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**Mar 02 2021**

**SC Court of Appeals**

APPEAL FROM CHARLESTON COUNTY

Bentley D. Price, Circuit Court Judge for Charleston County

---

Appellate Case No. 2020-000594

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Melissa Combs a/k/a Melissa Cleary.....Appellant,

v.

Carlie Elvin Cleary, Individually and as Personal Representative of the  
Estate of Scott B. Cleary & Ditech Financial, LLC.

Of whom Carlie Elvin Cleary, Individually and as Personal Representative  
of the Estate of Scott B. Cleary .....Respondent,

---

***RECORD ON APPEAL***

---

Kerry W. Koon, Esq.  
147 Wappoo Creek Drive, Ste. 203  
Charleston, SC 29412  
843.795.7000  
Attorney for Appellant

John J. Dodds, III, Esq.  
Cisa & Dodds, LLP  
858 Lowcountry Blvd., Ste. 101  
Mt. Pleasant, SC 29464  
843.881.6530  
Attorney for Respondent

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Melissa Combs et al  
PLAINTIFF(S)

Carlie Elvin Cleary et al  
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

The Defendant's Motion to Dismiss is granted and it is to be remanded back to probate court.

ORDER INFORMATION

This order  ends  does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/30/2020 .

Ditech Financial LLC

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Charleston Common Pleas

**Case Caption:** Melissa Combs , plaintiff, et al VS Carlie Elvin Cleary , defendant, et al  
**Case Number:** 2019CP1003006  
**Type:** Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-01-30 11:46:15 page 3 of 3

ELECTRONICALLY FILED - 2020 Jan 30 2:35 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003006





Charleston Common Pleas

**Case Caption:** Melissa Combs , plaintiff, et al VS Carlie Elvin Cleary , defendant, et al  
**Case Number:** 2019CP1003006  
**Type:** Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-03-03 10:38:09 page 3 of 3

ELECTRONICALLY FILED - 2020 Mar 03 11:16 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003006

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed \_\_\_\_\_ and  
 Codicil executed \_\_\_\_\_ and  
 Memorandum

be informally  GRANTED  DENIED.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_, 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.

Bond

- Fiduciary Bond in the amount of \$ \_\_\_\_\_
- Bond not required for 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

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

*[Handwritten signature]*  
\_\_\_\_\_  
95504

\_\_\_\_\_, Probate Court Judge

For formal appointment of Personal Representative, see separate order executed \_\_\_\_\_.

6

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE PROBATE COURT  
FIDUCIARY LETTERS

IN THE MATTER OF:  
SCOTT BRYAN CLEARY  
(Decedent)

CASE NUMBER: 2019ES1000038

- PERSONAL REPRESENTATIVE
- SUCCESSOR PERSONAL REPRESENTATIVE
- SPECIAL ADMINISTRATOR

On the 8th day of January, 2019, CARLIE ELVIN CLEARY  
was/were appointed and qualified as Fiduciary(ies) of the above matter by this court, with all the authority granted to a fiduciary  
law.

NOW, THEREFORE, LETTERS are issued, as evidence of such appointment, qualification, and authority of the above fiduciary  
to do and perform all acts which may be authorized by law.

RESTRICTIONS:  
NONE

Executed this 8th day of January, 2019.



IRVIN G. CONDON, JUDGE OF PROBATE  
TAMARA C. CURRY, ASSOCIATE JUDGE  
LENNA S. KIRCHNER, ASSOCIATE JUDGE  
PETER A. KOUTEN, ASSOCIATE JUDGE

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
IN THE MATTER OF: )  
SCOTT B. CLEARY )  
(Decedent) )

IN THE PROBATE COURT  
MOTION FOR REMOVAL

CASE NUMBER: 2019-ES-10-0038

A formal proceeding concerning the above matter was commenced on April 4, 2019. The undersigned hereby moves for removal of this action to the Circuit Court and asserts that this action is removable because it involves the following:

- Probate of Will
- Appointment of Personal Representative
- Construction of Will
- Title to property in which the Estate of a decedent asserts an interest
- Internal or external matter involving a trust (excluding "special needs trusts")
- Action in which there is a right to trial by jury and in which the amount in controversy is at least \$5,000
- Action concerning gifts under the SC Uniform Gifts to Minors Act

This Motion is made no later than ten (10) days from May 19, 2019, the date on which all responsive pleadings were filed. By copy of this Motion, the undersigned is giving notice to interested persons as required by law.

Executed this 9th day of MAY, 2019.

Signature: [Handwritten Signature]

Print Name: Kerry W. Koon

Address: 147 Wappoo Creek Drive, Ste. 203  
Charleston, SC 29412

Telephone (Work): 843.795.7000

(Home): \_\_\_\_\_

(Cell): \_\_\_\_\_

Email: kerrykoon@hotmail.com

Relationship to Decedent/Estate: Attorney for Plaintiff

**ORDER FOR REMOVAL**

- It is hereby ORDERED on the Court's own Motion that this action be removed to the Circuit Court.
  - Jurisdiction is retained as to all other matters involving this case.
  - The related matters of \_\_\_\_\_ are also removed to serve the best interest of the Estate and/or the interest of judicial economy.
- The Motion for Removal is hereby GRANTED. This action shall be removed to the Circuit Court.
  - Jurisdiction is retained as to all other matters involving this case.
  - The related matters of \_\_\_\_\_ are also removed to serve the best interest of the Estate and/or the interest of judicial economy.
- It is hereby ORDERED that the Motion for Removal is DENIED because \_\_\_\_\_.

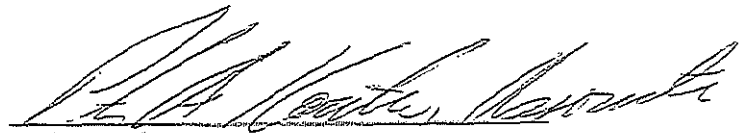
Executed this 3rd day of May, 2019

[Handwritten Signature]  
9504, Probate Court Judge



ORDERED, ADJUDGED AND DECREED that Betty P. Cleary be appointed Special Administrator of the Estate of Scott Bryan Cleary provided, however, such appointment shall be without prejudice to the claim of Melissa Combs a/k/a Melissa Cleary for removal of Betty P. Cleary as Special Administrator and substitution of Melissa Combs a/k/a Melissa Cleary as Personal Representative.

AND IT IS SO ORDERED this 19<sup>th</sup> day of August, 2020, at Charleston, South Carolina.

  
Probate Judge


IS SO MOVE:

I CONSENT:

CISA & DODDS, LLP

s/John J. Dodds, III  
858 Lowcountry Blvd., Suite 101  
Mt. Pleasant, SC 29464  
(P) (843) 881-6530  
(F) (843) 881-5433  
SC Bar No.: 1707  
john@cisadodds.com  
ATTORNEY FOR ESTATE OF  
SCOTT BRYAN CLEARY

s/Kerry W. Koon  
147 Wappoo Creek Drive, Suite 203  
Charleston, SC 29412  
(P): (843) 795-7000  
kerrykoon@hotmail.com  
ATTORNEY FOR MELISSA COMBS  
a/k/a MELISSA CLEARY

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

*20/2*  
*ph*  
*8/19/20*

STATE OF SOUTH CAROLINA )

IN THE PROBATE COURT

COUNTY OF CHARLESTON )

CASE #: 2019-ES-10-0038

MELISSA COMBS A/K/A MELISSA CLEARY, )

Plaintiff, )

v. )

SUMMONS

CARLIE ELVIN CLEARY, INDIVIDUALLY )

& AS PERSONAL REPRESENTATIVE OF THE )

ESTATE OF SCOTT B. CLEARY & )

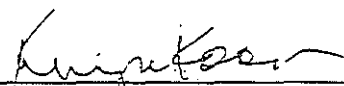
DITECH FINANCIAL, LLC, )

Defendants. )

19 APR -4 PM 1:38

**TO THE DEFENDANTS ABOVE NAMED:**

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or her attorney, Kerry W. Koon, at his office, 147 Wappoo Creek Drive, Suite 203, Charleston, South Carolina 29412, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

  
\_\_\_\_\_  
**KERRY W. KOON**  
147 Wappoo Creek Drive, Ste. 203  
Charleston, SC 29412  
(843) 795-7000  
ATTORNEY FOR PLAINTIFF

At Charleston, South Carolina  
This 4<sup>th</sup> day of Apr, 2019.

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE #: 2019-ES-10-0038
MELISSA COMBS A/K/A MELISSA CLEARY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<i>COMPLAINT</i>
	)	
CARLIE ELVIN CLEARY, INDIVIDUALLY	)	
& AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF SCOTT B. CLEARY &	)	
DITECH FINANCIAL, LLC,	)	
	)	
Defendants.	)	
_____	)	

19 APR -4 11:33

The Plaintiff would respectfully show unto the Honorable Court as follows:

**BACKGROUND**

1. That the Plaintiff is a resident of the State of South Carolina and County of Charleston.
2. That the Defendant is, upon information and belief, a resident of the State of North Carolina.
3. That the Defendant has been appointed as personal representative of the Estate of Scott Brian Cleary.
4. That this is an action to determine the heirs at law of Scott Brian Cleary who died intestate on November 22, 2018; to try title to certain parcels of real property located in Charleston County, South Carolina, hereinafter more particularly described, and also in the State of North Carolina; to set aside a deed of distribution from the Defendant as personal representative to Defendant individually dated February 26, 2019, and recorded in the ROD

Office for Charleston County in Book 0780, Page 666; and to remove the said Carlie Elvin Cleary as personal representative of the Estate of Scott B. Cleary.

5. That the real estate located in Charleston County, South Carolina which is affected by this action is more particularly described as follows:

All that certain piece, parcel, lot or tract of land with the buildings and improvements thereon, situate, lying and being in the County of Charleston, State of South Carolina, and being known and designated as Lot 3, Block E", Old Orchard Subdivision, as shown on a plat of Harold A. Moore, RLS, dated December 1995, and recorded July 5, 1956, in the Register's Office for Charleston County in Plat Book K, Page 108. Said parcel having such size, shape, metes, bounds, location and dimensions as shown on the aforesaid plat to which reference is made.

Subject to any and all restrictions, covenants and easements of record.

Being the same property conveyed to Scott B. Cleary by deed of Maria D. Cordero, dated November 29, 2005, and recorded in the Register's office for Charleston County on December 1, 2005, in Book E-564, Page 261.

TMS #: 428-02-00-103  
Property address: 1262 Oxbow Drive  
Charleston, SC 29412

~~-AND-~~

All that tract, piece or parcel of land located in Charleston County, State of South Carolina, shown and designated as Lot 15, Tract I, on a plat entitled "Subdivision Plat Of "The Pointe", Located At Headquarters Island Plantation, Johns Island, City Of Charleston, South Carolina" dated May 29, 1987, revised August 19, 1987, and finally revised June 28, 1988 by Alpha Surveying, Inc., which plat was recorded July 26, 1988, in Plat Book BS, Page 131, in the RMC Office for Charleston County, South Carolina.

Being the same property conveyed to Scott B. Cleary by deed of Citadel Federal Savings Bank dated December 17, 1991, and recorded in Book X-208, Page 624 in the Register's Office for Charleston County on December 18, 1991.

TMS #: 346-07-00-072  
Property address: Lot 15, Tract I, The Pointe, Headquarters Island,  
Johns Island, SC 29455

6. That this action may further affect real property located in Wilkes County, North Carolina generally described as 8201 Sparta Road, 12.56 acres, 8305 Sparta Road, 40.11 acres and 6.10 acres, Sparta Road.

*FOR A FIRST CAUSE OF ACTION-  
DETERMINE HEIRS*

7. That the Plaintiff and decedent Scott Brian Cleary lived in matrimonial cohabitation for a number of years, enjoyed a reputation in the community as a married couple and formed a mutual agreement between themselves to assume toward each other the relation of husband and wife, such that at the time of his death, Scott Brian Cleary was married to Melissa Combs a/k/a Melissa Cleary.

8. Upon information and belief, Scott Brian Cleary had no other heirs at law and the Plaintiff therefore seeks a declaration pursuant to Section 62-2-802 (4) S.C. Code of Law Annotated, that she is the surviving spouse and sole heir of the Estate of Scott B. Cleary.

*FOR A SECOND CAUSE OF ACTION-  
QUIET TITLE*

9. That the Plaintiff reiterates each and every allegation hereinabove alleged as if repeated herein verbatim.

10. That the decedent owned the parcels of real property in hereinabove described, in Charleston County, South Carolina and also real property located in the State of North Carolina.

11. That the Plaintiff is entitled to an order of this court quieting title in the hereinabove described properties in the name of the Plaintiff as sole owner.

12. That Defendant Ditech Financial, LLC may claim an interest in the property known as Lot 3, Block E, Old Orchard Subdivision by virtue of a mortgage to MERS, as nominee for Mortgages-4-U, LLC dated November 29, 2005, and recorded in the ROD Office

for Charleston County in Book 0780, Page 722, and assigned to Ditech Financial, LLC by assignment dated February 26, 2019, and recorded in the ROD Office aforesaid in Book 0780, Page 722.

**FOR A THIRD CAUSE OF ACTION-  
SET ASIDE DEED OF DISTRIBUTION**

13. That the Plaintiff reiterates each and every allegation hereinabove alleged as if repeated herein verbatim.

14. That on February 26, 2019, the Defendant improvidently executed a deed of distribution to the Charleston County real properties hereinabove described and recorded in the ROD Office for Charleston County in Book 0780, Page 666 which deed should be set aside for the purpose of execution of a proper deed of distribution granting the property to the Plaintiff herein.

**FOR A FOURTH CAUSE OF ACTION-  
REMOVAL OF PERSONAL REPRESENTATIVE**

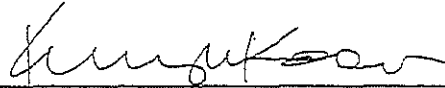
15. That the Plaintiff reiterates each and every allegation hereinabove alleged as if repeated herein verbatim.

16. That as surviving spouse of the decedent, the Plaintiff has priority for appointment to administer the estate, as personal representative and the Defendant should therefore be removed and the Plaintiff appointed.

***WHEREFORE***, the Plaintiff prays as follows:

- a) for an order declaring the Plaintiff to be the surviving spouse and sole heir at law of Scott Brian Cleary; and
- b) for an order declaring that the Plaintiff is the sole owner of the real property described in the Complaint and including the property located in the State of North Carolina owned by the decedent at the time of his death, and quieting title to such properties in her name; and

- c) for an order set aside the deed of distribution executed by Carlie Elvin Cleary to himself dated February 26, 2019, and recorded in the ROD Office for Charleston County in Book 0780, Page 666; and
- d) for Carlie Elvin Cleary to be removed as personal representative of the Estate of Scott B. Cleary and for appointment of the Plaintiff as personal representative; and
- e) for costs and attorney fees of this action; and
- f) for such other and further relief as the Court may deem just and proper.



KERRY W. KOON  
147 Wappoo Creek Drive, Ste. 203  
Charleston, SC 29412  
(843) 795-7000  
ATTORNEY FOR PLAINTIFF

At Charleston, South Carolina  
This 4<sup>th</sup> day of Apr, 2019.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE PROBATE COURT  
NINTH JUDICIAL CIRCUIT  
CASE #: 2019-LP-10- 364

MELISSA COMBS A/K/A MELISSA CLEARY, )  
 )  
Plaintiff, )

v. )

CARLIE ELVIN CLEARY, INDIVIDUALLY )  
& AS PERSONAL REPRESENTATIVE OF THE )  
ESTATE OF SCOTT B. CLEARY & )  
DITECH FINANCIAL, LLC, )  
 )  
Defendants. )

*LIS PENDENS*

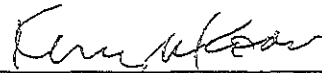
JULIE J. ARMSTRONG  
CLERK OF COURT

2019 APR -4 PM 1:35

FILED

*PLEASE TAKE NOTICE* that an action has been commenced in the Probate Court for Charleston County, South Carolina, affecting title to the real property hereinafter described on Exhibit "A" hereto.

The purpose of the action is to declare the Plaintiff the surviving spouse and sole heir at law of the Estate of Scott Brian Cleary, and to quiet title in the Plaintiff's name as the sole owner of the properties hereinafter described.



KERRY W. KOON  
147 Wappoo Creek Drive, Ste. 203  
Charleston, SC 29412  
(843) 795-7000  
ATTORNEY FOR PLAINTIFF

At Charleston, South Carolina  
This 4th day of Apr, 2019.

19 APR -4 PM 1:39

*Exhibit "A"*

All that certain piece, parcel, lot or tract of land with the buildings and improvements thereon, situate, lying and being in the County of Charleston, State of South Carolina, and being known and designated as Lot 3, Block E", Old Orchard Subdivision, as shown on a plat of Harold A. Moore, RLS, dated December 1995, and recorded July 5, 1956, in the Register's Office for Charleston County in Plat Book K, Page 108. Said parcel having such size, shape, metes, bounds, location and dimensions as shown on the aforesaid plat to which reference is made.

Subject to any and all restrictions, covenants and easements of record.

Being the same property conveyed to Scott B. Cleary by deed of Maria D. Cordero, dated November 29, 2005, and recorded in the Register's office for Charleston County on December 1, 2005, in Book E-564, Page 261.

TMS #: 428-02-00-103

Property address: 1262 Oxbow Drive, Charleston, SC 29412

~~-AND-~~

All that tract, piece or parcel of land located in Charleston County, State of South Carolina, shown and designated as Lot 15, Tract I, on a plat entitled "Subdivision Plat Of "The Pointe", Located At Headquarters Island Plantation, Johns Island, City Of Charleston, South Carolina" dated May 29, 1987, revised August 19, 1987, and finally revised June 28, 1988 by Alpha Surveying, Inc., which plat was recorded July 26, 1988, in Plat Book BS, Page 131, in the RMC Office for Charleston County, South Carolina.

Being the same property conveyed to Scott B. Cleary by deed of Citadel Federal Savings Bank dated December 17, 1991, and recorded in Book X-208, Page 624 in the Register's Office for Charleston County on December 18, 1991.

TMS #: 346-07-00-072

Property address: Lot 15, Tract I, The Pointe, Headquarters Island, Johns Island, SC 29455

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE PROBATE COURT  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 2019-LP-10-354

MELISSA COMBS A/K/A MELISSA )  
CLEARY, )

Plaintiff, )

vs. )

CARLIE ELVIN CLEARY, )  
INDIVIDUALLY & AS PERSONAL )  
REPRESENTATIVE OF THE ESTATE )  
OF SCOTT B. CLEARY & DITECH )  
FINANCIAL, LLC, )

Defendants. )

ANSWER AND COUNTERCLAIM  
(of Carlie Elvin Cleary, Individually  
& as Personal Representative of the  
Estate of Scott B. Cleary)

191127-1 P. 3-11-19

The Defendant, Carlie Elvin Cleary, Individually & as Personal Representative of the Estate of Scott B. Cleary, answering the Complaint herein, would allege unto this honorable Court as follows:

ONE: Each and every allegation of the Complaint which is not hereinafter specifically admitted or explained is denied and strict proof demanded thereof.

TWO: This Defendant is without sufficient information or belief so as to form an opinion as to the allegations contained in paragraph 1 of the Complaint and therefore denies same and demands strict proof thereof.

THREE: Answering paragraph 2 of the Complaint, this Defendant admits that he is a resident of the State of North Carolina.

FOUR: Answering paragraph 3 of the Complaint, this Defendant admits that he has been appointed as Personal Representative of the Estate of Scott Brian Cleary.

FIVE: The allegations contained in paragraph 4 of the Complaint constitute conclusions of law to which no response is required from this Defendant.

SIX: This Defendant admits the allegations contained in paragraph 5 of the Complaint given the Plaintiff has filed a Lis Pendens against the properties described in paragraph 5.

SEVEN: The allegations contained in paragraph 6 of the Complaint state conclusions of law to which no response is required from this Defendant.

EIGHT: This Defendant denies the allegations contained in paragraphs 7 and 8 of the Complaint and demands strict proof thereof.

NINE: Answering paragraph 9 of the Complaint, this Defendant repeats and realleges each and every allegation contained in paragraphs One through Eight above as though fully set forth verbatim.

TEN: This Defendant admits the allegations contained in paragraph 10 of the Complaint.

ELEVEN: This Defendant denies the allegations contained in paragraph 11 of the Complaint and demands strict proof thereof.

TWELVE: This Defendant admits the allegations contained in paragraph 12 of the Complaint.

THIRTEEN: Answering paragraph 13 of the Complaint, this Defendant repeats and realleges each and every allegation contained in paragraphs One through Twelve above as though fully set forth verbatim.

FOURTEEN: This Defendant denies the allegations contained in paragraph 14 of the

Complaint and demands strict proof thereof.

FIFTEEN: Answering paragraph 15 of the Complaint, this Defendant repeats and realleges each and every allegation contained in paragraphs One through Fourteen above as though fully set forth verbatim.

SIXTEEN: This Defendant denies the allegations contained in paragraph 16 of the Complaint and demands strict proof thereof.

FURTHER ANSWERING THE COMPLAINT AND BY WAY OF COUNTERCLAIM,  
THIS DEFENDANT ALLEGES AS FOLLOWS  
(Removal of Plaintiff)

SEVENTEEN: Each and every allegation contained in paragraphs One through Sixteen above is incorporated herein by express reference as though fully set forth verbatim.

EIGHTEEN: That the real property, together with improvements, if any, described in paragraphs 5 and 6 of the Complaint have been duly conveyed to this Defendant, individually, as the sole surviving intestate heir of the Decedent, Scott Brian Cleary, yet Plaintiff, Plaintiff's daughter and Plaintiff's boyfriend continue to occupy this Defendant's residence at 1262 Oxbow Drive, Charleston, South Carolina 29412.

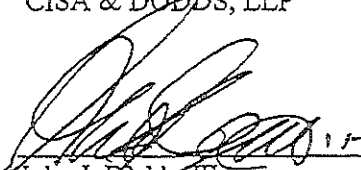
NINETEEN: Upon information and belief, this Defendant is entitled to an Order from this honorable Court requiring Plaintiff to immediately vacate all real property, together with improvements, if any, owned by this Defendant, individually, including, but not limited to the residence at 1262 Oxbow Drive, Charleston, South Carolina 29412.

TWENTY: Upon information and belief, this Defendant is entitled to recover reasonable attorney's fees and costs from Plaintiff.

WHEREFORE, having fully answered the Complaint, this Defendant prays unto this honorable Court that the Complaint be dismissed, that this Defendant be awarded reasonable attorney fees and costs of and from the Plaintiff for defending this action, and further, as to this Defendant's Counterclaim, that this honorable Court issue its Order requiring Plaintiff to immediately vacate all real property, together with improvements, described in paragraphs 5 and 6 of the Complaint including, but not limited to, the residence at 1262 Oxbow Drive, Charleston, South Carolina 29412; that this Defendant be awarded reasonable attorney fees and costs from the Plaintiff, and for such other and further relief as to this honorable Court is fair and proper.

CISA & DODDS, LLP

By:

  
John J. Dodds, III

858 Lowcountry Blvd., Suite 101

Mt. Pleasant, SC 29464

(P) (843) 881-6530

(F) (843) 881-5433

SC Bar No.: 1707

[john@cisadodds.com](mailto:john@cisadodds.com)

ATTORNEY FOR CARLIE ELVIN CLEARY,  
INDIVIDUALLY & AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
SCOTT B. CLEARY

Mt. Pleasant, South Carolina

May 15 2019.

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE #: 2019-ES-10-0038
	)	
MELISSA COMBS A/K/A MELISSA CLEARY,	)	
	)	
Plaintiff,	)	
	)	<i>PLAINTIFF'S ANSWER</i>
v.	)	<i>TO COUNTERCLAIM.</i>
	)	
CARLIE ELVIN CLEARY, INDIVIDUALLY	)	
& AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF SCOTT B. CLEARY &	)	
DITECH FINANCIAL, LLC,	)	
	)	
Defendants.	)	
	)	

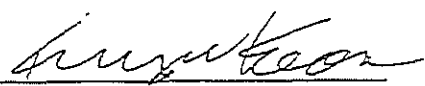
19 MAY 20 10 30 AM

Plaintiff answering the Counterclaim of the Defendant would respectfully show unto the Honorable Court as follows:

1. That she is not required to admit or deny the allegations of Paragraph 17 of the Counterclaim.
2. That she denies the allegations of Paragraphs 18, 19 and 20 of the Counterclaim.

*WHEREFORE*, the Plaintiff prays as follows:

- a) that the Counterclaim be dismissed;
- b) for costs and attorney fees of action; and
- c) for such other and further relief as the Court may deem just and proper.

  
KERRY W. KOON  
 147 Wappoo Creek Drive, Ste. 203  
 Charleston, SC 29412  
 (843) 795-7000  
 ATTORNEY FOR PLAINTIFF

Charleston, South Carolina  
5-9-19, 2019.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 IN THE ESTATE OF )  
 SCOTT BRYAN CLEARY )  
 )  
 MELISSA COMBS a/k/a MELISSA )  
 CLEARY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CARLIE ELVIN CLEARY, )  
 individually and as Personal Representative )  
 of the Estate of Scott B. Cleary, and )  
 DITECH FINANCIAL, LLC, )  
 )  
 Defendant. )

IN THE PROBATE COURT  
 CASE NO.: 2019-ES-10-0038  
 CIRCUIT COURT CASE NO:  
 2019-CP-10-3006

**NOTICE OF MOTION AND  
 MOTION TO DISMISS  
 (SCRCP 12(b)(1))**

FILED  
 2019 AUG 16 PM 2:15  
 JILLIE J. ARMSTRONG  
 CLERK OF COURT

TO: KERRY W. KOON, ESQUIRE, ATTORNEY FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendant, Carlie Elvin Cleary, Individually and as Personal Representative of the Estate of Scott B. Cleary, will move before the Presiding Judge of the Court of Common Pleas for Charleston County, South Carolina not sooner than ten (10) days from the service hereof, at such time and location as is provided by the Court, for an Order dismissing the within captioned action in accordance with Rule 12(b)(1), SCRCP on the ground that the Circuit Court has no subject matter jurisdiction as to the claims asserted by Plaintiff as set forth in the Complaint. In support of his Motion, Defendant shall rely upon the statutory and common law for the State of South Carolina including, but not limited to, Section 62-1-302, Code of Laws of South Carolina, 1976 (as amended), as well as such other matters as are properly brought before the Court.

Defendant, by and through his undersigned attorney, certifies that consultation with opposing counsel concerning this Motion would serve no useful purpose.

Respectfully Submitted,

CISA & DODDS, LLP

By: 

John J. Dodds, III  
858 Lowcountry Blvd., Suite 101  
Mt. Pleasant, SC 29464  
(P) (843) 881-6530  
(F) (843) 881-5433  
SC Bar No.: 1707  
[john@cisadodds.com](mailto:john@cisadodds.com)

**ATTORNEY FOR CARLIE ELVIN CLEARY,  
INDIVIDUALLY & AS PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
SCOTT B. CLEARY**

Mt. Pleasant, South Carolina

August 14, 2019.



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 IN THE ESTATE OF )  
 SCOTT BRYAN CLEARY )  
 )  
 MELISSA COMBS a/k/a MELISSA )  
 CLEARY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CARLIE ELVIN CLEARY, )  
 individually and as Personal Representative )  
 of the Estate of Scott B. Cleary, and )  
 DITECH FINANCIAL, LLC, )  
 )  
 Defendant. )

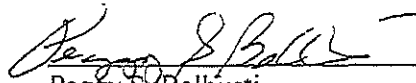
IN THE PROBATE COURT  
 CASE NO.: 2019-ES-10-0038  
 CIRCUIT COURT CASE NO.:  
 2019-CP-10-3006

**CERTIFICATE OF HAND DELIVERY**

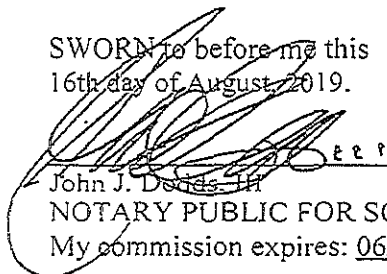
2019 AUG 16 PM 2:15  
 JULIE J. ARYSTROPHIS  
 CLERK OF COURT  
 FILED

PERSONALLY appeared before me, Peggy S. Belbusti, Legal Assistant to John J. Dodds, III, attorney for the Defendant, Carlie Elvin Cleary, Individually & as Personal Representative of the Estate of Scott B. Cleary, who, first being duly sworn, deposes and says that on the 16th day of August, 2019, she had hand delivered via legal courier a copy of the Defendant's Notice of Motion and Motion to Dismiss (SCRCP 12(b)(1)), as well as a copy of the within Certificate of Hand Delivery in the within action, to the following parties:

Kerry W. Koon, Esquire  
 147 Wappoo Creek Drive, Suite 203  
 Charleston, SC 29412  
 Attorney for Plaintiff

  
 Peggy S. Belbusti

SWORN to before me this  
 16th day of August, 2019.

  
 John J. Dodds, III  
 NOTARY PUBLIC FOR SOUTH CAROLINA  
 My commission expires: 06/20/2022

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE #: 2019-ES-10-0038
	)	CIRCUIT COURT CASE #: 2019-CP-10-3006
MELISSA COMBS A/K/A MELISSA CLEARY,	)	
	)	
Plaintiff,	)	
	)	<i>PLAINTIFF'S MEMORANDUM</i>
v.	)	<i>IN OPPOSITION TO DEFENDANT'S</i>
	)	<i>MOTION TO DISMISS</i>
CARLIE ELVIN CLEARY, INDIVIDUALLY	)	
& AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF SCOTT B. CLEARY &	)	
DITECH FINANCIAL, LLC,	)	
	)	
Defendants.	)	
	)	

This is an action originally commenced in the Probate Court and removed to the Circuit Court by order of Judge Curry dated May 13, 2019.

In the motion to dismiss, Defendant cites no specific authority other than S.C. Code Section 62-1-302 "...as well as such other matters as are properly brought before the Court." Section 62-1-302 clearly authorizes removal of this action to the Circuit Court as an action to try title concerning property in which the estate of the decedent serves an interest (Section 62-1-302(d)(3)). Jurisdiction in this court is therefore proper pursuant to Section 62-1-302.

Although not specifically stated, Plaintiff presumes that Defendant will also rely on *Stone v. Thompson*, Appellate case number 2017-000227 (Opinion filed July 24, 2019) in which the Supreme Court prospectively abolished common law marriage in South Carolina. The court specifically declined to apply the abolition retrospectively to common law marriages in existence prior to the decision:

"We likewise decline to exercise our prerogative to apply our ruling today retroactively. We see no benefit to undoing numerous marriages which heretofore were considered valid in our state, and we will not foreclose relief to individuals who relied on the doctrine. Accordingly, our ruling today is to be applied purely prospectively; **no individual may enter into a common law marriage in South Carolina after the date of this opinion.**" Emphasis added. (Opinion page 7).

The Petition, in paragraphs 7 and 8, clearly alleges a preexisting common law marriage, proof of which is not foreclosed by Stone v. Thompson. Based upon the pleadings and the above cited authority the motion to dismiss should be denied.

If, however, Defendant relies on any factual allegations to support his motion, filed along with this memorandum are Plaintiff's affidavit with exhibits and affidavits of others all establishing Plaintiff and decedent's agreement to become husband and wife and their reputation among friends and acquaintances as husband and wife.

There is ample evidence of subject matter jurisdiction over this case, either under the Rule 12(b)(6) standard or a summary judgment standard.

Respectfully submitted,

S/Kerry Koon  
**KERRY W. KOON**  
147 Wappoo Creek Drive, Ste. 203  
Charleston, SC 29412  
(843) 795-7000  
*ATTORNEY FOR PLAINTIFF*

Charleston, South Carolina  
January 6, 2020.

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE #: 2019-ES-10-0038
	)	CIRCUIT COURT CASE #: 2019-CP-10-3006
MELISSA COMBS A/K/A MELISSA CLEARY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<i>AFFIDAVIT OF MELISSA COMBS</i>
	)	<i>A/K/A MELISSA CLEARY</i>
CARLIE ELVIN CLEARY, INDIVIDUALLY	)	
& AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF SCOTT B. CLEARY &	)	
DITECH FINANCIAL, LLC,	)	
	)	
Defendants.	)	
	)	

Personally appeared before me, *MELISSA COMBS A/K/A MELISSA CLEARY* who, being duly sworn, deposes and says as follows:

That I am the wife of Scott B. Cleary. Scott and I were romantically involved at least 12 years prior to his death in 2018. We lived under the same roof either in his home on James Island or sometimes in my home in North Carolina. In the summer of 2015, I moved into our home at 1262 Oxbow Drive, Charleston, SC 29412 and we lived together continuously at that address until his death in November of 2018.

Around Valentine's Day in 2016, he asked me to go to Folly Beach with him and there we exchanged marriage vows agreeing to become husband and wife. After that, Scott began introducing me to others as his wife, Melissa Cleary. We bought two (2) vacation time share interests together; the first from Bulegreen Vacations (Exhibit "A") identifying us as only co-applicants. The second with Holiday Inn Club Vacations identified us as husband and wife and was signed by both myself and Scott B. Cleary (Exhibit "B"). We also began

exchanging greeting cards with each other on occasions such as Valentine's Day and birthdays, identifying ourselves as husband and wife (Exhibit "C").

Scott also changed his profile at the North Carolina State University Alumni Association to a "married" status identifying me as his wife and also naming me as a joint member (Exhibit "D").

In April 2016, while employed at SPAWAR, Scott had a business trip to meet with his supervisor in Washington, D.C. He left on a Wednesday. Either that night or the following night I called Scott's cell phone several times and his supervisor's assistant finally answered and informed me that they had been out to dinner and that Scott had collapsed in the restaurant and was taken to a hospital and was being transferred to Baltimore Memorial Hospital because of a suspected brain hemorrhage. The next morning she called back and told me that he had been diagnosed with a stroke and a brain bleed. I immediately packed a bag and my daughter and I drove to Baltimore. Scott was hospitalized in ICU for several days and spent about two weeks in the hospital before being transferred to a rehabilitation facility in Baltimore. I stayed with him the entire time, both in the Baltimore Memorial Hospital and rehabilitation facility.

When we returned home, he had to undergo months of rehab before he could attempt to go back to work. I stayed by his side the entire time during his rehabilitation and took care of all of his personal needs including bathing, assistance with the toilet, helping him walk and communicating for him until he regained the ability to talk for himself. I provided this support for Scott not as a caregiver but out of love as a wife to her husband.

He tried to go back to work for about two or three days in approximately August 2016, but had a fall and injured his hand. Scott never went back to work after that.

We stayed together and lived as husband and wife until his death. Ever since early 2016, we considered ourselves as husband and wife.

This 3 day of JANUARY, 2020.

Melissa Combs  
Melissa Cleary  
Melissa Combs a/k/a Melissa Cleary

SWORN to and subscribed before me  
this 3 day of JANUARY, 2020.

Megan Mitchum  
Printed Name: Megan Mitchum  
Notary Public for South Carolina  
My Commission Expires: 4/16/2029

Ex. "A"

# bluegreenvacations®

## CREDIT APPLICATION

Region Name: THE LODGE ALLEY INN

**\*\* PLEASE PRINT CLEARLY \*\***

This application should be completed by the Purchaser(s). The Co-Applicant's Section and all other Co-Applicant questions must be completed and the appropriate box(es) checked if another person will be jointly obligated with the Applicant on the loan, or if the Purchaser is married and resides, or if the property is located in a community property state.

Applicant's Name as it will appear on legal documents:  SCOTT B CLEARY FIRST MI LAST		Co-Applicant's Name as it will appear on legal documents:  MELISSA J COMBS FIRST MI LAST	
Present Address: <input checked="" type="checkbox"/> Own <input type="checkbox"/> Rent # Years <u>9</u> 1262 Oxbow Dr		Present Address: <input checked="" type="checkbox"/> Own <input type="checkbox"/> Rent # Years _____ 1262 Oxbow Dr	
City/State/Zip Charleston, SC 29412 Complete Home Phone # 843 406 8891 Complete Work Phone# & ext. 843 218 4742 Social Security Number: ****1705		City/State/Zip Charleston, SC 29412 Complete Home Phone # 843 406 8891 Complete Work Phone# & ext. <u>33(n-027-1)19</u> Social Security Number: ****9556	
Employer: <u>SPACE AND NAVAL WARFARE SYSTEMS CTC</u>		Employer: _____	
Position/Title: <u>ELECTRONICS ENGINEER-SUPERVISOR</u>		Position/Title: _____	
Length of Time at Employer: <u>22</u> years _____ months		Length of Time at Employer: _____ years _____ months	
Applicant's Annual Income: <u>120,000</u>		Co-Applicant's Annual Income: _____	
Other Annual Income: <u>N/A</u>		Other Annual Income: _____	

The undersigned acknowledges that I/we have the ability to make all payments connected with this purchase and will not pose an undue financial burden for my/our family.

The undersigned authorizes Seller and any lender in connection with this purchase to start a credit investigation and hereby declare(s) that I/we have read the foregoing Application, that the statements made herein are complete and true to my/our knowledge, and that the statements are made and information given as an inducement to the Seller to enter into the Purchase Agreement and any lender to make a loan in connection with such purchase. The Purchaser Applicant(s) authorize the Seller, or his agent, to verify the information contained herein and to make such additional inquiries as reasonably may be related to or associated with this Application from credit bureaus and from employers, creditors and references listed on this Application, and agree that such information, along with this Application, shall remain the Seller's property.

Accepted:

Scott B. Cleary  
SCOTT B CLEARY  
Applicant's Legal Signature  
Melissa J. Combs  
MELISSA J COMBS  
Co-Applicant's Legal Signature

12/03/2016  
(Date)

12/03/2016  
(Date)



10/4/2018 1:02:49 PM  
 Site: SOUTH BEACH RESORT  
 Tour Id: 4706818  
 SOUTH BEACH RESORT  
 Rate: \$0.00

Tour Check In Time: 1:02 PM  
 Arrived By: Amoral

## Tour Record Form

Assigned To: ERIC H MORI

Name: Cleary, Scott  
 Prospect # / Owner #: 8389270  
 Marital Status: MARRIED MALE  
 State / Country: SC / UNITED STATES

Name: Cleary, Melissa  
 Prospect #: 8389270  
 Marital Status: MARRIED FEMALE  
 State / Country: SC / UNITED STATES

Date: 10/04/2018 Wave: 1130 # of Guests: 4  
 Referring Owner Name:  
 Address: 1262 Oxbow Dr  
 Charleston 29412-9439

Campaign: IHG VIP  
 Deposit:  
 Program Name: IHG  
 Offered Premium:  
 QTY=1 PLU=IHGREB  
 QTY=199 PLU=CASH  
 Total Due=\$0.00

Sales Consultant: ERIC H MORI / 064065  
 Sales Manager: JAMES R BEST / 052459  
 Director of Sales: KEVIN D MCGRATH / 030227  
 Latitude Consultant:

Take Over:  
 Relations Specialist:  
 Relations Manager:  
 Sign Off: **FRST**

**SALE**

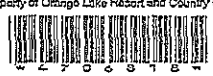
**Gifting Ticket**

Name: Cleary, Scott Tour Wave: 1130 GKTW   
 Tour ID: 4706818 Room Number:  
 Deposit: Marital Status: MARRIED MALE Owner #:  
 Date: 10/04/2018

Campaign Name / ID #: IHG VIP / 3318 Assigned Rep: ERIC H MORI  
 Marketing Rep: Trans Notes:  
 Premium Description: Hotel Note:  
 QTY=1 PLU=IHGREB Quinella:  
 QTY=199 PLU=CASH  
 Total Due=\$0.00

HCV Tier Level:	Reservation Type	Check In Date	Check Out Date	Number Of Days
HCV Mbr Total Points:	Global Accs	05/09/2010	06/14/2010	36
PCR Number:				
Membership Level:				

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## Holiday Inn Club® Exchange Program Membership Agreement

Owner Number: 6481954

A. PRIMARY MEMBER INFORMATION - All Fields Required Date: October 04, 2018

Last Name: Cleary First Name: Scott Bryan  
 Street Address: 1262 Oxbow Dr  
 City: Charleston State/Province: SC Postal Code: 29412-9439  
 Country: UNITED STATES E-mail address: clearvsb@mac.com  
 Home Phone: 8434068891 Business / Cell Phone:

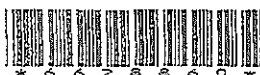
B. SECONDARY MEMBER INFORMATION

Last Name: Combs First Name: Melissa Johnson  
 Street Address: 1262 Oxbow Dr  
 City: Charleston State/Province: SC Postal Code: 29412-9439  
 Country: UNITED STATES E-mail address:  
 Home Phone: 8434068891 Business / Cell Phone:

C. OWNERSHIP INFORMATION

- Complete only the information that pertains to Timeshare Periods owned by you, which are being assigned to the GlobalAccess Exchange, LLC ("GAE") for use in the Holiday Inn Club® Exchange Program ("Holiday Inn Club®"). Please use the unit number grid for your unit type to reference Holiday Inn Club® Points and information. *All fields in the following tables are required for fixed ownership enrollment.*

Resort/Access	Number of Points	Contract Number	Unit #	Week #/Season	Unit Type	Club Conversion YES/ NO
North Village	100,000	6628860			OL Trust	<u>92</u>



6481954

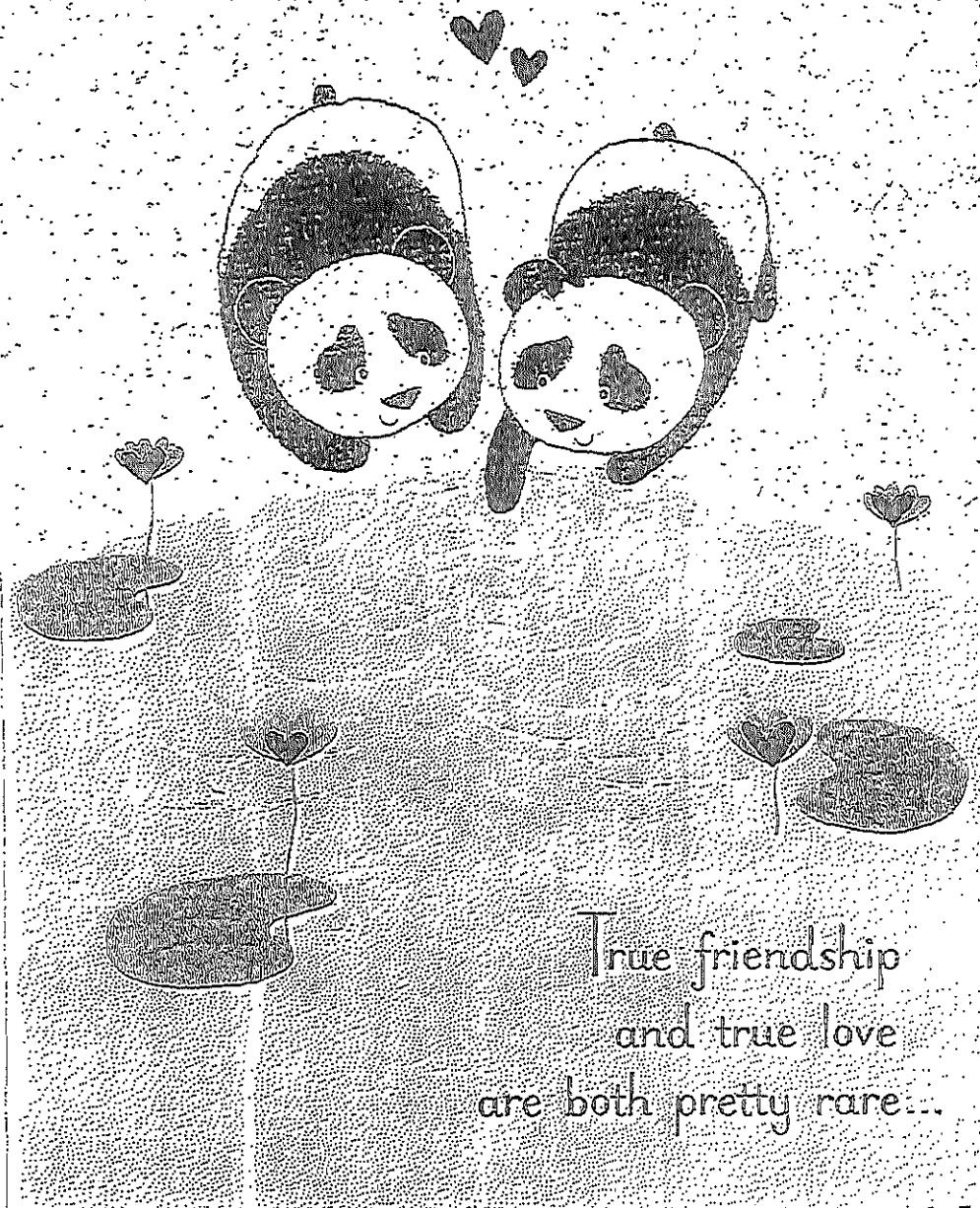
1

C:\PROGRA~1\TSWAPP~1.1\SAM\Reports\CustomReports\HCV Membership Agreement Trust.rpt



Sweet Husband  
of Mine

Ex. "C"



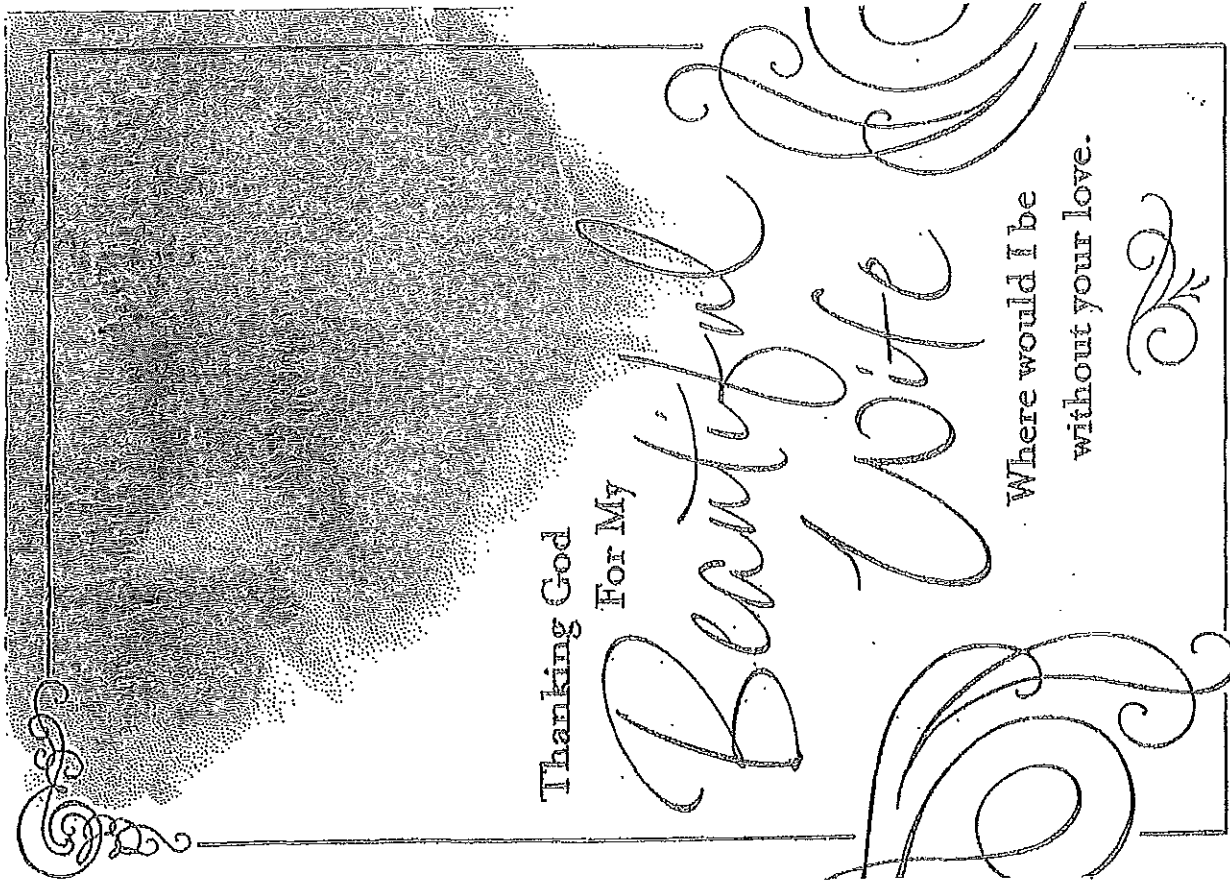
True friendship  
and true love  
are both pretty rare...



...but I found  
the best friend  
I could ever want  
when I fell in love  
with you.

Happy Valentine's Day  
with Kisses and Hugs

Love you always  
*Melina Casey*



39

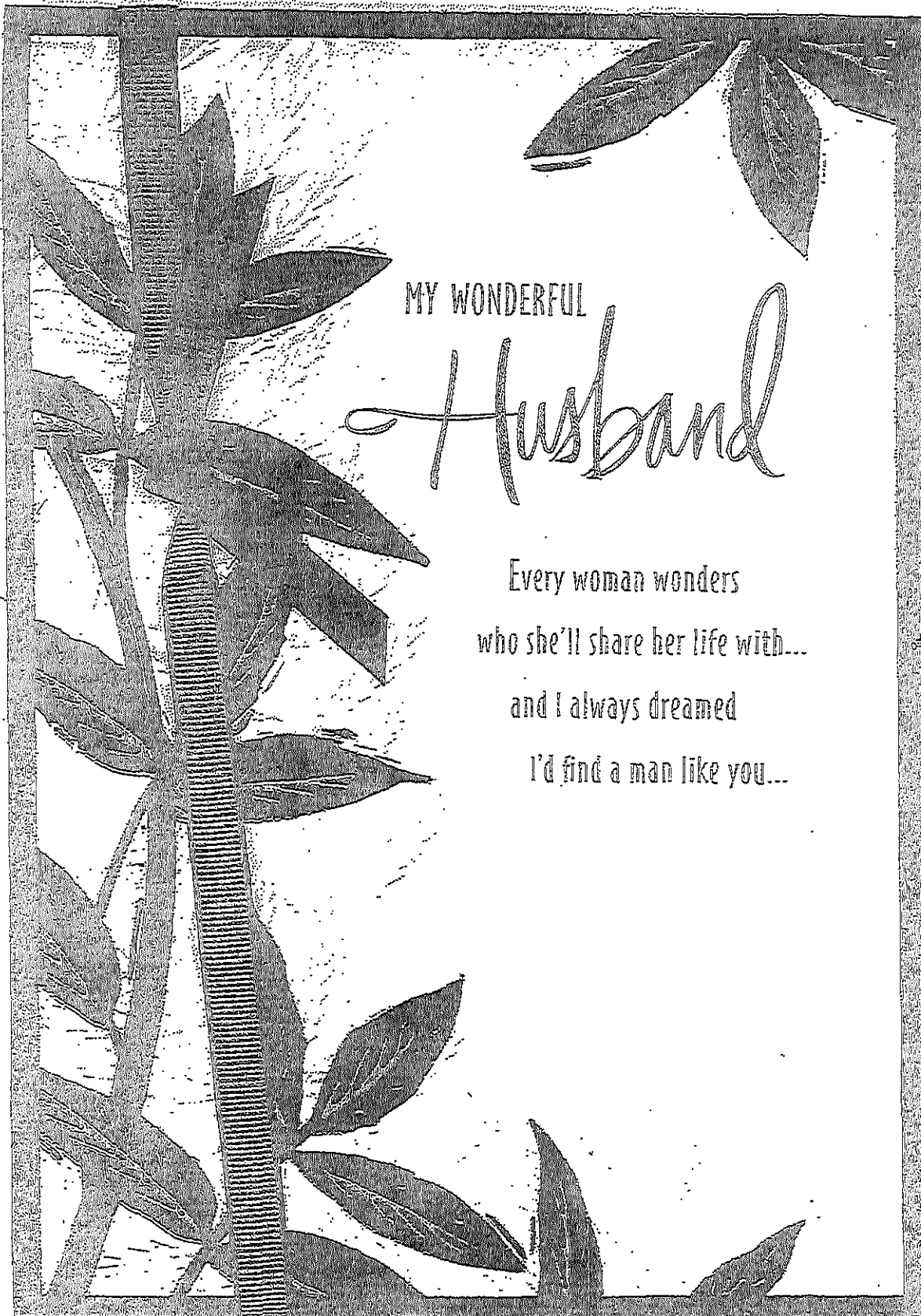
In the small things...  
the big things...  
in all things—  
I thank God  
for the gift you are...  
the blessing you are  
in my life.


*Happy Birthday*  
With All My Love

LOVE ALWAYS


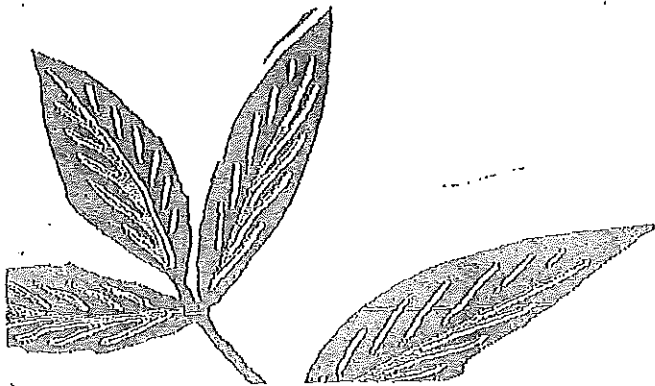
SCOTT

How beautiful is your love!  
SONG OF SOLOMON 4:10 NASB





A man with intelligence,  
a fun sense of humor  
and, above all, a caring heart.  
A man I could call both  
my husband and my friend,  
someone who would walk  
hand in hand with me  
through everything life brought.



Today I'm so thankful  
that I found you...  
the man I'd always dreamed of,  
the one I was meant to be with.  
You're an incredible father  
and a wonderful husband,  
and I will love you forever.

*Happy Father's Day*  
*Love always for ever*  
*and always*  
*my true love*  
*M. Ann*

Mar 29, 2019

North Carolina State University

### ENTITY OVERVIEW

Mr. Scott B. Cleary [View Profile](#)

Rec Type  
Degree

Alumnus - degree holder (1984 Engineering)  
BS 1984 Engineering (Major: Electrical Engineering)

Married: Mrs. Melissa Combs (650119)

### Contact Information

#### Home (Preferred)

487 Briar Creek Dr  
North Wilkesboro, NC 28659-8288  
Modified: Mar 11, 2019

[Google Map - Home](#)  
[Zillow.com - Home](#)

Preferred Email  
dearysb@mac.com

#### Business

Space & Naval Warfare Systems Command  
PO Box 190072  
North Charleston, SC 29419-9072  
Modified: Feb 17, 2017  
(843) 244-4742 (B, Pref)

[Google Map - Business](#)

Active eContact Information (0)

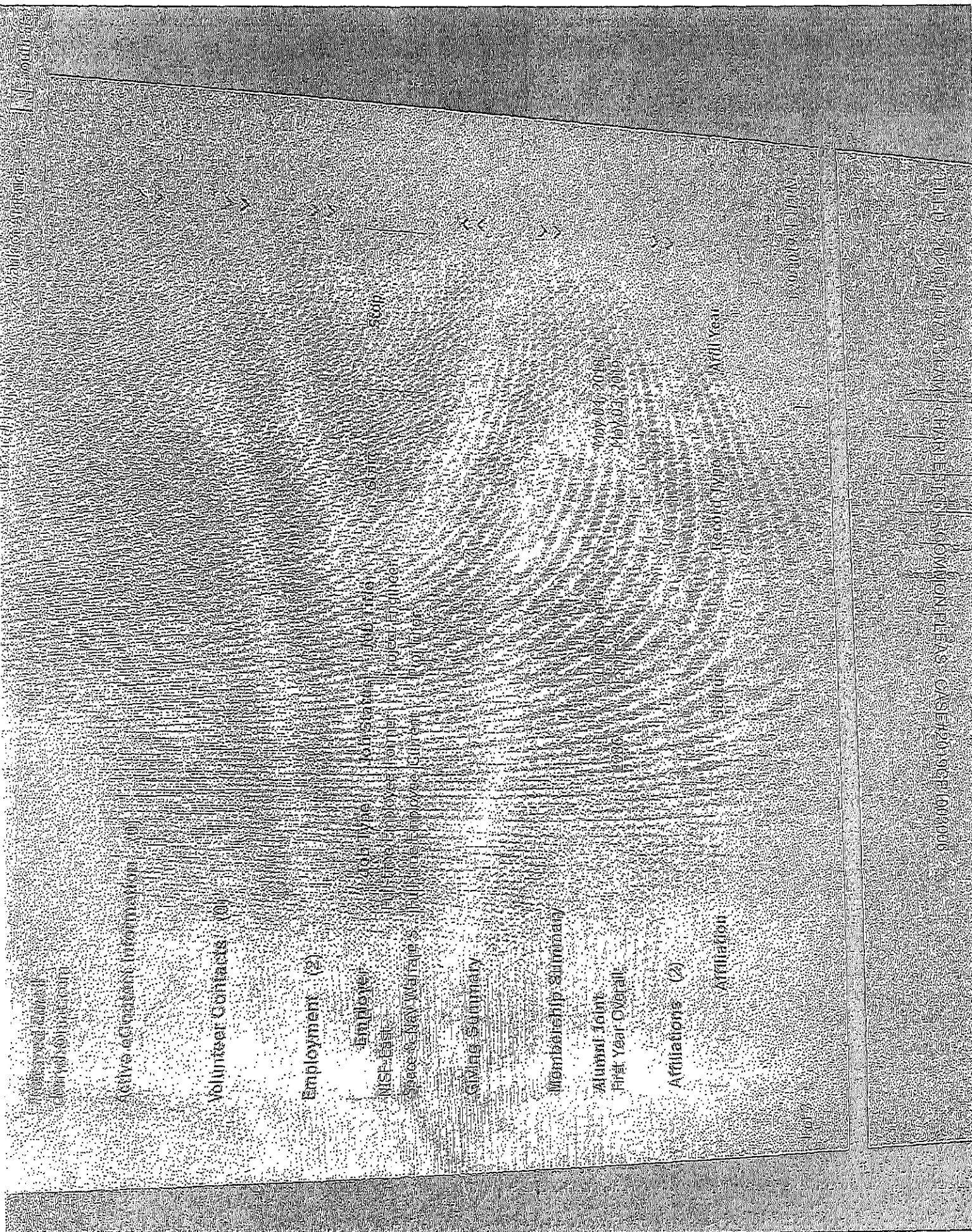
Volunteer Contacts (0)

Employment (2)

Employer	Job Type	Job Status	Job Title	Start	Stop
NSC Park	Faculty Employee	Former	Assistant Professor		

42

42





STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

AFFIDAVIT OF ROBERT L. MYER, JR.

Personally appeared before me, ROBERT L. MYER, JR., who, being duly sworn, deposes and says as follows:

My name is Robert L. Myer, Jr. I live at 1741 Winfield Way, Charleston, South Carolina 29414.

I knew Scott and Melissa Cleary before Scott's death. I worked with Scott at the former SPAWAR. I knew Scott for about 18 years. I knew Melissa for several years also. We visited in each other's homes and frequently saw each other socially.

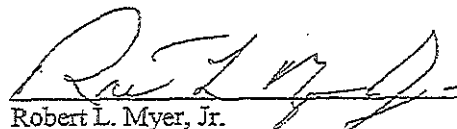
I considered Scott & Melissa husband and wife. They had the reputation of husband and wife in the community.

I had Melissa entered into my telephone as "Melissa Cleary" which is the name I knew her by.

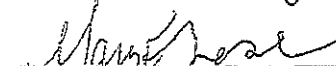
Especially after Scott become ill and had a stroke, he relied heavily upon Melissa for his care. She did everything for him, took care of him including his intimate personal needs, bathing and assisting him with the toilet. Melissa gave up everything for him.

Scott expressed to me that if anything ever happened to him, he wanted Melissa to be taken care of because of how much she did for him and how much he depended upon her.

This 6<sup>th</sup> day of May, 2019.

  
Robert L. Myer, Jr.

SWORN to and subscribed before me  
this 6 day of May, 2019.

  
Printed Name: Mary E. Lose  
Notary Public for South Carolina  
My Commission Expires: Sept 10, 2025



Mary E. Lose  
NOTARY PUBLIC  
State of South Carolina  
My Commission Expires  
September 10, 2025

STATE OF SOUTH CAROLINA )  
 ) AFFIDAVIT OF CAROL MYER  
COUNTY OF CHARLESTON )

Personally appeared before me, CAROL MYER, who, being duly sworn, deposes and says as follows:

My name is Carol Myer and the wife of Robert L. Myer, Jr. We live at 1741 Winfield Way, Charleston, South Carolina 29414.

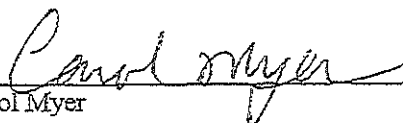
I knew Scott and Melissa Cleary as a couple for approximately 4-5 years before Scott's death. My husband and I socialized with them often on Tuesday nights at the Charleston Sports Pub, West Ashley location. This was a tradition that was started by my husband and Scott and continued after he and Melissa were together.

They also attended our family gatherings such as Thanksgiving and other family occasions.


I always heard them refer to themselves as "Scott and Melissa Cleary." Especially after Scott's illness, it was amazing what Melissa did for him. She handled all of his doctor's appointments, paying bills and taking care of his personal needs.

Scott and Melissa acted and were received in their circle of friends as a married couple and referred to themselves as such and certainly enjoyed the reputation within our circle as a husband and wife.

This 9 day of MAY, 2019.

  
Carol Myer

SWORN to and subscribed before me  
this 9 day of May, 2019.

  
Printed Name: Lauren Vaughan  
Notary Public for South Carolina  
My Commission Expires: March 10, 2027

LAUREN VAUGHAN  
Notary Public - State of South Carolina  
My Commission Expires March 10, 2027

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

AFFIDAVIT OF PEGGY HARRIS

Personally appeared before me, PEGGY HARRIS, who, being duly sworn, deposes and says as follows:

My name is Peggy Harris. I reside at 1707 Restoration Court, Charleston, SC 29414.

I knew Scott & Melissa Cleary as a couple for approximately 5 years before Scott's death. They were often with my sister and brother-in-law, Bob & Carol Myer, through whom I met the Clearys. I often went out socially with Scott & Melissa and Bob & Carol. Scott & Melissa were often invited to our family dinners such as Thanksgiving and other occasions.

Melissa was always referred to and introduced to me as Melissa Cleary. They had a reputation in our social circle as husband and wife. They were accepted as a married couple. This was also true in our mutual circle of friends who often met at the Charleston Sports Pub.

This 6<sup>th</sup> day of May, 2019.

Peggy Harris  
Peggy Harris

SWORN to and subscribed before me  
this 6 day of may, 2019.

Megan Mitchum  
Printed Name: Megan Mitchum  
Notary Public for South Carolina  
My Commission Expires: 5/22/2019

STATE OF SOUTH CAROLINA )  
 ) AFFIDAVIT OF IAN MCCLURE  
COUNTY OF CHARLESTON )

Personally appeared before me, IAN MCCLURE, who, being duly sworn, deposes and says as follows:

My name is Ian McClure. I live at 1238 Aruba Circle, Charleston, South Carolina 29412.

I work as a bartender at the Charleston Sports Pub located at 792 Folly Road, Charleston, South Carolina 29412.

I met Scott and Melissa Cleary in approximately July of 2018. The James Island location of the Charleston Sports Pub opened in June of 2018 and the Cleary's became regular customers. They usually came in at least once a week often on Wednesday which is Bingo night. Scott and Melissa were introduced to me as husband and wife by a former co-worker. I knew them both as Cleary as did the other employees and regular customers. In short, I always considered them husband and wife because of the way I was introduced and they referred to each other and they enjoyed the reputation as husband and wife within my circle of acquaintances.

They were listed Scott and Melissa Cleary in the Charleston Sports Pub's "loyalty system" and Melissa was continued in our records as "Melissa Cleary" after Scott passed away.

This 13 day of May, 2019.

Ian McClure  
Ian McClure

SWORN to and subscribed before me  
this 13 day of May, 2019.

Tracey O'Brien  
Printed Name: Tracey O'Brien  
Notary Public for South Carolina  
My Commission Expires: 9/14/22

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE #: 2019-CP-10-3006
	)	
MELISSA COMBS A/K/A MELISSA CLEARY,	)	
	)	
Plaintiff,	)	
	)	<i>PLAINTIFF'S MOTION TO</i>
v.	)	<i>ALTER OR AMEND</i>
	)	
CARLIE ELVIN CLEARY, INDIVIDUALLY	)	
& AS PERSONAL REPRESENTATIVE OF THE	)	
ESTATE OF SCOTT B. CLEARY &	)	
DITECH FINANCIAL, LLC,	)	
	)	
Defendants.	)	
	)	

***TO THE DEFENDANT ABOVE NAMED:***

*PLEASE TAKE NOTICE* that the Plaintiff intends to move before the Honorable Court at a date and time to be set by the Court to alter or amend the Order of the Honorable Bentley D. Price filed January 30, 2020, dismissing the within action and remanding the same to the Probate Court.

The grounds for this motion are that, it is respectfully submitted that the Court misapprehended or overlooked the proper application of S.C. Code Section 62-1-302(c) and (d) which provide in pertinent part as follows:

(c) The probate court has jurisdiction to hear and determine issues relating to paternity, common-law marriage, and interpretation of marital agreements in connection with estate, trust, guardianship, and conservatorship actions pending before it, concurrent with that of the family court pursuant to Section 63-3-530.

(d) Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must

be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de no vo:

(3) actions to try title concerning property in which the estate of a decedent or protected person asserts an interest;

(5) actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value;

Plaintiff moved to dismiss on the ground that the circuit court lacked jurisdiction, however when subsections (c) and (d) are read together, actions to try title to property, such as this one, are removable as a matter of right. Further, an action for common law marriage is an action at law to which a party has a right to trial by jury. Richland Memorial Hospital v. English, 295 S.C. 511, 513, 369 S.E. 2<sup>nd</sup> 395, 396 (Ct. App. 1988).

In this case, the motion for removal was properly filed on June 5, 2019, and granted by the Probate Court on June 10, 2019.

It is respectfully submitted that the Court of Common Pleas properly acquired subject matter jurisdiction upon removal of this action from the Probate Court, such that the Defendant's motion should have been denied.

Respectfully submitted,

S/Kerry W. Koon

**KERRY W. KOON**

147 Wappoo Creek Drive, Ste. 203

Charleston, SC 29412

(843) 795-7000

ATTORNEY FOR PLAINTIFF

Charleston, South Carolina  
February 7, 2020

1 STATE OF SOUTH CAROLINA )  
 ) Court of Common Pleas  
 2 COUNTY OF CHARLESTON ) Case No. 2019-CP-10-3006  
 )  
 3 )  
 )  
 4 MELISSA COMBS, )  
 )  
 ) Plaintiff, )  
 5 )  
 ) vs. ) Transcript of Record  
 6 )  
 ) CARLIE ELVIN CLEARY, )  
 7 )  
 ) Defendant. ) DATE: January 9, 2020  
 8 )  
 )

9

10

B E F O R E:

11

THE HONORABLE BENTLEY PRICE

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A P P E A R A N C E:

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KERRY W. KOON  
Attorney for the Plaintiff

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JOHN JOSEPH DODDS, III  
Attorney for the Defendant

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19

Original transcript ordered by:  
Kerry W. Koon

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Stenographically recorded and transcribed by:

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Karen V. Andersen  
Registered Merit Reporter  
Certified Realtime Reporter  
Certified Shorthand Reporter

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25

1 THE COURT: This is defense's motion to dismiss.

2 MR. DODDS: That's correct, Your Honor.

3 Thank you, Your Honor. May it please the Court.

4 John Dodds, on behalf of the defendant, Carlie Elvin  
5 Cleary, individually and as personal representative of  
6 the Estate of Scott V. Cleary.

7 Your Honor, this is a motion to dismiss pursuant  
8 to South Carolina Rule of Civil Procedure 12(b)(1) for  
9 lack of subject-matter jurisdiction.

10 Scott Cleary died, Your Honor, on November 22,  
11 2018, while a resident of Charleston County, South  
12 Carolina. His father, the defendant, Carlie Elvin  
13 Cleary, was appointed PR January 8th, 2019, by Charleston  
14 County Probate Court. I neglected to say, Your Honor,  
15 Scott Cleary died intestate in November of 2018.

16 His father petitioned the court to be appointed  
17 as personal representative. He was appointed by  
18 Charleston County Probate Court on January 8th, 2019.

19 The plaintiff, Your Honor, asserts that she is  
20 the common-law wife of the decedent, which is the basis  
21 of her claim before this Court. She initiated an action,  
22 Your Honor, in probate court April the 4th, 2019, asking  
23 the court to declare her the decedent's common law  
24 spouse, to declare her the sole owner of the decedent's  
25 real estate, and to set aside a deed of distribution into

1 the defendant father, Mr. Cleary, and to remove the  
2 father as a personal representative.

3 Probate court -- excuse me. Then the plaintiff  
4 filed a motion in probate court to remove the case to  
5 circuit court. Probate court -- that was filed May the  
6 9th, 2019. Probate court removed it May 13, 2019.

7 I'm asking the Court to dismiss the case that  
8 had been removed to this court and to remand it back to  
9 probate court on the grounds that this court doesn't have  
10 any jurisdiction.

11 So, Judge, initially, we are going to look at  
12 Article XI of the South Carolina Constitution regarding  
13 the judicial department. And, essentially, it says that  
14 the circuit court shall be a general trial court with  
15 original jurisdiction in civil and criminal cases, except  
16 those cases in which exclusive jurisdiction has been  
17 given to inferior courts.

18 So what I've given to Your Honor is a copy of  
19 what I believe to be the controlling statute, Your Honor,  
20 which is 62-1-302, subject-matter jurisdiction of probate  
21 court, concurrent jurisdiction with regard to the family  
22 court.

23 And Section (a) says, the probate court has  
24 exclusive original jurisdiction over all subject matter.  
25 And then Item (1), Estates of decedents, including the

1 contest of wills, construction of wills, determination of  
2 property in which the estate of a decedent or a protected  
3 person has an interest, and determination of heirs and  
4 successors of decedents, et cetera, and it goes on, to be  
5 fair, except that the circuit court also has jurisdiction  
6 to determine heirs and successors as necessary to resolve  
7 matters, including partition, quiet title, and other  
8 actions pending in the circuit court.

9 This isn't a partition action, Judge. It's not  
10 a quiet title. And there was no other matter pending in  
11 circuit court.

12 Then you've got to look to, Judge, Section (c)  
13 on the next page. And it says, the probate court has  
14 jurisdiction to hear and determine issues relating to  
15 paternity, common-law marriage, and it goes on,  
16 interpretation of marital agreements, and then it says,  
17 concurrent with that of the family court, pursuant to  
18 this section.

19 Of course, that is a situation where both of the  
20 alleged common-law spouses are alive and well.

21 But Section (c) says, probate court has  
22 jurisdiction to hear and determine the issues relating to  
23 common-law marriage.

24 And, again to be fair, it goes on, Judge, and it  
25 says that the probate court must remove to the circuit

1 court in certain types of cases. And then it defines  
2 what those cases are.

3 The plaintiff has asserted that the basis of the  
4 removal to this court is actions to try title concerning  
5 property in which the estate of the decedent or protected  
6 person asserts an interest.

7 The issue in the case, Judge, is whether or not  
8 the plaintiff is the common-law spouse of the decedent.  
9 If she is, she's the sole intestate heir of the decedent  
10 and would inherit all of the decedent's property. And  
11 that's the issue.

12 So I've given you a couple of cases, Judge,  
13 talking about subject-matter jurisdiction. It could be  
14 raised at any time. Can't be created. The probate court  
15 is a creature of statute. Its jurisdiction is defined by  
16 the statute.

17 Interestingly, I found a case, Judge, Court of  
18 Appeals from 1987, Judge Hughston affirmed the order of  
19 the probate court, finding that a claimant was not the  
20 common-law husband of the decedent. So I think that  
21 lends credence to the fact that the original issue of  
22 whether or not a party was a common-law spouse was  
23 originally tried in probate court. And then when they  
24 got an adverse ruling, they appealed it to the court of  
25 common pleas.

1           So what I'm asking the Court to do is to dismiss  
2 the matter which was removed to this court on the grounds  
3 of lack of subject-matter jurisdiction, and to remand the  
4 matter back to the probate court.

5           THE COURT: All right.

6           Yes, sir.

7           MR. KOON: Thank you, Your Honor. I think the  
8 key phrase in the statute that we've been talking about  
9 and was cited in the motion, subsection (d), which  
10 begins, notwithstanding the exclusive jurisdiction of the  
11 probate court over the foregoing matter -- and one of the  
12 foregoing matters is the issue of common-law marriage.  
13 And it goes on, of course, to say that removal would be  
14 mandatory in one of several types of cases, one of which  
15 being issues to try title, cases to try title concerning  
16 property in which the estate of a decedent claimed an  
17 interest.

18           And, of course, our causes of action are to set  
19 aside deeds and to acquire title. So I don't think  
20 there's any question that we fit under Subsection (d)(3).  
21 And Subsection (d) and its precatory language says, that  
22 notwithstanding any of the above, which is what Mr. Dodds  
23 is relying on to say that this Court doesn't have  
24 jurisdiction, notwithstanding the exclusive jurisdiction  
25 of the probate court over the foregoing matters,

1 determination of common-law marriage, probate court must  
2 removed if it's an action to try title.

3 So the removal, I would suggest, Your Honor, was  
4 perfectly within the statute. This Court does have  
5 jurisdiction.

6 And another issue I thought I might be met with  
7 the argument today that improperly filed the case in the  
8 probate court because the deeds of distribution had  
9 already been signed. But, of course, I did sue Mr.  
10 Cleary, the grantee, individually. And, you know, who  
11 else has jurisdiction to decide whether these deeds were  
12 proper or not, but this court?

13 So I think the motion should be denied. I think  
14 the statute is clear that the probate court acted  
15 appropriately and this court does have jurisdiction  
16 because of the first phrase in paragraph (d).

17 THE COURT: All right.

18 MR. DODDS: Very briefly, Your Honor. If you  
19 look to item (d), Your Honor, it basically says that the  
20 probate court has exclusive jurisdiction of the items set  
21 forth above, which are (a) through (c). And then it goes  
22 on to say, however, with regard to specific items as set  
23 forth in (d) (1) through (6), it could be removed to  
24 circuit court. Okay?

25 But this lady doesn't get to assert a claim for

1 title unless the probate court first determines that she  
2 is the common-law spouse of the decedent. Because this  
3 issue about trying a title, the only basis, legal basis  
4 that she would have to assert a claim to any of the  
5 decedent's real estate would be that she has been  
6 adjudicated the common-law wife of the decedent. And if  
7 that's the case, then she could take -- you know, then  
8 the case, essentially, wraps up, because she's the sole  
9 heir.

10 So she doesn't get to really (d), Your Honor,  
11 until the probate court first determines that she's the  
12 common-law spouse of the decedent.

13 Thank you, Judge.

14 THE COURT: What month did Justice Hearn dispel  
15 a common-law marriage?

16 MR. KOON: July of this year, Your Honor.

17 THE COURT: So two months after this?

18 MR. KOON: Yes. And, of course, the case says  
19 that pre-existing common-law marriages are not affected.  
20 So we are alleging it pre-existed.

21 THE COURT: Got it.

22 MR. DODDS: It's a Charleston County case.

23 THE COURT: I know. She came and talked to us  
24 about it at the last judicial conference. They gave us  
25 their insight into why they decided to abolish it and all

1 that kind of stuff. I just didn't know which month they  
2 did it.

3 Mr. Koon, let me ask you a question. We've been  
4 friends a long time, so I know you will tell me the  
5 truth. What is the benefit to removing to the circuit  
6 court? It happens a lot, which is crazy. I don't know  
7 anything about probate work. So it's always -- that's, I  
8 guess, my --

9 MR. KOON: Your Honor, I think the probate  
10 practice is not as regular. It's not as routine. It's  
11 not as predictable as the circuit court practice. Many  
12 lawyers, including myself, are more comfortable in the  
13 circuit court arena, because the rules are, you know,  
14 established, not only the rules, but the practice is  
15 established.

16 You know, the probate court sets a hearing and  
17 sends out a notice. And, you know, that's about it.

18 THE COURT: Just out of sheer comfort, you would  
19 rather be in circuit court?

20 MR. KOON: Certainly. But, again, going back  
21 to -- that establishes my preference. But it doesn't  
22 establish any legal matters. The key to that is the word  
23 notwithstanding in Section (d).

24 THE COURT: Okay. Mr. Dodds?

25 MR. DODDS: I think if you look at subsection

1 (c), it's saying, although the probate court has  
2 jurisdiction to hear the matters in (a) through (c), it  
3 can be removed. In fact, uses the word "must be removed"  
4 on the items in (d).

5 What I'm saying, Judge, is that the items in (d)  
6 don't apply. And so that pushes us back to probate court  
7 having exclusive jurisdiction in the case of a dead  
8 person to decide a common-law marriage.

9 THE COURT: All right. Anything further?

10 MR. DODDS: No, sir.


11 THE COURT: All right. You will have my answer  
12 at the end of the day.

13 (Whereupon, the proceedings are adjourned.)  
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CERTIFICATE OF REPORTER

1  
2  
3 I, Karen V. Andersen, Registered Merit Reporter,  
4 Certified Realtime Reporter for the State of South  
5 Carolina at Large, do hereby certify that the foregoing  
6 transcript is a true, accurate and complete Transcript of  
7 Record of the proceedings.

8 I further certify that I am neither related to  
9 nor counsel for any party to the cause pending or  
10 interested in the events thereof.

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16 Karen V. Andersen  
17 Registered Merit Reporter  
18 Certified Realtime Reporter  
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STATE OF SOUTH CAROLINA	)	
	)	Court of Common Pleas
COUNTY OF CHARLESTON	)	Case No. 2019-CP-10-3006
_____	)	
MELISSA COMBS a/k/a MELISSA CLEARY,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	
CARLIE ELVIN CLEARY, individually	)	Date: March 3, 2020
and as personal representative	)	
of the Estate of Scott B. Cleary	)	
and DITECH FINANCIAL, LLC,	)	
	)	
Defendant	)	
_____	)	

B E F O R E:

THE HONORABLE BENTLEY PRICE

A P P E A R A N C E:

KERRY W. KOON  
Attorney for the Plaintiff

JOHN JOSEPH DODDS, III  
Attorney for the Defendant

ORIGINAL TRANSCRIPT ORDERED BY:  
Law Office of Kerry W. Koon

Stenographically recorded and transcribed by:

Karen V. Andersen  
Registered Merit Reporter  
Certified Realtime Reporter  
Certified Shorthand Reporter

1 THE COURT: This is your motion to reconsider,  
2 correct?

3 MR. KOON: It is.

4 THE COURT: What was the one that was --

5 MR. KOON: This was the spouse.

6 THE COURT: Oh, got you. This was referring back to  
7 the master or probate court?

8 MR. KOON: Probate court. And, quite frankly, when  
9 we argued the case, I was a little unsure as to what the  
10 grounds for the motion were. And I filed an elaborate  
11 response that probably didn't meet the grounds that John was  
12 going to argue. But I didn't glean that from the motion  
13 itself. And I think that Your Honor's determination hinged  
14 on the interpretation of the probate court jurisdictional  
15 statute, Section 62-1-302, which in Section C, mentions that  
16 the probate court has exclusive jurisdiction of certain  
17 matters, including matters to determine common law marriages.  
18 That's Subsection (c) with the jurisdiction concurrently with  
19 the family court.

20 But then Subsection (d) comes along behind it and  
21 says, even in matters of exclusive jurisdiction of the  
22 probate court - and it describes those matters as the  
23 foregoing matters - that the case would be removed from the  
24 circuit court if, and there are five or six different -- I  
25 guess five different circumstances in which it would be

1 removed to the circuit court, one of which is if it concerns  
2 the title of the real property in which the estate claims an  
3 interest, which this case does.

4 And another one - and I will be honest, Your Honor,  
5 I did not raise this in our prior argument - but in matters  
6 in which the parties have the right to a jury trial. And in  
7 common law spouse claims, you do have the right to a jury  
8 trial, *Memorial v. English*.

9 So, respectfully, I'm asking Your Honor to  
10 reconsider your decision to remand the case to the probate  
11 court and leave it in circuit court. At the time we argued  
12 it, you asked why I wanted to be in circuit court. Well, you  
13 got mandatory mediation. You get more complete discovery.  
14 You don't get rushed to trial. Though I guess we can do  
15 scheduling orders in probate court as well.

16 So I think the parties, and my finding in  
17 particular, the Plaintiff, has an interest in being in the  
18 circuit court. And so, respectfully, we would ask for Your  
19 Honor to reconsider your ruling that the circuit court does  
20 not have jurisdiction based upon Subsection (c) and (d) of  
21 the statute.

22 THE COURT: Let me ask you this, Mr. Koon. Pardon  
23 my ignorance, but I remember specifically asking you why you  
24 wanted to move to circuit court. And you said exactly that,  
25 because this is where I'm more familiar.

1 MR. KOON: That is certainly true.

2 THE COURT: Meaning you have all those abilities to  
3 enter into discovery and right to a jury trial, mandatory  
4 mediation, all the things that you are very familiar with.  
5 But the question then begs, why would you not want to do  
6 that?

7 MR. DODDS: Because it doesn't belong there.

8 THE COURT: I understand that. But that's not the  
9 question. I'm saying whether it belongs in circuit court or  
10 not, why would you not want to participate --

11 MR. DODDS: It's all about delay. His client is  
12 occupying the residence of the decedent. And so delay works  
13 in her favor because my client is paying the mortgage payment  
14 on the property. And our efforts to evict her from that  
15 property is essentially held in abeyance pending the  
16 determination of the issue as to whether she's the common law  
17 spouse of the decedent. So that's what this is all about.  
18 She's staying in a house on James Island for free.

19 THE COURT: Okay.

20 MR. DODDS: And we agreed -- and I wish I wouldn't  
21 have, frankly. We agreed to allow her to turn on the  
22 electricity in our name, you know, thinking that this matter  
23 would be resolved in magistrate's court on James Island where  
24 we had filed an ejection action within a couple of months.  
25 And that was -- you know, we are probably working on eight or

1 nine or ten months ago. So that's what this is all about, is  
2 delay.

3 And, you know, all the things that Mr. Koon would  
4 like to have with respect to discovery -- he's done none, by  
5 the way -- a scheduling order, you know, those can be done in  
6 probate court. And I respect Mr. Koon for telling you,  
7 Judge, that he didn't argue this issue about triable by jury  
8 and that sort of thing, because he didn't. And the rules  
9 under Rule 49 -- excuse me, 59, prevent him from arguing on  
10 the first occasion a new matter which was not raised in his  
11 previous argument.

12 And in terms of putting him on notice, Judge, I  
13 referenced the statute, which is the jurisdictional statute  
14 for probate court and also the circumstances under which it  
15 can be sent over to circuit court, and that's 62-1-302. And  
16 that's pretty clear.

17 So what we kind of start with, Judge, in this  
18 62-1-302, starts off (a) (1), that the probate court has  
19 exclusive original jurisdiction over all subject matter  
20 related to da, da, da, da, determination of heirs. That's  
21 what this case is about.

22 Mr. Koon's client has alleged that she's the common  
23 law spouse of the decedent who died intestate, Your Honor.  
24 And if she can prove that she's the common law spouse of the  
25 decedent, then she is the sole heir pursuant to the laws of

1     intestacy.

2             What he's trying to do, Your Honor, is to have the  
3     matter heard. And let me mention just one other, and that's  
4     (c), Your Honor, and it talks about the probate court has  
5     jurisdiction concurrent with the family court to hear and  
6     determine issues relating to "common-law marriage". So not  
7     circuit court, but family court.

8             And, Judge, the probate court deals with the issue  
9     of common-law marriage on a regular basis, determining  
10    whether or not an alleged common law spouse is an heir  
11    pursuant to the laws of intestacy.

12            So what he argued at the last hearing, Judge, and  
13    what he raised in his memorandum was that this was somehow  
14    some sort of an action to try title or partition or something  
15    like that. And the significance of that, Judge, is that  
16    (a) (1) talks about the probate court has exclusive original  
17    jurisdiction, determination of heirs. And then it goes on  
18    and says, except that the circuit court also has jurisdiction  
19    to determine heirs and successors as necessary to resolve  
20    real estate matters, including partition, quiet title and  
21    other actions pending in circuit court.

22            And that happens all the time, Judge, on suits to  
23    declare title, tax deeds and stuff like that. Circuit courts  
24    make determinations that so-and-so died intestate back in  
25    1901 and these were his heirs, for the purpose of

1 facilitating a suit to declare title action and ultimately  
2 the disposition of the real property. That's not what is at  
3 issue in this case.

4 What's at issue is whether or not Mr. Koon's client  
5 is the common law spouse of the decedent. And if she is,  
6 then the case is essentially over from the perspective of  
7 what happens to the decedent's assets, because per the laws  
8 of intestacy, everything would go to her. He died without  
9 any children. He had a father. And that's it.

10 THE COURT: All right.

11 MR. KOON: Respectfully, Your Honor, of course, a  
12 couple of things to respond. Our second cause of action is  
13 to quiet title to two pieces of real property located in  
14 Charleston County. So I think that alone triggers the  
15 jurisdictional ability of this court to hear the case under  
16 Subsection (d).

17 And this is not a matter of delay by no means. And  
18 if the Defendant has an issue with the fact that the  
19 magistrate's court case cannot go forward, that's a clear  
20 matter of lack of jurisdiction on the magistrate's court's  
21 part, because there is a statute, of course, that ejection  
22 proceedings cannot be maintained if there's an action in a  
23 higher court that determines -- to determine the title of  
24 real property, which this one does. So that would -- that's  
25 just a nonissue. That's what the law is.

1           And I learned that the way I learned most of things,  
2 somebody pulled it on me. But it's there. And the  
3 magistrates all recognize it, of course.

4           Thank you, Your Honor.

5           MR. DODDS: Very briefly, Judge, I don't think that  
6 you can assert a cause of action in a complaint in an effort  
7 to confer jurisdiction of the Court. The Court is going to  
8 have to look at what the issue is. The issue is - and I  
9 don't believe he can dispute this - is whether or not this  
10 woman is a common law spouse of the decedent.

11           THE COURT: Who is your client, Carlie Elvin Cleary?

12           MR. DODDS: He's the personal representative, Your  
13 Honor.

14           THE COURT: Of the estate?

15           MR. DODDS: Yes, Your Honor.

16           THE COURT: Which has no other beneficiaries  
17 whatsoever, correct?

18           MR. DODDS: That's correct. So he would be the sole  
19 beneficiary.

20           THE COURT: The father?

21           MR. DODDS: Right, unless she prevails on her  
22 theory. Yes, sir.

23           MR. KOON: Mr. Cleary did pass away just a couple  
24 days ago, I understand.

25           MR. DODDS: He did.

1 THE COURT: All right. Let's have a law lesson for  
2 our student law clerk who is here. What would happen to the  
3 estate now?

4 MR. DODDS: It would pass pursuant to his last will  
5 and testament, Your Honor. The deed of distribution to the  
6 real estate has already been issued in the name of Mr. Cleary  
7 as the sole beneficiary of the decedent.

8 THE COURT: So he has a will giving it to somebody  
9 else. It would go to somebody else?

10 MR. DODDS: That's true. It was passed -- if she  
11 does not prevail, then nothing is upset with respect to  
12 what's happened. And it would pass pursuant to his last will  
13 and testament. Yes.

14 THE COURT: All right. Anything else, Mr. Koon?

15 MR. KOON: No, Your Honor. Thank you.

16 THE COURT: Always happy to help. Anything further?

17 MR. DODDS: No, Your Honor. Thank you.

18 THE COURT: You will have my decision by the end of  
19 the day.

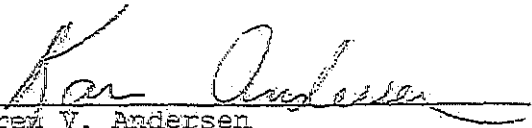
20 (Whereupon, proceedings are adjourned.)  
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CERTIFICATE OF REPORTER

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I, Karen V. Andersen, Registered Merit Reporter,  
Certified Realtime Reporter for the State of South Carolina  
at Large, do hereby certify that the foregoing transcript is  
a true, accurate and complete Transcript of Record of the  
proceedings.

I further certify that I am neither related to nor  
counsel for any party to the cause pending or interested in  
the events thereof.

  
Karen V. Andersen  
Registered Merit Reporter  
Certified Realtime Reporter

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**Mar 02 2021**  
**SC Court of Appeals**

APPEAL FROM CHARLESTON COUNTY

Bentley D. Price, Circuit Court Judge for Charleston County

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Appellate Case No. 2020-000594

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Melissa Combs a/k/a Melissa Cleary.....Appellant,

v.

Carlie Elvin Cleary, Individually and as Personal Representative of the  
Estate of Scott B. Cleary & Ditech Financial, LLC.

Of whom Carlie Elvin Cleary, Individually and as Personal Representative  
of the Estate of Scott B. Cleary .....Respondent,

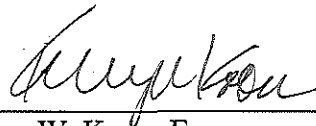
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***CERTIFICATE OF COUNSEL***

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The undersigned hereby certifies that the Record on Appeal contains all material  
proposed to be included by any of the parties and not any other material.

February 26, 2021



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Kerry W. Koon, Esq.  
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Charleston, SC 29412  
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Attorney for Appellant