

**RECEIVED****Mar 02 2021****SC Court of Appeals****FAX****Date:** 03/02/2021

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**NOTE:**

Case No. 2020-000021 Record on Appeal - Part 2 of 9. Correction the ROA will be sent in 9 separate parts.

1 contend, was not proper. As far as the court award, I do  
2 not believe that being a personal representative you have to  
3 be an attorney, I believe you can do that without being  
4 counsel. Just because she is counsel, and she's a good  
5 counsel, does not mean that you get to tack on a party's  
6 attorney's fees, so we object on that basis and we ask the  
7 Court to reconsider that. Also the items produced. There  
8 are statements that those items were not the items  
9 responsible, but that's it, that's what our client had.  
10 They are not gun people, they just -- "Here is what we have,  
11 here you go, sort it out, out of an abundance of caution  
12 we're giving it up." So anything dealing with this second  
13 gun that came into play, that second gun does not match any  
14 of the descriptions, and really that was us telling our  
15 client, "Anything you have you better give it up." And  
16 there's still -- we looked at it, didn't believe it fit the  
17 description but out of a sheer abundance of caution that  
18 item was produced, and it still does not line up with the  
19 description, and because there was no finding on that  
20 particular item that it was not produced, that he had it or  
21 that he somehow disposed of that, then any finding on  
22 contempt based on that just does not flow. Under Rule 37,  
23 which they initially moved under for fees, at the very least  
24 we would ask for another hearing and to postpone the payment  
25 until we figure out and look at the factors, the Cheapos

1 Truck Stop factors to determine, okay, what items of  
2 contempt are you finding and how does it relate to the  
3 attorney's fees, and kind of break it out, and Rule 37  
4 actually of the South Carolina Rules of Civil Procedure  
5 allows for that. Another basis for our motion is deposition  
6 testimony was entered against George, and because this fee  
7 is so high and it's -- it looks so much like criminal  
8 contempt -- I know we disagree on that, but George's  
9 deposition testimony coming into this particular proceeding  
10 we contend was error just based on that and the nature of  
11 the contempt. Also in our motion there are no citations to  
12 the record as to George and also to Mr. McCoy's client,  
13 Chris, although with Diane there's specific citations in the  
14 record. Based on the cases you have to find specific facts,  
15 and if the Court does uphold its order we respectfully ask  
16 the Court to identify which parts of the transcript actually  
17 amounted to a contempt so that way we could pinpoint on  
18 appeal. And I believe -- I was not there that day so don't  
19 hold me to this, but I believe you said something to the  
20 effect to make sure you had specific citations to the  
21 record. And although it has it for Diane, at the very least  
22 we would ask that the Court pinpoint the citations for the  
23 record that base the contempt, so that way on appeal we can  
24 address, okay, this person said this and it led to your  
25 decision. And other than -- we also addressed the Taylor

1 Factors. The Court addressed two, three and five of the six  
2 Taylor Factors, but did not, in our opinion, address one,  
3 four and six, which are the -- and this is Taylor versus  
4 Medenica, 331, South Carolina 575. And the factors that  
5 were not addressed in our estimation are the nature, extent  
6 and difficulty of the case, four, the contingency of  
7 compensation, and six, the customary legal fees for similar  
8 services. Now, really number four is the big one because  
9 when you're dealing with contingency fees sometimes you're  
10 kind of playing with house money in that you haven't  
11 actually paid that amount. I get that it's time, it's not  
12 completely a dispositive factor but it sure is important,  
13 and we at least like to address that at a separate hearing.  
14 And finally, this kind of ties in with the first argument,  
15 the identification of trust property. We're dealing with a  
16 trust, and that trust, the documents -- I draft these things  
17 and I've learned a lot from this case about what to do and  
18 what not to do with the inventory, a lot, and there's no  
19 specific identifications of these items. I mean, that's a  
20 no-no. It's not Ms. Ballard's fault, she did not draft this  
21 estate document, but it is what it is. And it even goes  
22 back further than the subpoena, you have the estate items,  
23 then the subpoena, which was vague as well. And not only  
24 that, but up until the petition we have no idea what items  
25 we're working with, just gave them everything we had and