the Court to approve
12 the agreement. You could have had it appraised if you
13 disagreed with the value of it.

14 A: I did disagree with the value at the mediation.

15 Q: Did you hire anybody to appraise it?

16 A: I didn't have to, I had the contract from the real estate
17 agent that had \$1.3 million dollars on it and presented that
18 at mediation.

19 Q: What contract was that?

20 A: It was a contract when we decided to sale the house and
21 move down to the south end.

22 Q: Alright.

23 A: I had 401K from Greatwest that I have documents for but
24 it's not anywhere. I don't know where that is. It was \$450 -
25 - \$445,887.48. I have profit share things that came from MG

1 Trust off of the -- when I went to sign our joint tax return.
2 Then the Nelson Mullins retirement thing came.

3 Q: Let me ask you this one question. All that stuff you're
4 talking about --

5 A: Yes.

6 Q: -- that was all on the '13 tax return, '12 tax return, '11
7 tax return, '10 tax return; wasn't it?

8 A: No, this was on the '14 tax return.

9 Q: And is that the first time any of that had ever shown up?

10 A: I didn't know about MG Trust.

11 Q: Here's my question. Is that the --

12 A: No.

13 Q: -- first time?

14 A: It's the first time that I have seen it, yes.

15 Q: Alright, did you go look at your old tax returns and see
16 if those things are on it?

17 A: I have not looked at all the old tax returns, no. Sorry.

18 Q: Okay.

19 A: Then there was two South Carolina Deferred Compensation
20 Plans that are not listed anywhere and so I don't know where
21 they came from. It was a 457 Plan and a 401K Plan.

22 Q: Okay.

23 A: And then there was an Edenvale Deferred Compensation.

24 There's something form Resolute Services that I did not

25 understand and I have a question about that.

1 Q: Okay.

2 A: There -- everything that I have picked up has different
3 assets on it, our taxes, the prenuptial, the mediation, the
4 county taxes. Everything is totally different.

5 Q: Let me ask you: how long ago did y'all sign that prenup?

6 A: 2001.

7 Q: Okay and you filed tax returns each year after that;
8 right?

9 A: Yes.

10 Q: Investments go up, investments go down.

11 A: Correct.

12 Q: You buy things, you sell things and that happens over
13 time; doesn't it?

14 A: Correct.

15 Q: You wouldn't expect all that to be the same in the 2015
16 when he died as it was in '01; would you?

17 A: No, but I would have expected it to be the same from the
18 mediation to his death.

19 Q: Okay. Did you tell that to Juliaan? How long did she
20 represent you by the way?

21 A: I hired her on May the --

22 Q: How long did she represent you?

23 A: -- the first of June, probably for about eight weeks.

24 Q: Okay and how long did Jim McLaren represent you?

25 A: For -- well, he was out of town so he never really filed

1 anything to represent me.

2 Q: How long --

3 A: He called you.

4 Q: That's right. How long was Mr. McLaren assisting you,
5 talking to you about this case?

6 A: I talked to him about being my attorney. He never filed
7 to be my attorney, he just talked to you and I don't know. He
8 was out of town and had pneumonia and was in Hawaii, so
9 probably a month.

10 Q: Okay. After the mediation and after you had the agreement
11 approved why'd you call Baxter Hahn and leave him a message
12 about an IRA?

13 A: I kept getting notifications from Wells Fargo that I was
14 supposed to -- had a notification in my account to please open
15 my account and see what the notice was and then I had a
16 notification that my tax documents would be forthcoming for
17 Wells Fargo but I don't have a Wells Fargo account. I had
18 asked in becoming for like two and a half years or so and I
19 asked David about it and he gave me indication that it was
20 just something that he had done for me so I didn't have any
21 documents on it and I'm just -- is there something out there
22 for me?

23 Q: Well, if you knew that for two and a half years why didn't
24 you say something about it at the mediation because you waived
25 all your rights to the retirement accounts except for the one

1 pension; right?

2 A: Which is one of the problems --

3 Q: Is that right?

4 A: -- yes, it was not revealed to me what they were and we're
5 just now finding out what they were.

6 Q: Okay, why did you call Baxter Hahn and tell him you had an
7 IRA -- you and David had an IRA and you were checking on it?
8 That's what I want to know.

9 A: I called to ask him if -- I said I think that we have an
10 account there and I said I'd like to know what the situation
11 is. Am I a beneficiary and he said I was not.

12 Q: You even had the account number didn't you?

13 A: Uh-huh. (Affirmative response)

14 Q: It says an IRA account for David and myself.

15 A: Uh-huh, that's what I thought it was

16 Q: Okay and he said that's wrong; right?

17 A: He did.

18 Q: Okay and you waived that in the agreement; right?

19 A: He did, in our taxes it had -- well, in his estate its got
20 about \$800 and some thousand dollars with Wells Fargo.

21 Q: That's the \$800 and some you accused Bryan of stealing?

22 A: No, sir. I didn't accuse Bryan of stealing anything. I
23 sent a note to the account -- to you to say that the \$800 --
24 this is a different \$899,871 was in the money market account
25 at Bank of America and that because all of that had been taken

1 for the estate by Bryan that -- you know, I felt like I should
2 get something for the tax return. I can't believe they even
3 tried to take my taxes that I paid from each payroll check
4 from me.

5 Q: And what did you say about the \$880?

6 A: Which --

7 Q: That he took it from the estate; do you remember that?

8 A: The \$880?

9 Q: Yes, ma'am.

10 A: The \$899,871 from Bank of America in a money market
11 account was taken for the estate.

12 Q: Okay.

13 A: And Bryan's the personal representative and I sent the
14 note to the estate.

15 Q: Okay.

16 A: Which it was -- subject line -- it was to you and it was
17 subject line, estate of David W. Harwell.

18 Q: Okay. Do you have any proof that he took \$800,000 from
19 the estate?

20 A: That account now has \$5,905 in it according to the probate
21 office.

22 Q: Do you have any proof that Bryan took the \$880,000 from
23 the estate?

24 A: Well, he has to, he's the personal representative. He's
25 the only one that could actually have transferred the money.

1 Q: Alright and you think you're entitled to a piece of it?

2 A: No, sir. I think that after 20 years I'm entitled to
3 being able to keep the lights on and some place to live.

4 Q: Well, I don't mean to argue with you but \$75,000 bucks
5 goes a long way towards doing that.

6 A: They all went towards David Harwell's clothing, food,
7 shelter, Debbie Harwell's transportation, food, clothing,
8 shelter and 100 percent of it went to charge cards and left me
9 with another \$70,000 in debt. What he did it for was
10 apparently to make the Judge think that I was getting
11 something when all I got was stuck with debt.

12 Q: Okay. We've had endless conversations about mail; haven't
13 we?

14 A: We have.

15 Q: And the post man showed us this and that's the online
16 record of change of address forms. You see that? I think
17 it's exhibit number 7.

18 A: Uh-huh. (Affirmative response)

19 Q: Alright and you filed an individual change of address form
20 when you and David separated in February; didn't you?

21 A: I did.

22 Q: And you wanted your mail to go from where to where?

23 A: My mail that was going to 312 Canal Street -- I asked that
24 Deborah B. Harwell's mail be sent to Myrtle Beach, South
25 Carolina.

1 Q: To your PO Box?
2 A: To my PO Box.
3 Q: And what is that?
4 A: 7769.
5 Q: Alright and that's the mailing address that you use; isn't
6 it?
7 A: Yes, was there something wrong with that?
8 Q: Alright and then -- remember when David died?
9 A: I would like to remember.
10 Q: Okay, do you remember when he went into the hospital?
11 A: No -- yes I did. I went to the hospital.
12 Q: Yeah, you went up there; didn't you?
13 A: I did. I did. His closest relatives called me and asked
14 me if I would please go because they knew that they wanted me
15 to be there.
16 Q: You knew there was a restraining order keeping you away?
17 A: I have no restraining order that I'm aware of.
18 Q: Okay, alright. He was in the hospital on September 25th on
19 a respirator; wasn't he?
20 A: Yes.
21 Q: Alright, but yet it looks like from the postal records you
22 filed a family change of address form while he was in the
23 hospital. Now, why would you do that?
24 A: He did not get mail at 312 Canal Street. I'm the only one
25 that really got mail there.

1 Q: Why did you file a change of address form three months
2 after a court approved agreement and while Judge Harwell was
3 on a respirator you filed a family change of address form;
4 didn't you?

5 A: Yeah, I did.

6 Q: Alright.

7 A: Intentionally.

8 Q: Alright, you did it on purpose didn't you?

9 A: I did do it on purpose.

10 Q: And you wanted the mail from that family sent where?

11 A: To PO Box 7769.

12 Q: Alright and family according to you was you and David;
13 right?

14 A: It was me and David but David got his mail at Georgetown.
15 I'll be glad to answer why if you'd like to ask me.

16 Q: I just want to know if you did it.

17 A: I definitely did it. I was told to do it and I did it.

18 Q: Okay and how long did you receive David's mail after he
19 passed away?

20 A: Not very long. I think it was a 10 day period in
21 December.

22 Q: Okay, did you get those dividend checks? You remember we
23 talked about those at the last hearing?

24 A: I'm sorry; I don't remember you talking about a dividend
25 check.

1 Q: Yeah, \$2,200 thing from CompuShare, some BB&T stuff --

2 A: No, sir. I haven't gotten any checks except a penny check
3 that I sent to you, sent to Bryan, and sent back to the people
4 -- sent a note back to the people. Everything that I've
5 gotten from mail, which has been extremely limited, I've sent
6 a note back to give them Bryan Harwell's address and
7 everything and tell them that he was PR and forward everything
8 else there.

9 Q: Okay, tell me what evidence you have to back up your claim
10 that Bryan willfully committed a felony by leaving you off the
11 death certificate? Tell me that.

12 A: The -- that case for the death certificate has been
13 ordered by Judge Folk in Beaufort to go to Circuit Court in
14 Florence.

15 Q: Listen to me. Listen to the question. Yes, all of the
16 claims in Probate Court are going to Circuit Court.

17 A: Exactly.

18 Q: My question is this: what proof do you have to back up
19 your claim that Bryan willfully and intentionally left you off
20 of the forms and committed a felony?

21 MR. WELSH: Your Honor, I object. I mean, they're going
22 to do discovery in that case. Why are we sitting here going
23 through all of this?

24 THE COURT: Mr. Barth?

25 MR. BARTH: Because there are restraining orders that

1 we're still dealing with against her messing with the estate
2 with her doing all kinds of stuff, one of which is fooling
3 with the death certificate. Once she has filed a claim
4 alleging that the personal representative has intentionally
5 filed a false death certificate claim. Number one, we allege
6 that is a disparaging comment which violates the restraining
7 order and in order to do that I'm entitled to know what proof
8 she has to make that allegation.

9 MR. WELSH: Once again, I'm not even sure if it was a
10 time put on this -- it was well after the plaintiff's death
11 and this Court doesn't have any jurisdiction over that. The
12 Probate Court -- now the Circuit Court has that jurisdiction.
13 They have exclusive jurisdiction over estate matters and the
14 only thing -- well --

15 THE COURT: And I see where you're going, Mr. Barth, but
16 as far as the fact that she's made disparaging remarks, I
17 understand that. As far as delving into what proof she has
18 and all that, that might be crossing the line and going into a
19 probate matter and something that needs to be handled in
20 Circuit Court in another case; so, I'm going to sustain the
21 objection and let's move on.

22 MR. BARTH: Alright.

23 BY MR. BARTH:

24 Q: The estate's asking for attorney's fees against you in
25 this Rule to Show Cause; you understand that?

1 A: Yes, sir. I realize that y'all took me for fees for
2 everything y'all can think of and to try to wreck me and not
3 have an attorney, even asking Judge Folk not to allow me to
4 have an attorney and that I should not be allowed to represent
5 myself pro se. Yes, sir, I certainly understand that.

6 Q: You have two attorneys in Probate Court; don't you?

7 A: No, sir --

8 Q: Now one.

9 A: -- you sued my attorney personally and professionally,
10 Deidre Edmonds, and I have a probate attorney and his name is
11 Adam Silvernail in Columbia.

12 Q: And he's representing you on three claims; isn't he?

13 A: In all probate matters that are going to Circuit Court in
14 Florence.

15 Q: Yes, ma'am, and you filed your own probate claim in
16 addition; didn't you -- pro se?

17 A: Yes, sir.

18 Q: Alright. How much have you paid Mr. Silvernail?

19 A: His first bill has not come yet. He bills differently.

20 Q: How much do you owe him?

21 A: I haven't gotten a bill yet.

22 Q: What are your financial arrangements with him?

23 A: To try to pay him when a bill comes.

24 Q: What are your financial arrangements with him? You have
25 to have a written agreement.

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
COUNTY OF HORRY)	2015-DR-26-691
David W. Harwell by and)	
through his personal)	
representative,)	
Bryan Harwell,)	
Plaintiff,)	Transcript of Record
vs.)	
Deborah B. Harwell,)	June 16, 2016
Defendant.)	

B E F O R E:

Honorable Melissa Buckhannon
Horry County Courthouse
Conway, South Carolina

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

Kevin M. Barth, Esquire
Gena Ervin, Esquire
Attorneys for Plaintiff

Cliff Welsh, Esquire
Attorney for Defendant

Sallie Beth Todd
Family Court Reporter

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- 1 A: I think that agreement says that he charges \$200 an hour
2 or something like that.
- 3 Q: Okay, did you pay him a retainer fee?
- 4 A: No, he doesn't do that. He does it differently than
5 anybody I've been to.
- 6 Q: A couple weeks ago you paid Carrie Warner \$5,000; didn't
7 you?
- 8 A: I did.
- 9 Q: Did she give it back to you?
- 10 A: No.
- 11 Q: She hasn't given it back to you?
- 12 A: No.
- 13 Q: What work did she do for you?
- 14 A: None.
- 15 Q: Where'd you get the \$5,000?
- 16 A: I borrowed it.
- 17 Q: Okay. Who'd you borrow it from?
- 18 A: I borrowed it from my -- from Lake Cruises.
- 19 Q: From?
- 20 A: Lake Cruises.
- 21 Q: Who is that?
- 22 A: It's a company.
- 23 Q: Your company?
- 24 A: Uh-huh. (Affirmative response)
- 25 Q: Alright, tell us about Lake Cruises.

1 A: Well, it's not my company.

2 Q: Okay.

3 A: It was my cousin's company who died of Parkinson's disease
4 in January.

5 Q: That's the marina and charter service you run?

6 A: Yes, yes.

7 Q: Who owns it now?

8 A: The estate. It's in foreclosure.

9 Q: Okay.

10 A: Actually, both dates of foreclosure were the same dates of
11 the dates to be here exactly.

12 Q: Let me ask you this, if this Judge finds that you violated
13 this Court's Order by filing all of these probate claims, you
14 don't have any intention of withdrawing them do you?

15 A: I haven't even thought about it.

16 Q: Well, let's think about it. You signed an agreement that
17 says you waive any right to file anything against the estate.
18 You've now filed it, we're in all kinds of litigation in
19 Beaufort and Florence County and if the Judge finds that
20 that's in violation of this Court's Order are you going to
21 withdraw them?

22 A: I guess I'll just have to ask for recommendations from an
23 attorney. I don't even know -- I'm sorry, I don't even know
24 how to interpret that.

25 Q: Well, I want to know. I mean, you have not done what the

1 Court ordered you to do, in our opinion, and I want to know if
2 she tells you to withdraw them because you're in violation of
3 the Court Order are you going to do it?

4 A: I don't think so.

5 Q: Okay. Did you send them another change of address form
6 after Judge Harwell died?

7 A: I sent a number of change of addresses because I tried to
8 get my mail as the CompuServe documents but Bryan Harwell had
9 actually filed for Debbie Harwell's mail to go to him.

10 Q: Okay. Let me ask you, here's my question --

11 A: So, we're both filing back and forth but I'm trying to get
12 -- I sent a letter to everybody -- to anything that I've
13 gotten.

14 Q: Here's my question: Didn't you file at least one change of
15 address form and sent mail to your PO Box --

16 A: Yes.

17 Q: -- after Judge Harwell died?

18 A: Yes, I did.

19 Q: Okay, that address was the Florence Timberlane address --

20 A: Yes.

21 Q: -- right?

22 A: Exactly.

23 Q: Alright and you -- were you living at Timberlane at the
24 time?

25 A: Timberlane was our house in Florence for the past nine

1 years. I was asked to do that by PEBA.

2 Q: Were asked to do a change of address form?

3 A: Yes, sir.

4 Q: Alright and did you do a family change of address?

5 A: That's how it had to be.

6 Q: Okay and so --

7 A: I would be glad to explain if you will let me.

8 Q: -- so because of that family change of address form that
9 you filed before he died and after he died, you continued to
10 get mail that was addressed to you and to David; correct?

11 A: David's mail has my --

12 Q: Correct?

13 A: -- things inside of it according to PEBA so I could not
14 get retirement until such time I got my package --

15 Q: Ms. Harwell --

16 A: -- my package was going to 2208 Timberlane Drive and they
17 said it was against what they could do -- they could not send
18 it to my address and it could -- and I said, "well how am I
19 going to get my package, can I come get it" and they said,
20 "No, you can't come get it. It has to be mailed to 2208
21 Timberlane". After they mailed the third package and I did
22 not get it the lady called me and she said, "are you still his
23 wife" and I said, "well, yes, I'm still his wife" and she
24 said, "then you change the address until you get the package"
25 and that's what happened.

1 Q: Ms. Harwell, my question was: Isn't it true that because
2 of the address change you filed before he died and two months
3 after he died that you continued to get your mail get sent to
4 your PO Box and you continued to get Judge Harwell's mail --

5 A: I haven't --

6 Q: Listen to me --

7 A: No.

8 Q: -- sent to your PO Box?

9 A: No.

10 Q: Okay, so all of those things you claim to have received
11 and filed with the Probate Court that were addressed to David,
12 how did you get those if they didn't come to your PO Box?

13 A: That was like for a very limited period of time and the
14 reason that it was done back and forth was so I could get my
15 mail. They canceled my dental insurance because my dental --
16 as they explained to me, David was the employee of the State
17 so when a document would come from PEBA his name's on the
18 outside but on the inside it has self or spouse; and so mine
19 was coming as spouse but I'm not getting it. I'm not getting
20 anything and so that's what they recommended to do, that's
21 what we did. I haven't taken any mail. I sent everything
22 over to Probate Court, sent it back to you guys, written a
23 note to anywhere. I started getting -- there's been automated
24 things that we did not ask for and in the documents that you
25 presented if you read them it tells you it was an automated

1 thing that happened. No one requested a change of address
2 from CompuServe of anywhere else that you were alleging, it
3 says in there it's automated.

4 Q: It went along with your change of address forms; correct?

5 A: Evidently it did but the same thing would have happened to
6 Bryan as he would have been requesting the same forms. So,
7 the same thing is going on on both sides.

8 Q: Is that what --

9 A: I'm just trying to get my mail.

10 Q: Is that when you told the postal inspector you wanted
11 Bryan indicted for stealing your mail?

12 A: That's when I had a telephone call --

13 Q: Is that a yes?

14 A: Pardon?

15 Q: Is that a yes? Is that when you told the postal inspector
16 you wanted him indicted and arrested for stealing your mail?

17 A: When the postal inspector called --

18 Q: It's easy. Is that when you said it?

19 A: I asked him what number I would call to file a charge for
20 my checks being taken, yes.

21 Q: Alright.

22 A: Which I still do not have.

23 Q: And that was the same conversation where you told the
24 postal inspector you would neither separated nor divorced;
25 isn't that true?

1 A: I did not. He said, "Are you still his wife" and I said,
2 "Yes". I don't believe he asked separated or anything like
3 that.

4 Q: Did you hear him testify?

5 A: I did but I don't remember exactly the wording.

6 Q: Alright. One other thing I want to ask you, Ms. Harwell.
7 I've got another document that I want you to look at. Would
8 you mind looking at that? Do you see that?

9 A: Yes, sir.

10 Q: It's an e-mail you sent --

11 A: Yes, sir.

12 Q: -- as a pro se litigant to everybody --

13 A: Uh-huh. (Affirmative response)

14 Q: -- objecting to the case being moved from Beaufort Probate
15 to Common Pleas.

16 A: Yes.

17 Q: Alright.

18 MR. BARTH: I'd move to introduce that, Your Honor.

19 THE COURT: Any objection?

20 MS. HARWELL: Where's the rest of it? This is only part
21 of it? Where's the rest of it?

22 MR. BARTH: I'm asking the questions.

23 MR. WELSH: Yes, I think I should have an objection if
24 this is not the whole message or whole document.

25 THE COURT: I think he's just introducing that one e-

1 mail. I don't think he's introducing the whole e-mail stream.

2 MR. BARTH: I'm not.

3 THE COURT: Do you have an objection to the e-mail that
4 she's identified as being from her?

5 MR. WELSH: It was just the objection to the change of
6 venue or change of --

7 MR. BARTH: That's all it is. She objects to moving it
8 to circuit court.

9 MR. WELSH: None.

10 THE COURT: Plaintiff's exhibit twenty nine into evidence
11 without objection.

12 (PLAINTIFF'S EXHIBIT NUMBER TWENTY NINE IS
13 ADMITTED INTO EVIDENCE.)

14 BY MR. BARTH:

15 Q: Lastly, Debbie, why'd you send that text message to Baxter
16 saying don't sell the property that your daddy wanted you a
17 Teresa to have it.

18 A: The reason that I sent it was because I had a friend call
19 and said that they saw online there were some documents were
20 Bryan had sued Baxter and their relationship was a little
21 questionable but I wanted to support Baxter in that because
22 his wife had wanted the house and had expressed it numerous
23 times and frankly I thought I was doing a good thing
24 supporting it telling him that I thought maybe, you know, that
25 David did want him and Teresa to have it.

1 Q: So, isn't it true --

2 A: I thought I was supporting him. I love these boys.

3 Q: Alright, listen to me. You knew that we filed a Petition
4 to sell those pieces of property; didn't you?

5 A: Somebody called me and told me they had seen something
6 about -- I didn't know exactly what it was for. They just
7 said that they had saw where Bryan had sued Baxter.

8 Q: Okay and did you go to Florence Probate Court and get a
9 copy of the Petition to sell the property?

10 A: No, I did not.

11 Q: Were you provided with one?

12 A: No.

13 Q: You sure about that?

14 A: I don't know when I would have been provided with one
15 unless Gena had sent something over the e-mail or something.

16 Q: Didn't you know when you --

17 A: I probably wouldn't know it if I saw it.

18 Q: Didn't you know at the time that you filed your \$3 million
19 dollar claim that it was going to stop any sale of any
20 property from this estate? Didn't you know that?

21 A: That's not true. That's not what the law says.

22 Q: Okay.

23 A: I am handling the probate estate now of my cousin. You
24 can sale any property that you want to any time you want to as
25 long as you retain the funds. That's the law.

1 Q: That's the law?

2 A: I haven't done anything to stop anything.

3 Q: Alright, let me ask you this now that you're so good with
4 the law, tell me which one says you're entitled to a piece of
5 this estate after waiving it. Find me that one.

6 A: It's the one about fraud and misrepresentation.

7 Q: The one you filed after the first part of this hearing --
8 Motion?

9 A: Yes.

10 Q: Thank you. At the mediation, or one of the settlement
11 offers actually before mediation, you wanted to be treated as
12 the wife at the funeral and listed in any obituary?

13 A: Yes.

14 Q: Alright and that wasn't part of the agreement; was it?

15 A: For a reason.

16 Q: Is that part of the agreement?

17 A: It was not for a reason and my husband told me later he
18 would talk to Bryan about it. Yes.

19 MR. BARTH: I move to strike it. The Order speaks for
20 itself.

21 THE COURT: The Order speaks for itself, ma'am.

22 BY MR. BARTH:

23 Q: Alright, but yet you went and filed one anyway; didn't
24 you?

25 A: I did. That's what Judge Lisa Kinon, and that's what

1 Derrick told me to do, both of them.

2 Q: Okay.

3 A: And they said that's what's being done now everybody does
4 the same thing. They said if you get left out for some reason
5 to just file your own --

6 MR. BARTH: I'd move to strike that.

7 MS. HARWELL: -- and that's what I was advised to do by
8 Judge Lisa Kinon.

9 THE COURT: Ma'am, you can't tell me what anybody else
10 says, it's hearsay. Strike the hearsay from the record.

11 BY MR. BARTH:

12 Q: You filed it and then asked the estate to pay for it;
13 right?

14 A: I did because I thought it was wrong for them leave me
15 out. I'm his wife right now.

16 Q: Alright, thank you, ma'am.

17 THE COURT: Mr. Welsh?

18 CROSS EXAMINATION OF MS. HARWELL BY MR. WELSH:

19 Q: How long would you say you talked about that, Debbie? Did
20 you have any doubt that David was coming back?

21 A: No, I always thought he would be coming back. I never
22 thought he would stay gone.

23 Q: Was there a reason -- reasons that he wanted this
24 separation?

25 MR. BARTH: I object.

1 MS. HARWELL: Yes, sir --

2 MR. BARTH: I object.

3 MS. HARWELL: -- there was.

4 MR. BARTH: I object.

5 THE COURT: Stop talking.

6 MR. BARTH: I object.

7 THE COURT: What's your objection?

8 MR. BARTH: She's trying to go back behind the Order and
9 try to explain what it is. The Order speaks for itself. Why
10 they entered into an agreement has no relevance on today
11 whether she violated a Court Order or not.

12 THE COURT: Mr. Welsh?

13 MR. WELSH: I can ask it differently.

14 THE COURT: Alright, ask it differently.

15 MR. WELSH: I wasn't going at why she violated the Court
16 Order or didn't violate the Court Order.

17 BY MR. WELSH:

18 Q: What were your and David's plans --

19 MR. BARTH: I object, same objection.

20 THE COURT: Mr. Welsh, I'm trying to figure out what -- I
21 mean, the Order does speak for itself. Neither one of them
22 filed anything before his passing to modify or do away with
23 the existing Family Court Order and I don't think she's in a
24 position to testify as to what Judge Harwell's plans were
25 other than the Order speaks for itself.

1 MR. WELSH: Well, he's still the named plaintiff in this
2 thing nine months after his death.

3 THE COURT: No, the personal representative is; the
4 estate is the named plaintiff.

5 MR. WELSH: He's never been substituted.

6 THE COURT: The Rule to Show --

7 MR. WELSH: And we don't have the proper -- we don't have
8 the proper parties -- I mean, that's another -- I don't know,
9 the documents I have all have David Harwell on them.

10 MR. BARTH: The caption is the personal representative.
11 That's who steps into the shoes of the decedent.

12 THE COURT: I mean, in the Rule to Show Cause -- if you
13 look at the Rule to Show Cause it is David W. Harwell, by and
14 through his duly appointed personal representative, R. Bryan
15 Harwell. In Family Court when one passes away --

16 MR. WELSH: Okay, alright, I'm sorry. I didn't see that.
17 Alright, moving right along.

18 BY MR. WELSH:

19 Q: Debbie, the tax issue that -- the tax refund issue, we've
20 talked about -- there's been a lot of talk about the fact that
21 it was carried over to the next year, that would have been to
22 the 2015 tax return?

23 A: Yes.

24 Q: And you got the payment, the \$75,000, in the year of 2015;
25 is that correct?

1 A: Yes.

2 Q: And any tax consequences that you would have gotten
3 because of that payment would have been on your 2015 tax
4 return?

5 A: Yes.

6 Q: Okay, now the \$75,000 that was taken as alimony?

7 A: Yes.

8 Q: And what did that -- what did that money represent? How
9 did that figure come up?

10 MR. BARTH: I object. I don't think that's relevant.
11 The agreement is what it is. I mean, it's a settlement
12 agreement, if they're going back into how things were
13 negotiated there were all kinds of things that were negotiated
14 prior to the signing of that agreement.

15 THE COURT: And, Mr. Welsh, that's my problem. One, our
16 mediation rules say we can't -- what's discussed in mediation
17 is confidential that's why you can't --

18 MS. HARWELL: It's a non-confidential agreement --

19 THE COURT: Ma'am, I am talking --

20 MS. HARWELL: I'm sorry.

21 THE COURT: -- and I am not going to be interrupted by
22 you. Do you understand that?

23 MS. HARWELL: Yes, I'm sorry.

24 THE COURT: It is a -- in mediation that's why the
25 mediator can't be called to testify as to what took place in

1 mediation. If that was part of the settlement negotiations --
2 I mean, the fact of the matter is I have an Order. I am bound
3 by the Order on its face. Whatever reason went into it I am
4 bound by the Order on the face and we just don't discuss
5 settlement negotiations in Family Court, it's not allowed.

6 MR. WELSH: Well, the problem is we don't really have a
7 mediation agreement. We have a broad outline that was
8 supposed to lead to an agreement and any terms are supposed to
9 be arbitrated by the mediator and it is obviously a term that
10 is in discussion here because it is now -- they had a
11 deposition(SIC) for proportional which is quite different than
12 the deposition -- I mean, the definition that was discussed at
13 mediation. They testified that proportional was a percentage
14 of the gross income compared to each other. Well, if that was
15 a definition that they wanted clarified the agreement says
16 that the mediator is the one to arbitrate it. We shouldn't be
17 here even on that but we are here and I'm trying to --

18 THE COURT: Well, one --

19 MR. WELSH: -- if we're going to go by the agreement,
20 that's what the agreement says that any term that is -- has to
21 be -- is in dispute there's an arbitration agreement. It goes
22 back to the mediator to determine.

23 THE COURT: Mr. Barth?

24 MR. BARTH: Bear with me one second while I pull it.
25 First of all, the question that he's asking is nothing to do

1 with how the \$75,000 was negotiated. So, going back to that
2 question --

3 **THE COURT:** I sustained that objection. She can't
4 testify as to the settlement negotiations of where the \$75,000
5 came from. \$75,000 was in the agreement, she signed the
6 agreement, it was approved by the Court.

7 **MR. BARTH:** The paragraph 21, Your Honor, it says, "The
8 parties agree that should they have a dispute or disagreement
9 over the language to be used in a formal agreement the
10 mediator will decide what language is to be used". There
11 wasn't any question about what language was to be used; the
12 language was they will share it proportional. There is no
13 dispute about that. We didn't do another formal agreement.
14 It is what it is.

15 **THE COURT:** And, Mr. Welsh, it is -- it is often a
16 practice in Family Court the parties will go to mediation,
17 they will come out with an outline of an agreement and they
18 may or may not formally go forward and do a more extensive
19 agreement. What I read this to mean is if they go forward and
20 do a more extensive agreement and they have problems about the
21 language or the intent of what -- then the mediator will be
22 called in to clarify any language or to arbitrate that issue.
23 It doesn't say if there is a problem in following the
24 agreement as reached that there will be arbitration before
25 another filing with the Court. We often have those as terms

1 in our agreements too, but that is not present. What I read
2 this is if they choose to go forward and do a different
3 agreement, a more formalized agreement -- however, both of
4 these parties were represented by counsel. Neither counsel
5 did a more formal agreement. A requested -- a hearing was
6 requested by the parties and in Family Court both parties have
7 to submit their unavailable dates, both parties are actively
8 involved in the scheduling of a Family Court matter. The
9 matter was scheduled for Court. The attorneys appeared, Judge
10 Harwell appeared, as is reflected on the Final Order that I'm
11 reading. A request was made to approve this Order by Mr.
12 Harwell who was present and Ms. Harwell who signed an
13 Affidavit and the agreement was approved. Neither party asked
14 for a more formal agreement to be done; therefore, I am bound
15 by the terms of the Final Order that it approved the mediated
16 agreement. That became the Order of the Court.

17 MR. WELSH: Alright.

18 BY MR. WELSH:

19 Q: Debbie, without going into any details, there are actions
20 pending in -- well, now it's Circuit Court in Florence; is
21 that correct?

22 A: Correct.

23 Q: And as a matter of fact, just recently on June 10th, 2016
24 the Probate Judge in the County of Beaufort sent all the
, 25 issues back to Florence Circuit Court; is that correct?

1 A: Correct.

2 MR. WELSH: You haven't put this in yet?

3 MR. BARTH: I have not.

4 MR. WELSH: Okay.

5 BY MR. WELSH:

6 Q: And is this the Order that you received doing that?

7 A: Yes, it is.

8 Q: Alright, so there are actions pending in another Court?

9 A: Yes.

10 MR. WELSH: I'd move --

11 THE COURT: Any objection?

12 MR. BARTH: No objection to the document coming in, Your
13 Honor, but we do want to protect our position in the other
14 Court. We'd move to dismiss all of those claims for lack of
15 jurisdiction. I don't want to agree to anything that waives
16 that but I don't have a problem with that document coming in.
17 It's an official Court Order.

18 THE COURT: And I completely understand. You're not
19 saying the validity of it, you're not giving any stamp of
20 approval on it, you're just saying it's a document that exists
21 --

22 MR. BARTH: Yes, ma'am.

23 THE COURT: -- and I will -- Defendant's exhibit number
24 two is entered into evidence with that stipulation.

25 (DEFENDANT'S EXHIBIT NUMBER TWO IS

1 ADMITTED INTO EVIDENCE.)

2 MR. WELSH: And I'm not involved in any of those actions.

3 THE COURT: I understand, I understand.

4 MR. WELSH: So I'm not asking you to consent or agree to
5 anything on it.

6 BY MR. WELSH:

7 Q: Let's see. Okay, Debbie, just for clarification, you were
8 talking about PEBA.

9 A: Uh-huh. (Affirmative response)

10 Q: I don't know -- do you know what that stands for?

11 A: Public Employees Benefits Authority.

12 Q: And how did that relate to what was going on?

13 A: All of my Blue Cross Blue Shield, all of my insurances, my
14 dental insurance, everything comes from PEBA and that -- along
15 with they also have the applications for retirement. They
16 have everything to do with the State and David was the State
17 employee.

18 Q: Alright and you said something about how they had advised
19 you to do a change for a period of time of the mail going to
20 the Florence house.

21 A: Until I could get the application.

22 Q: Do you know what period of time that was?

23 A: I think it was 10 days or something like that.

24 Q: Alright. So, it was just 10 days that mail went from that
25 house?

1 A: Correct.

2 Q: Alright.

3 A: To my knowledge.

4 MR. WELSH: Well, I don't think I have anything more.

5 THE COURT: Mr. Barth?

6 MR. BARTH: Just one.

7 REDIRECT OF MS. HARWELL BY MR. BARTH:

8 Q: The one you're talking about the 10 day change of address
9 -- that lasted for 10 days?

10 A: That was to 2208 Timberlane.

11 Q: Yes, ma'am, and that was the one filed after he passed?

12 A: Yeah, it had to be after he passed because of PEBA.

13 Q: Okay and that was not your first change of address form
14 was it? The first one you received letters for months; didn't
15 you?

16 A: From where?

17 Q: From both of Judge Harwell's houses, Canal Street and --

18 A: I could not get any mail. They canceled my dental
19 insurance. I lost my \$250,000 in term insurance. I lost the
20 car insurance -- canceled everything because I couldn't get
21 any mail.

22 Q: How long did you get Judge Harwell's mail from Canal
23 Street and Timberlane after your first change of address form
24 the week he was in the hospital?

25 A: I think Timberlane was for about 10 days if I remember

1 right.

2 Q: Alright.

3 A: And probably all together with everything that came
4 probably 10 pieces of mail maybe -- 9, I don't know, not much.

5 Q: Thank you.

6 THE COURT: Any --

7 MR. WELSH: (Negative response).

8 THE COURT: Alright, ma'am, you can have a seat back over
9 by your attorney. Ma'am, you can seat back over by your
10 attorney.

11 Mr. Barth, any other witnesses?

12 MR. BARTH: Your Honor, if you don't mind, let me ask Mr.
13 Welsh. What we have to present is two advised attorney fee
14 affidavits and the inventory and appraisement from the Probate
15 Court. If Mr. Welsh wants me to call a witness to put them in
16 through I will. If not --

17 THE COURT: Talk to him.

18 MR. BARTH: Your Honor, I'll grab the Attorney Fee
19 Affidavits and the Inventory. I don't think Mr. Welsh is
20 going to require us to call a witness. He does, however,
21 obviously object to his client having to pay any of it. Your
22 Honor, the Inventory and Appraisement dated -- filed February
23 8th, 2016 would be our next exhibit.

24 THE COURT: Any objection?

25 MR. WELSH: No.

1 THE COURT: I understand that you're not acknowledging
2 that she needs to anything, but you're not challenging the
3 validity of the affidavit.

4 MR. WELSH: That's what they would testify to.

5 THE COURT: That's right.

6 Exhibit 30 into evidence without objection.

7 (PLAINTIFF'S EXHIBIT NUMBER THIRTY IS
8 ADMITTED INTO EVIDENCE.)

9 MR. BARTH: The other two those are the revised fee
10 affidavits.

11 THE COURT: Alright, is that 30 and 31?

12 MR. BARTH: That'd be 31 and 32.

13 THE COURT: Alright, 31 and 32?

14 MR. BARTH: 30 was the Inventory.

15 THE COURT: Okay.

16 MR. BARTH: It was a certified copy of the Inventory from
17 the Probate Court.

18 THE COURT: Number 31 and 32 is fees.

19 MR. BARTH: Fee Affidavits, Your Honor. That's all we
20 have, Your Honor, in our case.

21 (PLAINTIFF'S EXHIBIT NUMBERS THIRTY ONE AND THIRTY
22 TWO IS ADMITTED INTO EVIDENCE.)

23 THE COURT: Mr. Welsh, do you have any witnesses to call?

24 MR. WELSH: No, no, Your Honor.

25 THE COURT: Alright.

1 It's 12:25 now, I understand that Judge Spruill will be
2 expecting y'all at 2:00. I'm going to speak with him and see
3 if he will allow me to have you at 2:00 to render my ruling
4 and then you'll go down the hall to him. Let me run and see
5 if he's here before I release you and make sure he's good with
6 that. If not, I'll let him deal with you and then I'll bring
7 you back in and make my ruling; but let me just make sure. I
8 think mine might be a little bit quicker than his.

9 MR. WELSH: Your Honor?

10 THE COURT: Yes, sir.

11 MR. WELSH: Are we not going to have an opportunity to
12 argue?

13 THE COURT: We usually don't do that in Family Court, Mr.
14 Welsh.

15 MR. WELSH: You know, you were asking about cases on
16 jurisdiction --

17 THE COURT: Alright, hold that thought. Let me catch him
18 before he leaves for lunch and then I'll come back and hear
19 very, very brief arguments but we usually don't have closing
20 arguments in Family Court.

21 (RECESS)

22 THE COURT: Alright, I just talked to Judge Spruill. My
23 understanding of what he was going to do today is not to
24 actually go forward with the hearing on the Motion to
25 Reconsider. He was going to set some ground -- because as I

1 understand it from him without putting words in his mouth,
2 nothing was filed along with Motion so he doesn't know what
3 the basis of all that -- so, he was going to talk on the
4 record about the scheduling of it and the ground rules. Now
5 that she has an attorney he's willing to talk to the attorneys
6 in chambers and wanted to know if y'all would be willing to
7 come back and speak with him and let him tell you that and
8 maybe you don't have to have a hearing with him today.

9 MR. WELSH: That will be fine. I doubt he'll want to
10 have testimony anyway.

11 THE COURT: Right, and that's what he wants to make sure
12 how y'all want to handle it. So, I'm going to -- so I can
13 release him for lunch and then y'all can come back in and make
14 your arguments and then -- so, he's waiting on you back here
15 in Judge Norton's chambers and I'll show you where that's at.

16 MR. WELSH: Does he want --

17 THE COURT: Just attorneys.

18 (RECESS)

19 THE COURT: Alright, while I'm not one that will normally
20 allow closing arguments, Mr. Welsh, you have asked me to do
21 so. I will allow it briefly. I'll be happy to hear from you.

22 MR. WELSH: Well, Your Honor, basically --

23 THE COURT: Let me stop you first, as you did not bring
24 it, I'm going to let Mr. Barth go first.

25 MR. BARTH: Thank you, Your Honor. May it please the

1 Court? To be honest with you, in 34 years of practicing this
2 is about as clear a violation of the Court Order as I've ever
3 seen and she doesn't even deny it. She admitted changing the
4 mail. She admitted signing an agreement that waived a claim
5 against the estate. She admitted filing claims against the
6 estate. And to compound it she files a new claim against the
7 estate within a couple days of hearing her lawyer, that she
8 hired, say under oath that based on her understanding of
9 probate law Debbie doesn't have any right to any money from
10 the estate. Even in the face of that she continues to
11 interfere. There were questions about the estate asking to
12 sale property. She knew it, she knew that's what they were
13 trying to do and so she e-mails Baxter Harwell and says your
14 daddy didn't want it sold, he wanted you to have it; and when
15 she filed a claim it stops all of that where it's dead in the
16 water where it sits to this very day and now it's going to be
17 litigated in the Court of Common Pleas. Ordinarily, when
18 people violate a Court Order, Judge, they have some excuse for
19 it or they didn't understand this or they didn't understand
20 that, Debbie hasn't said any of that. She just said she
21 didn't understand the agreement, the lawyer didn't explain it
22 to her. She didn't know she had the right to appeal. Her
23 first story was that she didn't even see the Order for months
24 and months and we know that's not case now because she picked
25 up the check. What she understood in the agreement was the

1 money she was getting and she took it. The mountain house she
2 was supposed to get, she got it. Her personal property, she
3 got it. She was supposed to get his Legislative General
4 Assembly Retirement, she has it. Her first story was she
5 filed surviving spouse simply to get her Social Security
6 Retirement benefits, she has all of that now. And yet, still
7 comes in two weeks ago and files a claim for an elective
8 share. I just haven't ever seen anything like it. I'll be
9 honest with you and I don't know what will get this lady's
10 attention. If she walks out of the door today we won't ever
11 find her again. It took a professional retired SLED agent
12 nearly two months to find her the last time and she said she's
13 living over her office in some marina in North Carolina that
14 she says is now being foreclosed. We don't know where she is.
15 We wouldn't have found her this time if she hadn't have been
16 at her lawyer's office. The only thing she understands is
17 going to be the handcuffs; because I asked her specifically
18 today, the last thing I wanted to know from her is if the
19 Judge finds that you have violated a Court Order by filing all
20 of these claims in Probate Court after you waived them, are
21 you going to withdraw and she looked at you and me and said
22 no. That's exactly why in our Rule -- I knew that was going
23 to be her answer and that's exactly why in our Rule we said we
24 wanted her held in contempt. We know she isn't going to sign
25 any paperwork and we're asking Your Honor to include in on

1 Order that the Clerk can do it for her. There is no other
2 Court that can enforce this Order and this Order is crystal
3 clear that she waives any right she has to Judge Harwell's
4 estate period, end of story, end of Order. And for some
5 reason that's the only part of the agreement that she doesn't
6 really understand. She admitted taking his mail. She had
7 reasons why she did it, but she didn't deny it. She even
8 filed one months after he died. I mean, clearly, that
9 interferes with the administration of the estate. She's
10 interfered with all of this and here we are a year later and
11 we're still trying to find mail. We're still trying to get
12 property sold. We're still trying to deal with her claims and
13 I just don't know what else to say, Judge. I mean, if this
14 isn't a violation of a Court Order, an intentional willful
15 violation I don't know what is because she told us -- she told
16 us I did it, yes I did. People have excuses all of the time
17 why they don't pay their child support, you know, but the fact
18 that you think you've got some excuse and can't afford it
19 doesn't stop you from complying with the Court Order and this
20 lady just isn't going to do it. She isn't going to do it
21 until she's in handcuffs and I probably haven't said that
22 twice in 34 years. I just haven't ever run across anything
23 like it and now she wants to set the whole thing aside and
24 we've got to deal with that. Fortunately, the Rules say it
25 doesn't stay the operation and enforcement of the agreement.

1 In fact, she filed a 60B, but it's kind of odd that she files
2 it after half the trial's over and after she's heard her
3 lawyer say she's entitled to no relief in Probate Court. So,
4 that's my two cents worth, Judge. I just, I think it's
5 crystal clear.

6 THE COURT: Thank you.

7 Mr. Welsh?

8 MR. WELSH: Well, Your Honor, I don't think that anything
9 is crystal clear about this situation. The first thing, and
10 as I mentioned earlier, the Court on contempt powers --
11 anything like that -- a domestic case dies with either of the
12 spouses and the -- even in the Rule -- the Complaint attached
13 to their Rule they have in the jurisdiction paragraph, the
14 jurisdiction that they're citing is that there is confusion
15 over the equitable division. I can't think of the exact term
16 -- they needs assistance in the equitable division even though
17 it's been said that there's a proportionate share it doesn't
18 divide it -- and there definition was one thing, Ms. Harwell
19 said it's something else. At the mediation -- regardless,
20 even that since there is the term used I'm not sure that the
21 Court has jurisdiction over that but if it does that is the
22 only issue that you've had two days of testimony on that would
23 be ruled upon by this Court. I mean, I've got all the cases
24 that are cited by the Court of Appeals and the Supreme Court.
25 Here's an opinion by Judge Hearn in Hatchell Freeman vs

1 Freeman it very clearly says, "an action for divorce being
2 purely personal terminates on the death of either spouse".
3 There's no subject matter jurisdiction. Now, there is
4 exclusive jurisdiction of much of this in the Probate Court
5 because as soon as someone dies the Probate Court has
6 exclusive jurisdiction of the estate. Now, I have real
7 questions about the equitable division which at the time this
8 Rule was filed I obviously wasn't -- I'd say hey we need to
9 have some clarification on that but there is nothing -- the
10 contempt powers of the Court at the time of the death of
11 either spouse is gone. In one of these cases there even is
12 already a pending contempt action and the case says that
13 that's dead and we can decide -- there was still an equitable
14 issue there and they went and decided the equitable issue on
15 the property. But, that is clear. As far as the facts go, as
16 I said, the one issue is the tax refund issue that I can see
17 an argument being something this Court should decide. Well,
18 as the testimony has been this was a \$39,000 refund that we're
19 getting. They used her e-mail to Judge --- I mean, to Lawyer
20 Barth as an argument saying that's her whole position. I
21 don't know if they ever talked to her other than that but it
22 was -- she felt at that that point -- it said she'd been
23 discovering what she felt were a lot of assets that were not
24 told -- that she was told about and she also had a lot of
25 trouble living at the time. That she should get the whole

1 \$39,000 as opposed to the \$2,000 something that was discussed,
2 Judge, the whole issue in her mind is it was her tax dollars
3 taken out of her check that made up this refund. It was her
4 \$27,000 interest deduction that helped the refund be as much
5 as it was. As well as the fact by her signing the joint tax
6 return it immediately saved \$14,000. She would have made more
7 if she filed separately. As she said, the \$75,000 she got
8 went to pay off debts that had been incurred during the course
9 of the marriage. It went straight from her to the credit card
10 company to pay off clothes for Mr. Harwell, food that they
11 used for living and such as that. She asked for some more, I
12 mean, that doesn't necessarily mean she isn't willingly
13 obeying the Order, the money the \$39,000 just carried over to
14 the next tax return just like they always did year after year.
15 And in this particular case the offset that she was trying
16 for, the \$20,000 tax consequence from the \$75,000 alimony that
17 she was forced to take to pay off the debts she received in
18 2015. So, any benefit she's going to get from the check -- or
19 from the refund had to be on the 2015 return because that's
20 where the whole idea behind the proportional measure. There
21 was never any discussion that it was decided on the gross
22 incomes of the two parties because that would be insane. I
23 mean, their incomes were so different that obviously she would
24 not get anything. She would have gotten more, like I say,
25 filing separately. But anyway, getting back to the real issue

1 here there is no jurisdiction. I'll be glad to hand up this
2 whole --

3 THE COURT: Please do.

4 MR. WELSH: -- stack of cases. I don't have extra
5 copies.

6 MR. BARTH: It's okay.

7 THE COURT: Thank you.

8 Alright, thank you very much. I'll have y'all come back
9 at 2:30 and I'll give you my decision at that point in time.

10 MR. BARTH: May I just get the caption off of those
11 cases?

12 THE COURT: Sure.

13 MR. BARTH: I'll give them right back to you.

14 (RECESS)

15 THE COURT: I have reviewed the case law that was
16 presented to the Court by counsel and I would distinguish
17 those from this case in that in the majority of these cases a
18 Final Decree had not yet been signed. The death occurred
19 during the pendency of the case and prior to the entry of the
20 divorce. I also find that the Court does retain jurisdiction
21 to enforce its Court Order and the only Court that can enforce
22 a Family Court Order through the contempt powers of the Family
23 Court would be Family Court. Probate court certainly has its
24 jurisdictional levels as does Circuit Court, but when there is
25 a violation of a Family Court Order that is to be dealt with

1 in Family Court. In this case there was a Final Order
2 entered. It was done so on July 21st, 2015. It approved the
3 Family Court Order -- I mean, a mediated agreement and in lieu
4 of her appearance the defendant, Ms. Harwell, signed an
5 Affidavit of Nonappearance of the defendant wherein she
6 attested, "I previously entered into the mediation agreement
7 signed by me on July 17, 2015 with the plaintiff settling all
8 matters. I join the plaintiff in requesting that this Court
9 approve the agreement as set forth in the mediation agreement.
10 I would attest that I have carefully read the terms of the
11 agreement as set forth in the mediation agreement in its
12 entirety and I have freely and voluntarily entered into the
13 agreement as set forth in the mediation agreement. I have not
14 been promised anything, nor have been coerced into signing the
15 mediation agreement. I am not now nor was I at the time of
16 signing under any duress. I think the agreement as set forth
17 in the mediation agreement is in my best interest under the
18 current circumstances. I am not now nor was I at the time of
19 signing under the influence of any drugs or alcohol. I am
20 fully aware of the plaintiff's financial situation. This
21 document represents our agreement as set forth in the
22 mediation agreement and I understand it in its entirety. I
23 understand that I have a right to a trial and to have those
24 matters heard and decided upon by the Family Court and I
25 choose to waive those rights. It is my desire that the Court

1 approve the agreement as set forth in the mediation agreement.
2 I understand that upon approval of the Court any violation of
3 the agreement as set forth in the mediation agreement is
4 punishable by the Court through contempt powers of the Court
5 and could result in imprisonment for up to one year, a fine in
6 the amount of \$1,500 and or up to 300 hours of community
7 service. I am requesting the Court to approve the agreement
8 as set forth in the mediation agreement I signed on July 17,
9 2015." It is signed by Deborah J. Harwell under oath, sworn
10 to before me this July 17th -- on the 17th day of July, 2015
11 and it was notarized. Her Family Court attorney testified
12 that she received a copy of that Final Order wherein she had
13 asked the Court to approve the Order -- approve the agreement
14 and make it part of the Court Order as she recalled it her
15 testimony was quite clear and credible in that she had a
16 \$75,000 check and a \$1,000 check pursuant to that agreement,
17 which one was a lump sum payment that was to be considered
18 alimony and one was -- the \$1,000 was as part of personal
19 property -- the equalizing of the personal property and she
20 attached it to the Order to be picked up because she did not
21 want to mail the checks through the mail. She further
22 testified that the Order and the checks were all picked up by
23 the defendant. I find that the defendant's testimony that she
24 didn't know what she was signing, didn't understand it to be
25 less than credible especially after she took the \$75,000

1 check, she took the \$1,000 check cashed them and used them for
2 whatever purpose she wanted to use them and then there was
3 follow-up correspondence between her attorney and the
4 plaintiff's attorney regarding the deed to the mountain home.
5 So, she made sure the agreement was followed and the division
6 in her favor was accomplished as quickly as she possibly
7 could. It was only after the death of the plaintiff that she
8 seemed to decide that she didn't know what she was signing,
9 didn't agree with what she was signing and didn't want to
10 follow it anymore. I find that the Final Order in itself
11 clearly set out the contempt powers of the Court so plaintiff
12 received a copy of that. I find that she signed an affidavit
13 that acknowledged the contempt powers of the Court so there's
14 no way at all that she could say at this time I did not know.
15 She is not an unintelligent woman. She represented herself
16 through the first portion of this trial. She testified she
17 was a business owner, she created the business. She further
18 testified that she was representing herself and was learning
19 about the legal terms and she had a good understand of what
20 was going on. She only seemed to get fuzzy when it did not
21 suit her. I believe she knew exactly what it said. I believe
22 she knew exactly what it meant and I believe that after the
23 plaintiff passed she began to look at a way to better herself.
24 In regards to the alleged violation number one regarding
25 the tax refund: The Order clearly stated in the agreement,

1 "The parties will file a joint tax return for 2014. The
2 husband shall be responsible for the payment of taxes due.
3 The parties will proportionally share any refund they may
4 receive". There is no question in this Court's mind about
5 what proportionally means. Proportionally means -- as we do
6 on a regular basis in a lot of issues in Family Court when we
7 say pro rata share, proportional share it is based on the
8 incomes of the parties and their pro rata share of what they
9 make. It is not equal. Although the plaintiff took on the
10 responsibility of payment of taxes due clearly they understood
11 that they had a -- there was a disparity between their incomes
12 and any refund they receive was going to be proportionally
13 shared between them based upon their incomes. As Mr. Welsh
14 said, her income was so much less it would be crazy for her to
15 enter into that. There's a lot of times people enter into
16 agreements that we don't know the basis of why they enter into
17 it but they entered into it and they can bind themselves to
18 stuff that the Court may not have bound them to but they can
19 bind themselves. The taxes paid in was proportionally done
20 because I'm sure she didn't pay in the same amount of taxes
21 that the plaintiff paid in. So, therefore it does stand to
22 reason that she would not receive as much refund because she
23 did not pay as much in and I have no doubt that she understood
24 that term. I find that based upon plaintiff's exhibit number
25 10 she shows she does not intend to follow the terms of the

1 Order. She was not going to help accomplish the proportional
2 share and division. She wanted it all at that point in time.
3 I find that she is in willful violation of the Final Order
4 based upon her refusal to accomplish the equitable division
5 regarding the tax refund.

6 Allegation number two: It is clear in paragraph number
7 ten of the Final Order and agreement that "The parties shall
8 be mutually restrained from disparaging the other party or any
9 member of the other party's family including children,
10 children's spouses and grandchildren in any manner. The
11 parties are further restrained from contacting or
12 communicating with the other." I think that is very clear, it
13 is very succinct and it is very unusual because most
14 restraining orders in a Family Court Order includes the
15 parties only. It does not necessarily extend, especially to
16 adult children, those children's spouses and the
17 grandchildren. So, it seems that these parties were very
18 specific and particular about once again going outside of what
19 the bounds of what the Court may possibly order and binding
20 themselves to a term on their own. And, I do not find that
21 restraint died with the plaintiff. He could not be held in
22 contempt which is supported by some of the case law handed up
23 by counsel but the restraint is still upon her. She entered
24 into it, she is bound by it and clearly she made disparaging
25 remarks about the plaintiff's son and she did so

1 intentionally. I find that to be in willful violation of the
2 Final Order.

3 Allegation number three also addresses the restraining
4 order that she was not to come about, there was to be no
5 contacting or communicating with each other. While he was
6 still alive in the hospital she came to the hospital clearly
7 understanding there was a restraining order that had never
8 been revoked by the plaintiff. And if anyone knew how to
9 revoke a restraining order, modify an Order or to do anything
10 of that nature the plaintiff would have known how to get that
11 done and it was not done. When she was asked to leave from
12 the hospital she refused, perked herself in the hallway
13 outside his room and security had to be called. Therefore, I
14 find that she is in willful violation for her failure to
15 follow the restraining order.

16 Regarding number four, the interference with his estate,
17 paragraph number twelve of the Order says, "Both parties waive
18 any and all rights they may have in the estate of the other or
19 to make any claim upon or against the estate of the other.
20 Each party's estate shall be bound by the terms of this
21 agreement." That is pretty clear as well. She clearly should
22 not have been part of the process. While we don't always know
23 what a deceased persons intent about their spouse or ex-spouse
24 or what role they would play because that's not something
25 normally brought up in Family Court I can tell you. I will

1 tell you this is the first time of my time on the bench that
2 there's been in front of me any mention of a proposal that a
3 person would want to be a part of the family, treated as part
4 of their family in the event of a death of the other party.
5 However, the defendant made that an issue so that the Court
6 now is clearly aware of what the plaintiff's view of what that
7 was because he refused, that she was not to be a part of the
8 family in any of the process should he pass before her. That
9 was in plaintiff's exhibit number one. That was a proposal
10 term and it was turned down. She should not have disrupted
11 the funeral home and caused more trouble and grief. I can
12 only imagine the grief of the family as they dealt with the
13 loss of their father and their grandfather having to also take
14 so many steps to defend his name, to defend against the
15 actions of the defendant who refused to sit by quietly and
16 acknowledge that she was legally separated from the plaintiff
17 and he did not want her to be a part of it. And, I find
18 particularly telling in plaintiff's exhibit number eleven when
19 she texted Mr. Harwell, "Bryan, please don't make my husband's
20 legacy one of controversy. He deserves respect and praise for
21 his career accomplishments. Don't ruin that for him. It will
22 go down in history and how will it be viewed in five years? I
23 want to be at my husband's reception line and burial." What
24 that tells me is she wants Bryan Harwell to be more concerned
25 about controversy and respect for his father's accomplishments

1 than she was willing to be because she wanted to be at the
2 husband's reception line and burial and she was letting him
3 know if I'm not there and you don't give me what I want there
4 will be controversy because that seems to be what she's
5 threatening. That seems to be his only avenue to keep
6 controversy from happening is that she wants to be at her
7 husband's reception line and burial. I find that she showed
8 very little respect to the family and very little respect to
9 the plaintiff's legacy. That this service had to be held on
10 private property to be able to keep her out was a shame. I
11 find that she's in willful violation of the Court Order by her
12 interference with his estate.

13 Allegation number five, under paragraph eleven of the
14 Final Order she had 30 days to remove -- to release the
15 husband's cell phone number from her plan. She was to take
16 all necessary steps to release the husband's cell phone number
17 from her plan within 30 days of the approval of the agreement.
18 She failed to do that. It was not done until after his death
19 which was well past 30 days from the date of this agreement
20 and at that time she demanded the phone back and the phone had
21 to be left or she would not release it. I find she's in
22 willful violation of the Final Order in that regard.

23 In regards to allegations number six, seven, and eight
24 the change of address, while I find her actions were in very
25 bad faith and I find that her actions were completely self-

1 serving and vindictive, I don't find there to be anything in
2 the Order that specifically addresses this issue and I
3 completely understand that it may not have been something
4 within the purview of the attorneys to think that she would go
5 and try to change his address to come to her but it was not
6 addressed so I cannot find there to be a contempt citation for
7 that because it was not specifically addressed in the Order.

8 In regards to allegations number nine, her call to the
9 bank attempting to make a claim, clearly the statement she
10 made to the bank was false. Clearly once again it was self-
11 serving but there was nothing specifically in the Order that
12 addressed that and I do not find there to be a violation in
13 that regard.

14 In regards to allegations number ten and eleven, once
15 again the interference with the bank and interference with the
16 accounts. Clearly it was bad faith, clearly she was acting on
17 her own accord, self-serving, attempting to get property that
18 just did not belong to her. But, once again, those accounts
19 were not specific in the Order. Paragraph eight only dealt
20 with the personal property although that was alleged in the
21 Rule to Show Cause and I find that there's no willful
22 violation in that regard. However, her continuing to act in
23 her own best interest and to try to circumvent around the
24 family and Mr. Harwell as he attempted to protect the estate
25 of his father clearly shows that she had no intent of acting

1 in the spirit of the Order. Clearly the spirit of the Order
2 said what each was to get, that each was to leave the other
3 alone, and that each was to have no claim on the estate and
4 make no effort to obtain anything from the other beyond what's
5 in this Order. But, as it's nothing specific I cannot find
6 her in willful violation.

7 In regards to allegation number twelve, the claim against
8 the estate, I do not think I can hold her in contempt for
9 filing a claim against the estate in Probate Court. In light
10 of the Family Court Order I believe there is absolutely no
11 merit whatsoever to what she has filed in the Probate Court.
12 I find it to be reprehensible that she is doing so when
13 clearly she signed this mediated agreement and signed the
14 affidavit asking the Court to approve the mediated agreement.
15 She clearly meant to waive any and all rights she may have in
16 the estate of the other or to make any claim against the
17 estate of the other. Everything that she testified that she's
18 now finding out was in existence and she knew or should have
19 known at the time that the mediation was entered. If she
20 entered into an agreement without knowing fully everything
21 that was out there which the discovery power of Family Court
22 would allow her to do but she entered into an agreement, that
23 was to her detriment and I only hope for the family's sake
24 that the probate matter will be handled in an expedited manner
25 because I just do not find there to be any merit whatsoever.

1 But, I do not think that I can hold her in contempt or force
2 her to dismiss any filings that she has done in Probate Court
3 that is in the jurisdiction of another Court.

4 Based upon her willful violation of the final Court Order
5 I'm going to sentence her to 45 days in the Horry County
6 Detention Center. I find that if she fails to execute the
7 documents to accomplish a division of the tax return per the
8 Order upon presentment the Clerk of Court may execute the
9 documents so that equitable division can be accomplished
10 pursuant to the Order. I will include as part of this Order
11 that it is not clear in an Order that she is not to do any
12 further changes of address for the deceased, his estate, or
13 any member of his family. She is now under a Court Order for
14 not doing that. I find that this is an appropriate case for a
15 partial award of attorney's fees. I'm going to require her to
16 pay \$25,000 in a partial award of attorney's fees and costs.
17 This is to be paid or satisfactory arrangements to be paid
18 within 60 days of her release from jail. It is to be paid
19 directly to Mr. Barth and he can disperse those funds as his
20 client deems fit. I find that based upon the results
21 obtained, the ability to pay, and the actions of the party --
22 of the defendant that clearly attorney's fees are just in this
23 case. I am not doing a full amount of attorney's fees simply
24 because you did not prevail on all of the issues and the
25 disparity of the income of the defendant but I do find she has

1 the means. She received \$75,000, plus an additional \$1,000,
2 plus a mountain home that is free and clear to her. She said
3 she received a business. On one hand she said it was
4 foreclosed on, on one hand she said it was in probate, then
5 the next minute she's borrowed \$5,000 from it and she's
6 receiving \$900 a week so I have no clue. But, obviously she's
7 receiving an income and she has the means of which to pay the
8 partial award of attorney's fees.

9 Alright, any questions regarding the terms of the Order,
10 Mr. Barth?

11 MR. BARTH: No questions, Your Honor. I would ask one
12 other thing that we did mention in our original pleadings as
13 it relates to the change of address mail issues. I don't
14 think they'll have any objection to it, it's not changing the
15 substance of Your Honor's Order but the mediated agreement did
16 not specifically reference the Timberlane house in Florence
17 and as a result the Post Office continues to hold mail for
18 both of them and unless this Order specifically says that --

19 THE COURT: We will specifically say that all mail to the
20 Timberlane address and the Canal Street address will go to
21 whatever address is designated by the personal representative
22 of the estate.

23 MR. BARTH: Thank you, Your Honor.

24 THE COURT: Any questions regarding the Order, Mr. Welsh?

25 MR. WELSH: No, sir -- I mean, no, ma'am. I think it's

1 crystal clear.

2 THE COURT: Alright, thank you.

3 Mr. Barth, if you could get me an Order. Let Mr. Welsh
4 see it before you submit it.

5 MR. BARTH: Yes, ma'am, I will.

6 THE COURT: Thank you.

7 Excuse me, Ms. Harwell, were you recording this on your
8 phone?

9 MS. HARWELL: Yes, ma'am.

10 THE COURT: No, ma'am. Under what right were you
11 recording this? You are not allowed to bring a recording
12 device into this courtroom. In fact, there are signs posted
13 all over this courthouse that you are not to bring a phone
14 into this courtroom. All cell phones are to be turned off.
15 So, why were you recording?

16 MS. HARWELL: I was recording so I would know what you
17 said.

18 THE COURT: You were sitting here listening to what I
19 said.

20 MS. HARWELL: Well, I was trying to --

21 THE COURT: Turn this phone back on so that the recording
22 can be deleted. The only person that has the authority to
23 record is the official reporter of the Court and clearly you
24 know that transcripts can be done because a transcript was
25 made of the last proceeding. Your former Probate Court

1 attorney got a copy of the transcript so this is completely
2 inappropriate. Ma'am, this is exactly what I'm talking about.
3 You don't seem to have any regard for authority over you. You
4 kind of do what you want to do. So, turn this phone back on
5 and I want to insure that the recording is deleted. I want
6 you to turn on the recording so that I can insure that it was
7 recorded and then hand it to my deputy because I will delete
8 it. How do you get it to go, ma'am? Did you send this to
9 anywhere?

10 MS. HARWELL: No.

11 THE COURT: Because it says the new recording three which
12 is 45 minutes long is being optimized for sharing at this
13 time. Did you send this anywhere?

14 MS. HARWELL: I did not.

15 THE COURT: Ma'am, if I find out -- if this recording
16 shows up anywhere that you have sent it from my courtroom I
17 will hold you in contempt of court. Do you understand?

18 MS. HARWELL: I did not send it --

19 THE COURT: Do you understand?

20 MS. HARWELL: Yes, ma'am.

21 THE COURT: Raise your right hand. Don't roll your eyes
22 at me again. Stand up.

23 MS. HARWELL, HAVING BEEN FIRST
24 DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE COURT: Did you send this recording to anyone?

1 MS. HARWELL: No, ma'am.

2 THE COURT: Then why does it say it is preparing to be
3 sent which is why I can't turn it on?

4 MS. HARWELL: I don't know. I doubt there's anything on
5 there because it's so soft. I doubt that it could actually do
6 it.

7 THE COURT: Alright, I have deleted it but I will tell
8 you and I will tell you here now in front of your attorney --
9 Mr. Welsh, I hope you can advise her if I find that this has
10 been sent to anyone I will hold her in contempt of court. I
11 am certain she did not have your permission to tape the
12 proceedings. She should not have done so. She did so. I'm
13 going to withhold contempt at this time for her taping one of
14 the proceedings in Court but if this makes it out and she has
15 sent it to anyone else and has lied to the Court I will hold
16 her in contempt of court and I will refer her to the
17 Solicitor's Office for perjury. Do you understand?

18 MR. WELSH: Yes.

19 THE COURT: Thank you so much.

20

21

22

(Adjourned)

23

24

25

C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of David W. Harwell by and through his personal representative Bryan Harwell, held in the Family Court for Horry County, Horry County Courthouse, Conway, South Carolina, on June 16, 2016.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

SBTodd
Sallie Beth Todd, CVR

Official Reporter

July 13, 2016.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF FLORENCE) COURT OF COMMON PLEAS NONJURY
3
4 DEBORAH B. HARWELL,)
5 PLAINTIFF,)
6 vs.)
7 ROBERT BRYAN HARWELL, INDIVIDUALLY)
8 AND AS PERSONAL REPRESENTATIVE OF THE)
9 ESTATE OF DAVID W. HARWELL; AND SOUTH)
10 CAROLINA DEPARTMENT OF HEALTH AND)
11 ENVIRONMENTAL CONTROL, DIVISION OF)
12 VITAL RECORDS,)
13 DEFENDANTS,)
14 vs.)
15 LAW OFFICE OF DEIRDRE W. EDMONDS, P.A.)
16 AND DEIRDRE W. EDMONDS, INDIVIDUALLY,)
17 THIRD-PARTY DEFENDANTS.)
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TRANSCRIPT
OF
RECORD

2016-CP-01-435

February 2nd, 2017
Spartanburg, South Carolina

B E F O R E:
THE HONORABLE ROGER L. COUCH, Judge.

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

DESA BALLARD
ESQ.
Attorney for the Plaintiff

KEVIN M. BARTH and GENA P. ERVIN
ESQ.
Attorneys for the Defendant Harwell

M. DAWES COOKE, JR. and BARBARA WAGNER
ESQ.
Attorneys for the Third-Party Defendants

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

(There were no exhibits marked or testimony taken during this hearing.)

1 PROCEEDINGS.

2
3 THE COURT: All right. The next matter is the Harwell
4 case.

5 If you'll come forward please.

6 (WHEREUPON, the parties comply.)

7 THE COURT: All right. It's my understanding that this
8 is a motion for sanctions under the Rules of Civil
9 Procedure, Rule 11, and under the Frivolous Claims Act.

10 I believe it is your motion.

11 Is that correct?

12 MR. BARTH: That, that is correct, Your Honor.

13 THE COURT: Mr., Mr. -- is it Barth?

14 MR. BARTH: Yes, sir.

15 THE COURT: Okay. And over on this side, if you'll
16 state an appearance.

17 MR. COOKE: Thank you.

18 My name is Dawes Cooke. I'm with the Law Firm of
19 Barnwell Whaley Patterson & Helms in Charleston --

20 THE COURT: Uh-huh. (Affirmative).

21 MR. COOKE: -- and I represent Ms. Deirdre Edmonds --

22 THE COURT: I see.

23 MR. COOKE: -- who is the attorney in the underlying
24 case against whom sanctions are being sought.

25 THE COURT: Right.

1 Okay. So, we're ready to proceed?
2 MS. BALLARD: Your Honor, I'm Desa Ballard.
3 THE COURT: Yes.
4 MS. BALLARD: I represent Mrs. Harwell.
5 THE COURT: Okay.
6 MS. BALLARD: Thank you, Your Honor.
7 THE COURT: All right. Very good.
8 Now, are you ready to proceed?
9 MR. BARTH: Yes, sir.
10 May it please the Court?
11 THE COURT: Yes, sir.
12 MR. BARTH: I would ask one thing.
13 I understand Your Honor's rules about electronic stuff,
14 and I would ordinarily cut everything I have off, but
15 Mr. Cooke's last memo came in last night after I was already
16 here and I have not---
17 THE COURT: I notice, I notice I got some in an email
18 last night---
19 MR. BARTH: ---printed that out.
20 THE COURT: ---and yesterday was my birthday. So, I
21 was at my birthday dinner last night. So, I will read them.
22 I have not read them yet. I promise you.
23 MR. COOKE: We'll bring you a hard copy if it please.
24 MR. BARTH: If Your Honor please, it, it---
25 THE COURT: My grandchildren had my attention. I'm

1 sorry. They do that when I get out -- get off work.
2 MR. BARTH: Rightfully so, Your Honor.
3 THE COURT: All right.
4 MR. BARTH: If it goes off, it shouldn't, but I just
5 wanted to---
6 THE COURT: That's quite all right. We're -- it's just
7 us now I think. So, that will be fine.
8 MR. BARTH: Thank you, Your Honor.
9 May it please the Court?
10 THE COURT: Yes.
11 MR. BARTH: My, my name is Kevin Barth. Gena Ervin and
12 I represent Robert Bryan Harwell, individually, and as
13 personal representative of the Estate of David Harwell.
14 Your Honor correctly noted we're before Your Honor
15 requesting sanctions under, under two alternative theories.
16 I would be remiss if I didn't mention to Your Honor, I
17 have never filed one of these in 35 years of practicing law.
18 THE COURT: Well, I must say that it's in the rule but
19 it's a fairly novel question for me too.
20 MR. BARTH: Well, I, I promise you it wasn't done
21 lightly. It isn't being pursued lightly and I apologize for
22 dragging Your Honor into the fray.
23 THE COURT: That's quite all right. It's, it's in the
24 rule and you have a right to file it. So, let's---
25 MR. BARTH: All right.

1 THE COURT: Let's, let's hear it.

2 MR. BARTH: Your Honor, here's where, here's where we
3 are on, on all of this.

4 It is our contention, and I'll outline it for you in a
5 little more detail, it's been extensively briefed and you've
6 seen affidavits, Your Honor. You -- I've brought the
7 clerk's file to you today.

8 THE COURT: Yes, sir.

9 MR. BARTH: But our, our bottom line position is, is
10 that the claim that Deborah Harwell -- the claims that
11 Deborah Harwell filed in this matter were barred by the
12 Family Court action, and that she wants another bite at the
13 apple, and, as unpleasant as it is for us, she found a
14 lawyer to help her do that. We believe, we believe it was
15 done in an attempt to shakedown more money from the estate
16 or else we wouldn't have filed this particular motion.

17 Your Honor, you haven't read it yet but Mr. Cooke's
18 memo last night mentions in there -- what, what it does is
19 it's trying to turn this matter into the judicial system
20 retaliating against a litigant who pursues claims against a
21 "powerful and respected family like the Harwells" and even
22 mentions in there that Your Honor should carefully consider
23 an award of sanctions because that would chill the practice
24 of law. It would keep lawyers from pursuing claims against
25 powerful families and all that and I just want to put Your

1 Honor's eye back on the ball.

2 This claim is not about the Harwells. This claim is
3 not about who the defendant is or the Respondents are. This
4 claim, and our position would apply whether it was John Doe
5 versus Jane Row, because what we believe, this is, is an
6 attempt to obtain money, through litigation, that clearly
7 they're not entitled to whether it's a "powerful family" or
8 whether it's me or whether it's Your Honor or anything like
9 that. And we believe that the reason this matter is even
10 before Your Honor is actually because Mrs. Harwell is trying
11 to take advantage of the fact of the family or we wouldn't
12 be here.

13 Now, we've asked for -- we've asked for relief under
14 two, two different theories, as Your Honor is noted, and I
15 know you know the rules and I'm not gonna cite them to you.
16 But if I could give you a little history and I think it may
17 be a little easier from me to explain if we take them in, in
18 order. And what I'd like to do, if Your Honor please, is
19 deal with the claims that Mrs. Harwell filed against Bryan
20 Harwell and the Estate.

21 If I could do that first and then---

22 THE COURT: Yes, sir.

23 MR. BARTH: ---I guess that would give Desa the
24 opportunity to address those specifically.

25 Your Honor, Justice Harwell and Deborah Harwell were

1 married. Went through Family Court litigation in Horry
2 County. Reached a mediated settlement agreement that both
3 parties asked to be approved by the Family Court.

4 The agreement, on its face, says that both parties were
5 represented by competent counsel. It even notes that
6 Mrs. Harwell was represented at the mediation by a forensic
7 accountant of her choosing and her retained, that she
8 retained, and it says clearly each party waives any claim
9 they have in and into the Estate of the other. We waive
10 that.

11 Mrs. Harwell filed an affidavit of nonappearance, and
12 said I will not be at the hearing, but I'm asking the Court
13 to approve the agreement and it was approved by the Court.
14 It was not appealed. Nothing was filed. Nothing was done.
15 That is the final order of the Court.

16 Now, what happened is Judge Harwell -- Justice Harwell
17 passed away in late September. In January, Your Honor, even
18 in the face of a Court order that says I waive any right I
19 have to this man's estate, she files a 3.1 million-dollar
20 claim against the Estate, and the basis for it, as Your
21 Honor will see, has seen in the record, it's a one page
22 form. It says 3.1 million-dollars, and it says basis for
23 the claim, Prenuptial Agreement.

24 The Court approved agreement, on its face, Your Honor,
25 says that we have settled all of our marital issues

1 including the Prenuptial Agreement, and that was the valid
2 order in place at the time this claim was filed. Nothing
3 equivocal about that. That was the -- that was her claim.

4 She filed a second claim, Your Honor, asking for some
5 money for an obituary she ran herself subsequent to the one
6 run by the personal representative but basically they're
7 both asking for money from the Estate.

8 Our position, at the time, was she waived that in
9 Family Court. They shouldn't be allowed to go forward. And
10 I will note that, just on the merits of Mrs. Harwell's claim
11 and her testimony, cause a lot of this is relatively fact
12 intensive, but certainly based on credibility of the
13 witnesses, when you look at the basis of her claim being
14 Prenuptial Agreement, at the Family Court hearing, Your
15 Honor, and you have the transcript of the testimony, she
16 testified that the reason she, she was being at -- we were
17 asking the court to hold her in contempt for violating the
18 court order in a number of respects. One of which was the
19 filing of these claims against the Estate when she had
20 clearly waived it.

21 And, at the Family Court hearing, her defense was I
22 didn't know there was gonna be a hearing, I didn't know
23 there was gonna be an order, and, even though the order was
24 issued in July, I didn't even see it until I picked up the
25 file from my lawyer in the Fall. That was her position.

1 In her affidavit that she presented to Your Honor a day
2 or two ago, her position has morphed into I wasn't allowed
3 to go to the hearing. My lawyer wouldn't let me. I wanted
4 to go to the hearing but my lawyer wouldn't let me.

5 She also says in her affidavit she didn't understand
6 the agreement. She said that at the Family Court. And if
7 Your Honor note -- will notice when you look at the
8 transcripts, she understood it enough to know to take the
9 \$75,000 check. She understood it enough to know to take
10 title to the four or five hundred thousand dollar mountain
11 house and to obtain the personal property. She understood
12 all that but apparently she didn't understand she was
13 waiving a claim against the Estate.

14 At the hearing, she took the position that she was
15 forced to sign the agreement because Justice Harwell told
16 her that, if she didn't sign it, Bryan Harwell, the personal
17 representative, would have her indicted or murdered. That
18 was her testimony at the Family Court hearing.

19 The testimony in the affidavit that Ms. Ballard
20 presented to Your Honor in the last day or two claims that
21 she was just told by Justice Harwell just play along, it
22 doesn't mean anything, I'm just doing it for this, that, and
23 the other. But, Your Honor, that just gives you a little
24 flavor of what we're dealing with as far as Mrs. Harwell is
25 concerned.

1 I would note also that the 3.1 million-dollar claim
2 that they are now -- have -- they have morphed into the
3 claim was done to protect a Rule 60(b) motion to set aside
4 the agreement based on fraud or misrepresentation. I'll get
5 into that in a second, if Your Honor please, but, in her
6 testimony and I can cite you to the page at the Family Court
7 hearing, I specifically asked Mrs. Harwell what is the basis
8 for the 3.1 million-dollar claim, Your Honor, and, and her
9 testimony, on Page 54, was that David and I figured up -- we
10 were still seeing each other. We figured out how much money
11 I had put into everything and that's what it came to.

12 And I said well, it came to three million?

13 well, it came to 3.1 million-dollars and I, and I think
14 that's what I'm asking for.

15 So, her position, before the Family Court, was not
16 Prenuptial Agreement because she knew she had already
17 settled that. It wasn't that she was going to set aside the
18 Family Court order based on fraud or misrepresentation. It
19 was that she wanted three million-dollars back because
20 that's what she had spent on the marriage. Zero mention of
21 setting aside for fraud or anything else.

22 Now, her position is it became apparent that Justice
23 Harwell had hidden that -- assets and defrauded her and, and
24 that's the reason why I filed these claims.

25 Your Honor, I would also note, and this applies to --

1 this would apply to our argument against Ms. Edmonds as
2 well, but, in Page 59 of the second day of the transcript,
3 and I asked her again, what is the basis for an elective
4 share?

5 Because what she did, Your Honor, the first day of the
6 contempt trial, we -- I discussed with Ms. Edmonds the
7 Petition to be Adjudicated a, a Surviving Spouse and Ms.
8 Edmonds said, as she's pointed out in her memoranda, that
9 she wants to -- she is the surviving spouse for statistical
10 purposes and because she wasn't divorced but that has
11 nothing to do with money issues or entitle her to any money
12 from the Estate.

13 After that testimony, Mrs. Harwell turns around and
14 files a pro se Petition for an Elective Share. That is an
15 elective share as the widow of someone who passes away.
16 That is as a result of the marriage.

17 She -- Mrs. Harwell says in her affidavit, in Paragraph
18 32, all of my pleadings in this matter were filed because I
19 relied on the advice of Ms. Edmonds and, to a certain
20 extent, Mr. Silvernail, who prepared some pro se pleadings.
21 Well, that can't possibly be the case when she just heard
22 Ms. Edmonds say this doesn't give you an elective share.
23 This just makes you the wife for statistical purposes. And
24 just a note, on both party's argument that they saw a Rule
25 60 motion coming on this for fraud and misrepresentation,

1 Mrs. Harwell's answer was, when I first went to Ms. Edmonds
2 to get my name on the death certificate, it was purely for
3 that. But when we got into the case and realized there were
4 so many things so severely wrong, we realized that something
5 was wrong here and we started looking into it and it became
6 very obvious that something was wrong.

7 I assume that's what they're talking about when she
8 says that he misrepresented his assets but the reason that's
9 important is, number one, Your Honor, as far as Ms. Edmonds
10 is concerned, her story now is that she was told at the
11 beginning that there was a possibility that she was gonna
12 move to set aside the Family Court order. That is -- that
13 flies in the face of what Mrs. Harwell testified to at the
14 hearing.

15 THE COURT: At the Family Court hearing?

16 MR. BARTH: At the Family Court hearing, Your Honor,
17 yes, sir.

18 It just -- it, it can't be both ways.

19 The bottom line, as far as Mrs. Harwell is concerned,
20 Your Honor, and, and, Judge Buckhannon hit it on the head,
21 she saw her testify and heard, heard the testimony and Your
22 Honor can read it for yourself, when her story went from I
23 had to sign it because Bryan was gonna have me murdered to
24 Judge Harwell told me don't worry about it till now it
25 was -- it all ought to be set aside for fraud. It's -- as

1 you heard just earlier today, this is somebody trying to get
2 another bite at the apple. She negotiated a very favorable
3 Family Court settlement with a very good lawyer and her own
4 forensic accountant. She took all of that and then waited
5 for Judge Harwell to pass away and then filed these claims
6 hoping to shake him down for -- shake the Estate down for
7 more money.

8 THE COURT: Well, has there ever been a petition in
9 Family Court to set aside the agreement?

10 MR. BARTH: Your Honor, yes, and I will hand that up to
11 Your Honor. It was filed actually, Your Honor, between the
12 first day of the contempt hearing and the second day of the
13 contempt hearing in May of 2016.

14 If I might hand that up to Your Honor. I don't know---

15 THE COURT: Thank you.

16 MR. BARTH: This is the, this is the sum and substance
17 of her Rule 60(b) motion, which I note for Your Honor was
18 filed months after these claims were filed. It was filed
19 after Deirdre Edmonds refiled these claims and it was filed
20 after one day of the contempt trial. And then, of
21 particular note, because Deborah Harwell addresses it in her
22 affidavit, once she retained Ms. Ballard, Ms. Ballard did
23 the right thing and withdrew it. That -- you've, you've
24 probably seen a thousand Rule 60 motions in your life. That
25 isn't one of them.

1 You have to allege the fraud. You have to allege it in
2 detail. And the reason is because nobody ever thought of
3 that before. They just hadn't thought of that. It came up
4 later and our position, as to Mrs. Harwell, Your Honor, is
5 she filed these claims originally by herself. She found a
6 lawyer to refile them as petitions. She filed a third claim
7 asking that she be adjudicated as a surviving spouse, and
8 according to the lawyer, it was for statistical purposes
9 only. Then she turns after around, after hearing that, from
10 her own lawyer---

11 THE COURT: Now, that death certificate has been
12 amended at this point in time?

13 MR. BARTH: Yes, sir.

14 THE COURT: By action of DHEC?

15 MR. BARTH: DHEC, yes, sir.

16 THE COURT: All right.

17 MR. BARTH: And the issue all along, the issue all
18 along was, and, and I'll get to it as it relates to Ms.
19 Edmonds, but the issue all along for DHEC is what do they do
20 when somebody checks the block married but separated. I
21 mean that -- well, most of which was found out the day Your
22 Honor held the hearing and for the first time the DHEC
23 lawyer showed up and, and really had no answer for anybody,
24 but yes, it has been corrected to answer Your Honor's
25 question.

1 THE COURT: And that happened after the hearing I
2 participated in---

3 MR. BARTH: Yes, sir.

4 THE COURT: ---in Florence I believe?

5 MR. BARTH: Yes, sir, it did.

6 THE COURT: It hadn't been done at that time?

7 MR. BARTH: Yes, sir.

8 THE COURT: I noticed in some of the papers I got it
9 had been done. So ---.

10 MR. BARTH: Yes, sir, it had been done and, by
11 stipulation -- you'll notice the stipulation that was filed
12 by all the parties. It says that it was done by and with
13 the consent of the personal representative, which flies in
14 the face of Deborah Harwell's affidavit from this week that
15 says -- asked Your Honor to note that it was finally amended
16 to include her over Bryan's objection, and that's just --
17 it's just not true.

18 THE COURT: Okay.

19 MR. BARTH: Your Honor?

20 THE COURT: I just kind of wanted to bring myself
21 up-to-date on how that happened and---

22 MR. BARTH: Yes, sir---

23 THE COURT: ---I have.

24 MR. BARTH: ---it happened when the DHEC lawyer showed
25 up and everybody got together and, and it was ultimately

1 done and noted for the Court by, by stipulation.

2 THE COURT: All right. Thank you.

3 MR. BARTH: Your Honor, the, the 60(b) motion, in our
4 opinion, is really a red herring and it's come up at the
5 last minute as it relates to Mrs. Harwell. She didn't
6 mention it as a basis for her money claims. She didn't
7 mention any of it.

8 And the third claim, if any of them -- if, if there's
9 ever a definition of frivolous or bad faith, it is the claim
10 for an elective share as the widow of Justice Harwell after
11 hearing your own lawyer say it doesn't entitle you to
12 anything. It is statistical only. She's filed four claims
13 and---

14 THE COURT: Now, that was filed by who?

15 MR. BARTH: That was filed by Mrs. Harwell pro se. I
16 imagine she couldn't find any lawyer to sign off on that
17 one.

18 THE COURT: All right.

19 MR. BARTH: But as Your Honor well knows, Rule 11 in
20 the frivolous proceeding applies to pro se litigants as
21 well.

22 THE COURT: It applies to whoever, whoever signs the
23 pleading I believe is what it says.

24 MR. BARTH: Yes, sir, and she signed that one and I'm
25 not sure if, if that is in the file. I think it is. If

1 it's not, I'll be glad to hand that up to Your Honor. But
2 that, that's our position with regard to Mrs. Harwell.

3 As I've said, I'll be glad to address anything Ms.
4 Ballard wants to bring up, but as far as Mrs. Harwell goes,
5 that's, that's where we are, Your Honor.

6 THE COURT: All right.

7 MR. BARTH: Thank you.

8 MS. BALLARD: Do you want me to respond at this point,
9 Your Honor?

10 THE COURT: However y'all -- you guys want to handle
11 it.

12 You want to go, Ms. Ballard?

13 MS. BALLARD: Does that suit you?

14 MR. COOKE: Sure.

15 MS. BALLARD: Okay. Great.

16 THE COURT: Yes, ma'am.

17 MS. BALLARD: As Your Honor knows, when we appeared
18 before you in Florence in July, I had been contacted by Mrs.
19 Harwell the day before and had not even met with her. I met
20 with her the afternoon after we left.

21 THE COURT: As a matter of fact, I think I gave you a
22 little time to---

23 MS. BALLARD: You did.

24 THE COURT: ---work, work with her and maybe some
25 things will get worked out and I think maybe they did.

1 MS. BALLARD: They did.

2 THE COURT: I don't know.

3 MS. BALLARD: We were, we were very successful.

4 As, as Your Honor knows, at that hearing I said to you
5 that I intended to provide Mrs. Harwell not only with legal
6 representation but with legal advice as well.

7 THE COURT: Uh-huh. (Affirmative).

8 MS. BALLARD: After I got involved, I guess in the
9 non-lawyer way of putting it, is we found her in a hole and
10 we stopped digging.

11 Okay. We dismissed the Rule 60(b) motion in Family
12 Court that Mrs. Harwell had filed on her own, and, as she
13 indicates in her affidavit, she had the assistance of Mr.
14 Silvernail in preparing that --

15 THE COURT: Right.

16 MS. BALLARD: -- even though he would not sign it.
17 Well -- and I've spoken with him and confirmed that.

18 When she hired me, I said, you know, I can handle all
19 the civil things but I'm not a Family Court lawyer but don't
20 worry. I think I can probably find you someone without too
21 much difficulty. I've been a lawyer for more than 30 years.
22 I've had a lot of experience. I know a lot of people.

23 I tried for two days to find a Family Court lawyer who
24 would represent Mrs. Harwell. Unsuccessfully. No one would
25 touch it. I called a lawyer in the Upstate whose been

1 practicing longer than me, and I said help me find somebody,
2 and he said Desa, everybody in the State knows about that
3 case. No one is gonna touch it and you are gonna lose and I
4 said well, I appreciate that but I kind of would like the
5 case decided based on the evidence and the law. Not on what
6 people are hearing on the street.

7 Mrs. Harwell told Judge Buckhannon in the Family Court
8 that she couldn't find a Family Court lawyer because she
9 couldn't find a Family Court lawyer. I couldn't find one
10 either. I tried.

11 So, when I got involved, trying to get up to speed in
12 this very complicated matter, what I found was that Mrs.
13 Harwell had been the defendant in a Family Court property
14 settlement case that had been brought and expedited.
15 Probably the fastest Family Court case that had ever been
16 brought and resolved within a matter of months. Brought,
17 served, mediated, final order.

18 And from -- I have to disagree with Mr. Barth. The
19 quality of the representation she received in the Family
20 Court, with reference to that mediation, is highly
21 questionable. We have been looking into that.

22 What we decided is we didn't have an option going
23 through Family Court. Our only option is to make a claim
24 against the lawyer who very poorly represented her in Family
25 Court.

1 Yes, we think there are hidden assets.

2 Yes, we think there are claims that could be made but
3 they weren't.

4 So, we were looking at what options may exist for her
5 but, at the time she filed these pleadings pro se, she
6 couldn't find a lawyer to help her with that. I couldn't
7 find a lawyer to help her with that and -- cause I don't go
8 into Family Court either and I went to the motion for
9 reconsideration with Bryan and I ain't going back again
10 either. I don't like Family Court.

11 We went through this, Your Honor, after you kindly gave
12 me that, I think, a week to file a response---

13 THE COURT: Right.

14 MS. BALLARD: ---to the motion for sanctions.

15 THE COURT: Right.

16 MS. BALLARD: And I did file a response to it but, in
17 the mean time, Kevin and I were very busy trying to resolve
18 the whole case and we came really close to doing that. We
19 entered into the stipulation that he mentioned to you
20 dismissing all of the claims that Mrs. Harwell had filed
21 herself pro se, and some of the claims that, that Ms.
22 Edmonds had filed for her. We dismissed those without
23 prejudice because somebody needed to step back and take a
24 look at everything and figure out where we were.

25 THE COURT: Uh-huh. (Affirmative).

1 MS. BALLARD: We've not refiled anything. We have
2 filed a preliminary action against the lawyer who
3 represented Mrs. Harwell in the, in the Family Court---

4 THE COURT: Family Court.

5 MS. BALLARD: ---matter but that's gonna be, I think,
6 expanded. The experts are looking at that.

7 THE COURT: Okay.

8 MS. BALLARD: I don't speak that language.

9 Mrs. Harwell was married to the retired Chief Justice
10 for almost 20 years and she was a stepmother to the Federal
11 District Court for almost 20 years but she has no legal
12 training. She tried to do the best she could, after having
13 been mistreated in the Family Court, having had a very poor
14 result in the Family Court that she may or may not have read
15 before now. We don't know. We're still looking into that.
16 But she had deadlines.

17 This Rule 60 had to be filed because of a deadline.
18 These other claims had to be filed because of deadlines.

19 They were filed, some by Mrs. Harwell individually,
20 some by Ms. Edmonds, and when I got involved, every one of
21 them was withdrawn. But I did want to mention, and you got
22 into that with Kevin just a minute ago, after I got
23 involved, we got that death certificate fixed too. It was
24 wrong. That death certificate was wrong. We don't know how
25 it got wrong but we fixed it. So, that case was clearly a

1 meritorious case.

2 Mrs. Harwell has a right to have legal representation
3 to look into whether she was poorly represented in a
4 domestic case. With nobody willing to help her, she filed,
5 at the last minute, on her own. We withdrew it because
6 that's what you do under the Safe Harbor Provision of Rule
7 11. That, of course, is in the Federal version of Rule 11
8 but I think we all -- Your Honor can take notice of the Safe
9 Harbor Provision in Rule 11 in the Federal Court because
10 that's what Rule 11 applies to.

11 It applies to pleadings. It doesn't apply to cases.
12 It applies to pleadings. And what it says is a pleading is
13 frivolous and your remedy for that is to withdraw it.

14 Well, that's what we did. That's exactly what Rule 11
15 tells us to do and that's exactly what we did.

16 I'm not convinced all of those didn't have merit. I'm
17 not convinced of that and we are still looking at that now
18 but we have the benefit of some time. But Mrs. Harwell had
19 no assistance whatsoever. I couldn't get her any assistance
20 and I remember saying to her I know everybody. This won't
21 be a problem. Well, it was.

22 She has been mistreated. By whom remains to be seen.
23 She called me after she was released from jail after 18
24 years -- 18 days in jail for contempt that Bryan Harwell
25 brought against her in Family Court basically for visiting

1 the funeral home and visiting her husband in the hospital.
2 She went to jail for 18 days for having done that, and for
3 having filed these lawsuits even though a Family Court judge
4 said I'm not really gonna rule on those, but how dare she
5 file those lawsuits.

6 Mrs. Harwell, like anybody else, has a right to have
7 good legal advice. I don't know how good I am but I'm here
8 and I would ask Your Honor to consider the fact that we have
9 acted in good faith from the day I got involved. We're
10 trying to figure out where it went wrong. We're trying to
11 figure out where it went off the rails but Mrs. Harwell did
12 not act in bad faith. She acted with a total absence of
13 legal training and a total absence of legal assistance, and,
14 Your Honor, we -- as to the issues that she filed pro se, we
15 did exactly what we were suppose to do. We dismissed those.

16 Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 MR. BARTH: Your Honor?

19 THE COURT: Yes, sir.

20 MR. BARTH: I don't know if Mr. Cooke's got anything to
21 do with that.

22 MR. COOKE: I was gonna defer until Mr. Barth makes his
23 presentation as to Ms. Edmonds.

24 Is that---

25 MR. BARTH: Thank you, Your Honor.

1 I would like to just, very briefly, address a couple of
2 things Desa said.

3 She talked about all the problems she had and others
4 had to find Mrs. Harwell a lawyer and couldn't find one.
5 What everybody overlooks is the fact that she had a lawyer
6 in Family Court that tried the case the second day of the
7 contempt action. She found a lawyer. She had a lawyer who
8 represented her and did the best he could with the evidence
9 he had.

10 So, for everybody to come in and try to reward her or
11 give her a pass because she couldn't find a lawyer is just
12 not right. She had one. And Your Honor will see, he tried
13 the whole, the whole, at one entire day, defending
14 Mrs. Harwell in all -- in these claims and that's exactly
15 what he did.

16 The fact that he couldn't -- that she couldn't find
17 another one to step in, just like Desa said, I found her in
18 a hole and decided to stop digging, because Family Court
19 lawyers know a dog when they see one and they didn't want to
20 touch it because Mrs. Harwell knew very well what she
21 waived. She knew very well she got a heck of a good deal in
22 the mediated agreement that she had taken advantage of and
23 then she wanted to come back for more. Any lawyer on earth
24 wouldn't touch that with a 10-foot pole. That's why she
25 can't find a lawyer.

1 And to just -- the last thing I want to say on that
2 particular issue, Your Honor, is Mrs. Harwell -- and, and
3 look at her affidavit if you, if you get a chance. She
4 blames her Family Court lawyer. She blamed the mediator.
5 She blamed Bryan for allegedly trying to have her murdered
6 if she didn't do X, Y, and Z.

7 Now she's gonna blame it on her, on her Family Court
8 lawyer that represented her and I guess they're gonna sue
9 the CPA as well. I don't know and don't care.

10 What I do care about though is, if that's the remedy
11 they have for a Family Court action that was properly
12 handled and concluded, your remedy is a malpractice action
13 against the lawyer and not an attempted shakedown of an
14 estate by filing these kind of claims that have no merit.
15 That's the problem. They finally figured out, if any of
16 this is true and it doesn't matter what I think, but I don't
17 believe any of it, if any of it is true, their remedy is
18 against Ms. Derrick, her Family Court lawyer and Mr. Hodge,
19 the CPA. It's not against Bryan Harwell or the Estate and
20 that's what makes these claims even more meritless.

21 To try and rescue and revive and somehow give Edmonds
22 and Harwell a pass on all of this because Ms. Derrick didn't
23 do her job, they're gonna have a heck of a time doing that
24 because, on the merits of the Family Court case, she got a
25 great deal. But even they admit, in all of this, that their

1 remedy, if any, would be against the lawyer.

2 They're not attacking the agreement. They're not
3 attacking anything. They're attacking the lawyer for not
4 looking.

5 And -- so, why does the Estate have to spend fifty,
6 sixty thousand dollars to go through all this headache when
7 her complaint is against the lawyer?

8 And that's my problem with Deborah Harwell's claim.
9 And to be honest with you, Desa is a heck of a good lawyer
10 and she knows -- she understands mitigating your damages.
11 And they better withdraw them because they're meritless and
12 that's exactly what Desa did. She did that the right way.

13 THE COURT: All right.

14 MR. BARTH: Thank you, Your Honor.

15 THE COURT: Just one second.

16 (Pause.)

17 THE COURT: We'll move on to the next issue in just a
18 minute.

19 MS. BALLARD: Thank you, Your Honor.

20 (Pause.)

21 THE COURT: All right. We'll move on.

22 Yes, sir.

23 MR. BARTH: May it please the Court, Your Honor.

24 Addressing the claims filed by Ms. Edmonds, I -- really
25 the bottom line to it, especially in light of Mr. Cooke's

1 memo, is, is this is zealous representation by somebody
2 willing to take on some family or is it a lawyer taking
3 frivolous positions in order for her and her client to make
4 probably good money by shaking down an estate because of who
5 they're suing. There would of been no felony allegations if
6 she'd been suing me or been suing John Doe. They knew
7 exactly what they were doing.

8 Now, Your Honor, I want to talk first about the
9 Petition to be Adjudicated Surviving Spouse and have the
10 death certificate amended. The Frivolous Proceedings Act
11 and Rule 11 both talk about that -- the defense wants to say
12 it's about a -- frivolous claims. It's about a frivolous
13 this. It's about -- what it talks about is if a claim or
14 allegation is made for a purpose other than to get the
15 relief your client is entitled to, if it's done for some
16 other purpose, to harass, injure, or press somebody, that is
17 something that the Court can take into account and should
18 take into account.

19 To allege that Bryan Harwell intentionally and
20 willfully lied to DHEC, number one, has nothing to do with
21 the claim for amendment of the death certificate because
22 now, I've noticed from all the affidavits, even her own
23 expert's affidavits say well, I don't know that I
24 necessarily agree with her "litigation strategy" and stuff
25 like that but she got what she was asking for. So, it

1 worked.

2 well, the death certificate was amended to show her as
3 a surviving spouse, and it would have been amended to show
4 her as a surviving spouse if she had recognized exactly what
5 she should have recognized from day one when she found out
6 that DHEC had one document, the funeral home had another
7 document. I get that. Ms. Edmonds says well, that raised a
8 red flag for me and one of the experts says that raises a
9 red flag. Yes, it does. Absolutely it does. And that
10 gives you the basis of filing a lawsuit, if that's what you
11 want to do, to ask DHEC to correct it.

12 Now, Ms. Edmonds touts herself, in all her affidavits,
13 as having this extensive Probate Court background and she's
14 such an expert in Probate Court and probate law. She knows
15 very well that the informant never deals with DHEC. They
16 fill out a sheet. They give it to the funeral home. The
17 funeral home gives it to DHEC. DHEC does what they do.

18 There isn't a single lawyer, Your Honor, me included,
19 that would look at that death certificate, that one sheet
20 Bryan Harwell filled out, and then the two things that the
21 funeral home filled out, and take that and make the leap to
22 say the informant committed a felony and should be punished.

23 what you would say is we needed DJ action or go under
24 the statute to have it clarified and fixed. Ms. Edmonds
25 even recognizes that there's one particular statute that

1 allows an obvious omission or error to be corrected by DHEC
2 on its own or by providing them with information showing
3 it's an obvious error. Well, she didn't do that. She filed
4 suit. Of course, DHEC isn't gonna amend anything. They're
5 a defendant.

6 They said nope, get me a Court order, which is what
7 they said when they filed their answer. There is zero
8 reason in this case to allege that Bryan Harwell committed a
9 felony except to intimidate him and the Estate into paying
10 them some money. That is the bottom line. If I, I, being
11 me, just plain on Kevin Barth, she'd of never made that
12 allegation because I can disprove it and it doesn't matter.
13 I know I didn't do it.

14 Puts a judge in a heck of a tough spot but it put --
15 yeah, that's a litigation strategy. I call it shakedown.
16 She may call it a litigation strategy.

17 If all she really wanted was the death certificate
18 amended, she didn't have to put that in there, and then if
19 Your Honor looks at the sequence of events that occurred,
20 even post-filing, she filed the action, she alleges that he
21 committed a felony, I send her the sheet, I send her stuff,
22 she sends a subpoena to DHEC, presumably she got what she
23 was looking for, and should have figured out at that point
24 that yes, there was a mistake made, if Mrs. Harwell is a
25 surviving spouse, we're still not so sure because Ms.

1 Edmonds even knows that, for the Probate Court, the probate
2 code, there's a different definition. But forgetting all
3 that, and leaving that aside, she has DHEC's file.

4 She's got everything else she needs and files an
5 amended petition, which all it had to do was take out the
6 allegation that Bryan Harwell intentionally lied to DHEC and
7 has committed a felony and should be punished, and instead
8 of taking that out, she adds in a request for attorney fees
9 from DHEC and from Harwell and the Estate.

10 Now, if you're gonna double down like that, you better
11 be doggone sure of what you're talking about because it's
12 for Your Honor to take a look at and determine why that
13 allegation is made, why that allegation is necessary to the
14 relief that they sought, and why, when she found out that
15 clearly it was a mistake the funeral home made or DHEC, they
16 know it wasn't the informant, why leave that allegation in
17 there if it's not to intimidate somebody else or to shake a
18 little money down from them and they know it. If she truly
19 thought that Bryan had committed a felony, she's a lawyer.
20 She's a mandatory reporter.

21 She has to turn it over to ODC. She has to turn it
22 over to the solicitor. She didn't do any of that cause that
23 isn't what they wanted. They wanted money and it didn't
24 work.

25 She got her death certificate and now we know that what

1 happened, in response to that, was her client files a pro se
2 petition for an elective share in the estate. But if what
3 you want is the death certificate amended, Your Honor, you
4 don't make that kind of allegation, and no lawyer would, and
5 that is exactly what Rule 11 is designed to prevent.

6 If I can just make blanket allegations that the
7 defendant is a drunken thief and he did this, this, and
8 this, and hope I can prove it later, and when I find out I
9 can't prove it, I don't withdraw it, then I don't know what
10 Rule 11 would be for and their sole defense, as I understand
11 it, is that, when she initially filed it, she had a good
12 faith belief there was a problem. Even if that's true,
13 there's not a good faith belief that somebody committed a
14 felony to get it.

15 Just get your death certificate amended. That's what
16 they want. And now it appears, according to DHEC's
17 protocol, they're entitled to it and they got it. That's
18 our position on that, Your Honor.

19 On the money claims, it appears, from the last
20 memorandum, that Ms. Edmonds position is that she had to
21 file that in order to protect Mrs. Harwell's potential
22 rights under a Rule 60 motion to set aside the, set aside
23 the Family Court approved agreement.

24 Number one, Deborah Harwell's testimony says she just
25 went in there for the death certificate and it was only much

1 later that she got into it and realized "something was very
2 wrong."

3 That flies in the face of Ms. Edmonds very first
4 affidavit that Your Honor saw back in the summer where she
5 said the reason she filed these claims as she did was
6 because she only had a few days. She was on a tight
7 timeline and the last paragraph of her affidavit said it was
8 done, Your Honor -- we, we were questioning the lack of
9 investigation.

10 who makes that claim without investigating the Family
11 Court order?

12 She already admitted she had seen the order but her
13 excuse was I only had a couple days to do it, and, exigent
14 circumstances, sometimes you file it and then you have the
15 opportunity to investigate it.

16 No, that's a logical assumption. However, if you look
17 at the form and Judge, Judge Edmonds, being the expert she
18 is in Probate Court, she testified that, on the petition for
19 allowance of the claim, the three million-dollar one,
20 there's a little spot at the bottom that says other. Now,
21 if there's something that the Probate Court needs to know
22 why this claim is out of the ordinary, you note it there.
23 That's where -- that's what it's for.

24 What Ms. Edmonds put in that notation was Prenuptial
25 Agreement. Even after she had seen the mediated agreement

1 that waived the right to the estate and settled the prenup,
2 she put Prenuptial Agreement. If Mrs. Harwell truly had
3 said to her on day one I had good reason to set this
4 agreement aside based on fraud and misrepresentation, that's
5 where Ms. Edmonds should of put it on the form cause that's
6 where it goes.

7 She didn't put anything about that. When she signed
8 her first affidavit for the Court in July of '16 for the
9 hearing before Your Honor, she didn't mention a thing about
10 fraud, misrepresentation, or anything else. She said she
11 had to file it because of the tight timeline, exigent
12 circumstances. Trust me, she had plenty of time to think
13 about it, and if she had already come up with this Rule
14 60(b) story, she'd put it in the affidavit but it isn't in
15 there.

16 Last, on this particular issue, Your Honor, as far as
17 it relates to Ms. Edmonds, unless I'm missing something, and
18 if I am I know Dawes will point it out, but unless I'm
19 missing something, the first time Deirdre Edmonds swore
20 under oath that any of this was done to protect
21 Mrs. Harwell's rights under the upcoming 60(b) motion was in
22 the affidavit she filed yesterday, day before. We'll ask
23 them. That's the first mention of it and she says it was
24 done because Mrs. Harwell told me, day one, that she
25 suspected fraud. And I would ask Your Honor, when looking

1 at that, and I'll, I'll be glad to point to the page, Page
2 59 of day two, Your Honor, of the transcript, is where
3 Mrs. Harwell testifies I went there to get the death
4 certificate amended, and it was later, when we investigated
5 the matter, we realized something was seriously wrong.

6 That ain't day one. That ain't day one. She saw a
7 three million-dollar claim against the Estate and she simply
8 refiled it hoping to make an easy piece of money. That's
9 where we are.

10 And, Your Honor, if this case doesn't warrant some kind
11 of sanction, I don't know what does, even though Mr. Cooke
12 in his memo last night seemed to say oh, Your Honor, if you
13 award any sanctions, now you -- the point of the matter will
14 be that the entire judicial system will retaliate against a
15 litigant for picking on a powerful family. This will be --
16 I'd make this very same argument if neither of these parties
17 were involved because that has nothing to do with the
18 judicial system retaliating against everybody. It's the
19 judicial system protecting the profession from B.S. claims
20 being filed by litigants, and, more importantly, lawyers.

21 When there's an order that I've looked at that says I
22 waived my interest in the Estate, how am I, as a lawyer,
23 going to help a client pursue a claim in the face of an
24 unappealed order period. The three million-dollar claim,
25 all she had to do was put on there, if it was true, we're

1 filing the claim subject to the Rule 60 motion that will be
2 filed simultaneously or, or that's upcoming. If that really
3 was the reason she did all this, we'd of known it from day
4 one, but, instead, we see it two days ago, and I just ask
5 Your Honor to carefully consider all of that.

6 Now, this isn't about who we're talking about. This is
7 about a lawyer overstepping her bounds. This isn't zealous
8 representation. This is bad faith shakedown.

9 THE COURT: Counsel.

10 MR. COOKE: Thank you, Your Honor.

11 Again, for the record, I'm Dawes Cooke. I represent
12 Ms. Edmonds.

13 Your Honor, we were unsure whether the Court was gonna
14 take live testimony today. We have now submitted, and as
15 you recall, we were sort of taken aback by Mr. Protopapas's
16 affidavit being submitted sort of in the eleventh hour. We
17 objected to that. We moved for a continuance. But we've
18 survived, thanks to Professor Powell, pulling an allnighter.
19 We, we have submitted an affidavit from him.

20 THE COURT: Uh-huh. (Affirmative).

21 MR. COOKE: He is the distinguished Professor Emeritus,
22 former Dean of the University South Carolina.

23 THE COURT: I've read his affidavit.

24 MR. COOKE: Okay. And so you know his qualifications.

25 THE COURT: Yes, sir.

1 MR. COOKE: We've also submitted an affidavit from
2 Mitchell Payne, who is a Probate Court practitioner. He's
3 not here in person but we also have Ms. Edmonds, and she is
4 happy to take the stand if the Court, at the end of my
5 remarks, has any questions that are responsive---

6 THE COURT: Well, she submitted an affidavit as well---

7 MR. COOKE: Yeah.

8 THE COURT: ---I believe.

9 MR. COOKE: She submitted two affidavits. She did one
10 last summer and then a rebuttal affidavit more recently.

11 THE COURT: Well, I'll, I'll leave it to you if you
12 think it needs to be supplemented in anyway but --.

13 MR. COOKE: Well, let me, let me, let me do my
14 presentation and see if the Court has any---

15 THE COURT: All right.

16 MR. COOKE: ---any questions if I may.

17 THE COURT: Yes, sir.

18 MR. COOKE: Your Honor, Ms. Edmonds has practiced in
19 the Probate Court for 30 some odd years. She was a probate
20 judge for 12 years. She was president of the South Carolina
21 Probate Judge's Association. Takes her duties very
22 responsibly.

23 I've learned something. I don't really do probate. I
24 don't do Family Court but I've seen a little bit of it, and
25 I realize that Probate Court litigation puts Family Court

1 litigation to shame in terms of the amount of, of emotion
2 and indignation that, that it can generate, and I would ask
3 that the, the court to consider that as you go through this
4 process.

5 Let me, let me give a couple of disclaimers. Ms.
6 Edmonds did not, would not ever represent Mrs. Harwell or I
7 think anyone else in Family Court. She does not practice
8 family law. She does not practice in Family Court.

9 She did not have anything to do with the filing of the
10 claims that Mrs., that Mrs. Harwell had filed before she
11 came to see her in February of, of last year. She did not
12 have anything to do with the filing of the, of the, the
13 elective share petition, and she had nothing to do with any
14 of the filings or anything that was done in the Family
15 Court.

16 So, we're here to talk about essentially two things
17 that she did do. She filed the petition for creditors
18 claims, which included a small claim for a funeral notice
19 that, that Mrs. Harwell had paid for and then the larger
20 claim where she was, you know, claiming her, her interest in
21 the Estate. That's number one.

22 Number two is she filed a petition to have Mrs. Harwell
23 declared the surviving spouse under the probate code and to
24 correct the death certificate. So, I'm gonna address those
25 two separately and I'm gonna, I'm gonna take the second

1 one -- the, the, the first one first and that is the
2 petition for creditor claims.

3 When Mrs. -- under the, under the Probate Code, the way
4 the process works, if somebody thinks that they have a claim
5 against an estate, they first file a claim with the personal
6 representatives and the personal representative then
7 approves or rejects that claim. Once that claim is
8 rejected, you have, by statute, a limited period of time,
9 maybe 30 days, to file a petition. If you don't file a
10 petition within that 30 days---

11 THE COURT: You waive it.

12 MR. COOKE: ---it's forever barred --

13 THE COURT: Yes, sir.

14 MR. COOKE: -- no matter how meritorious it might later
15 be.

16 Now, the dilemma that, that Ms. Edmonds was faced with
17 was, when, when Mrs. Harwell first walked into her office in
18 I think February of, of last year, these claims have already
19 been made against the Estate. They had already been denied
20 by the personal representative. Ms. Edmonds knew about the,
21 the Consent Decree. She knew that there had been a
22 Prenuptial Agreement but she doesn't practice family law.

23 what she did know was that Mrs. Harwell was contesting
24 and intending or intended to contest the validity of this
25 settlement agreement that she had entered into.

1 So, here's the dilemma. You're sitting at your desk
2 and you've got ten days, 11 days left in the Statute of
3 Limitations. You don't practice family law. No discovery
4 has been done. There's not even a Rule 60 motion before the
5 Family Court yet but your client says I have a claim. I
6 don't think my settlement agreement was valid.

7 And so what do you do?

8 Do you let the Statute of Limitations run?

9 There's a case -- I mean I found this. It's called Ray
10 versus Ray, nineteen -- 2007 case by the Supreme Court of
11 South Carolina, and it reversed the Family Court for
12 refusing to overturn a settlement decree.

13 Why?

14 Because one of the parties had fraudulently concealed
15 assets from the court. And the court goes through it --
16 and, and from the party as well. It goes through and gives
17 an analysis. It says you can't overturn a settlement decree
18 in Family Court for intrinsic fraud but you can do it for
19 extrinsic fraud. When you hide your assets from the court
20 and from the party, that's extrinsic fraud. The, the --
21 you're not bound by that.

22 Now, Ms. Edmonds is not a Family Court practitioner let
23 alone a Family Court judge, and she had no ability
24 whatsoever, as she was sitting in her office in February
25 and, and March of 2016, to predict that never in a million

1 years could her client ever prove that she was entitled to
2 have that settlement decree overturned.

3 So, what did she do?

4 She did what she had to do, what she was ethically and
5 professionally responsible, responsible to do if she had
6 accepted this client, and that is I filed the claim and then
7 you've got to go do what you need to do in order to
8 establish that you have a valid claim.

9 Imagine, imagine if she had sat there and just said,
10 you know, this just looks fishy to me. A deal's a deal.
11 And I'm prejudging here today that you're never gonna come
12 up with any evidence, no matter how much discovery you might
13 do, no matter how good a lawyer you might get in Family
14 Court, I'm deciding today that you'll fail and I'm not gonna
15 file that claim for you or maybe she doesn't even tell her
16 she's got to file the claim.

17 So, right about now Desa Ballard would be calling me up
18 and saying I'm representing your client whose claims you
19 allowed to go forfeit because you did not file a timely
20 claim. The decision that, that -- that decision would be
21 very much like a decision that a lawyer made not too long
22 ago in a case called Kinard versus State of South Carolina
23 and this is a decision that just came down in December by
24 the Supreme Court. It's in the criminal context.

25 A criminal defendant pleaded guilty and then what did

1 he do?

2 He told his lawyer to appeal it.

3 The lawyer said I'm not doing that. That's frivolous.

4 And what the Supreme Court said is a lawyer who disregards
5 specific instructions from the defendant to file a notice of
6 appeal acts in a manner that is professionally unreasonable
7 regardless of whether the appeal would of had merit.

8 Regardless of whether the -- he acts in a professionally
9 unreasonable manner regardless of whether the appeal would
10 of had merit.

11 Why do they say that?

12 Because what they're saying is that, as a lawyer, you
13 should do no harm. You shouldn't, by your inaction, kill
14 your client's chances of proving a claim that they might
15 possibly have. There are, theoretically, ways that somebody
16 could overturn a guilty plea just like there are,
17 theoretically, ways somebody can overturn a consent decree
18 in Family Court and it's not up to that lawyer to doom that
19 claim to a failure. And it would of been irresponsible for
20 Ms. Edmonds to do so.

21 Now, Mr. Protopapas is a great lawyer. He's not a
22 probate lawyer, and, in his affidavit, he doesn't anywhere
23 say he knows anything about probate law but he was given two
24 big notebooks full of the documents, and I did not see in
25 that notebook this document, which is the Rule 60(b) motion

1 that Mrs. Harwell would later file in, two months later, she
2 filed it in May of 2016, with this assistance of Mr.
3 Silvernail, Silvernail and this was her Rule 60(b) motion
4 for relief from that order. If this was successful, she
5 might have a claim to that 3.1 million-dollars. If it's not
6 successful, she wouldn't have a claim to that
7 3.1 million-dollars but there's no way in the world that Ms.
8 Edmonds could of predicted, with any certainty, how this
9 would come out.

10 In Mr. Protopapas's affidavit, he says, you know,
11 they're several things that Ms. Edmonds could have done
12 professionally. One of them was file the petition and then
13 promptly file a Rule 60(b) motion in Family Court. Well, he
14 didn't know that that's exactly what happened.

15 It wasn't Ms. Edmonds who filed it. She couldn't do
16 it. She's not competent. She wasn't hired to do it. But
17 that's exactly what was done. File the petition and then
18 file a Rule 60(b) motion. It would of been malpractice for
19 her not to do that, Your Honor. And so we submit that
20 there's no way in the world she would be sanctioned for
21 that. She was protecting whatever clients -- whatever
22 claims her client might have.

23 Like to move on -- oh, by, by the way, she is misquoted
24 in her testimony and, and can I -- could I hand up for
25 you -- this is a hard copy of the, of the motion that we --

1 of the memorandums that we filed yesterday but it's got
2 the---

3 THE COURT: Sure.

4 MR. COOKE: It's got the four affidavits in support and
5 I've taken the liberty---

6 THE COURT: Pass it up.

7 MR. COOKE: ---of tabbing, tabbing these for the
8 Court's reference.

9 THE COURT: Thank you.

10 MR. COOKE: So, Ms. Edmonds is quoted in the moving
11 papers as having admitted, in Family Court, that Ms. Edmonds
12 had no potential -- no possible claim and it's by virtue of
13 the filing of the petition for declaration of her status as
14 surviving spouse. That is a mischaracterization of her
15 testimony, and if you'll look at -- it's Exhibit 2, which is
16 the rebuttable affidavit of Deirdre Edmonds and Attachment B
17 to that.

18 This is an excerpt of her testimony, and if you'll look
19 at Page 37?

20 Do you see that at the top?

21 THE COURT: Yes, sir.

22 MR. COOKE: It's a transcript. This is in the Family
23 Court hearing that occurred last spring. It says, right in
24 the middle of the page, Line 12, she is still a surviving
25 spouse under law.

1 Q. Okay.

2 A. Not for purposes of any property, property rights
3 through the Probate Code.

4 Q. Okay. So, this summons and petition, as I
5 understand it, and correct me if I'm wrong, asking that she
6 be adjudicated the surviving spouse would not entitle her to
7 any money or anything from the Estate?

8 A. No, sir, that was for purposes of the Court finding
9 she was the surviving spouse so she could be included on the
10 death certificate.

11 She doesn't -- she wasn't asked and she didn't testify
12 that Mrs. Harwell had no claims against the Estate. She had
13 no way of knowing that. She's not a Family Court
14 practitioner. She wasn't representing her in Family Court.

15 Her testimony was limited to the petition to correct
16 the death certificate and have her declared surviving spouse
17 for purposes of the death certificate. That was not for the
18 purpose of getting money, or to use Kevin Barth's words, to
19 shakedown the Estate for, for money.

20 I also call the Court's attention to Attachment A
21 where---

22 THE COURT: 2-A?

23 Are you talking about 2-A?

24 MR. COOKE: Yes, 2-A, yes, sir, and that's the
25 testimony of Deborah Harwell from, from that court where she

1 describes the basis for her claim that, that she was
2 defrauded in the, in the settlement agreement.

3 Now, we're not advocating for that position here today.
4 All we're saying is that that is the claim, the claim that
5 she is making there, that is the claim that Ms. Edmonds had
6 a duty to protect, to preserve. She's not advocating that
7 position. She's preserving that position. So, that's,
8 that's our response on the, on the creditor's claim
9 petition.

10 THE COURT: Okay.

11 MR. COOKE: And that is that, to the contrary of it
12 being frivolous, it would of been malpractice not to have
13 filed that claim timely. So---

14 THE COURT: You're saying if there was a possibility of
15 the claim, you needed to protect -- perfect it by filing it
16 in Probate Court?

17 MR. COOKE: That's exactly right, and, in fact,
18 Mrs. Harwell did make that claim as, as was, as was
19 anticipated.

20 All right. So now I want to move on to the, the
21 petition that was filed that should not have had to have
22 been filed because Mr. Harwell, Judge Harwell -- I'm just
23 gonna call him Respondent cause -- just because, because he
24 should of corrected it himself. He is the informant.
25 That's a, that's a technical term. But he is the person who

1 is legally responsible, even though it's true that the, that
2 the statute contemplates that the funeral home will input
3 the information, the statute specifically says that they
4 will get that information from the next of kin or the, or
5 the closest available person, and that's the Respondent and
6 he's called the informant, and his job was to provide
7 accurate information.

8 And we didn't write the statute, but the statute, for
9 some reason, says that it would be a felony if you don't
10 provide accurate information for a death certificate. Why
11 the Legislature thought that it was important is -- I don't
12 know but that's what the statute says, and that's what the
13 petition that Ms. Edmonds says -- filed says. It says
14 that---

15 THE COURT: I haven't picked up on the difference.
16 Apparently there was a paper that was filled out by the next
17 of kin, and there was a -- then a paper filled out by the
18 funeral home sent to DHEC and---

19 MR. COOKE: Right.

20 THE COURT: ---and the argument before, Mr. Barth
21 indicated there was a difference between those documents.

22 MR. COOKE: And I'm gonna go through that.

23 THE COURT: And I haven't picked up on what that
24 difference is yet. So, I---

25 MR. COOKE: I'm, I'm gonna, I'm gonna help Your Honor

1 with that.

2 THE COURT: If you could address that for me.

3 MR. COOKE: Right.

4 First of all, let me, let me explain, if I could, the
5 Code Section is 62-2-802 I believe which governs the, the
6 death certificate and defines surviving spouse.

7 I believe that Mr. Harwell, and perhaps his legal team,
8 were confused about what surviving spouse means because
9 there's a provision in the probate code that says, if you're
10 the surviving spouse for purposes of this death certificate,
11 if you were married at the time that the person dies.

12 There's another provision in the same section that says but,
13 if all of your property rights have been adjudicated, you're
14 not the surviving spouse for the purposes of these specific
15 sections and it gives you specific sections of the Probate
16 Code.

17 Among those being you don't get to inherit through
18 intestacy if all of your property rights have already been
19 adjudicated but you are the surviving spouse. Your name is
20 still suppose to be on that certificate for things like
21 getting insurance benefits. If you're the, if you're the
22 survivor and you're entitled to those benefits, you need to
23 be the surviving spouse to, to get those. That's not part
24 of the estate. This is something you're entitled to as the
25 surviving spouse.

1 Mrs. Harwell's brought up the fact that what if she
2 were ever to be remarried again. She would have to be a
3 surviving -- she would have to be able to produce a death
4 certificate showing her as the surviving spouse. Otherwise,
5 as far as the law's concerned, she's still married to
6 somebody. So, it's important. It's not just for
7 statistical purposes but it's not for the purpose of
8 claiming money under the Estate as Ms. Edmonds just
9 explained in the testimony that I read to you.

10 But here's the -- here's what she was confronted with
11 and that is how -- why is it that, five months into this,
12 Mr. Harwell will not -- has not corrected this thing?

13 Okay. So, she files the petition and then she has an
14 absolute correct position. I don't think anybody's
15 disputing, to this day, that the death certificate should
16 have listed Mrs. Harwell as the surviving spouse. So, Tab
17 2-C is the affidavit of Angela -- Angelious Saleeby, who's
18 the person at DHEC responsible for all these papers, and she
19 says, she explains that South Carolina DHEC is the official
20 agency charged with recording the event of a death. An
21 informant provides information -- the informant provides
22 information required on the death record for filing
23 purposes. South Carolina Certificate of Death, 4-C, is not
24 filed with DHEC. That's an important point. It's gonna
25 come up cause he talked about these forms.

1 The funeral home or person acting as such is
2 responsible for filing the death record either
3 electronically by entering the demographic information
4 through the State's electronic vital records system or by
5 submitting it on paper. The physician or coroner is
6 responsible for completing the medical portion by entering
7 it electronically or on paper.

8 One of the fields on the death record is surviving
9 spouse's name and that's block number ten, and you're gonna
10 need a magnifying glass before we're done. I can promise
11 you that.

12 If nothing is entered in the surviving spouse's name
13 field at the time of filing, the electronic vital record
14 system files -- fills in the blank with NA at the time of
15 issuance and that's exactly what happened. The, the, the
16 death certificate that anybody would, would give says NA
17 under surviving spouse, which means that block was left
18 blank.

19 In the case of decedent David Walker Harwell, the death
20 record was filed by Stoudenmire-Dowling Funeral Home. The
21 record filed with DHEC, a copy of which is attached, shows
22 the space for the name of the surviving spouse was left
23 blank at the time of filing. As a default in the electronic
24 vital records system, because this field was left blank, NA
25 was automatically printed on the death certificate at the

1 time of issuance. And if you turn that page, and get out
2 your magnifying glass, and I've, I've done it, so I'm just
3 gonna walk you through it, they're two blocks up there that
4 are important.

5 One is Block 9 and the other is Block 10 and Block 9
6 has some choices. It's marital status at time of death and
7 it says married, or married but separated, widowed,
8 divorced, never married, or unknown. There's a little tiny
9 check there where it says married but separated and that's
10 gonna become important. And the blank right next to it is
11 Number 10 where it says surviving spouse and that's blank.
12 And that should of said Deborah Boggs because it's suppose
13 to have the maiden name of the surviving spouse but that
14 should of said Deborah Boggs and it did not.

15 Now, what else did, what else did -- so, so, so, so,
16 that was the information that was given to Ms. Edmonds
17 before she filed this petition. She had called DHEC and had
18 spoken to Ms. Saleeby and, and this is all in Ms. Edmonds's
19 affidavit. She was given that information. She was told
20 that the form that was filed with us does not list your
21 client as the surviving spouse, and, therefore, as far as
22 DHEC's concerned, she's not the surviving spouse.

23 The next exhibit is 2-D. This is a Probate Court form
24 and this one was actually signed by the Respondent.

25 THE COURT: To G you said?

1 MR. COOKE: D.

2 THE COURT: D.

3 Go ahead.

4 MR. COOKE: This was signed, on the last page, D-6
5 signed by R. Bryan Harwell and on Page B-2, and it's also
6 printed, it says two of six, right -- kind of right above
7 the center, there's a whited out spot and that spot use to
8 say Deborah Boggs. You can kind of see part of the letters
9 hanging down but it's been whited out. So, Ms. Edmonds was
10 aware of that when she filed this.

11 So, what she now knows is that the form that was filed
12 with the -- with DHEC did not list Deborah Harwell as a
13 surviving spouse. Bryan Harwell has known that for some
14 five months and has not corrected it, and, in filing this
15 other form, he had taken the liberty of whiting out or
16 signing a form where her name had been whited out.

17 Now, the whiting out of that, by itself, is not as
18 sinister as leaving it off of the, of the death certificate
19 form but it's still significant. According to Ms. Edmonds's
20 affidavit, in her 30 years of probate practice, the normal
21 thing to have done -- and this -- see, in this one, the,
22 the, the Estate would be entitled to take a position that
23 she's not entitled to inherit as a, as a surviving spouse
24 but the normal thing, according to Ms. Edmonds, would of
25 been to put her name there and then put an explanation of

1 why she's not entitled and they did that. You can see they
2 say see mediation/separation agreement and so forth and so
3 on.

4 THE COURT: Uh-huh. (Affirmative).

5 MR. COOKE: So, it seemed odd to her that they had not
6 only not put her name there, but had put -- somebody had put
7 her name and it had been whited out and, and Bryan Harwell
8 had signed that form. So, that was ominous to her as well.

9 Then she was provided with an affidavit from Sandy
10 Dowling. This was after she had filed the petition. And
11 Sandy Dowling is an assistant manager, associate director of
12 Stoudenmire-Dowling Funeral Home, and in it he says that the
13 form that they submitted listed Deborah Boggs as the
14 surviving spouse. And if you turn to what's marked at the
15 bottom of C-3, and get your magnifying glass out, if you
16 look at Box 10, it does say Deborah Boggs but you see nine,
17 that married but separated, is gone and it's not---

18 THE COURT: I may be looking at the wrong thing right
19 now.

20 You said which one, 2-E?

21 MR. COOKE: This, this is Exhibit F. I'm sorry.

22 THE COURT: F.

23 MR. COOKE: It's the affidavit of Sandy Dowling.

24 THE COURT: I see it.

25 okay. And there's an attachment to that.

1 MR. COOKE: Right, and an attachment where---

2 THE COURT: Okay.

3 MR. COOKE: And he says in his affidavit that what's

4 attached here is what I filed with DHEC.

5 THE COURT: Okay. I'm there now.

6 MR. COOKE: Okay. And if you look at it, that form is

7 the same form as what Ms. Saleeby provided, but it's

8 different, because this one is not blank in Box 10. This

9 one says Deborah Boggs and Number 9 doesn't have married but

10 separated checked. It has married checked and there's an

11 explanation for that.

12 If you look at Tab E, this is an excerpt from Bryan

13 Harwell's testimony in the Family Court proceeding later.

14 THE COURT: Tab what?

15 MR. COOKE: Tab -- it's Tab E.

16 THE COURT: E?

17 MR. COOKE: E.

18 THE COURT: All right.

19 MR. COOKE: And it's -- I think yours says 2-E.

20 All right. So, this is---

21 THE COURT: I'm there.

22 MR. COOKE: This is an excerpt of testimony and Page

23 119---

24 THE COURT: Uh-huh. (Affirmative).

25 MR. COOKE: ---he says the form -- and I gave that to

1 the funeral home. I don't deal directly and I did not deal
2 directly with DHEC. The original form, as I understand it,
3 which Ms. Edwards has that Mr. Dowling submitted, indicated
4 your name, and he's addressing Mrs. Harwell who's
5 cross-examining him here, and it said married instead of
6 married but separated.

7 The only change that I know of is that they were
8 changing married to married but separated. I signed the
9 correct information, gave that information to the funeral
10 home with my brother present. They have always known you
11 were married but separated, and it's my understanding that
12 that was passed onto DHEC.

13 And he says did you -- she said did you see the death
14 certificate when it came back?

15 He said I did and it said NA under surviving spouse and
16 I was even contacted, when I got it from the funeral home,
17 because they provided it to me. DHEC didn't send it to me.

18 All right. So, what you got -- two things there. One
19 is that he did know that it did not list her as the -- the,
20 the death certificate didn't list her and he acknowledges
21 that there was a change made to the information that was
22 submitted to DHEC.

23 And so, what we now have is we have a death certificate
24 form that, that, that says married and lists Deborah Boggs
25 but then we have another one that says married but separated

1 and has a blank.

2 so, what appears to have happened was that the, as, as
3 Bryan Harwell testifies here, the original form that he says
4 was submitted and that the affidavit says was submitted was
5 replaced with another form, another form that corrected the
6 box that said married to saying married but separated. But
7 what neither Bryan Harwell nor Mr. Dowling said was that, in
8 addition to changing that box, they also deleted Deborah
9 Harwell as the surviving spouse.

10 THE COURT: Deborah Boggs.

11 MR. COOKE: Deborah Boggs, right, but it's her. But
12 it's her. That's correct.

13 All right. So, they're some other evidence here. If
14 you look at Tab G, this is the, this is -- Ms., Ms. Edmonds,
15 when this conflict began to appear, she sent a subpoena to
16 two different places. She sent a subpoena to DHEC and they
17 produced what's marked as Exhibit 2-G, which is the same
18 form that was attached to the Saleeby affidavit, and if you
19 put your magnifying glass down, you'll see that that checks
20 married but separated and there's a blank there. So, this
21 is the form that DHEC has in its records today and had at
22 the time of the subpoena.

23 Exhibit H is the death certificate that shows surviving
24 spouse's name NA, which, as Ms. Saleeby explains, there's no
25 mystery about it. If you leave the blank -- the box blank,

1 it comes out as NA.

2 Exhibit I is also important. In addition to the
3 funeral home -- the informant having to fill out the
4 information that goes to DHEC, the physician who certifies
5 the death also has to fill out their portion and that has to
6 be sent in as well. But the process is the funeral home
7 sends the completed form to the physician and then the
8 physician fills in the part at the bottom and then it goes
9 to DHEC.

10 So, Ms. Edmonds said well, let's see what the physician
11 has in her files. And so she sends the subpoena and this is
12 what comes back. It's Exhibit I and this is identical to
13 the one that DHEC has. It, in Box 9, it's checked married
14 but separated and Number 10 means surviving spouse. So,
15 that proves that the form that the funeral home sent, which
16 was, you know, by statute, suppose to be completed by
17 information from the informant, that they sent to the
18 physician was the one that had the blank, did not list Mrs.
19 Harwell, and that's the one that wound up going to DHEC.

20 As far as the, the critique of the, of the petition,
21 the Respondent says this was a no harm no foul situation.
22 You didn't need to, you know, make this a, a big case about,
23 about the death certificate. Mrs. Harwell testified she was
24 never denied any benefits because of not having a death
25 certificate.

1 Exhibit 2-J is her testimony, which is exactly the
2 opposite. This was her testimony given on June 16 in Family
3 court and she's being interrogated about her income.

4 Can you tell me what you make at the marina?

5 I make 800. I make, make 900 a week.

6 Okay. Any other income than your---

7 No.

8 ---late husband's retirement?

9 She says I was not able to obtain retirement because I
10 could not get a death certificate. So, I got my first check
11 for \$400 about three weeks ago.

12 So, that just shows that it was, that it was of some
13 importance to her that, that, that she gets that, that death
14 certificate.

15 So, Your Honor, we do, do -- we do contend that Rule 11
16 provides sanctions for filing a frivolous action. This
17 action was far from frivolous. There was no reason
18 whatsoever to oppose it or to even require that it had been
19 filed. That death certificate should have been corrected at
20 the very beginning.

21 And contrary to what's been suggested to you here, it,
22 it was never the defense of the Respondent that well, DHEC
23 can just do whatever DHEC wants to do. The answer that they
24 filed to this petition says she's not entitled to be the
25 surviving spouse because she gave up all of her rights in

1 the settlement agreement. In other words, they -- I believe
2 that they were confused about what surviving spouse was
3 meant. So, they were fighting this. They were fighting
4 this because they thought that that was gonna let the
5 camel's nose under the tent of the Estate if they agreed
6 that Deborah Harwell was the surviving spouse when, in fact,
7 as Ms. Edmonds testified, that was not why they filed this
8 petition. It wasn't just a technicality. It was more than
9 a technicality. It was, it was, it was so that she could be
10 the surviving spouse, which she was by law.

11 So, Your Honor, that -- for that reason, the action
12 certainly not -- is not frivolous. The defense of the
13 action might be frivolous. I mean their, their position was
14 we'll, you know, we'll let this whole thing go away if
15 Mrs. Harwell will dismiss all of her claims. Well, that's
16 not much of an offer. They should have, they should of
17 voluntarily corrected this, this death certificate right
18 from the very beginning.

19 So, Ms. Edmonds did exactly what she was professionally
20 required to do. Your Honor, in our brief, I do get on my
21 soapbox a little bit. I mean I'm, I'm stunned that
22 Mrs. Harwell did something that caused her to spend two
23 weeks in jail over whatever it was that she -- whatever it
24 was. I don't care how offensive it was. Whatever it was,
25 for, for, for a citizen to go to jail because she is

1 claiming to be the, the, the surviving spouse and to have
2 had a relationship with her husband, I mean I, I get, I get
3 that there's a bona fide dispute about that, and it might be
4 tremendously offensive to the, the children, who aren't her
5 children, her stepchildren. It might be tremendously
6 offensive to them.

7 I do a lot of legal malpractice defense, and so a
8 man -- every one of my clients is indignant that their
9 integrity would be challenged, that, that -- and every
10 single one of them wants to sue the lawyer that brought the
11 lawsuit against them. Every single one. It's -- that's
12 human nature.

13 But Ms. Edmonds did, did something that, that I, that I
14 think we should admire. And I, as a defense lawyer in
15 malpractice cases, a lot of my colleagues look down on
16 lawyers that take malpractice cases. They call them -- they
17 say they're crazy or they call them bottom feeders or money
18 grubbers. And, and I would never admit this to my
19 colleagues but I, I actually respect those people because
20 sometimes they do go too far. Sometimes they're over
21 zealous on -- I mean I just got a case where we got summary
22 judgment affirmed by the Fourth Circuit Court of Appeals.
23 My client's chomping at the bit to go sue the plaintiff's
24 lawyer in that case but you need to have somebody out there
25 who's willing to take on unpopular causes.

1 I mean -- and it doesn't matter that they're a judicial
2 family, but they're an important family, and, and the
3 children of Justice Harwell are, are good, important people,
4 and very few lawyers would want to take them on even if
5 their case was a hundred percent defensible or valid.

6 And so, I would, I would ask the Court to consider that
7 Ms. Edmonds did take an unpopular position but she did she,
8 as an experienced estate attorney, was required to do to
9 give Mrs. Harwell her day in Court. And, for that reason,
10 she shouldn't be sanctioned. And, and even if you look at
11 this and you say, you know, this allegation of willful, of,
12 of, of changing of the death certificate, that's sort of
13 piling on, I think that's over zealous but it wasn't
14 frivolous. It wasn't frivolous.

15 She had reason to believe it, and, and our Supreme
16 Court says, in, in the, in the, in the comments to the Code
17 of Professional Responsibility, that an action is not
18 frivolous merely because you don't have all the facts to
19 support it and you have to rely on discovery to prove your
20 case. You don't have to be ready to go to trial on the day
21 that you file a petition.

22 So, for all those reasons, and I appreciate your
23 patience, and I'll, I'll offer, once again -- I mean if I,
24 if I put Ms. Edmonds on the stand, she gave two very
25 comprehensive affidavits and they're both there, but if the

1 Court has any questions or doubts whatsoever, I would be
2 happy to have her testify or answer those questions.

3 THE COURT: All right. I don't think it will be
4 necessary for her to testify unless you feel like there's
5 something I should hear---

6 MR. COOKE: I haven't---

7 THE COURT: ---that I haven't heard already.

8 MR. COOKE: I mean I would love for you to hear her and
9 see her. She's scared to death to do that I'll say, but,
10 but, in all candor, I know your time is limited. Everything
11 that she would say is in her affidavit.

12 THE COURT: Okay.

13 MR. COOKE: But I just feel like sometimes seeing a, a
14 human being and saying something is worth more.

15 THE COURT: I understand.

16 Ms. Ballard, anything you wish to add on the---

17 MS. BALLARD: To the extent that Mrs. Harwell and -- is
18 also having sanctions sought against her for bringing the
19 death certificate case, as I said earlier, we were
20 successful in getting the death certificate amended. We
21 don't understand why, but, for some reason, our opponent is
22 very touchy about the death certificate because, after we
23 got it corrected, we asked for a list of the places to which
24 the false death certificate had been provided because we
25 wanted to provide the correct one, and that request was

1 denied. We don't know why.

2 So, we've been unable to correct the public record
3 insofar as the false death certificate was distributed to
4 wherever it was distributed. We don't know cause they won't
5 tell us. We're sending the correct death certificate to
6 wherever it is we can figure out they probably sent it but
7 wouldn't it be easier for them to just tell us. There's
8 some reason this sticks in their craw, some reason, and
9 that's why we're here.

10 THE COURT: All right.

11 MR. BARTH: Judge?

12 THE COURT: Yes, sir.

13 MR. BARTH: I'm in the Twilight Zone. I -- that
14 comment---

15 THE COURT: I'm old enough to know what that means.
16 Go ahead.

17 MR. BARTH: As am I, Your Honor.

18 For Desa to stand up and say this is about the
19 corrected death certificate, what she's doing is sending it
20 to a bunch of random people that don't have a daggum thing
21 to do with this litigation, and that's one more example of
22 Mrs. Harwell's jerking him around.

23 Sends it to Judge Harwell's old financial adviser,
24 Justice Harwell's old financial adviser before he died.
25 He's got nothing to do with this and Debbie's got no money

1 with him. He doesn't need a death certificate. He didn't
2 need the old one.

3 And, and what they're doing is they're trying to turn
4 it around. Oh, these scorned children, these greedy
5 children, and why you want to punish these people for taking
6 them on.

7 It's a grudge match that Mrs. Harwell wants money and
8 she had a lawyer that tried to help her do that. And now
9 it's just to jerk them around.

10 Now, Your Honor, I want to address it in reverse order
11 if you don't mind.

12 THE COURT: Sure.

13 MR. BARTH: The -- I'm not sure if this was -- if
14 it's -- it's in the record somewhere but I'll just hold
15 it -- I'll just hand it up to Your Honor.

16 Your Honor, that is the informant's sheet. The way I
17 understand it, the informant or the next of kin fills out
18 that sheet, signs it, and then the funeral home inputs it
19 into a computer, and everything the funeral home does is
20 electronic and it goes to DHEC.

21 During this entire process, that is the only document
22 that has anything to do with DHEC that Bryan Harwell signed.
23 They knew it. They saw it. All these things that Dawes is
24 talking about Mr. Dowling did this and they have an
25 affidavit from DHEC, I, I get all that.

1 There's a mistake. There's a mistake that obviously
2 somebody at the funeral home or DHEC made but you tell me,
3 Your Honor, and maybe I'm missing it, how that mistake gives
4 rise to Paragraph 19 of the petition that doesn't say upon
5 information and belief. It says as a statement of fact,
6 Respondent Harwell individually, knowingly, and willfully
7 supplied false information in the preparation of the
8 decedent's death certificate in violation of the code, and
9 then it goes on to say that he committed a felony by doing
10 that.

11 Ms. Edmonds knows. She's the expert. All the
12 informant does is fill that one sheet out and that's exactly
13 what he did. And if there's any lawyer around that can say
14 what these things, ominous as they may be, you tell me how
15 that would give any lawyer leeway to make that kind of
16 allegation of intentional and willful misconduct. That is
17 nothing to do with the relief requested, it was not
18 necessary, and it's done simply -- what -- it's done to make
19 us settle a case and pay them some money. I mean I know
20 what it's done for.

21 But if we're looking at it strictly from the technical
22 sense, what does that have to do with all of the different
23 things they're looking at?

24 The forms that Dawes attached to his, you notice, I
25 mean he doesn't attach the one that my client signed. He

1 attached the ones that the funeral -- that were going back.
2 and forth between the funeral home and the doctor and DHEC.
3 Fine.

4 what's that have to do with my client?

5 what's that have to do with willfully lying on a, on a
6 document?

7 If you notice the application that they talked about
8 being whited out that says these are the heirs, who would of
9 inherited intestate, even Judge Edmonds knows that the way
10 it was done, you're suppose to note on it. And even -- but
11 she says her practice was to list the X and then reference
12 the Family Court order.

13 I don't care what her practice is. This wasn't in her
14 Court. This is the way our Florence County Probate Court
15 does it. You reference the Family Court order where she
16 waived her right to inherit from the Estate, which means she
17 isn't an heir period, end of story, and for, for them to
18 take that and somehow parlay it into an allegation of
19 willful misconduct, and I throw in the caveat, Your Honor,
20 that there was an un-appealed from, no order, no motion or
21 Rule 60 filed or anything at this point, there's an
22 unappealed order that says you shall not make disparaging
23 comments about the family, and we knew this -- suspected
24 this was gonna be the problem after Judge Harwell, Justice
25 Harwell died.

1 So, they make a comment that he's committed a felony.
2 How does a lawyer clearly violate a restraining order
3 or help a lawyer -- help a client violate a restraining
4 order when it's very clear on its face?

5 And Mr. Cooke says she was put in jail for filing these
6 claims and all that. You ought to read it, Your Honor.
7 It's a soap opera, all the stuff that she was held in
8 contempt for. I thought the most egregious was the filing
9 of these meritless pleadings but, as you'll note, the judge
10 said the claims are meritless because she waived it but it's
11 not for me. It's for the judge it's in front of to dismiss
12 them.

13 Well, that's where we are. They are dismissed and she
14 said Your Honor had to deal with it but it's meritless. She
15 waived it.

16 And, Your Honor, the last -- the last thing I would say
17 on that issue is they make a bill deal out of why Judge
18 Harwell, Judge Harwell, Bryan, didn't correct it. I
19 included it in our memo and they didn't.

20 The issue was -- here's what he said. Here's what
21 Judge Bryan Harwell said. She said -- Debbie cross-examined
22 him.

23 Why didn't you make the correction and he said because
24 I don't know what DHEC's protocol is, Debbie. Do they put
25 in NA when it's married but separated? I don't know. A

1 DHEC employee prepared it. I don't know what else you want
2 me to say. And then he says I didn't make any intentional
3 misrepresentation to DHEC or anybody else.

4 The position all along is, if they're married but
5 separated, DHEC, do whatever you're suppose to do. That's
6 exactly what he said.

7 Now, Mr. Cooke was -- and Barbara Wagner and those are
8 smart enough to leave that page off of the testimony and
9 just say leave the part in that helped them. That's good
10 lawyering. But the fact is, from the getgo, our position
11 was do whatever you're suppose to do. I gave you corrected
12 information and DHEC, do what you do.

13 So, for them to say he should of gone back and done
14 anything is -- I just don't get it. I just, I just
15 absolutely don't get it.

16 As to the money claims, I want -- the only thing I
17 would say is she is, she is in a, in a dilemma so she says
18 but the way to protect the timeline to give you a chance,
19 when you're looking at a Court order that is in place
20 invalid, the way you give yourself time and protect a
21 client's rights is to do exactly what Deborah Harwell did
22 because the pro se claims that Deborah Harwell filed and the
23 ones that Ms. Edmonds filed, they are identical except one
24 says claim and one says petition.

25 All she had to do was say Mrs. Harwell, this is a valid

1 court order and lawyers have to obey valid court orders. If
2 and when you decide you want to move to set aside, you call
3 my. Till then, you file the pro se stuff. You -- she
4 obviously knows how to do it. She's already done it. She
5 did it before this. She did it after this.

6 That's how a reasonable ethical lawyer handles it.
7 They just don't sign off on what the client says because, if
8 you do, this is what happens. When you sign off on
9 something like this, and then you find out the claims have
10 no basis in fact or law, not to mention the fact that Rule
11 60 wasn't filed for nearly three months after these things
12 were filed, any lawyer that was gonna file it to protect the
13 deadline, a month goes by, six weeks go by, no, no Rule 60's
14 filed, you get out because, if you don't, you're helping a
15 client violate a valid, unappealed court order that nobody
16 is moved to modify or amend.

17 You can't just come back in the rearview mirror and say
18 oh, she told me that from day one. And, as I said, Your
19 Honor, the first time, the first time you're hearing from
20 Edmonds anything about Rule 60 was two days ago when she
21 filed her affidavit. It wasn't last -- it wasn't the Spring
22 of 2016 when all this stuff was going on.

23 I mean that's pretty much where we are.

24 THE COURT: All right.

25 MR. BARTH: Kinard, the case he cites, Your Honor, that

1 says file your appeal if your client tells you to no matter
2 whether it's meritless or not, number one, it's a criminal
3 case.

4 Number two, there's an Anders -- there's a way you file
5 it. I think it's an Anders brief where it says my client
6 told me to appeal it. I don't see any merit but maybe there
7 is. We don't have any of that here.

8 That's not giving a lawyer free rein to do anything a
9 client asked in order to protect them. That's not at all
10 what it is. That's a criminal case and the rules are
11 completely different. Completely different than what we
12 have here.

13 She can't fall behind that to say well, I was just
14 doing it to protect the client. Again, they're a million
15 other ways to do it and lawyers know better and that's why
16 we have Rule 11 because this kind of stuff, they can turn it
17 around and blame it on the Estate all they want to and call
18 it disgruntled and call it whatever but what this is is way
19 the heck beyond zealous representation, Your Honor.

20 It is exactly what gives lawyers the reputation we
21 have, these kind of allegations, and these kind of claims.

22 THE COURT: Thank you, sir.

23 Anything---

24 MS. BALLARD: Your Honor, could I make one brief
25 response to Mr. Barth?

1 THE COURT: Yes, I'll allow you to do so.

2 MS. BALLARD: Thank you.

3 THE COURT: I'm gonna hold you to one though.

4 MS. BALLARD: It is just one.

5 To the extent Mr. Barth said that the original property
6 settlement agreement, which contains the non-disparagement
7 clause, it has not been challenged, that's not quite true.
8 We have appealed the contempt order and, in that appeal, we
9 have challenged the subject matter jurisdiction of the
10 Family Court to issue a non-disparagement clause as to
11 people who are not parties to the Family Court action.

12 THE COURT: All right.

13 MS. BALLARD: So, that issue is being challenged.

14 MR. COOKE: Can I, can I raise two points?

15 THE COURT: I'll hold you to two.

16 MR. COOKE: All right. But then I have subparts.

17 THE COURT: Well, now, now you've gone and taken
18 advantage.

19 Go ahead.

20 MR. COOKE: First of all, Ms. Edmonds has been
21 consistent from day one. If you go to Exhibit 1, it's her
22 previous affidavit from July of 2016 in the Paragraphs 20
23 and 21, she says, in order to preserve a claim that had been
24 disallowed by a personal representative petition or, or
25 proceeding must be commenced by accredited within 30 days

1 and I did it for that purpose.

2 This, this worksheet that was handed up to you, and you
3 do have that by the way, that is an exhibit to the
4 supplemental memorandum in support of Bryan Harwell's motion
5 for sanctions and that---

6 THE COURT: All right.

7 MR. COOKE: ---that's actually Exhibit C.

8 I am not here and Deirdre Edmonds is not here to accuse
9 Bryan Harwell today of falsifying that record. That is, is
10 not before the Court.

11 what is before the Court is did she have any reason,
12 back in March of 2016, to support that allegation. It's an
13 entirely different proof.

14 But, that said, this form is, itself, problematic.
15 First of all, Ms. Saleeby explains in her affidavit that
16 that is, that that worksheet is not filed with DHEC. We
17 know it was filed with DHEC. There was a form showing that,
18 that that space was blank.

19 This is the only document that anybody has ever
20 produced that shows both the married but separated box
21 checked and Deborah Boggs listed as the surviving spouse.
22 This was not filed with DHEC.

23 It's curious that this was signed supposedly on
24 September 30, 2015. Justice Harwell passed away at about
25 one o'clock PM on September the 30th. This would of been

1 the day that he passed away. But you have the testimony,
2 and this is an Exhibit D to, to the petition -- to the, to
3 the supplemental brief. You have the testimony of
4 Mr. Dowling at the -- in the Family Court in which he
5 explains, on Page 23 of that transcript, he says all right.
6 And when the funeral home realized that the wrong block was
7 checked, that's when you sent the documents in the corrected
8 form?

9 Correct.

10 Did Bryan Harwell have anything to do with correcting
11 that mistake?

12 Yeah, he signed off on the correction.

13 Okay. And that's all he did?

14 Yes.

15 So, with all due respect, Ms. Edmonds, even when, even
16 when Kevin sent her this, this worksheet form, she could
17 well have looked at that and said that's mighty suspicious
18 that the, according to, according to Mr. Dowling, he sent a
19 form that had the wrong box checked, it said married, and
20 then, sometime later, they realized that that was a mistake.
21 And so they sent a corrected form that had the married but
22 separated box checked.

23 Well then, if that's true, then, if they made that
24 mistake, why would there, on September 30th, why would
25 they have had the worksheet that had all the correct

1 information?

2 so, she could reasonably have, have concluded or
3 believed, based on Mrs. Harwell having been told by the DHEC
4 person that, that Mr. Harwell is the one who left her name
5 off the, off the form, that that was done deliberately to
6 obscure the fact that she was the surviving spouse or to
7 deny the fact that she was the surviving spouse.

8 THE COURT: All right.

9 MR. COOKE: Thank you, Your Honor.

10 THE COURT: Thank you very much. I'll cover everything
11 and then get back with you.

12 MS. BALLARD: Thank you, Your Honor.

13 THE COURT: You'll hear from me.

14 MR. BARTH: Thank you, Your Honor.

15 THE COURT: Thank you for your, for your time.

16 MR. BARTH: Thank you for fitting us in over here, Your
17 Honor.

18

19

20 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

21

22

23

24

25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Florence County, South Carolina, on the 2nd day of February, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 27th, 2017



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF FLORENCE 2016-CP-21-1435

DEBORAH B. HARWELL,)
)
 PLAINTIFF,) TRANSCRIPT OF RECORD
)
 VS.)
)
) JULY 19, 2017
 ROBERT BRYAN.) CHARLESTON, SC
 HARWELL, ET AL.,)
)
)
 DEFENDANTS.)

B E F O R E:

HONORABLE ROGER COUCH, JUDGE.

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

HARVEY WATSON, ESQUIRE
Attorney for the Plaintiff

KEVIN BARTH, ESQUIRE
DAWES COOKE, ESQUIRE
Attorneys for the Defendants

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

1 (The following proceedings were held
2 July 19, 2017, Charleston County, South Carolina, @
3 9:40 a.m.)

4 THE COURT: Good morning. I am opening
5 a hearing in the Harwell matter. I have received
6 motions to reconsider I think from all parties in
7 the matter and I assume there's no objection to my
8 hearing this matter outside of the circuit since
9 everyone is here. But let's put that on the
10 record. So state your appearances and let me know
11 if there is any objection to my hearing this
12 outside of the 12th Circuit.

13 MR. BARTH: May it please the Court, I
14 am Kevin Barth. I represent Mr. Harwell
15 individually and as personal representative of the
16 estate of his father David Harwell. We have no
17 objection to Your Honor hearing it here.

18 THE COURT: All right.

19 MR. BARTH: Appreciate you fitting us
20 in.

21 MR. COOKE: Thank you, Your Honor. I'm
22 Dawes Cooke from Barnwell Whaley Patterson and
23 Helms. I represent the third party Defendant law
24 office of Deirdre W. Edmonds, PA and Deirdre W.
25 Edmonds individually and we have no objection, but

1 we appreciate the Court hearing this out of
2 circuit.

3 MR. WATKINS: I'm Harvey Watson here on
4 behalf of Deborah Harwell. I apologize to
5 everybody for the travel delays and pushing this
6 back a little bit.

7 THE COURT: I am familiar and have run
8 the gauntlet from Summerville to here several
9 times. I know that's a problem.

10 MR. WATKINS: It was a slog. I am glad
11 to be here and I have no objection.

12 THE COURT: Glad to have you here.
13 Luckily my criminal case I was trying this week the
14 verdict came in yesterday afternoon so we have
15 plenty of time this morning.

16 Since all parties have filed motions to
17 reconsider I guess I will take it that the question
18 of sanctions, the moving party was the Defendant.

19 MR. BARTH: Yes.

20 THE COURT: So I will hear from the
21 moving party first. That would be Mr. Harwell's
22 estate.

23 MR. BARTH: May it please the Court,
24 Your Honor, thank you again for hearing us and for
25 entertaining and reading all of the briefs and

1 memorandum that have been filed in this matter. We
2 laid out in our Rule 59 motion to reconsider or to
3 amend our grounds on the claims against Ms. Harwell
4 No. 1 and Ms. Edmonds and her practice No. 2.

5 I won't go through and belabor each one
6 of them individually, Your Honor. There are just a
7 couple of things I would like to point out and then
8 I will be glad to answer any questions Your Honor
9 may have.

10 No. 1, as it relates to the sanction
11 against Ms. Harwell, the \$40,000 award, Your Honor,
12 we are asking Your Honor to reconsider the \$25,000
13 offset that Your Honor included in your order based
14 upon the fact she was ordered to pay \$25,000 in
15 attorneys fees in the family court action. We base
16 that really on two things, Your Honor. No. 1, Ms.
17 Harwell has appealed that contempt order and hasn't
18 paid it.

19 THE COURT: Well, I wasn't aware she
20 hadn't paid anything on it. I assumed that she
21 had.

22 MR. BARTH: Correct, Your Honor, and
23 that's one of the things we wanted to bring to Your
24 Honor's attention is that nothing has been paid as
25 it is on appeal and final briefs were just filed

1 this week.

2 THE COURT: I see.

3 MR. BARTH: No. 2, the \$25,000 attorney
4 fee award in the family court action --

5 THE COURT: Let me stop you right
6 there. My intention was that I felt like the
7 wrongs that you were complaining of were very
8 similar or the same as the wrongs you complained of
9 in the contempt action. And, of course, the family
10 court issued a punishment for that. It was my
11 desire to see that -- I don't want to see her in
12 any way punished twice for the same offense. Do
13 you follow what I am saying?

14 MR. BARTH: Yes, sir.

15 THE COURT: And so I guess my position
16 on that would still be that to the extent that she
17 pays the family court order at some point in time,
18 that would be a credit against anything she would
19 owe under my order.

20 Now, I point out to you my
21 understanding of the Rule 11 sanctions and
22 sanctions for frivolous claims is that they are not
23 designed to compensate a party for damages.
24 They're designed to stop the frivolous litigation.
25 They are designed to see that it doesn't happen

1 again. And they are to be a deterrent. So it's in
2 the form of I don't know, a civil penalty,
3 something to that effect. And it's not designed to
4 dollar for dollar compensate a party for what they
5 have done. So I didn't approach it from that fact.
6 That's the way I read the cases. And you disagree
7 with that's what the courts have said?

8 MR. BARTH: I don't disagree with that,
9 Your Honor, at all. The only thing I would call to
10 Your Honor's attention is that in the family court
11 action she was not held in contempt of court for
12 filing these claims, was not sanctioned for filing
13 these claims. The Court did comment that the
14 claims appeared to be frivolous as they had been
15 waived in the family court action, but --

16 THE COURT: But it was the same
17 conduct. You are complaining of --

18 MR. BARTH: Yes, sir.

19 THE COURT: -- the same conduct that
20 they were dealing with.

21 MR. BARTH: She just didn't sanction
22 her or award fees based on that conduct. She
23 simply commented on it. That's all we wanted to
24 bring to Your Honor's attention.

25 THE COURT: Well, one wrong deserves

1 one right and not two rights.

2 MR. BARTH: Yes.

3 THE COURT: You follow what I am
4 saying. That's kind of how I looked at this thing
5 and so that's the approach I took and if I do go
6 back and amend the order in that respect, because I
7 wasn't aware she hadn't paid it. In fact, I was of
8 the assumption she had paid it. Of course I didn't
9 have any basis to assume that either one way or the
10 other. But at any rate if she were to pay it then
11 I would feel that that should be a credit against
12 whatever I would award in this particular case. I
13 will look at it again. I don't mind looking at it
14 again, but that was the way I was thinking when I
15 did it.

16 MR. BARTH: Yes, sir.

17 MR. WATSON: Your Honor, I don't want
18 to speak out of turn, but I think the narrow point
19 on that, the order says what she may have or
20 already paid. If she pays we will give her credit,
21 but it's not a credit --

22 THE COURT: That's the way -- I don't
23 -- I'm not deciding your motion to reconsider by
24 discussion with Mr. Barth. But what I am saying is
25 that to the extent that there is an award by the

1 family court and it gets paid, I don't feel that
2 she should again pay a second penalty for the same
3 conduct. I understand that they are not punishing
4 the same thing. I understand that. But I just
5 don't see you get punished twice for the same
6 wrong.

7 MR. BARTH: Yes, sir. The only other
8 point as it relates to Ms. Harwell, Your Honor, is
9 we are simply asking respectfully that Your Honor
10 make sure that order clearly reflects that all of
11 her claims with the exception of the death
12 certificate -- I'm not a probate expert like Judge
13 Edmonds is. But there are claims and there are
14 petitions and then there is a later petition she
15 filed pro se for the elective share and Your Honor
16 said that the claims were frivolous, but we want to
17 make sure, I feel certain that Ms. Harwell will
18 appeal this one as well. But I want to make sure
19 that it applies to all of her claims and petitions,
20 including the elective share. I think that was
21 Your Honor's intention. But we are simply asking
22 that the order clearly reflect.

23 THE COURT: I understand that.

24 MR. BARTH: That it's everything she
25 has filed with the exception of the amendment to

1 the death certificate, Your Honor, and that those
2 are our points as they relate to Ms. Harwell. I
3 don't know if Your Honor wants to like last time
4 address them one at a time.

5 THE COURT: Let's go through all of
6 your claims at this point in time.

7 MR. BARTH: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. BARTH: As to Ms. Edmonds, Your
10 Honor, we have a number of things we would just
11 like to call to the Court's attention. We
12 obviously believe that additional sanctions should
13 be warranted on the other claims, particularly
14 since Rule 11 in the frivolous proceedings act
15 talks about two things, Your Honor. They talk
16 about filing of frivolous claim or pleading and
17 they talk about continuing a frivolous claim.

18 Both of those and either of the two can
19 subject someone to sanctions. Your Honor has noted
20 in the portion related to Ms. Harwell that all of
21 these claims are frivolous.

22 THE COURT: Well, let me -- let's talk
23 about that just a little bit because the way I
24 looked at Ms. Edmonds' conduct in this matter was
25 that she -- I didn't see anything that indicated

1 that she ever assumed responsibility for family
2 court matters. That she specifically disavowed any
3 knowledge or expertise in the family court or
4 knowledge of the proceedings, so she tried to stay
5 away from that.

6 MR. BARTH: Yes, sir.

7 THE COURT: Is the way I read the
8 record and what I heard in the hearing. And at the
9 time apparently Ms. Harwell was making some claims
10 that would have to be litigated in the family court
11 because she told her you are going to have to go
12 hire a separate lawyer for those claims. I'm not
13 going to be handling those claims. One of which
14 turned out to be a claim that she filed ultimately
15 I think pro se, a Rule 60 claim in the family court
16 to try to overturn the order that approved the
17 property settlement agreement.

18 But I looked at Ms. Edmonds as the
19 continuation of those claims being done for the
20 purpose of preserving whatever they had in the
21 probate court for whoever was going to handle the
22 family court matter to reopen that. Do you follow
23 what I am saying?

24 MR. BARTH: I do, yes, sir.

25 THE COURT: But that my finding was

1 there was never really a credible effort in family
2 court made or advanced or anything really ever
3 shown to me that there was a credible claim to set
4 aside the family court order.

5 MR. BARTH: Agree with that as well,
6 Your Honor.

7 THE COURT: I wouldn't place on Ms.
8 Edmonds a duty to do that research when she
9 disavowed knowledge of that particular court. Do
10 you follow what I am saying?

11 MR. BARTH: I do follow what you're
12 saying, Your Honor.

13 THE COURT: I don't know if it's an
14 excuse for a lawyer, I accepted it as an excuse for
15 a lawyer to say I don't know anything about what
16 goes on in that court so I am not going to take
17 responsibility for that. I assume you got a good
18 claim there and I'm going to do what I can to be
19 sure should you win up there that we are ready in
20 the probate court to go forward.

21 MR. BARTH: Your Honor, and I
22 understand exactly the rationale that Your Honor
23 has outlined in your order and today. Our position
24 is that as far as filing it, yes, she probably
25 needed to do that to preserve any potential claim

1 there was. But again as Ms. Ballard said, she
2 doesn't do family court. She doesn't want to do
3 family court. She is not a family court lawyer.
4 Exactly the same position that Ms. Edmonds was in.
5 Ms. Ballard comes in and the first thing she does
6 once she steps in is make a determination on all of
7 these claims. And what she did is exactly what a
8 good lawyer, an ethical lawyer and one that
9 complied with the rules should do, she withdrew
10 them all with the exception of the one regarding
11 the death certificate.

12 Ms. Edmonds did just the opposite. She
13 didn't do anything. She left them pending. She
14 stayed on as attorney of record.

15 THE COURT: Ms. Ballard got involved at
16 a much later date than Ms. Edmonds and it was a lot
17 more time to flesh out those alleged wrongs in the
18 family court.

19 MR. BARTH: She did, Your Honor. But
20 our point is that Ms. Edmonds was still attorney of
21 record, still had an ongoing duty to investigate
22 claims, still had the duty of Ms. Harwell's lawyer
23 to determine if the claims are valid and if they
24 are not withdraw them.

25 THE COURT: I understand what you're

1 saying.

2 MR. BARTH: That's why the rule says
3 continuation of the claims. I give Ms. Ballard
4 credit. She did exactly what she was supposed to
5 do. Our point is Ms. Edmonds should have done that
6 in the months following the filing of the action
7 when she was still attorney of record. When she
8 still had an active duty to look at these claims,
9 investigate these claims and pursue these claims
10 and if they are not valid withdraw. She had plenty
11 of time to talk with Ms. Harwell. She had plenty
12 to time to do exactly what Desa did in a very short
13 amount of time and by not doing that she continued
14 it and we had to go through with responding.

15 THE COURT: I understand your position.

16 MR. BARTH: And that's our position on
17 all of that, Your Honor. Other than something that
18 Dawes may bring to Your Honor's attention that's
19 basically what we have.

20 THE COURT: I will give you a chance to
21 stand back up.

22 MR. BARTH: Thank you, Your Honor. The
23 only other thing I would mention is, and I
24 mentioned this, Your Honor dealt with it in the
25 order. I would just ask you to reconsider your

1 thinking on alleging that someone in my client's
2 position committed a felony with zero evidence to
3 substantiate that.

4 THE COURT: I think -- let's talk about
5 that a little bit because I thought in my order I
6 found that she had -- the allegations in that
7 regard were somewhat overzealous I think is the
8 wording I used.

9 MR. BARTH: You did.

10 THE COURT: That's what I meant. I
11 felt like that was overzealous to make that
12 allegation. I don't know that I'm in a position to
13 try that case because it never got tried. And it
14 wasn't tried in front of me. But I felt like the
15 allegations were overzealous. Still feel like that
16 was out of bounds, probably shouldn't have been
17 made. I agree with that. I am a little bit
18 reluctant to make a finding on that when I took no
19 evidence on that and nobody testified as to their
20 intentions. You got to have criminal intent to do
21 those kinds of things and stuff and I certainly
22 don't find that that occurred because I didn't hear
23 any evidence on that. So I am a little reluctant
24 to go make findings on things that really aren't
25 before me to be found.

1 But I did make the statement in the
2 order and I meant it that I thought those
3 allegations were overzealous and as such out of
4 bounds.

5 MR. BARTH: Yes, sir. I just wanted to
6 bring that to Your Honor's attention and on behalf
7 of my client ask you to reconsider that.

8 THE COURT: I understand. Certainly
9 the Court is not making any finding he's guilty of
10 anything.

11 MR. BARTH: I understand. As Judge
12 Pogue used to tell me, he's chewed that piece of
13 meat once, he don't want to chew it twice. That's
14 why I generally don't file these motions.

15 THE COURT: That's quite all right.
16 Let me hear from -- we will move on over.

17 MR. COOKE: Dawes Cooke for Defendant
18 Edmonds who is here with her husband by the way.
19 Your Honor, we were all talking about how
20 appreciative we are the time this Court has spent
21 and wrote your own order. We don't see that very
22 often these days.

23 THE COURT: I probably should have done
24 a little better job. I got in a position retiring
25 I don't have an administrative assistant or a law

1 clerk. As a senior active I only do two weeks a
2 month, so they don't think we deserve those
3 amenities.

4 MR. COOKE: Even your ability to cut
5 and paste I thought that was pretty good too.

6 THE COURT: Well, thank you. I
7 appreciate that.

8 MR. COOKE: On behalf of all of us, we
9 appreciate the time.

10 THE COURT: Sure does make you
11 appreciate those people when you don't have them.

12 MR. COOKE: Right. I have been there
13 myself. So let me address briefly their motion to
14 reconsider, then we have got just one little thing
15 we have asked you to reconsider in the order.

16 THE COURT: Yes, sir.

17 MR. COOKE: We would ask you to deny
18 their motion to reconsider. Your analysis I think
19 was spot on. You put yourself in the position Ms.
20 Edmonds was in: Literally a client comes into the
21 office, she has got literally days to decide
22 whether she has a case. And I think Your Honor is
23 on to the fact that the merits and none of this
24 stuff has been tried. There has been no evidence,
25 no discovery of the underlying case. So it's a bit

1 of a leap to just assume that all those claims were
2 frivolous and to be subject --

3 THE COURT: I kind of took the position
4 though that by the time I heard it and the time I
5 issued the order there had been plenty of time if
6 there was some merit to them that we would have
7 seen some meat on the bone and I didn't see that.

8 MR. COOKE: Well, by the time it came
9 to you, Ms. Harwell had already basically decided
10 to give up and drop everything and so there has
11 never been a forum, not one bit of discovery was
12 ever done on the Rule 60 issue. None. But what
13 Ms. Edmonds confronted was her client walks in and
14 she said I have heard or picked up information that
15 has led me to believe that I was misled as to the
16 scope of the extent of my husband's assets and I
17 believe that gives me a right to relief.

18 She couldn't judge whether that would
19 give her a right to relief, but if she did a little
20 bit of research she would have seen the case of Ray
21 v. Ray, 2000 case by the Supreme Court says exactly
22 that. That if Ms. Harwell could prove that she was
23 misled about the extent of her husband's assets
24 that would be sufficient to throw out the consent
25 agreement. That was exactly what that case was.

1 The Supreme Court reversed the order of the family
2 court that had dismissed a motion to overturn a
3 consent decree. So at least there's a potential of
4 merit to it. And Your Honor said it exactly right
5 in the order. I'm not going to repeat it again,
6 but she had a duty to preserve that. If she hadn't
7 Ms. Ballard would be here suing her for malpractice
8 for having let that claim die on the vine. So I
9 think Your Honor addressed that properly.

10 As far as continuing the action, all of
11 this happened in very short measure. She filed the
12 petition with the probate court in March. Ms.
13 Harwell filed her Rule 60 motion in May. And then
14 next thing you know, we are before Your Honor with
15 the counterclaims and things are going on in the
16 family court. So all that happened very quickly.
17 She literally would have had no time to adjudicate
18 for herself the merits of this Rule 60 motion
19 before she was herself relieved because once the
20 counterclaim was filed against her she had to
21 withdraw in representing Ms. Harwell in any
22 capacity.

23 THE COURT: There was a lawyer who kind
24 of got interposed.

25 MR. COOKE: Adam Silvernail. Right.

1 And he wound up taking over representation of Ms.
2 Harwell on the adjudication of surviving spouse,
3 and again Your Honor is quite correct that there
4 has been no litigation. Normally when we see a
5 Rule 11 motion or a frivolous civil proceedings you
6 have already had an adjudication on the merits, you
7 have been through the whole trial and the act
8 actually contemplates the trial judge himself after
9 the trial determining whether the claim was
10 frivolous. And so by then you have seen all the
11 discovery, you have heard the evidence.

12 In this case none of that ever
13 happened. And so you would have to have found that
14 the claim for the surviving spouse and for the
15 correction of the death certificate was on its face
16 frivolous and as Your Honor correctly said in the
17 order you couldn't do that. Even the overzealous
18 part about saying it was a felony, that's a
19 draconian statute. I was kind of surprised and
20 shocked to see that there's something in the
21 probate code that says that's a felony to give
22 incorrect information on a death certificate, but
23 that is what it says. And the evidence that Ms.
24 Edmonds had was at least troubling. And you
25 mentioned several of the items, but I am going to

1 mention one more in your order.

2 Ms. Edmonds and Ms. Harwell has now
3 submitted an affidavit where she says that when she
4 found out that she wasn't the surviving spouse she
5 went to DHEC and the lady at DHEC pulled up
6 something on the computer and says Bryan Harwell
7 put in the information that said there was no
8 surviving spouse. So that was known to Ms.
9 Edmonds.

10 MR. BARTH: Your Honor, I hate to
11 interrupt, but that's not what it said. It says
12 Bryan Harwell is the informant. He doesn't do
13 anything with DHEC by statute.

14 THE COURT: As I recall from the
15 hearing he provided the information to the funeral
16 home. Funeral home actually turns it in. He was
17 the informant. He was listed as the informant.

18 MR. BARTH: Yes, sir. He was listed as
19 the informant.

20 MR. COOKE: That's what the DHEC
21 affidavit said, but in this Ms. Harwell's affidavit
22 which she has filed in this case she does say that
23 -- I think it's in paragraph 22.

24 It says an employee of the DHEC office
25 told me that I was not listed on the death

1 certificate. I asked her how that can be since I
2 was still married at the time of his death. She
3 looked up something on her computer and told us
4 that R. Bryan Harwell had left me off the death
5 certificate. I asked her how she would have that
6 specific information and she showed me that it was
7 in the DHEC record listing Bryan as the informant.

8 So that's the information that Ms.
9 Harwell, the client, brought to Ms. Edmonds that
10 she was to work with. We went through the forms.
11 You recall that where one form was checked married
12 but separated and that's the one that deleted the
13 name of Ms. Harwell as the surviving spouse. You
14 have got the fact that Ms. Harwell also said in her
15 affidavit that when she went to visit her husband
16 at the hospital that the personal representative
17 had her escorted out by security. That she was
18 informed that he told the funeral home she was not
19 allowed to go see him at the funeral home. We had
20 the fact that her name had been whited out at the
21 probate petition which was signed by Mr. Harwell.
22 We had -- and the obituary, we didn't really talk
23 about that so much at the previous.

24 THE COURT: Let's talk about that.
25 There was an obituary that was run by the estate, I

1 believe paid for by the estate; is that right?

2 MR. COOKE: Yes.

3 THE COURT: She chose to have one run
4 with her information maybe in another paper, I
5 believe, something to that effect; is that correct?

6 MR. COOKE: Yes.

7 THE COURT: And I think you took issue
8 with the fact that I indicated that that was not
9 something that the estate should be responsible for
10 and still I don't think the estate ought to be
11 responsible for that. If they run an obituary and
12 she chooses to put one in a paper somewhere.

13 MR. COOKE: Well, I'm going to get to
14 that.

15 THE COURT: I would hope that would be
16 her expense to do that if that's what she chose to
17 do.

18 MR. COOKE: Well, it's not uncommon,
19 it's not uncommon according to Ms. Edmonds for an
20 estate to pay for an obituary to be published.

21 THE COURT: But they did. That's what
22 I am saying. The estate had one.

23 MR. COOKE: But it was the wrong
24 obituary. Can I pass this up?

25 THE COURT: Yes, sir, please do.

1 MR. BARTH: What is that?

2 MR. COOKE: This is the --

3 MR. BARTH: The one David filed?

4 MR. COOKE: No, this is the first one.

5 THE COURT: So the one I am looking at
6 is the one that was run by the estate.

7 MR. COOKE: Yes, Your Honor. And it's
8 almost if it weren't part of such a sad overall
9 story it would be a little bit humorous. But down
10 here it says and it is very beautifully written,
11 but about two-thirds of the way down the page it
12 says he is survived by two sons Baxter, (Theresa)
13 Harwell of Surfside Beach and Bryan (Debbie)
14 Harwell of Florence. Four grandchildren, Carson,
15 Sara, Neil, Walker and Mason, a sister Ann H. Hill
16 of Virginia, two brothers Jim (Kay) Harwell of
17 Florence and Joseph Harwell of North Carolina. Two
18 sisters-in-law Margaret Harwell of St. Petersburg,
19 Florida and Nancy Harwell of Florence, South
20 Carolina and numerous nieces and nephews. He was
21 preceded in death by his two brothers Lacy and
22 Hicks, his mother and affectionally known as judge
23 and was an active outdoors man. He was
24 particularly found of his black lab Boo Bear.
25 Family wishes to express thanks and so forth and so

1 on.

2 Now, if it weren't part of such a sad
3 story it would almost be humorous that you have
4 that much detail specifically saying he was
5 survived by these people and not a single mention
6 of surviving spouse. So it's important for two
7 reasons. One is that's another piece of
8 information that Ms. Edmonds had which would lead
9 her to believe that for whatever reason the
10 personal representative of the estate was not
11 willing to recognize Ms. Harwell as the surviving
12 spouse. And as an aside, they may have had some
13 misconception about what the effect of her being a
14 surviving spouse was, maybe they thought it was
15 going to give her a leg up in claiming against his
16 estate and that's why they were fighting it, but
17 for whatever reason they chose to fight it.

18 As far as continuing this action, and
19 in their motion they say, well, we always agree
20 that we would abide by whatever DHEC said. Well,
21 that was very gracious of them. They of course
22 have to do that.

23 But in their response to the petition
24 they denied that she was entitled to be listed as a
25 surviving spouse and they pray for relief.

1 THE COURT: I made no -- I found that
2 was a valid claim and that she -- there was a basis
3 for it. That it was not frivolous. And, in fact,
4 I think I to a certain degree took something away
5 from what I awarded them because they didn't take
6 action sooner to correct it.

7 MR. COOKE: That's right. I am saying
8 that to reinforce your order in that regard. So
9 let me now turn to the obituary claim. That's the
10 one thing that we have asked Your Honor to
11 reconsider. Their defense to that. And it's in
12 the transcript of the original of the hearing
13 before Your Honor, their defense to that was that
14 that claim was barred by the family court
15 settlement decree. But of all the claims that
16 Deborah Harwell made, that's the one that couldn't
17 have been barred by the family court.

18 THE COURT: I don't think in my order I
19 found that it was barred in the family court.

20 MR. COOKE: You said it was frivolous.

21 THE COURT: Well, I just feel like if
22 the estate runs an obituary and pays for it, the
23 family member chooses to run one themselves, they
24 have chosen to pay for it. I don't know that the
25 estate has an obligation to reimburse each and

1 every family member who may choose to run a
2 different obituary in a newspaper. It used to be
3 the newspaper did it free. You didn't have to pay
4 for those things. It was a service that they felt
5 like they ought to do. Now they charge you to do
6 it by every inch and every column. It's an
7 expensive process you go there through. I don't
8 want -- I don't think we want to get to the point
9 where every heir has the right to run their own
10 obituary. As you say, this one has a lot of
11 personal information in it to the point of even
12 naming the favorite dog and maybe somebody else in
13 the family wouldn't want all that in there so they
14 run their own. I just don't know that we want to
15 get to the point where each family member gets to
16 prepare their own obituary expecting the estate pay
17 for it.

18 MR. COOKE: That may well be the
19 conclusion the probate court would have gotten to
20 on the merits of the case, but this is just an
21 extraordinary serious matter to Ms. Edmonds that
22 she's now been found to have filed a frivolous
23 claim. This was a claim that Deborah was making.
24 She incurred this expense. It's a normal expense
25 of an estate. She had a right to ask the probate

1 court to reimburse her. She had a right to ask for
2 it. Whether she was going to get it or not --

3 THE COURT: Well, I will take a look at
4 that again in that respect.

5 MR. COOKE: And we have also complained
6 about the amount too. They really spent no money
7 whatsoever defending it. It's interesting because
8 the existing case law does say that when you impose
9 sanctions it is intended to be not compensation,
10 but a deterrent.

11 But the U.S. Supreme Court handed down
12 a case we cited in our brief where they said you
13 still have to show a causal relation between the
14 conduct that is being sanctioned and the injuries
15 to the other side and you can't give
16 disproportionate attorney fees.

17 THE COURT: It's got to relate, I
18 understand.

19 MR. COOKE: Right. In this case 5,000
20 doesn't sound like a lot, but it's a fair amount of
21 money when they had to do absolutely nothing. All
22 they did was put in their petition we object to.
23 There was no discovery done. They didn't spend any
24 time, no legal research was done on that. So
25 that's our position.

1 But again I really do appreciate the
2 Court's time on this. But we would ask you to
3 please just at least reconsider whether it was a
4 frivolous claim, not whether it was a meritorious
5 claim, but whether it was a frivolous claim.

6 THE COURT: Certainly I will take a
7 look at it again. Yes, sir. Mr. Watson.

8 MR. WATSON: Yes. Appreciate it. Our
9 motion is rather brief. It's only three pages
10 long. I think a couple of main points I would like
11 to hit though. You touched on it in your order and
12 you touched on it today about the purpose of
13 sanctions is to deter future litigation abuse, not
14 a compensation issue. And I will tell Desa I will
15 order a copy of the transcript since there was such
16 high praise for her actions when she got involved
17 in this case, but the point is we are involved.
18 She dropped the claim. She has moved on. The
19 deterrence has been met in large respect. Even in
20 the family court order that's on appeal, Ms.
21 Harwell spent 18 days in jail and that is a
22 significant deterrent.

23 THE COURT: I felt like that was
24 significant.

25 MR. WATKINS: That has been fully

1 realized, can't be undone, regardless whether the
2 appeal turns out, we think there are merits to the
3 appeal or else we wouldn't be involved. So not
4 withstanding that fact that she has not yet paid
5 the amount listed in the family court order, an
6 existing order already says it's a condition. So I
7 think the condition has already been addressed by
8 the Court. And the 18 days in jail. That's -- I
9 don't want to speak personally, but I think that
10 everybody would agree that's a significant price to
11 pay as a deterrent.

12 And I think Dawes covered the obituary.
13 But the fact that there was one already done didn't
14 preclude another one being done. The fact that
15 there was some flowers at the funeral didn't
16 prevent the estate from ordering more flowers. So
17 I don't think it's so beyond the realm that two
18 could be considered. If they had given them the
19 benefit of the doubt to think that well, because of
20 the family court action she wasn't his spouse, but
21 then they perhaps realized later well, she legally
22 was his spouse, that should have been corrected.
23 It could have been something that the estate could
24 have recognized and would have been appropriate.

25 So I don't think it was so outside the

1 bounds that it shouldn't be considered as part of
2 something that was so egregious that needs to be
3 slapped down with sanctions. And that would be all
4 I would add in addition to what we provide in
5 writing.

6 THE COURT: Thank you very much. I
7 told you I would give you a chance to speak, Mr.
8 Barth.

9 MR. BARTH: Very briefly, Your Honor.
10 As to the obituary, I would simply remind the Court
11 what you already know very well. Ms. Edmonds has
12 made a monstrous deal in this case out of the fact
13 that she's an expert in probate court and probate
14 court law. She knows the rules. She knows how it
15 works. She knows very well that authorized
16 obituaries are paid for by the estate. And if ten
17 other relatives file they are not. If I filed one
18 it may be because I'm stupid and don't know the
19 probate court rules. She can't make that claim.
20 She knows it and she knows it was a BS claim when
21 she filed it and she knows that the estate has no
22 obligation under any law to make that claim, that
23 the estate has no obligation to pay that. And she
24 filed a claim anyway. That's exactly what makes it
25 frivolous, No. 1. It's exactly what makes it a

1 Rule 11 violation to file it and continue it. I
2 understand it is serious. It is always serious
3 when lawyers do things they're not supposed to do.
4 But it's one more example of the overzealous nature
5 in which she handled this matter. And Your Honor
6 is right on the money that the estate never has to
7 pay for unauthorized obituaries. If I want to run
8 one then I pay for it. That's just how it works.
9 I can't then sue the estate to pay me back for
10 something that the estate didn't ask for nor
11 authorize. And the expert that she is she knows
12 that.

13 And I just throw that out as one more
14 example of being overzealous and this is what
15 happens. This is what the rules are designed to
16 prevent. I know we did not spend a ton of time on
17 it because it was small in comparison to
18 \$3.1 million which is obviously where we spent much
19 of our focus, but Your Honor has noted in your
20 order that Debbie's claims for all of this other
21 than amending the death certificate have no merit.
22 There has been no evidence that there is merit to
23 it. Day 60 came and went. The order is on appeal.
24 She's stuck with what she has. Desa knew it. Desa
25 dismissed everything. She is now suing her lawyer

1 claiming that that the reason she is in this
2 situation is because of her family court lawyer,
3 but she knows the claims have no merit and now she
4 is going against her lawyer.

5 That may excuse some of what Ms.
6 Edmonds did, but as far as Deborah Harwell goes,
7 she hasn't slowed up a bit. The award is
8 absolutely appropriate in light of the fact that we
9 have spent 50 some thousand dollars and climbing
10 because of these claims that she knows now have no
11 merit. And she has got a pot of money she is going
12 after for the lawyer, against her lawyer.

13 And as far as deterrence goes, like I
14 said, if 25 hasn't deterred her because she hasn't
15 paid, 40 isn't going to deter her and it is more
16 than reasonable when you file a \$3.1 million claim
17 and Your Honor sees this is one of many notebooks
18 that Dawes and I have on this case. We have worked
19 our fannies off. We have worked your fanny off on
20 this claim and it's convoluted, complicated, and
21 all of this was commenced by Deborah Harwell filing
22 a claim she knew had no merit.

23 She can blame anybody she wants to, but
24 this is what happens. And \$40,000 as Your Honor
25 said doesn't reimburse the estate for all of the

1 money they have spent having to deal with these
2 frivolous claims. You assigned some blame to Mr.
3 Harwell for not trying to fix the death certificate
4 earlier and we understand. We accept that. But
5 \$40,000 in relation to a \$3 million claim, that is
6 a tiny percentage of the claim and it's not -- I
7 think it's 80 percent, maybe 75 percent of what
8 they have spent and climbing.

9 So I do think it is appropriate. We
10 would ask Your Honor not to modify that and
11 certainly not to modify the sanction against Ms.
12 Edmonds. She is the expert and she knows better.
13 And this is what happens when you get overzealous.
14 Thank you, Your Honor.

15 THE COURT: Thank you very much. I
16 will take a look at your motions and briefs you
17 filed and I will issue an order. I anticipate that
18 probably given the fact I don't have a law clerk to
19 help me it will take probably about three weeks to
20 get that out.

21 MR. BARTH: Thank you, Your Honor.

22 THE COURT: Thank you very much.

23 (These proceedings were concluded at
24 10:18 a.m., July 19, 2017, Charleston County, South
25 Carolina.)

CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomat
Reporter for the State of South Carolina at Large,
do hereby certify that the foregoing transcript is
a true, accurate, and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 27th day of November, 2017 at
Charleston, Charleston County, South Carolina.

Ruth C. Weese

Ruth C. Weese

Registered Diplomat

Reporter